

THE JUDICIAL POWER OF CONTEMPT

Upholding Authority or
Restricting Speech?





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ACKNOWLEDGMENTS

Authored by

Harsh Bora

Research support

Ratna Appnender, Mangla Verma, Vipul Kumar,
Mahvish and Abhilasha.

Edited by

Sanhita Ambast

Layout & design

Mythri Babu and Manoj Murali



ACTION RESEARCH &
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Part III - Action Research & Resource Centre comprises lawyers, researchers and social workers passionate about rights and freedom enshrined in Part III of the Indian Constitution. Engaging with overlapping themes of law, human rights and social justice, we work with survivors from vulnerable groups and organisations supporting them to empower communities to seek justice and accountability. Through collaborative action oriented research, coupled with participatory trainings, litigation and advocacy, we facilitate rights based solutions to address identity based violence, criminalisation of oppressed communities and accountability of public institutions. **Part III Samvidhaan Series** is an annual publication of Part III Action Research & Resource Centre, on issues pertaining to Constitutional rights.



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FOREWORD

Peter Wright could well have been a rogue James Bond. He sent the shivers up the spine of the British establishment when he decided to pen a memoir reflecting on his days spent in the British Intelligence Agency-MI5! The British government filed a suit seeking a pre-publication injunction against the book 'Spycatcher' on the grounds of threat to national security. By a 3-2 majority, the House of Lords granted the injunction.

In 1987, after the House of Lords decided the eye-catching Spycatcher Case, the Daily Mirror decided to make a spectacle of the three dissenting Law Lords. So, the tabloid's front page carried the upside-down mug shot of the three Hon'ble Justices along with the screaming headlines "You Fools".

This story would be incomplete without Lord Templeman's reaction to lawyers (perhaps not law students), who wanted the court to initiate criminal contempt action. Whether he was indeed a fool or not, the judge felt, was a matter of opinion. He certainly could not come in the way of any person harbouring such an opinion about him however passionately he may have felt that he was otherwise!

The legendary Krishna Iyer, in an article in the Hindu, recalled how Lord Denning reacted to a peer, Lord Shawcross' comment on one of his judgements. "Denning is an Ass." The Times published this. In spite of it, Lord Denning declined to take contempt action since he took the view that he would disprove it not by contempt proceedings but by means of his performance.

Across the Pond, Hollywood was most besotted by the concept of “criminal contempt”. In the iconic film “My Cousin Vinny”, Judge Haller held Vinny in contempt on three separate occasions, and each time, made him spend a night in jail. One of the ‘offences’ even related to his choice of clothing. Luckily for Americans, in reality, Courts there are generally more circumspect when it comes to invoking powers of criminal contempt. In fact, the United States Supreme Court in *Craig v. Harney* :: 331 U.S. 367 (1947) proclaimed:

“... the law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate.”

This Report which is in your hands could not have come at a more opportune moment. The Indian Supreme Court during the trying pandemic times decided in its wisdom to expend hours of judicial time to address the issue of criminal contempt on account of a tweet by an activist lawyer. Soon it became fashionable for young law students to try their hands at law by motioning the Attorney General for India to grant sanction to initiate contempt action against some person or the other.

The Report meticulously traces the history of criminal contempt in India from its roots in 13th century England and her efforts to punish the disrespect of the Sovereign and his judges who acted for the King. As is the case with many issues such as treatment of women and sexual minorities in matters of marriage and lifestyle, the coloniser has moved on in her March of the Law of Criminal Contempt towards evolution while the former colony remains shackled to archaic past notions.

The Report thoroughly examines instances where the power to punish for criminal contempt was invoked by Indian courts, and lays bare the striking inconsistency in its application. More often than not, it appears, initiation of contempt action is dependent on the personality of individual justices.

While support for abolition of the law altogether is strong, one must also keep in mind the fact that our judges do not have the luxury of defending or justifying their actions in the court of public opinion, which is a raging monster today, in the age of social media. In fact, the Law Minister revealed that Chief Justice Ramana had reached out to him on the issue of exploring how to protect judges from the onslaught of social media. The need of the hour, therefore, is to first understand the multi-faceted complexities of the issues involved. The Report throws up some very interesting questions – is the law too vague? Is it inherently restrictive of the freedom of speech? Is the law on sentencing uniform? Does a modern society really need the law? Is the law effective at what it aims to achieve? Does criticism lower the authority of the judiciary? How else does the judiciary protect itself from wanton attacks?

I congratulate the Part III team for their path breaking work!

Sanjoy Ghose,

Senior Advocate,

Delhi High Court

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New Delhi



LIST OF ABBREVIATIONS

Cr.P.C	Code of Criminal Procedure
IPC	Indian Penal Code
CJI	Chief Justice of India
UK	United Kingdom
US	United States of America

LIST OF CASES

<i>A.K. Roy v Union of India</i>	(1982) 1 SCC 271, (India)
<i>Advocate General, State of Bihar v Madhya Pradesh Khair Industries</i>	(1980) 3 SCC 311, (India)
<i>Amicus Curiae v Prashant Bhushan and Anr.</i>	2010 Cri. L.J. 4466, at Order dated 14.07.2010, (India)
<i>Arnesh Kumar v State of Bihar</i>	(2014) 8 SCC 469
<i>B.K. Kar v Hon'ble the Chief Justice and His Companion Justices of the Orissa High Court</i>	AIR 1961 SC 1367, (India)
<i>Bal Thackerey v Harish Pimpalkhute and Ors.</i>	(2005) 1 SCC 254, (India)
<i>Baradakanta Mishra v The Registrar of Orissa High Court</i>	(1974) 1 SCC 374, (India).
<i>Bathina Ramakrishna Reddy v State of Madras</i>	AIR 1952 SC 149, (India)
<i>Brahma Prakash Sharma v State of Uttar Pradesh</i>	1953 SCR 1169, (India)

<i>Bridges v California</i>	314 U.S. 252, (1941)
<i>C.K. Daphtary and Ors. v O.P. Gupta and Ors.</i>	(1971) 1 SCC 626, (India)
<i>Chandra Shashi v Anil Kumar Verma</i>	(1995) 1 SCC 421, (India)
<i>Court on Its Own Motion v M.K. Tayal</i>	2007 (98) DRJ 41, (India)
<i>Debi Prasad Sharma v Emperor</i>	(1944) 46 BOMLR 11
<i>Dhananjay Sharma v State of Haryana</i>	(1995) 3 SCC 757, (India).
<i>Dr. D.C. Saxena v Hon'ble The Chief Justice of India</i>	(1996) 5 SCC 216, at 246, (India)
<i>Dr. Prodip Kumar Biswas v Subrata Das</i>	(2004) 4 SCC 537, (India)
<i>EMS Namboodiripad v T. Narayanan Nambiar</i>	(1970) 2 SCC 325, (India)
<i>Ex. Capt. Harish Uppal v Union of India</i>	(2003) 2 SCC 45
<i>Fakie N.O. v CCII Systems (Pty) Ltd.</i>	2006 (4) SA 326 (SCA), (South Africa)
<i>Hari Singh Nagra & Ors. v Kapil Sibbal</i>	(2010) 7 SCC 502, (India)
<i>Indirect Tax Practitioners Association v R.K. Jain</i>	(2010) 8 SCC 281, (India)
<i>Internet and Mobile Association of India v Reserve Bank of India</i>	(2020) 10 SCC 274, (India)
<i>J.R. Parashar and Ors. v Prashant Bhushan and Ors.</i>	(2001) 6 SCC 735, (India).
<i>Jakka Vinod Kumar Reddy v A.R. Srinivas</i>	Contempt Case No. 826 of 2021, decided on 06.06.2022
<i>K.A. Abbas v Union of India</i>	(1970) 2 SCC 780, at 798, (India)
<i>Kartar Singh v State of Punjab</i>	(1994) 3 SCC 569, (India)
<i>Kedar Nath Singh v State of Bihar</i>	AIR 1962 SC 955, (India)
<i>Kolender v Lawson</i>	461 U.S. 352, 357 (1983)
<i>L.D. Jaikwal v State of U.P.</i>	(1984) 3 SCC 405
<i>Legal Remembrancer v Matilal Ghose</i>	I.L.R. (1913) 41 Cal. 173.
<i>M.C. Mehta v Union of India</i>	AIR 1987 SC 1086, (India)
<i>M.R. Parashar v Dr. Farooq Abdullah</i>	(1984) 2 SCC 343, (India)

