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Evolution of Contempt of Court: Historical Analysis and Comparative Perspectives in the UK, USA, and India

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ABSTRACT

The research paper provides an extensive overview of the concept of "contempt of court" and its historical evolution in legal systems across various countries, with a primary focus on the United Kingdom, the United States, and India. It delves into the background, definitions, types, and significance of contempt of court, discussing how it aims to uphold the integrity and authority of the judicial system. The paper traces the historical development of contempt of court from its origins in early legal systems, where it was used to maintain the dignity of the court and ensure compliance with its orders. It highlights the transition from the discretionary power of monarchs to the three branches of governance in democratic societies, leading to the need for a balanced approach to contempt laws. The analysis centers on the Indian context, detailing the evolution of contempt laws in the country. It covers key legislations such as the Contempt of Court Act of 1926, its shortcomings, and subsequent amendments. The Contempt of Court Act of 1971 is discussed in detail, highlighting the complexities and challenges associated with balancing freedom of expression and personal liberty against the preservation of the court's decorum and authority. The paper also explores significant legal cases, both in India and internationally, that have shaped the interpretation of contempt of court. Notable cases include instances where criticism of the judiciary was considered contemptuous and led to legal actions. The paper underscores the tension between protecting freedom of speech and maintaining the judiciary's integrity and analyzes recent controversies surrounding the interpretation and application of contempt laws. Ultimately, the paper concludes by suggesting the importance of striking a balance between freedom of expression and contempt of court, emphasizing the discretionary nature of contempt jurisdiction. It advocates for a clear distinction between criticism and contempt, along with a cautious approach to exercising contempt jurisdiction only when the integrity of the judicial system is genuinely at risk.

Keywords: *Contempt of court, Contempt of Court Act, 1971, Freedom of speech and expression, Article 19 of Indian Constitution, 1950.*

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I. INTRODUCTION

The "contempt of court" according to Sir James Francis Oswald means *"any conduct that tends to bring the authority and administration of the law into disrespect or disregard or to interfere with or prejudice parties, litigants or their witnesses during the litigation.*".[3]

The doctrine of contempt of court has been used by judges since Roman times to preserve the grandeur of the justice delivery mechanism. During these old times, this doctrine was used in a liberal manner at the discretion of the king. However, it evolved with change in time, with enhancement in the art of governance, the king or sovereign surrendered its power to the three organs of democratic governance, namely, the Legislature, Executive and Judiciary. All duties carried out by judges were considered to be executed at the order of the sovereign. It was thus referred to as the "Kings Justice" and required complete admiration and compliance. The dignity of law was considered to be disrupted if any contempt came to the seat of justice.

English judges were one of the first ones to give a steady balance to the provisions of contempt of court. In India, this doctrine was laid down in the 19th century when court of records was formed by the British. The Contempt of Court Act, 1926 was an attempt to formulate a comprehensive legislation. However, this act lacked key provisions with respect to contempt in subordinate courts and only the Chief courts and judicial commissioners were covered. The extra territorial jurisdiction of the High courts was also excluded from the preview of the act. It was a short act and merely three sections were present. The preamble stated that *"it was an act to define and limit the powers of certain courts in punishing for contempt of courts."* It had uncertainties concerning the authority of the high courts to penalize the offense of contempt. It was necessary to solve this issue and put a limit to the high court's power to punish cases of contempt. A person in contempt may be punished with jail term which may not exceed a period of six months or a fine which may not exceed beyond 2000 rupees or both under the act.

The act of 1926 had several deficiencies and as a result the Contempt of Court Act, 1952 was introduced with overriding effect over the act of 1926 in order to enable the High Court to exercise its contempt power beyond the limits of its extra provincial jurisdiction.[4] The provisions relating to penalty in both these aforementioned acts were valid and constitutional, but they failed to meet the expectations of the general public since they interfered and restricted Article 19(1) (a)[5] of the Constitution of India dealing with freedom of speech and expression.

[3]JAMES FRANCIS OSWALD, CONTEMPT OF COURT, 6 (3rd ed., Hindustan Law Books, Calcutta 1993).
[4]K. N. Goyal, *Judicial Miscellany*, J.T.R.I. JOURNAL, July – September 1995, at 34.
[5]INDIA CONST. art. 19, cl. 1(a).

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The act of 1952 lacked safeguards to uphold the freedom of press in India. Consequently, a committee was set up under the chairmanship of Shri H. N. Sanyal, who was also the Solicitor General of India at that time. The committee advised key changes to the Contempt of Court Act, 1952 and gave a detailed report to the legislative authority. A bill was then presented to the select committee in Rajya Sabha on 19th February 1968 which eventually developed into the contempt of court Act, 1971 and repealed the earlier act. The preamble of contempt of court Act, 1971 states that "*An Act to define and limit the powers of certain courts in punishing contempts of courts and to regulate their procedure in relation thereto."* The current law relating to contempt of court is indeterminate and insufficient since two significant fundamental rights, namely, right to "freedom of expression" and "right to personal liberty" are directly affected while exercising jurisdiction to punish for contemptuous behaviour.

II. DEFINITION OF "CONTEMPT OF COURT"

Several judges have tried to define "Contempt of Court," over the years. However, there is no typical description of the expression. The Sanyal committee had also observed that difficulty and vagueness start at the definition stage itself. Extraordinary procedures and far-reaching doctrines relating to contempt law have evolved over the due course of time. These doctrines have evolved from elementary rules created for the purpose of safeguarding compliance with the directions of the court. They were never subjected to any kind of legislative supervision and scrutiny right till the advent of the 21st century. As the law of contempt expanded its reach, every time there was a new type of threat to the administration of justice, the law on contempt witnessed a corresponding extension. Even now it can be exclaimed that the categories of contempt are not exhaustive in nature. On one end, there is contempt based upon mere disregard to directives of the court involving an offence of private nature between the parties to the litigation proceedings. On the other hand, there is contempt which might include violence or blackmail or defamation by publication in print or other sources of media.

When a legal system develops through a law based on precedents, the entire process becomes haphazard. In this case it becomes difficult to create a clear classification between various divisions of law of contempt. It becomes almost impossible to demarcate an area of action of contempt law which could be based on the possibility of new forms of contempt ascending in the future. It is for this reason that an exhaustive definition of contempt of court has not been successfully laid down by judges and jurists. The law of contempt covers the whole field of litigation itself. The real end of a judicial proceeding, civil or criminal, is to ascertain the true facts and dispense justice…Anything that tends to curtail or impair the freedom of the limbs of

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the judicial proceeding must result in hampering the due administration of law and in interfering with the course of justice."[6]

The proceedings of contempt do not comprise a disagreement among two parties but between the court and any individual who is accused of degrading the dignity of the court.[7]Any person who brings to the knowledge of the court of any contemptuous behaviour is not classified as a prosecutor but is considered only as an assistant or friend of the court. The special jurisdiction to punish for the offence of contempt was described in Supreme Court Bar Association v. Union of India[8] as an ostensible irregularity on the ground that the court would not adjudicate on any claim among the parties to the litigation process. The authority to obligate for contempt is penal in nature. This allows to preserve the decorum and integrity of the court and any orders passed during the process.

III. POSITION OF LAW IN UNITED KINGDOM

Justice Wilmot in R. v. Almon[9] observed that, whenever a man's allegiance to the law is fundamentally shaken, it is the most dangerous obstruction of justice. In his opinion, he calls for immediate action since courts are the channels by which the Kings justice is conveyed to people and it not for the sake of the judges as private individuals.

The Act of contempt of court in England is restricted through judicial powers which can be exercised to avoid any obstruction of justice and to safeguard the dignity of the court. Contempt can be of two types. It can either be civil or criminal in nature. When the interference caused against the administration of justice is found to be intentional, such actions may be termed as a criminal contempt. On the other hand, when the act involves the disobedience of a decree or any order passed by the court even lacking the intent to interfere, the same can be termed as civil contempt. It is essential that proof beyond any reasonable doubt is presented to establish criminal contempt whereas civil contempt only requires a great amount of evidence. The fact whether the contempt occurs inside the court or beyond its physical limits also holds significance. It is much harder to prove contempt when it occurs outside the court room.