<i>Martin v Lawrence</i>	(1879) I.L.R. 4 Cal. 655
<i>Matter of a Special Reference from the Bahama Islands</i>	1893 AC 138, (United Kingdom)
<i>Mr. Krishna Prasad & Ors. v Union of India</i>	W.P. No. 512/2021
<i>Mrityunjay Das v Sayed Hasibur Rehman</i>	(2001) 3 SCC 739, (India)
<i>Municipal Committee, Amritsar v The State of Rajasthan</i>	AIR 1960 SC 1100
<i>Navtej Singh Johar v Union of India</i>	(2018) 10 SCC 1, (India)
<i>P N Duda v P Shivshanker</i>	(1988) 3 SCC 167 (India)
<i>Perspective Publications (P) Ltd. And Ors. v State of Maharashtra</i>	AIR 1970 SC 221, (India)
<i>Pritam Pal v High Court of Madhya Pradesh, Jabalpur through Registrar</i>	1992 SCR (2) 864, (India)
<i>R. v Almon</i>	(1765) Will. 243
<i>R. v Commissioner of Police of the Metropolis, Ex parte Blackburn</i>	[1968] 2 Q.B. 150, (United Kingdom)
<i>R. v Kopyto</i>	(1987) 62 O.R.(2d) 449 (C.A.), (Canada)
<i>R.C. Cooper v Union of India</i>	(1970) 2 SCC 298, (India)
<i>R.K. Anand v Registrar, Delhi High Court</i>	(2009) 8 SCC 106, (India)
<i>Raipur Development Authority v Chokhamal Contractors</i>	(1989) 2 SCC 721, (India)
<i>Rajendra Sail v Madhya Pradesh High Court Association</i>	(2005) 6 SCC 109, (India)
<i>Rakesh Kumar v Vijayanta Arya (DCP)</i>	Contempt Case (Civil) No. 480/2020, decided on 07.12.2021
<i>Rama Dayal Markarha v State of Madhya Pradesh</i>	(1978) 2 SCC 630, (India)
<i>Re: Ajay Kumar Pandey, Advocate</i>	(1998) 7 SCC 248, (India)
<i>Re: Arundhati Roy</i>	(2002) 3 SCC 343, (India)
<i>Re: Prashant Bhushan</i>	AIR 2020 SC 4114, (India)
<i>Re: Roshal Lal Ahuja</i>	(1993) Supp (4) SCC 446, (India)

<i>Re: S. Mulgaokar</i>	(1978) 3 SCC 339
<i>Re: S. Mulgaokar</i>	(1978) 3 SCC 339, at 348, (India)
<i>Re: Vijay Kumar</i>	(1996) 6 SCC 466, (India)
<i>Re: Vijay Kurle & ors.</i>	(2019) 9 SCC 521
<i>Re: Vinay Chandra Mishra</i>	(1995) 2 SCC 584, (India)
<i>Red light on the Cars of the Hon'ble Judges of the High Court v State of Uttar Pradesh</i>	AIR 1993 All. 211, (India)
<i>S. Abdul Karim v M.K. Prakash</i>	(1976) 2 SC 975, (India)
<i>S. Rangarajan v P. Jagjivan Ram</i>	(1989) 2 SCC 574, (India)
<i>Sakiri Vasu v State of Uttar Pradesh</i>	(2008) 2 SCC 409, at 414, (India)
<i>Sambhu Nath Jha v Kedar Prasad Jha</i>	(1992) 1 SCC 573, (India)
<i>Schenck v United States</i>	249 U.S. 47 (1919)
<i>Secretary, Hailakandi Bar Association v State of Assam</i>	(1996) 9 SCC 74, (India)
<i>Shreya Singhal v Union of India</i>	(2015) 5 SCC 1, (India)
<i>Supreme Court Bar Association v Union of India</i>	(1998) 4 SCC 509
<i>Supreme Court Bar Association v Union of India</i>	(1998) 4 SCC 409
<i>Surendra Nath Banerjee v The Chief Justice and Judges of the High Court</i>	I.L.R (1883) Cal 109 PC
<i>Surya Prakash Khatri and Anr. v Madhu Trehan and Ors</i>	2001 Cri. L.J. 3476, (India)
<i>The Superintendent, Central Prison, Fatehgarh v Ram Manohar Lohia</i>	AIR 1960 SC 633, (India)
<i>Tmt. A. Pushpa v Thiru.Karunakaran</i>	W.P.2551 of 2018
<i>V. Senthur v M. Vijayakumar</i>	Contempt Petition (Civil) No. 638 of 2017, decided on 01.10.2021
<i>Vincent Panikulangara v V.R. Krishna Iyer</i>	1983 KLT 829, (India)
<i>Vitusah Oberoi v Court of its Own Motion</i>	(2017) 2 SCC 314, (India)

INTRODUCTION

Contempt of court is commonly understood as disobeying court orders or the disruption of legal proceedings. The power to punish for contempt of court is a penal power that is vested in the judicial branch and is believed to be necessary for the working of a judicial system. It is a legal power that exists almost exclusively within common law countries. Although its exact nature differs, the offence of contempt of court continues to exist in most former British colonies. In India, contempt of court can be civil or criminal.

Criminal Contempt is an effort to protect the Court from “*contemptuous*” feelings against it to maintain the authority of the Court, so it is able to wield the power required for the administration of justice. It is rooted in an understanding that if the image of the Judiciary is sullied by allegations or corruption or bias, people will have less faith in the Judiciary, leading to a breakdown of the rule of law. Enforcing criminal contempt necessarily requires a restriction on the freedom of speech and expression. The Fundamental Right to Freedom of Speech and Expression guaranteed to every citizen under Article 19 of the Constitution of India creates an exception for speech that is in Contempt of Court. In practice this power intended only to ensure Judicial authority, can have the effect of restricting legitimate public debate and discussion as well as subverting efforts towards judicial accountability.

In recent years, the risk of being held in contempt of court has been an important way people experience the Judiciary in India. A growing reliance on Courts to bring about social justice has led to an increase in public speech and criticism of Courts.

Critique of the judiciary ranges from serious allegations of corruption, personal bias, bias towards the Executive, to comics and people on Twitter commenting on judicial pronouncements or judicial propriety. This has resulted in several instances of criminal contempt being invoked against citizens. At the same time, “contemptuous” comments against the Judiciary and individual judges continue, both in private and in public fora. Not every allegation of corruption or bias is hauled up for contempt, and there continues to be a general perception that the Judiciary, like every other institution in India, is corrupt.¹ How do we then understand increasing instances where the might of the State and of the Judiciary is used to hold only certain people and certain types of speech guilty of criminal contempt. What are the parameters to determine whether speech is “contemptuous”? Is the threshold to determine contempt consistent with the parameters of harm and injury that govern other speech-related crimes? Does any statute or judicial interpretation help explain when people can be hauled up for committing criminal contempt? Is a 1988 judgement of the Supreme Court, which refused to hold a former Law Minister P.Shivshankar guilty of criminal contempt when he alleged judicial bias when he said

”

“The Supreme Court composed of the element from the elite class had their unconcealed sympathy for the haves i.e. the Zamindars”,

valid? Or should people self-censor in view of the Supreme Court initiating contempt charges against a comic showing the flag of a political party on a drawing of the Supreme Court? Or further yet, do we hope that contempt powers will be exercised to curb inciteful speech and canards about the Constitution and the Court. For example, Narsinghanand, a Seer who recently said

”

‘we have no trust in the Supreme Court of India and the Constitution. The Constitution will consume the 100 crore Hindus of this country. Those who believe in this Constitution will be killed. Those who believe in this system, in these politicians, in

the Supreme Court and in the Army will all die the death of a dog”.

This Report is an effort to answer these questions and contradictions, by laying out the law and procedure on criminal contempt in India.

Part A of the Report explains the law on criminal contempt; which forms of speech or actions are prohibited as criminal contempt and which are permissible; and lays out alternative legal frameworks including the Indian Penal Code which address acts that interfere with the administration of justice. **Part B** of the Report goes on to examine the jurisprudence on contempt. It lays out the broad principles against which criminal contempt is determined, explains through judgments what it means to “scandalise the court” or “lower the authority of the Court”. It also culls out what has been held “*not to be contemptuous*”. The chapter analyses a range of jurisprudence on criminal contempt to ask whether there is uniformity or consistency in the exercise of contempt powers by the Supreme Court. It also looks at instances where criminal contempt powers have been invoked, irrespective of whether the same has resulted in a conviction or not. This analysis has been conducted using the constitutional principles of freedom of speech and expression, to assess whether criminal contempt is a *reasonable* restriction. **Part C** of the report, through examples of past cases and ongoing instances where contempt powers have been invoked, examines whether the practice of criminal contempt in India meets the basic requirements of a good law, i.e one that is not vague, arbitrary, uncertain, inconsistent or overbroad. This part identifies underlying assumptions, like that of the “majesty of the judiciary” and asks whether these are consistent with democracy and fundamental rights, or whether it places the Judiciary above the law. **Annexure 1** of the report traces the history of criminal contempt in India back to thirteenth century England and the preservation of the authority of the King. The concept of “*Disrespect*”, which underlies contempt law even today, evolved from efforts to punish disrespect of the King and judges who acted for the King. Delving into the history and evolution of

contempt law this part of the report throws light on governmental practices, historically based in institutions of monarchy, that have found their way into Indian law and jurisprudence.