The option of a trial by jury is not provided to contemnors in England. In 1981, the Contempt of Court Act was passed by the parliament. This act imposed an imprisonment sentence which may not exceed a period of two years for both civil and criminal contempt along with variety

[6]S. Pal, *Law of Contempt*, Law Research Institute, Calcutta, 2001, at 26.
[7]State of Maharashtra v. Mahboob S. Allibhoy, A.I.R. 1996 S.C. 2131 (India).
[8]Supreme Court Bar Association v. Union of India, (1998) 4 S.C.C. 409 (India).
[9]Rex v. Almon, 243 Wilm, (1765).

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of fines. The court also holds the discretion to pardon the contemnor on account of an apology.

In England, various restrictions are imposed on reporting of court proceedings. Also, publicising of any material that might hinder in the process of doing justice is restrained. The news published in the media might prejudice a juror and create a bias which can be detrimental to the proceedings of the court. The contempt of court rules helps to prevent any such actions before or during a trial. The decision of the jury must only be influenced by the evidence presented during the trial. The innocence of the accused must be assumed by the jury along with the presumption that the accused has no previous criminal record.

Two sets of rules are used to govern Contempt of court:

1. Individual cases are governed by the Contempt of Court Act, 1981.

2. General administration of the law is governed through contempt

If any substantial risk is created by a story which may create a prejudice and seriously impede the course of a trial, then it can be used as a test to determine contempt. The use of the words 'serious' and 'substantial' are the tests which help the court to determine if a story would prejudice the mind of the reader who might be selected as a juror in a case. The timing of the published story helps to determine the occurrence of contempt. If the time between news getting published and the jury proceeding to conclude its decision is long, then there are lesser chances that the story might lead to contempt. News outlets must anticipate the average amount of time required for a case to go from apprehension to trial. The risk of contempt increases if the news is published just before the commencement of the trial as opposed to being published on an earlier occasion.

The likelihood of a juror encountering a specific news story is taken into account when determining whether it constitutes contempt. For instance, if the news is published in a western daily located in Brighton but the trial is taking place in Essex County, the potential for "substantial risk" or "serious prejudice" is minimal, as it's unlikely that a potential juror from the trial area would have come across it. If the court assumes that a potential juror might have been exposed to the news, the next step is to evaluate the initial influence it could have had on the reader. This assessment involves considering how the story was presented. For instance, a front-page headline in a local newspaper would likely carry more impact than a story buried on the eighteenth page of a national publication. Subsequently, the court would analyze the lingering or residual effect of the story.

Courts typically adopt a liberal approach when applying the provisions outlined in the Contempt of Court Act of 1981. Judges recognize that much of the pre-trial media coverage may carry

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potential bias, yet it often lacks the capacity to generate a significant threat of "substantial risk" or "serious prejudice." There have been vivid accounts of the Geoff Knights assaulting a taxi driver created by National Tabloids, however the same have been cleared of any charge of contempt. It is necessary to understand that every case is distinct in facts but by applying the above-mentioned tests the editor of a tabloid can make their own analysis as to whether a piece of news might lead to contempt. If the person who is arrested is released without any charge except on account of bail, the provisions of the contempt of court Act, 1981 cease to be active. Also, if arrest is not made within stipulated time and the case is discontinued.

It is considered safe for newspapers to assist in locating a wanted fugitive, upon requests from the police, who is subject to a court-issued warrant. However, the use of words or phrases like a "dangerous man" or "Help find the Monster" can create a substantial risk or serious prejudice. The attorney General has assured that such actions by newspapers will not be prosecuted as the standard for public safety overshadows the fugitive's right to a just and fair trial. This immunity ceases as soon as the "dangerous man" is arrested.

A defence is provided to the editor under Section 3 of the act. If during publication, having taken all sensible consideration, he didn't have the vaguest idea and was not motivated to presume that procedures in the specific trial were ongoing. Section 5 of the Act offers insurance to pieces of news, which are a dialogue in public transactions as long as the danger of partiality to a specific case is only coincidental to the more extensive discourse. The act also provides that, when the case is set for trial or when an actual date of hearing has been fixed, civil proceedings also become active when the risk of contempt is involved. Just as a story, a picture can also be in contempt, for example, the case is based on the witness identifying the accused in court or the test identification parade. If the media published a picture of the accused in handcuffs standing next to the enforcement agency, it will certainly create a prejudice in the mind of the juror.