The report refers to legal commentaries on contempt and Constitutional Law to simplify and explain legal provisions and concepts. Reports of government appointed committees, Law Commission and the Constituent Assembly Debates were studied to understand the evolution of contempt law in India. Further, authors of the report examined the Indian jurisprudence on criminal contempt by analysing landmark decisions given by the Supreme Court while invoking contempt powers, in the last seven decades since independence. Opinions of jurists and legal practitioners in India, published in journals and newspaper editorials, were looked at to understand the debate between repealing or reforming the law on criminal contempt and lastly, statutes and judgments of foreign jurisdictions on criminal contempt were reviewed for a comparative analysis.

The discussion on the use of criminal contempt shows that Courts have consistently held that people have the right to criticise the Judiciary, that courts should not be over-sensitive and that contempt powers should be exercised sparingly. At the same time, we see criminal contempt proceedings being initiated against tweets and comic strips, as well as legitimate public critique of the Judiciary. To this end, the Report helps readers understand the ways in which contempt powers are inherently vague and overbroad in their definition and designed for selective application. It also demonstrates how the procedural framework is designed to allow for excessive executive discretion, thus reinforcing the power of selective application. In doing so, it urges readers to think about the particular kinds of speech that are being restricted or regulated through contempt powers.





PART A

INTRODUCING THE LAW

This part of the report explains the law on criminal contempt and the powers of the Supreme Court and High Courts in relation to contempt. It lays out alternative legal frameworks including the Indian Penal Code which address acts that interfere with the administration of justice. This part also identifies speech or actions considered permissible and prohibited under the contempt law and examines the conflict between contempt of court and freedom of speech. It further explains how contempt of court came to be included as a reasonable restriction on the freedom of speech and expression in the Constitution.



CHAPTER 1

Contempt of Court: The law & procedure

✦ Defining the offence of contempt

The Contempt of Courts Act of 1971 (“the Act”) is the principal legislation on contempt in India.² It defines the offence of contempt; clarifies what is not contempt (i.e., exceptions and defences); protects fair journalistic practices and provides space for fair criticism of the judiciary; creates a procedure to try contempt; prescribes a punishment if held guilty; and provides an appeals process.

The Act recognises two kinds of contempt.

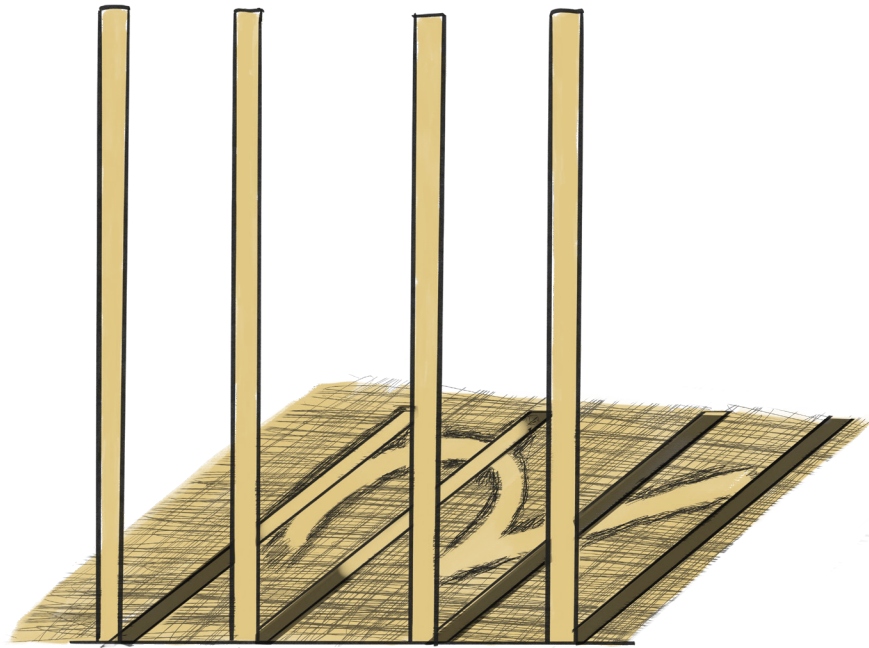
Civil contempt, which is a milder form of the offence, is defined as the “wilful disobeying a judgment, decree, direction, order, writ, or other process of a court, or the wilful breach of an undertaking given to a court”.³ Thus, civil contempt is limited to where specific orders or directions of a court have been violated.

Criminal contempt on the other hand, has a more complex characterisation and wider ramifications on free speech. It is defined as “the publishing (by written or spoken words, signs, visible representations, or otherwise) of any matter or doing of any act which:

- **Scandalises or tends to scandalise a court**
- **Lowers the authority or tends to lower the authority of a court**
- **Prejudices the due course of any judicial proceeding**
- **Interferes or tends to interfere with the due course of any judicial proceeding**
- **Interferes or tends to interfere with the administration of justice in any other manner**
- **Obstructs or tends to obstruct the administration of justice in any other manner”.**

Thus, criminal contempt comprises two sets of actions. The first are actions that are seen to obstruct or interfere with court proceedings or the administration of justice. The second are acts of pure speech, i.e., “words or other forms of expression about the Court . . . punished for no other reason but their content.”⁴

The Act provides a more complex punishment scheme for contempt of court than predecessor legislations. The maximum punishment for the offence of contempt remains the same as it has been since the 1926 law, i.e. simple imprisonment of up to six months, or a fine up to Rs. Two thousand, or both.⁵



The Act also specifically prohibits the court from imposing a punishment in excess of the one prescribed above.⁶ However, the Act also makes a crucial qualification before a court can sentence a person for contempt: it has to be satisfied that the contempt is of such a nature that it substantially interferes, or tends to substantially interfere with the due course of justice.⁷ In civil contempt cases, while ordinarily the court should only punish by imposing a fine, it can impose a sentence of simple imprisonment or detainment in a civil prison,⁸ if it is satisfied that a fine would not “meet the ends of justice”.⁹ For companies (i.e. juridical persons) found guilty of civil contempt in respect of an undertaking given to a court, even persons in charge of and responsible for the conduct of the business of the company can be punished by detaining them in civil prison.¹⁰ The only exception is when the contempt was committed without their knowledge or they exercised all due diligence to prevent its commission.

✦ **What is not considered contempt under the law?**

The law recognises several exceptions to the offence which are essentially to protect *bona fide* or critical speech or reporting of court proceedings.

Firstly, innocently publishing or distributing something in relation to court proceedings is not an offence.¹¹ This can either be if the person did not have reasonable grounds to believe that such a proceeding was pending,¹² or if no such proceeding was actually pending,¹³ or if they did not have reasonable grounds to believe that the publication contained matter that is contemptuous.¹⁴

Secondly, fair and accurate report of a judicial proceeding is not contempt,¹⁵ except in certain situations where the judge(s) is sitting ‘in chambers’ or ‘in camera’.¹⁶ In such cases, publications contrary to any law,¹⁷ or of court proceedings expressly prohibited by the court or related to public order or state security, etc. are not allowed.¹⁸

Thirdly, fair criticism of judicial acts is not contempt.¹⁹ As the Act states, any “fair comment on the merits of any case which has been heard and finally decided” is not contempt.

Fourthly, a complaint against any judicial officer of a subordinate court is not contempt if it is made in good faith to the High Court or any court subordinate to it.²⁰

Fifthly, by a 2006 amendment, truth can be accepted as valid defence by a court on the satisfaction that the publication was in public interest and the invocation of the defence is *bona fide*.²¹

Apart from these defences, a person accused of contempt of court can also raise any other defence available under law.²² A person accused of contempt can also be discharged or avoid punishment if they give an apology to the satisfaction of the court.²³

✦ Procedure in contempt cases

For all contempt cases, the Act prescribes a limitation period of one year for initiation of proceedings. Contemptuous publications

dating back to over a year from the date of initiating proceedings, are barred by law. However, through judicial decisions, exceptions have been developed. When the contempt has been kept hidden or in case of “*gross injustice to the society or [when] the case is of public importance*”, the court can exercise its inherent powers to initiate contempt even beyond the period of limitation.²⁴

A distinction has been made between criminal contempt inside and outside court, providing different procedures. For contempt in court, a summary procedure is prescribed for the Supreme Court and the High Courts to take action for contempt committed in their presence, or during a hearing.²⁵ In such situations, the court can direct detention of the contemnor,²⁶ and release them on bail, serve them a notice of charges against them, give them an opportunity to be heard, allow them to provide evidence in their defence, and pass an order discharging or punishing them.²⁷

For cases of criminal contempt outside court (where the contempt has not been committed in the presence of the Supreme Court or the High Court), the major difference is in the procedure for initiating proceedings. The Act provides 3 ways in which proceedings can be initiated:

- 1 **By a court, on their own motion, referred to as taking ‘*suo moto* cognizance’.**²⁸
- 2 **On a complaint made by the Attorney General or the Solicitor General in case of the Supreme Court, and the Advocate General in case of the High Court.**²⁹
- 3 **On the complaint of a private individual, with the written consent of the above-mentioned law officers.**³⁰

As already mentioned before, in cases of contempt of subordinate courts,³¹ the power to take action is with the High Court within whose jurisdiction the subordinate court is located.³² In such cases, the High Court can take notice of the contempt either on being informed by the subordinate court or on being informed by the Advocate General of the High Court. For contempt of subordinate courts, the contempt can be brought to the notice of the High Court by the subordinate court against which the contempt has been committed (termed as “reference”), or by the Advocate-General (and in the case of a Union Territory, a Central Government notified law officer).³³

After taking cognizance of criminal contempt ‘out of court’,³⁴ a procedure similar to that for contempt ‘in court’ follows, with some variations. Cases must be heard by a bench of at least two judges.³⁵ Notice of contempt has to be served on the charged person, accompanied by a copy of the motion or reference on which proceedings are based, and the affidavit on which the motion itself is based.³⁶ This requirement is a core principle of natural justice, providing the charged person a fair opportunity to know what the allegations against them are, so they can adequately defend themselves. If the court believes that the person might abscond or avoid service of the notice, it can attach their property of an amount that it deems reasonable, which can be released when they appear before the court.³⁷ The person can file an affidavit in their defence, and after taking additional evidence if necessary, the court can finally decide the case.³⁸

There is a right of appeal against an order or decision of the High Court. A decision of the single bench of the High Court is appealable before a bench of at least two judges of the same High Court within 30 days, and a decision of a two or more judge bench of the High Court is appealable before the Supreme Court within 60 days.³⁹ If the person satisfies the High Court that they will file an appeal or actually files an appeal, the bench or appellate court, respectively, can stay the punishment from being imposed, or release the person on bail.⁴⁰

It is important to note that judges are not immune from contempt prosecutions under the Act. They can be tried and punished for contempt of their own court or another court, just like an individual.⁴¹ This does not include observations or remarks by judges about a subordinate court in an appeal or revision against that subordinate court's order.⁴² Judge does face prosecution under the Act, the procedure remains the same as in the case of an ordinary individual.

✦ **Powers of the Supreme Court and High Courts in relation to contempt**

The Supreme Court and High Courts have made separate rules for the trial of contempt cases.⁴³ This rule-making power is provided by the Act. The rules must be in addition to, and not in derogation of, the Act or any other law on contempt of courts.⁴⁴ Further, the Constitution also provides wide powers to the Supreme Court and the High Court to punish for contempt. Article 129 of the Constitution states that the Supreme Court has all powers of a Court of Record including the power to punish for contempt of itself, and High Courts have similar powers under Article 215.⁴⁵ Article 142 of the Constitution, known as “inherent powers”, also gives the Supreme Court undefined powers to do “complete justice”. Further, Article 235 gives the High Courts the supervisory or administrative powers over subordinate courts i.e. trial courts. This reaffirms the power of a High Court to punish for contempt of itself, as well as of all subordinate courts within its jurisdiction.⁴⁶

Contempt powers cannot be diminished by the legislature. As the Supreme Court stated in 2019,



“In view of the fact that the power to punish for contempt of itself is a constitutional power vested in this Court, such power cannot be abridged or taken away even by legislative enactment.”⁴⁷

Thus, no law can limit the constitutional powers of the Supreme Court and High Courts regarding contempt.

✦ **Offences under IPC penalising contempt**

It is relevant to note that certain offences under the IPC also penalise actions that can be considered contempt of court. Chapter X of the IPC titled 'Of Contempts Of The Lawful Authority Of Public Servants' contains several offences such as preventing service of summons,⁴⁸ non-attendance before a public servant,⁴⁹ giving false information to a public servant,⁵⁰ obstructing a public servant in the discharge of their duties,⁵¹ etc. Similarly, Chapter XI titled 'Of False Evidence And Offences Against Public Justice' penalises perjury,⁵² fabricating evidence,⁵³ threatening witnesses to give false evidence,⁵⁴ etc. Thus, certain acts that may be liable for prosecution under the Contempt of Courts Act, are also considered offences under the IPC.



ENDNOTES

1 Special Correspondent, *Over 1,600 complaints against judiciary: Rijju*, The Hindu (April 1, 2022, 7:20AM), <https://www.thehindu.com/news/national/over-1600-complaints-against-judiciary-rijju/article65282517.ece>.

2 The Contempt of Courts Act, 1971 (Act. No. 70 of 1971), India Code 1971.

3 *Id.* at Section 2(b).

4 Gautam Bhatia, *Free Speech and Contempt of Court - I*, Indian Con. L. And Phil. (June 8, 2014), <https://indconlawphil.wordpress.com/2014/06/08/free-speech-and-contempt-of-court-i/>.

5 The Contempt of Courts Act, *supra* note 2, at Section 12(1).

6 *Id.* at Section 12(2).

7 *Id.* at Section 13(a)

8 Civil prison is a lower security prison where persons convicted of civil offences under the Code of Civil Procedure, 1908, and other laws, are imprisoned. Civil prisons are separate from prisons where convicts and under trials are kept, and have fewer restrictions on the inmates.

9 The Contempt of Courts Act, *supra* note 2, at Section 12(3).

10 *Id.* at Section 12(4).

11 *Id.* at Section 3.

12 *Id.* at Section 3(1).

13 *Id.* at Section 3(2).

14 *Id.* at Section 3(3). However, for this exception to apply, the publication must not be a book or paper that is not in conformity with Section 3 of the Press and Registration

of Books Act, 1867, or a newspaper not in conformity with Section 5 of that law.

15 *Id.* at Section 4.

16 Generally speaking, ‘in chambers’ or ‘in camera’ proceedings are those which are not open to the general public.

17 The Contempt of Courts Act, *supra* note 2, at Section 7(1)(a).

18 *Id.* at Section 7(1)(b).

19 *Id.* at Section 5.

20 *Id.* at Section 6.

21 *Id.* at Section 13(b).

22 *Id.* at Section 8.

23 *Id.* at Section 12(1).

24 Tmt. A. Pushpa v Thiru. Karunakaran, W.P. 2551 of 2018, at Order of February 07, 2019.

25 The Contempt of Courts Act, *supra* note 2, at Section 14.

26 Such custodial detention of the contemnor by the court would ordinarily be in jail.

27 *Id.*

28 The Contempt of Courts Act, *supra* note 2, Section 15(1).

29 *Id.* at Section 15(1)(c).

30 *Id.* at Section 15(1)(b).

31 Subordinate courts include courts such as the Sessions Courts or the Magisterial Courts.

32 The Contempt of Courts Act, *supra* note 2, at Section 13(2).

33 *Id.* at Section 15(2).

34 While the exact meaning of the word ‘cognizance’ can differ slightly based on the context, it generally refers to the taking of judicial notice by a judge.

35 The Contempt of Courts Act, *supra* note 2, at Section 18.

36 *Id.* at Section 17(1) and (2).

37 *Id.* at Section 17(3) and (4). This attachment is to be made as per the Code of Civil Procedure, 1908. See Section 17(4).

38 *Id.* at Section 17(4).

39 *Id.* at Section 19(1) and (4).

40 *Id.* at Section 19(2) and (3).

41 *Id.* at Section 16(1).

42 *Id.* at Section 16(2)

43 For the Supreme Court, see The Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, https://upload.indiacode.nic.in/showfile?actid=AC_CEN_3_3_00005_197170_1517807319029&type=rule&filename=THE%20RULES%20TO%20REGULATE%20PROCEEDINGS%20FOR%20CONTEMPT%20OF%20THE%20SUPREME%20COURT,%201975.PDF. High Courts have developed their own separate procedures.

44 The Contempt of Courts Act, *supra* note 2, at Section 23.

45 Supreme Court Bar Association v Union of India, (1998) 4 SCC 409, [“A court of record is a court, the records of which are admitted to be of evidentiary value and are not to be questioned when produced before any court.”].

46 A similar power of the High Court to punish contempt of subordinate courts is provided by Section 10 of the Contempt of Courts Act, 1971.

47 Re: Vijay Kurle & ors., (2019) 9 SCC 521, (India).

48 Pen. Code, No. 45 of 1860, India Code 1860, Sections 172 and 173.

49 *Id.* at Sections 174 and 174A.

50 *Id.* at Sections 177 and 182.

51 *Id.* at Section 186.

52 *Id.* at Sections 191 and 193.

53 *Id.* at Section 192.

54 *Id.* at Section 195A.



CHAPTER 2

Contempt of Court: A restriction on free speech

The fundamental right to freedom of speech and expression is both guaranteed and then limited by the Constitution of India. Under Article 19(1)(a), all citizens have the fundamental right to free speech and expression.⁵⁵ However, this right has limits, forming the exceptions listed in Article 19(2).⁵⁶



For certain interests that the Constitution itself provides (and no other), the State can make laws that limit the freedom of speech. One such interest is contempt of courts. Thus, there exists a law-making power with the government to restrict freedom of speech to prevent contempt of court.