Under Common Law, the prosecution should be able to prove prejudice has been created and the same was intended by the editor. All the circumstances that lead to the publication can be used by the court to infer intent. Any articles which can be prejudicial in general course of administration of justice are also covered within the ambit of common law contempt as opposed to the act which governs only individual cases.

Lord Salmon in Attorney General v British Broadcasting Council[10] stated that the *"description 'Contempt of Court' no doubt has a historical basis, but it is nonetheless misleading. Its object*

[10] Attorney General v British Broadcasting Council, (1981) AC 303.

is not to protect the dignity of the Courts but to protect the administration of justice." The In a democratic system, the power of contempt exists solely to facilitate the functioning of the Court, rather than to uphold and defend its authority and prestige. Lord Denning in Regina v. Commissioner of Police[11] noted that *"Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.*

IV. POSITION OF LAW IN THE USA

An act of defiance or disrepute towards the judicial organ of the government can be termed as contempt of court. It can be seen as a crime against the courts of justice or any person who's in-charge of discharging the judicial functions. Contempt of court is defined under volume 17 of the American Jurisprudence. It may be classified as follows:

1. Deriding the power of the Magistrateor self-respect of the court;

2. An action which may cause disregard and disrespect to the authority and administration of law;

3. Any behavior which hinders or biases the parties to a lawsuit or their witnesses during a litigation proceeding;

4. Any demeanor which tends toobstruct, humiliate, or hamper a court of law or a magistrate in the discharge of its or his responsibilities;

5. A statutory definition of contempt cannot be exhaustive.

The American case Schenk v. United States played a pivotal role in formulating the "clear and present danger" principle, which subsequently safeguarded freedom of speech within the nation. This case involved the Supreme Court's interpretation of specific provsions within the Military Censorship and Espionage Act of 1917. These provisions imposed stringent constraints on both freedom of speech and press. The court dismissed the petitions and affirmed the constitutionality of the espionage act. Justice Holmes said *"The right of speech had never been an absolute one at any time, in peace or in war. Free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. When a nation is at war, he added many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and no court could regard them as protected by any*

[11] Regina v. Commissioner of Police, (1968) 2 QB 150.

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Constitutional Right."

Thus, conferring to this interpretation, in order to prove that the freedom of speech can be violated, the government should establish conclusively that there is "clear and present danger" to the government ascending from the use of such freedom. The principle, conversely, got discarded in 1951 case of Dennis v. United States.[12] Vinson C.J. observed that "*we are squarely presented with the application of the "clear and present danger" test and must decide what the phrase imports."* The test for "clear and probable danger" has been adopted in place of the test for "clear and present danger". The factor of time has also been disregarded from the test. According to the new test it was declared that the impugned statute was within the constitutional boundaries. However, the act of conspiring to propagate a rebellion against the state without any apparent imminent danger was penalized. The reach of the law was prolonged in this process. Subsequently, Justice Douglas also expressed concern that the majority ruling in this case had indeed clouded the concept of free speech.

The Dennis case has been technically overruled by the Supreme Court while seeming to stick to the alteration of the "clear and present danger" test in Yates v. United States.[13] In the Yates case, the Supreme Court invalidated the convictions of fourteen individuals affiliated with communism who had been charged under the Smith Act by the government. It was held that the propagation of rebellion against the government as an intellectual idea did not fulfil the criteria to establish an offence under the statute. When some action whether immediate of otherwise has been initiated to that end, that the transgression under the act would be committed. The safeguarding of "freedom of speech," curtailed in the Dennis case, was to some extent reinstated in the Yates case. Nevertheless, this evaluation holds no relevance in India, as it was disapproved by Justice Madhokar in 1961.[14]

Only two types of contempt, namely, "Direct contempt" and "indirect contempt" are recognized under the United States contempt law. When the contempt occurs outside the court and the court needs to rely on evidence from witnesses and third parties, it is known as "indirect contempt." Contempt is direct when it ensues in the presence of the court during a trial.[15] The fact that "direct contempt" must take place in presence of the court does not mean that such contempt occurs inside a court room. The exercise of judicial duties must be accompanied by certain

[12]Dennis v. United States, 34 U.S. 494 (1951).
[13]Yates v. United States, 354 U. S. 298 (1957).
[14]Babu Lal Parate v. State of Maharashtra, A.I.R. 1961 S.C. 884 (India).
[15]Matter of Heathcock, 696 F.2d 1362, 1365, (11th Cir. 1983); United States v. Peterson, 456 F.2d 1135, 1139, (10th Cir. 1972).

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degree of conventionalism which is usually found in a court room setting.[16] The court may summarily decide and punish contemptuous behaviour which occurs in the court's presence.[17]

A broad general principal cannot be applied to the law of contempt. A certain distinction has been made between the civil and the criminal contempt by the courts. It becomes necessary to create such a distinction due to variance in procedural and substantive laws applicable to "civil" and "criminal contempt". In ordinary sense, criminal contempt is technically a crime. In Bloom v. Illinois[18], *it was observed that "criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings.* The following rights are included in these constitutional protections; Protection against double Jeopardy[19]; Information about charges against accused; Legal Assistance; Receive the proceedings summarily; The right to a defense[20]; Right against self-incrimination; Standard of proof must be "beyond reasonable doubt."[21]

When the criminal contempt is serious and where the quantum of punishment exceeds six months, the right to a jury trial is also accorded to the accused. In contrast to the complexities of criminal contempt, civil contempt can be avoided through obedience and compliance with the directions of the court. The sanctions under civil contempt have been designed not to punish, but to ensure compliance with the court order in future.

V. POSITION OF LAW IN INDIA

The initial significant legal precedent concerning contempt of court was established in 1954. During this case, the District Bar Association passed a resolution expressing their view that two judicial officers were not competent enough for their positions. The Apex Court observed that there is no contempt made out in this case since the judges made the impugned statements in their individual capacity and thereby could not trigger contempt proceedings. It was observed that *"It would be only repeating what has been said so often by various Judges that the object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened."*

[16]Matter of Jaffree, 741 F.2d 133, (7th Cir. 1984).
[17]McGuire v. Sigma Coatings Inc., 48 F.3d 902, (5th Cir. 1995).
[18]Bloom v. Illinois, 391 U.S. 194, 201 (1968).
[19]United States v. Dixon, 509 U.S. 688, 695 (1993).
[20]Cooke v. United States, 267 U.S. 515, 537 (1925).
[21]Gompers v. Bucks Stove & Range Co.,221 U.S. 418, 444 (1911).

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The Courts in future similar cases should keep in mind two considerations. Firstly, if the remarks on character the judges are within the boundaries of fair and reasonable criticism. Secondly, if it is simply a defamation rather than an actual contempt of court. Justice Mukherjee observed that "*It is to be kept in mind, when attacks or comments are made on a judge or judges, disparaging in character and derogatory to their dignity care should be taken to distinguish between what is libel on the judge and what amounts to contempt of court. The fact that a statement is defamatory so far as the judge is concerned does not really make it a contempt*." The Supreme Court laid down a principle that a definite intrusion with administration of justice need not be proved, rather a simple defamation which is likely to interfere with the administration of justice would be enough.

The "hyper sensitivity" of Supreme Court in handling of contempt cases can be seen from the case of E.M. Sankaran Namboodripad v. T. Narayanan Nambiar.[22] In 1970, the then chief minister of Kerala, E.M. Sankaran Namboodripad, remarked that Marx and Engels undrstood the judiciary an instrument of oppression. He further remarked that judges were guided by class prejudices. The court held him guilty of contempt of court. He appealed to the apex Court pleading that his remarks were just interpretations to the Marxist philosophy and the same were laid down as agenda of his party. Moreover, they were made as a fair criticism of the judicial administration of the country's highest court and did not criticized any particular judge. He exclaimed that the law of contempt should be interpreted in a way that no intrusion is done upon the freedom of speech and expression which is guaranteed under Article 19(1)(a) of the Constitution of India. The judges arrived at the conclusion after looking into the readings of Lenin and Marx, that nowhere in their writings they have made any direct attack on the judiciary and there is no mention of judges. The court observed that "either he does not know or has deliberately distorted the writings of Marx."