✦ **Objections raised: Constituent Assembly debates**

The restrictions on freedom of speech, as they were originally conceived in the Draft Constitution of India, 1948, did not include contempt of court.⁵⁷ During the debates that followed before the Constituent Assembly (“Assembly”), an amendment was proposed by T.T. Krishnamachari,⁵⁸ to include ‘contempt of court’ as an additional restriction to the ones already specified in Article 13.⁵⁹ It was intended to cover a lacuna that would protect the courts.⁶⁰ Another important reason provided by Dr. B.R. Ambedkar, the Chairperson of the Drafting Committee, was that if the words ‘contempt of court’ were not included, the existing law on contempt of court (being the Contempt of Courts Act of 1926) would be void under Article 8, as it would be inconsistent with the Constitutional right to free speech.⁶¹ The kind of contemptuous speech intended to be restricted by this amendment was a person speaking on a *sub-judice* matter and thereby interfering with the administration of justice. When the Assembly finally considered this amendment, it voted to adopt it.

However, this adoption was preceded by opposition by members of the Assembly. Thakur Das Bhargava, who later became a member of the Lok Sabha, argued before the Assembly that the actions that constituted contempt of court were already penalised under the Indian Penal Code. He highlighted acts such as the refusal to reply to a question from the court, interruption of judicial proceedings or insult to the court, and others, as already existing as penal offences. The need for a restriction on contemptuous speech, therefore, was unnecessary, since the act that formed the subject matter of such contemptuous speech was already penalised under law.⁶²

Another objection questioned the arbitrariness and conflict of interest in judges hearing cases of contempt against themselves. R.K. Sidhva, a former Mayor of Karachi, highlighted a core concern with the contempt power of the judiciary: that judges were the prosecutors and also sat in judgment in their own cases.⁶³ He emphasised the fallibility of judges before the Assembly and cited the example of the editors of two newspapers, the Sentinel and the Hindustan Times, against whom strictures had been passed by the Allahabad High Court for comments that according to him were very reasonable.⁶⁴ This amendment, he argued, would take away the public's entitlement to comment upon the conduct of judges by elevating them to a "super god" status, above everyone else.

The belated process of proposing this amendment was another major concern. Biswanath Das, who served as the Chief Minister of Orissa both before and after independence, argued that Fundamental Rights had passed after significant consideration by the Assembly. But this amendment had been introduced at the last minute, on the very last day for the Assembly to consider amendments. He also underscored that Fundamental Rights, once passed with great solemnity, should not be changed so suddenly.

These concerns were ultimately rejected and the amendment passed, making contempt of court one of the restrictions to the freedom of speech.

✦ **Unresolved conflicts: Contempt & free speech**

The conflict between contempt of court and the freedom of speech is obvious. If a person speaks or comments about a decision of a court, or any act or the character of a judge or a group of judges, or about the judiciary as a whole, they may be punished by the State through a law.

The first question this gives rise to is: what restriction on the freedom of speech for contempt of court is “reasonable”? Legally, this means that restriction must have a reasonable relation to the object it seeks to achieve i.e. prevention of contempt of court. As stated by the Supreme Court,



“The limitation imposed . . . should be one which has a proximate connection or nexus . . . [to the object], but not one far-fetched, hypothetical or problematic or too remote in the chain of its relation [with the object].”⁶⁵

Also, the extent of the restriction should be proportionate to the object of the restriction, and only necessary means should be adopted and not those excessive to achieving the object. The anticipated danger to the community interest likely to be caused by the speech “*should not be remote, conjectural or far-fetched, but have a proximate and direct nexus with the speech.*”⁶⁶ Further, the least restrictive means must be adopted.⁶⁷ Even if the restriction has a reasonable relation to the object, it cannot be excessively restrictive.⁶⁸

Another question is: what are the limits on a person’s speech before it can be restricted for contempt of court? The Supreme Court has attempted to answer these and several other questions related to how the offence of contempt of court restricts free speech, as will be seen in Part B of this report.

The contempt restriction to free speech has been challenged as being unconstitutional, without success. In *C.K. Daphtary v. O.P. Gupta*,⁶⁹ prosecution under the Contempt of Courts Act, 1952, was challenged before the Supreme Court as being an unreasonable restriction on the fundamental right to freedom of speech and expression. Highlighting the core conflict between free speech and contempt, the accused in the case argued that the restriction is unreasonable because firstly, a scurrilous attack on a judge does not affect the administration of justice. His argument thus was

that the restriction on such an attack has no “proximate nexus” with the object of the restriction i.e. to prevent contempt of court, because the administration of justice was not affected. His second argument, as noted by the Court, was that the harm caused by the restriction of even severe and unfair criticism of the court’s decision outweighed the adverse effect on the administration of justice. Put differently, his argument was that freedom of speech was so sacred that it was preferable to let the administration of justice suffer than to restrict this right even if exercised unfairly while criticising a judge or their decision. The Court rejected the first argument but did not specifically address his second argument. It held that if an attack on a judge was scurrilous, the effect of undermining the public’s confidence in the judiciary was inevitable, and this would in turn affect the due administration of justice.⁷⁰ It eventually ruled that the restrictions imposed by the existing law of contempt were reasonable, and in public interest. A recent challenge to the constitutional validity of the Contempt of Courts Act, 1971, has also been made by journalists Krishna Prasad, N. Ram, Arun Shourie, and lawyer Prashant Bhushan, before the Karnataka High Court.⁷¹



ENDNOTES

55 Constitution of India, 1950, Article 19, §1, cl.a.

56 *Id.* at Art. 19, §2.

57 Draft Constitution of India, art. 13, §2, 1948, https://www.constitutionofindia.net/historical_constitutions/draft_constitution_of_india__1948_21st%20February%201948.

58 *Id.* at Amendment No. 449.

59 Article 13 of the Draft Constitution was the precursor to what became Article 19 in the Constitution of India, 1950, that was finally adopted by the Constituent Assembly. Article 13(2) stated that the right to freedom of speech and expression provided under Article 13(1) shall not affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State.

60 CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS), <http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C17101949.html>; Sruthisagar Yamunam, Concerns about contempt laws came up in the Constituent Assembly – and were never fully addressed, Scroll (July 27, 2020), <https://scroll.in/article/968596/concerns-about-contempt-laws-came-up-in-the-constituent-assembly-and-were-never-fully-addressed>.

61 Article 8 of the Draft Constitution of India stated, “All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provision of this Part, shall, to the extent of such inconsistency be void.”

62 An even more significant argument made by Bhargava, though not necessarily the most relevant here, was that since the scope of the State’s power to restrict speech was being enlarged by this amendment, the scope for the exercise of that power should be limited by

another amendment. Thus, he suggested that the word “reasonable” be added before the word ‘law’ in Article 13(2), so that the State’s speech restricting power was ‘reasonable’ and not unbridled. Although his suggested amendment was rejected by the Assembly, the Constitution that was eventually adopted did contain the words “reasonable restrictions.”

63 This touches upon a principle of natural justice that no one should be a judge in their own cause or a case in which they have an interest.

64 *Debi Prasad Sharma v Emperor*, (1944) 46 BOMLR 11, (India), In the Hindustan Times contempt case, the newspaper, its editor, and a reporter were tried for contempt by the Allahabad High Court for publishing a report that the Chief Justice of that court had asked the judges in the province under his jurisdiction to contribute to the war fundraising efforts. They were convicted for contempt and sentenced to imprisonment and fine. In appeal, however, the Bombay High Court noted that the Chief Justice had in fact issued a circular to judicial officers enjoining them to raise contributions for war funds. It held that this was an ill-advised act by the Chief Justice and operating in his public capacity, he should not have issued that circular. It also held that the contempt proceedings were misconceived and the newspaper, its editor and reporter were not guilty of contempt.

66 *The Superintendent, Central Prison, Fatehgarh v Ram Manohar Lohia*, AIR 1960 SC 633, (India).

67 *S. Rangarajan v P. Jagjivan Ram*, (1989) 2 SCC 574, at 594, (India).

68 *Internet and Mobile Association of India v Reserve Bank of India*, (2020) 10 SCC 274, (India).

68 To give an example, if the lawmakers want to prevent contempt in court, they can pass a law prohibiting all litigants from entering any court at any point of time. This would certainly achieve the object because no contempt ‘in court’ is possible if there is literally no litigant inside a court. But this restriction would be excessive, as all litigants’ freedom of speech in court would be restricted and not just of those who will actually commit the contempt. The restriction is thus excessive.

69 C.K. Daphtary and Ors. v O.P. Gupta and Ors., (1971) 1 SCC 626, (India).

70 *Id.* at pp. 641-42.