Surprisingly, in P. N Duda v. P. Shivshanker[23], the Supreme Court took a liberal view. The then Minister of Law Mr. P. Shiv Shankar made a speech in which he made some strong allegations concerning the Supreme Court. He stated that "it was composed of elements from the elite class". and had "unconcealed sympathy for the haves". Justice Mukherjee observed that *"there was no imminent danger of interference with the administration of justice, nor of bringing an administration into disrepute. In that view the minister was not guilty of contempt of the court. The speech of the Minister read in its proper perspective, did not bring the administration of justice into disrepute or impair administration of justice, though in some portions of the speech*

[22]E.M. Sankaran Namboodripad v. T. Narayanan Nambiar, (1970) 2 S.C.C. 325 (India).
[23]P. N Duda v. P. Shivshanker, A.I.R. 1988 S.C. 1208 (India).

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language used could have been avoided by the minister having background of being former judge of the High Court. The minister perhaps could have achieved his purpose by making his language but his facts deadly."

Recently, the verdict in the Prashant Bhushan case[24] posed a severe threat to the fundamental right of freedom of speech and expression. The apex court started suo moto contempt proceedings against Prashant Bhushan after considering the two tweets he posted on social media platform Twitter. First tweet was a comment along with a picture, portraying the then CJI Sharad Arvind Bobde riding a Harley Davidson motorcycle belonging to a BJP leader. The second one was a write up on the apex court's role in damaging the democracy of India. The supreme court considered both the tweets as a scurrilous and malicious attack on the country's highest court of justice. The court observed that *"any publication that casts defamatory and unwarranted perceptions over the character of the judges would be included within the meaning of scandalizing the court."* This kind of act inculcates a sense of mistrust and disagreement among the people which thereby impairs their confidence on the judicial system of the country.

This judgment of the Supreme Court severely undermines the freedom of speech and expression since it is based on the premise that Indian judiciary's respect and integrity is derived from the perception of public towards it. What makes the judgment even worse is the timing of it. It comes at a time when government authorities have increasingly resorted to the abuse of criminal laws against protesters, dissenters, activists and university students on grounds of sedition, terrorism, and defamation.

The Supreme Court is not the only court which has issued contempt of court proceedings in the past. Many High Courts in the country have also done the same. In "Wah India" case[25], the Delhi High court came into the limelight. The results of a purported survey which graded the judges of Delhi High Court were published on the magazine's website. Judges were graded inter alia, on their quality of judgments delivered and their personal integrity. The court ordered the confiscation of unsold copies of the news magazine and banned its circulation. It even ordered the media to not publish any material that would lower the dignity and authority of the judges. The court, however, lifted the ban on the reporting of contempt proceedings and asked them to report in a fair and accurate manner.[26]

The case of Arundhati Roy[27] was one of the most controversial ones. She had criticized the

[24]Prashant Bhushan, In re (Contempt Matter), (2021) 3 S.C.C. 160 (India).
[25]Madhavi Divan, *The Law of criminal Contempt: time to move on*, The Lawyers Collective, March 2002 at 8.
[26]V. Venkatesan, w*hat constitutes 'scandalising the court,'* Frontline, May 12, 2001.
[27]Arundhati Roy, In Re, (2002) 3 S.C.C. 343 (India).

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Court for suppressing dissent as a response to the Court's earlier judgment of developing a dam. She even organized a protest in front of the court. This motivated the court to initiate suo moto contempt proceedings against her. The Court reiterated that the fundamental right of freedom of speech and expression guaranteed under the Indian Constitution is not absolute and is subject to reasonable restrictions. One of such restrictions is contempt of Court which aims at maintaining confidence and upholding the respect and integrity of the judiciary in the eyes of public. The court held that *"A fair criticism of the conduct of a judge in the institution of the judiciary and its functioning may not amount to contempt if made in good faith and in public interest. To ascertain the good faith and the public interest, the courts have to see all the surrounding circumstances including the person, his knowledge in the field and the intended consequence"***.**

Every individual citizen cannot be allowed to comment upon the functioning and conduct of the courts. Every statement made cannot be justified in the name of fair criticism since if not checked, it would completely destroy the institution itself. Nonetheless, the court held that this cannot come under the exception laid down in P. N. Duda v. Shiv Shanker[28]*case*. Since, in language of the court, "*it may be noticed that the criticism of the judicial system was made by a person who himself had been the judge of the High Court and was the Minister at the relevant time. He had made studies about the system and expressed his opinions which, under the circumstances was held to be not defamatory despite the fact that the court found than in some portion of the speech the language used could have been avoided by the Minister having the background of being a former judge.*"[29] After considering the materials on record the court hence found her guilty of contempt and sentenced her to one day of "symbolic imprisonment".