71 This was challenged in a W.P. No. 512/2021 titled ‘Mr. Krishna Prasad & Ors. v Union of India’.



PART B

HOW THE SUPREME COURT APPLIES CONTEMPT

This part of the report discusses legal principles on contempt laid down by the Supreme Court and examines whether there is uniformity or consistency in the exercise of contempt powers by the Court. This exercise, though not exhaustive, is intended to help readers understand what the Court considers “contempt of court” and what has been held “*not to be contemptuous*” to bring some clarity. Lastly, using the constitutional principles of freedom of speech and expression, this part also looks at instances where criminal contempt powers have been invoked by the Court, to assess whether it falls within the constitutionally accepted standards of reasonable restriction.



CHAPTER 3

Analysing the Supreme Court's interpretation of contempt

The Supreme Court of India (“the Court”) has heard and decided several contempt of court cases, both in its original or appellate jurisdiction.⁷² In the process, it has laid down several legal principles interpreting the contempt powers of courts which have been discussed in this chapter. In this process, the Court has explained the ingredients of the offence, the application of contempt powers, cautioned against its misuse, and imposed limitations on the power. These principles are based on previously existing English and Indian law, the contempt statute in existence, and the powers of courts of record under the Constitution of India.

✦ Conflict of interest

There exists a conflict of interest in contempt cases. In hearing and deciding contempt cases, a judge performs the role of the prosecutor and judge at the same time. This violates a universally recognised natural justice principle: no one should be a judge in their own cause.⁷³ In some cases, the Supreme Court itself has recognised this conflict of interest (without explicitly calling it so) and its effect on contempt proceedings. It has recognised that contempt proceedings combine the two incompatible roles of the prosecutor and the judge, and by punishing a person for contempt, a court can create the impression that the judge has acted in their own defence.⁷⁴ Contempt jurisdiction is therefore special and unusual, since it combines these two conflicting roles.

✦ Contempt powers must be exercised sparingly and with care and caution

In multiple decisions, the Supreme Court has advised the exercise of restraint in the use of contempt powers. The guiding principle is that contempt proceedings should not be initiated lightly,⁷⁵ and contempt powers must be exercised “sparingly” and with “utmost restraint and considerable circumspection.”⁷⁶

Courts must strike a balance and the benefit of the doubt is “generously against the Judge, slurring over marginal deviations.” Even if the criticism is uncharitable and unfair but made out of bona fide concern for improvement, a magnanimously charitable attitude should be adopted towards it.⁷⁷

Thus, while courts may come across several instances where it may feel that contempt has been committed, it should not exercise its contempt power in all of those cases.

What factors then decide whether contempt powers should be exercised in a given case or not. According to the Supreme Court, these are defined by Section 2(c) of the Act. Publications that “firstly, scandalise or lower the authority of court, or secondly, prejudice or interfere with due course of judicial proceedings, or thirdly, interfere or obstruct the administration of justice”, are all treated as contempt. However, as will be seen later in this report, these definitions are vague and have been applied inconsistently by the Court. Importantly, as Section 2(c) defines it, any publication that even ‘tends’ to cause any of the above outcomes, has been considered contempt.

✦ Low bar for proof of contempt

Distinct from most other penal offences, contempt has a low bar for establishing guilt, making it easy to convict. This is because it lacks the two requirements that most other criminal

offences require: of showing *mens rea* i.e. culpable or guilty intent, and actual harm or injury.

To be held guilty of contempt *mens rea* is not a necessary ingredient of the offence of contempt. Thus, contempt even if committed unintentionally, such as by accident or negligence, is still an offence.⁷⁸

If the publication is false or cannot be shown to be true, that person's lack of intention or knowledge that contempt would be committed is irrelevant while determining the offence.⁷⁹ However, courts are reluctant to punish a contemnor if they lacked *mens rea*,⁸⁰ and such lack of intent is relevant for determining the punishment for the contempt.⁸¹

Furthermore, for a person to be guilty, it is not necessary that their publication caused any actual harm or injury. Thus, in order to prove guilt, there is no requirement of any actual interference, scandal, prejudice, obstruction, etc. to be established, a mere 'tendency' is sufficient.

This is important, since a person accused of contempt cannot take the defence that their publication did not cause any actual interference, scandal, prejudice, obstruction, etc. It is enough, for the purpose of starting contempt proceedings, that the publication is likely, or tends in any way, to interfere with the proper administration of law.⁸² As will be seen in Part C, this low bar for prosecution is one of the major criticisms of the contempt law.

✦ **Contempt is institutional not personal**

In case after case, Courts have drawn a distinction between contempt of court and libel of judges.⁸³ Statements that are libellous against a judge and those which are contemptuous

against the institution are not necessarily the same. In the case of the former, i.e. when a defamatory statement against a judge constitutes libel, only an action for libel can be initiated by the judge against the person making the statement. However, when the statement goes beyond libel, and “lowers the authority of the court” or “obstructs the course of justice or the administration of law”, or “lowers the people’s confidence in the administration of justice”, it would then become contempt.



An often-cited example explaining this principle is a 19th-century case from the Bahama Islands. In this 1893 case, a man in the Bahama Islands (then a British colony) published a letter against the Chief Justice insinuating that he was incompetent, shirked work, and stating that it would be better if he died.⁸⁴ In that case, it was held that though the letter could be considered libellous, it was not calculated to obstruct or interfere with the course of justice or due administration of law.

Similarly, the Supreme Court of India has stated,



“When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice.”⁸⁵ Thus, contempt powers cannot be used to protect judges personally from statements because not every defamatory statement is contempt.⁸⁶



However, this distinction, although reiterated by the Supreme Court in several cases, lacks exact clarity. While the general principle itself is uncontested, its application has been inconsistent.

In Bathina Ramakrishna Reddy v. State of Madras,⁸⁷ a publication in a newspaper accused a local Sub-Magistrate of being known as a bribe taker through an agent, harassing litigants. It gave specific instances of the local Sub-Magistrate taking

bribes or harassing litigants for not giving them. According to the Court, such unsubstantiated allegations, which could also be false, would undermine the people's confidence in the administration of justice and bring the judiciary into disrepute, and therefore amounted to contempt. The defence that the publication was in good faith, was irrelevant.

Yet, in *Brahma Prakash Sharma v. State of Uttar Pradesh*,⁸⁸ a resolution of a bar association against two judges accusing them of being incompetent, overbearing and discourteous to the public, and stating wrong facts in their orders, was not held to be contempt. There, the Court ruled that the allegations were general and commonly made against judges, and that the venting of genuine grievances by the accused lawyers did not amount to contempt as it was fair criticism. The minimal extent of publicity given to the resolution by the accused was also a relevant factor because the resolution had not been circulated amongst the general public. Therefore, it was not calculated to undermine the confidence of the public in the capacity and integrity of the judge. Thus, an attack on the judge's judicial functioning was considered contempt in the first case but not in the second.

The Court's inconsistency in applying this rule is evident from these two cases. While good faith was irrelevant as a defence in the former case, it appears to have been considered by the Court in the latter case due to the minimal publicity given to the resolution by the lawyers.⁸⁹ Also, the accusations made against the judges were deemed to be "general" in nature in the latter, and therefore not contempt, a benefit not given in several other cases.

✦ What is 'scandalising or lowering the authority of the court'?

Of the different forms of contempt, "scandalising the court" is the vaguest. "Scandalising the court", which is considered contempt under Section 2(c)(i) of the Act, is understood by the courts as

“an expression of a scurrilous attack on the majesty of justice calculated to undermine its authority and public confidence in the administration of justice”.⁹⁰

In another case, the Court has explained it as follows:

” “Scandalising in substance is an attack on individual Judges or the Court as a whole with or without referring to particular cases casting unwarranted and defamatory aspersions upon the character or the ability of the Judges. ‘Scandalising the Court’ is a convenient way of describing a publication which, although it does not relate to any specific case either post or pending or any specific Judge, is a scurrilous attack on the judiciary as a whole which is calculated to undermine the authority of the Courts and public confidence in the administration of justice.”⁹¹

This “scandalising” has to be in reference to the administration of justice.⁹² The expression ‘administration of justice’ is generally associated with the functioning of the courts of justice.⁹³ Scandalising the authority of the court is said to occur when a person’s conduct tends to “bring the authority and administration of the law into disrespect or disregard”,⁹⁴ or if it creates “a general disaffection and dissatisfaction on the judicial determination in the people’s minds and makes them unwilling to obey the law”. If the people’s allegiance to the law is so fundamentally shaken, “it is the most vital and most dangerous obstruction of justice”, according to the Court, requiring urgent contempt action.⁹⁵ The authority of the court is the power of courts to declare the law and enforce obedience to it.⁹⁶

Despite the above explanation for ‘scandalising’ and lowering of the court’s authority, its real-world application remains inconsistent in the Court’s jurisprudence, as will be seen later.