VI. CONCLUSION

The historical evolution of contempt laws reflects the changing dynamics of governance, from autocratic to democratic systems. The transition from the king's authority to the tripartite governance structures of Legislature, Executive, and Judiciary underscored the need to protect the courts' authority while ensuring democratic principles and citizens' rights. This delicate balance has been the cornerstone of shaping contempt laws in different countries.

The intention behind formulating a law of contempt and vividly describing it as "scandalizing the court" is to create a protective fortification against the deviations that may occur while judging. In England, the Law Commission of 2012 abolished the offense of scandalizing the

[28]P. N. Duda v. Shiv Shanker, A.I.R. 1988 S.C. 1208 (India).
[29]Arundhati Roy, In Re, (2002) 3 S.C.C. 343 (India).

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court, deeming it a violation of freedom of expression that should not persist unless supported by substantial principled or practical reasoning. Presently, the exercise of contempt jurisdiction is a rare occurrence in these Western nations. Moreover, Justice Lord Diplock once observed that *"the species of contempt which consists of 'scandalising the judges' is virtually obsolescent in England and may be ignored."*[30]

Although it may not be feasible at present to abolish the law as done in UK as it is a necessary restriction on freedom of speech as envisaged under Article 19 of the Indian Constitution. Indian society has evolved in a manner where people often differ in opinion to each other. This often leads to disagreement and disputes which are then settled under the eye of the court. In a system consisting of many unreasonable people, where individuals make irrational allegations against anyone who crosses their path. Maintaining a delicate equilibrium between the freedom of speech and the concept of contempt of court is imperative. This equilibrium can be achieved by integrating certain principles or tests akin to those employed in the United States, which can serve as the basis for adjudicating contempt cases. It is essential to draw a clear line of demarcation between criticism and contempt, as not all forms of criticism should be construed as contemptuous. Moreover, the power of contempt of court should not be employed routinely; instead, it should be wielded when there exists an imminent or tangible threat to the reputation and credibility of the court. Preserving the faith of the citizens in the court is paramount, and this faith remains intact due to the caliber of judgments rendered by the court. It is crucial to bear in mind that the court's authority to deal with contempt is discretionary. A judge holds the prerogative to refrain from taking contempt action, even if an act of contempt has indeed transpired.

As societies continue to evolve, and communication platforms amplify voices and opinions, the concept of contempt of court remains a complex and multifaceted aspect of the legal landscape. It is imperative for legal systems to adapt to the changing dynamics of public discourse while upholding the fundamental principles of justice and democracy. This research paper serves as a comprehensive exploration of the multifarious dimensions of contempt of court, highlighting its historical context, legal interpretations, and implications for the delicate balance between the judiciary and the public's right to express and criticize.

(A) SUGGESTIONS

The law of contempt of courts must be revamped and the latest case of Prashant Bhushan just proves why. If the courts start considering social media comments for evaluating the contempt,

[30] Secretary of State for Defence v. Guardian Newspapers, (1984) 3 All ER 601.

it poses a great threat to freedom of speech and expression. It gives an idea to public that voicing criticism against the authorities could result in criminal proceedings. The supreme court rationale that criticism by citizens can have an irreparable impact on the integrity of the judicial system, is questionable. Since the same is maintained by quality of judgements that are delivered. In cases wherein the demarcation between bonafide criticism and defaming comments is practically difficult to lay out, the accountability of judiciary goes under threat. When criticism of any authority or institution is bonafide, it cannot be objected on any pretext.

The freedom of speech and expression and the independence of the judiciary are the most basic essentials in a democracy. The Supreme court functions acts as the guardian of the Constitution and it thus must vigilantly protect the fundamental right to free speech and expression even against judicial resentment. The power to criticise and ask questions should not be curtailed. While maintaining judicial integrity is necessary, it cannot be achieved by dissenting and muzzling up any form of opposing views. In its current form, contempt law is an unreasonable restriction on the freedom of speech and expression. Hence, legislature is required to do away with the old anachronistic view of this law like its counterparts in UK and USA, and adopt a liberal approach. It is the time of the hour that western approach is considered in India, which believes that judicial integrity is direct result of the conduct of the judiciary and not of any individual opinion.

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