✦ Other forms of criminal contempt

The other categories of criminal contempt are more objective and their examples more tangible. They can be understood by piecing together different decisions. “Abusing the process” of the courts is considered by courts as interference with the due course of judicial proceedings. For example, in one case, the Court found that initiating or carrying on proceedings which are lacking *bona fides* or which are frivolous, vexatious, or oppressive are all considered “abuse of the process of the court calculated to hamper the due course of judicial proceedings or orderly administration of justice”.⁹⁷ In another case, the swearing of false affidavits, which constitutes the offence of perjury, was held to be “having the tendency to cause obstruction in the due course of judicial proceedings”.⁹⁸

“Obstruction of the administration of justice” is understood to “impose obstacles or impediments, or to hinder, impede or in any manner interrupt or prevent the administration of justice”.⁹⁹ This includes, filing a fabricated document in court proceedings with the intention to defraud or deceive the court,¹⁰⁰ filing an inaccurate report (by the Director General of Police) regarding the cause of death of an undertrial with a view to mislead the court,¹⁰¹ or holding a *dharna* which prevents the public or court officers from attending court proceedings, or otherwise disrupting or disturbing court proceedings.¹⁰² It also includes “raising one’s voice unusually high to the annoyance of the judge”, and using derogatory language against them.¹⁰³



A decision of the Court has provided a non-exhaustive list of actions that constitute this category of contempt. In 1994, Vinay Chandra Mishra, a Senior Advocate, the Chairperson of the Bar Council of India, and the President of the Allahabad High Court Bar Association, was accused of misbehaving with a judge of the Allahabad High Court during a hearing. On being questioned by the judge about the case, he is said to have told the judge that no question could be put to him, and that he would get the judge transferred or impeached. He also demanded that a stay order be given in his case. His contempt case was adjudicated by the Supreme Court, which found him guilty.¹⁰⁴ More importantly, the Court listed a set of actions by a litigant or lawyer towards a judge that would constitute “interference or obstruction of the court of justice”. These included, to resent the judge’s questions; disrespect, abuse, or shout at them; question their authority; threaten them with transfer or impeachment; to use insulting language against them; lose one’s temper against them; dictate what order to pass; or to create a scene in court. According to the Court, such acts would shake the people’s confidence in the ability of the court to deliver free and fair justice, and undermine and erode the very foundation of the judiciary.

✦ The controversial contempt ‘out of court’

Contempt ‘out of court’ cases include a broad set of acts and have been disputed and controversial. Some instances of contempt noted by the Court are, the use of abusive or derogatory language in pleadings or petitions filed before the court,¹⁰⁵ filing a complaint against the judge to intimidate them,¹⁰⁶ repeatedly filing petitions lacking *bona fides*,¹⁰⁷ imputing motives to the court that it was trying to silence criticism and harass its critics by entertaining petitions against them,¹⁰⁸ and tweeting that the Chief Justice of India was denying the citizens their fundamental right to justice,¹⁰⁹ etc.

Such cases often concern statements made by politicians or commentators about the judiciary as an institution and not about any individual case. These are usually in reference to its

class character, ideological bent, or the executive's influence on it. Although the same law applies, such cases are trickier for the Court to decide, precisely because the attack is not directed towards any particular judge or case. Contempt's conflicting relationship with the freedom of speech is also most evident in such cases, because the allegedly contemptuous speech is usually a criticism of the judiciary for either its character, corruption, or institutional shortcomings. Thus, since the criticism is not directly of a case or decision, whether it constitutes contempt must necessarily weigh whether the comment was fair or whether it exceeded the boundaries of legitimate criticism.

As a result, the Court's decisions are not consistent in all cases.



For instance, in 1970, the Court convicted the former Chief Minister of Kerala, E.M.S. Namboodiripad, for giving a speech criticising the judiciary as an instrument of exploitation of the working classes, dominated and guided by class hatred and interests that discriminated between the rich and the poor.¹¹⁰ He asserted that the judiciary was not truly independent, but operated under the influence and pressure of the executive. Interestingly, he also clarified that his statements did not mean that the integrity of individual judges or judgments could be challenged. Yet, the Court convicted him for contempt. It held that Namboodiripad's characterisation drew a "distorted and poor picture of the judiciary and was calculated to raise a general dissatisfaction and distrust of judicial decisions". It also listed certain acts that would be contempt outside court, such as insulting judges, attacking them, commenting on pending proceedings with a tendency to prejudice fair trial, obstructing court officials, witnesses, or the parties, and abusing the process of the court.

However, in another case where similar questions of the class character and institutional bias within the judiciary were raised by another politician, contempt was not held to have been committed.



P. Shiv Shanker, a former judge of the Andhra Pradesh High Court, gave a speech in 1987 before the Bar Council of Hyderabad, while serving as the Union Minister for Law, Justice, and Company Affairs.

In his speech, he stated that the Supreme Court was constituted of elements from the elite class who were sympathetic towards *zamindars*. Their approach towards constitutional amendments aimed at abolishing the zamindari system was oligarchic, rigid, and traditional, which had caused setbacks to those reforms. He suggested that the executive and judiciary had supplemented and complemented each other resulting in improper and ineffective implementation of land reform laws. He also claimed that anti-social elements had found safe-haven in the Supreme Court.

The Court's approach in this case was far more tolerant than in *Namboodiripad* and it is not very clear why. The Court accepted that the Minister's characterisation of the Supreme Court as an institution consisting of persons from the elite class was possibly correct. It disputed the claim that the Court had an unconcealed sympathy for the 'haves', but accepted it as "an expression of opinion about an institutional pattern".¹¹¹ Furthermore, without providing any clear reasoning, the Court ruled that the comment about the Court being oligarchic by itself did not affect the administration of justice. P. Shiv Shanker was acquitted.

The most recent major case on contempt further highlights this inconsistency.



In August 2020, lawyer Prashant Bhushan was convicted by the Supreme Court for two tweets by him.¹¹² In the first tweet, he published a photo of the then Chief Justice of India ("CJI") S.A. Bobde, riding a motorcycle supposedly belonging to a BJP politician, without a mask or helmet. The more contentious part of the tweet was his accusation that the CJI was keeping the Court in lockdown and denying citizens their fundamental right to access justice. His second tweet stated, "When historians in future look back at the last 6 years to see how democracy has been destroyed in India even without a formal Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs." Against these tweets, *suo-moto* cognizance was taken by the Court on a petition filed by a lawyer. The contempt notice against Bhushan alleged that his

tweets had brought the administration of justice into disrepute, and that his tweets were capable of undermining the dignity and authority of the Court as an institution in general, and the office of the CJI in specific, in the eyes of the public.

Bhushan admitted the tweets but denied they constituted contempt. For the first tweet, he claimed that his intention was to highlight the situation that the CJI on one hand kept the court “virtually in lockdown due to COVID fears” and on the other hand was seen maskless in a public place with several people around him also without a mask. In the second tweet, he argued that he had expressed a *bona fide* opinion which may be outspoken, disagreeable, or unpalatable to some. It was essential to democracy that the people have the right to freely and fairly discuss the state of affairs of an institution and build public opinion to reform that institution. He also argued that criticism of the CJI or a succession of CJIs could not be equated to criticism of the Court itself. Thus, his tweets could not have scandalised the Supreme Court or lowered its authority.

The Court rejected his arguments regarding both tweets. For the first, it held that even through the COVID pandemic and the lockdown, the Supreme Court had conducted hearings through video-conferencing and heard thousands of cases. Bhushan had himself appeared before the Court through video-conferencing both as a lawyer and a litigant. Thus, his tweet that the CJI had denied the citizens their fundamental rights to access justice was false to his own knowledge. For the second tweet, the Court rejected his arguments about fair criticism and held that it was meant to convey that Supreme Court judges in the last six years and the past four CJIs had a greater role in the destruction of democracy. The use of a mass medium like Twitter by a person of his seniority and standing to make such scurrilous and malicious allegations against the Supreme Court itself was not fair criticism or made in *bona fide* public interest. Without providing any basis, the Court held that his second tweet had the effect of destabilising the foundation of the judiciary as an important pillar of Indian democracy and shaking the people’s confidence in it. Thus, the

Court rejected his defences and found him guilty of contempt. It did not follow its own words from P. Shiv Shanker's case that "an expression of opinion about an institutional pattern" was not contempt.

✦ **Fair comment or criticism is not contempt**

The fair criticism exception is the most common point of dispute in contempt cases, and also reflects a significant public concern related to contempt. It is relevant to speech that is critical of the judiciary, or demands accountability of public institutions, or to criticisms about the corruption and incompetence of judges.

The fair criticism exception is a legally valid defence against a charge of contempt. The Supreme Court has recognised that courts are fallible and thus not immune from criticism.¹¹³ In the marketplace of ideas, criticism of judges or the judicial system should be welcomed,¹¹⁴ and judges "need to be corrected by independent criticism . . . [which] cannot be repressed by indiscriminate resort to contempt power."¹¹⁵ The right of fair and reasonable criticism includes comments on the conduct or character of a judge in reference to the discharge of their judicial duties.¹¹⁶ If the criticism is fair, its strength or vigour would not make it contemptuous.¹¹⁷ Judges are not touchy when it comes to criticism of their judgments and fair comments, made in good faith and proper language.¹¹⁸ And so, freedom of speech and expression has to prevail except where contempt is manifest, mischievous or substantial.¹¹⁹

However, fair criticism is limited by boundaries, the transgression of which invites the charge of contempt. According to the Court, the fair criticism defence excludes making unfounded, unwarranted, and irresponsible aspersions against judges or courts.¹²⁰ One can criticise judges and their judgments, but cannot impute motives to them, act in malice, or attempt to impair the administration of justice.¹²¹ Any criticism about the judicial system or the Judges which hampers the administration of justice or which erodes the faith in the objective approach of

Judges and brings administration of justice into ridicule can be considered contempt.¹²² Criticism based on obvious distortion or misstatement, made to lower respect for the judiciary and destroy public confidence, can also be considered contempt.¹²³ Thus, certain kinds of criticism do not benefit from the fair comment defence.

In reality, however, despite being a valid legal right of every person and being a valid defence against any allegation of contempt, the boundaries of the 'fair criticism' defence are not clear. The Supreme Court in one case refused to provide a clear limitation to this right, stating instead that there could not be a "straight-jacket formula" for when this limit was crossed.¹²⁴ However, according to the court, the relevant facts to be considered are: the situation and circumstances in which the comment was made, the language employed, the context in which the criticism was offered and the people for whose benefit the exercise was undertaken, and the effect it will produce on the litigants and society in relation to courts and administration of justice. For example, a critic may fairly assert that a judgment is incorrect, or an error has been committed both with regard to the law or established facts. Normally, the judgment itself will be the subject-matter of criticism and not the judge. But when it is said that the judge was predisposed to convict, had a wayward bend of mind, lacked dispassion and objectivity in deciding a case, it amounted to attributing motives, which would bring the administration of justice into ridicule.¹²⁵ This, according to the court, was likely to interfere with the due administration of justice or undermine the confidence of the people in courts, and would be considered to be contempt. While this provides some clarity as to the limits of the fair comment exception, it also raises the question that every democracy must address - should the law penalise criticism of a public institution like the judiciary? If yes, then would that make judges above the law? Some of these questions will be discussed in Part C ahead.

✦ **The bar on proving allegations of bias or improper motives against a judge**

The Court does not allow a person being tried for contempt for imputing bias or improper motives to a judge, to prove such bias or improper motive in evidence. As per the Court, such a person is prohibited from producing evidence in their defence to show that their imputation was justified.¹²⁶ The underlying reason for this is the principle of fairness. The judge against whom the imputations are sought to be proved by the alleged contemnor is not a party before the court, nor are they on trial for their conduct. Therefore, since they are not in a position to refute or challenge these imputations against them, it would be unfair to let the accused person prove them against the judge. While seemingly well-reasoned, it does create a roadblock for an accused person trying to prove that their comments against the judge were justified and true or fair, which may form the basis of their defence against the contempt charge.

✦ **The standard of proof of guilt is ‘beyond reasonable doubt’**

The standard of proof required for establishing a charge of criminal contempt is the same as in any other criminal proceeding i.e. proof beyond reasonable doubt.¹²⁷ Guilt of contempt cannot be found on mere probabilities. Thus, when there were two equally consistent possibilities open to a court in deciding contempt, one consistent with guilt and the other with innocence, the offence cannot be said to have been proved beyond reasonable doubt.¹²⁸

The application of this principle is best demonstrated in the case of Dr. Farooq Abdullah, then the Chief Minister of the State of Jammu and Kashmir. In 1983, he was charged with making contemptuous statements about the state’s judiciary while addressing a rally where the Chief Justice of the High Court of Jammu and Kashmir and other judges were also present. He allegedly stated that “justice is being bought in judicial courts”

and claimed that he would disobey any stay orders passed by the courts.¹²⁹ Dr. Abdullah denied making those statements but the editor of the Daily Kashmir Times newspaper which had published his statement asserted that its reporting was true and accurate. Thus, faced with the situation where it was one person's word against the other without any external evidence, the Court held that his guilt had not been proved beyond reasonable doubt, and acquitted him.

In another case, the Court also held that only when a clear case of contempt is not explainable otherwise, should courts punish for contempt.¹³⁰ Thus, only when the guilt of the accused is established beyond reasonable doubt, and incapable of any other explanation, should the court convict.

✦ Contempt by the press: publication of false or unverifiable allegations

The free speech limitations created by contempt apply equally to the press as they do to individuals. According to the Supreme Court, the publication of “improper, mischievously false or illegal” material is an abuse of this freedom and can be restricted. Thus, the reckless publication of false imputations of corruption against a sitting Supreme Court judge and his family, apparently without any verification on the part of the newspaper, was held to be contempt.¹³¹

✦ Truth as a defence

Until 2006, the Act did not recognise the truth of a contemptuous statement as a valid defence. In its 1971 decision in *Perspective Publications*, the Supreme Court made it clear that “truthfulness or factual correctness” has not been recognised as a good defence in English or Indian cases.¹³² However, by a 2006 amendment, truth was incorporated as a defence (as mentioned in Part A),¹³³ if it is in public interest and the request for raising this defence is *bona fide*.

The Court has liberally applied this defence in some cases, but inconsistently. It has ruled that truth should ordinarily be allowed as a defence unless the Court finds that it is only “a camouflage to escape the consequences of deliberate or malicious attempt to scandalise the court or is an interference with the administration of justice.”¹³⁴ Yet, in Prashant Bhushan’s conviction for contempt in 2020, the Supreme Court applied this provision strictly, rejecting his defence of truth as it was not held to be in public interest or *bona fide*.¹³⁵ Thus, truth is not an absolute defence, but is contingent on whether the statement was in public interest.

✦ High Court cannot take suo motu notice of contempt of the Supreme Court

Contempt powers of the High Court, although wide, do not extend to trying contempt of the Supreme Court.¹³⁶ It has clarified that a court of record can only take cognizance of contempt of a court inferior to it, and not of one superior to it.¹³⁷ Thus, while the Supreme Court can take cognizance of contempt of any court in the country, the High Court cannot take cognizance of contempt of the Supreme Court. Being a court of record was not sufficient to grant the High Court such jurisdiction.

✦ Opening up contempt to private parties

Although the Act prohibits contempt action based on motions by private parties without the written consent of the appropriate law officer, the Supreme Court has modified this position.



A famous instance of the original, statutory position is a 1997 case where the Supreme Court set aside a *suo motu* contempt notice issued by the Bombay High Court against Bal Thackeray, president of the Shiv Sena political party, on a motion by a private party. The motion claimed that Thackeray had stated that an unnamed judge had demanded Rs. 35 lakhs to deliver a judgment in favour of a litigant. Citing *P.N. Duda*,¹³⁸ it overturned the Bombay High Court’s decision because the motion lacked the written consent of the Advocate General of the Maharashtra Government. It held

that Section 15 was the procedural safeguard whose object was to save the valuable time of the court from being wasted by frivolous contempt petitions that did not have the law officer's consent.¹³⁹ The frequent use of such *suo motu* powers in this manner would render this procedural safeguard redundant.

However, like stated before, this has changed, and the Supreme Court has over time allowed contempt jurisdiction to be used by private parties.



For instance, in 2010, the Supreme Court took “*suo motu*” cognizance against Advocate Prashant Bhushan and Tarun Tejpal, the Editor-in-Chief of Tehelka magazine on an application by Senior Advocate Harish Salve alleging criminal contempt.¹⁴⁰ He claimed that Bhushan had stated that at least half of the past CJIs were corrupt, and that the then Chief Justice S.H. Kapadia held shares in a particular company while hearing a case involving the same company. Tehelka magazine had published these allegations. Going against its own earlier ruling in Bal Thackeray's case, the Court held that although the application did not have the Advocate General's endorsement, it could treat it as mere information brought to its notice, on which *suo motu* cognizance could be taken. The reason for making this exception was that this was a rare case involving issues that could have a far greater impact on the administration of justice, the justice delivery system, and the credibility of the Supreme Court, in the eyes of the general public.¹⁴¹

The legal position as it stands today is that while the Act prescribes a specific procedure for initiating contempt proceedings, the power of the Court to do so *suo motu* is not restricted and can be based on motions filed by private, unrelated third parties. Since the High Courts and the Supreme Court derive their jurisdiction and power from Articles 215 and 129 of the Constitution, it results in giving scope for “judicial selfdealing”.¹⁴² Explaining this further, the Supreme Court recently held that “in view of the fact that the power to punish for contempt of itself is a constitutional power vested in this

Court, such power cannot be abridged or taken away even by legislative enactment”,¹⁴³ such as the Contempt of Courts Act, 1971.¹⁴⁴

✦ How does the Supreme Court punish contempt?

Contempt cases lack any clear policy or rules for how punishments should be imposed on convicted persons. As stated in Part A, a conviction for contempt carries a maximum punishment of simple imprisonment up to six months, or a fine up to Rs. two thousand, or both. However, what punishment the Court imposes can vary significantly. Usually, the Court does not award a severe (i.e. maximum or thereabout) punishment for contempt of court. Punishments of imprisonment can range from a few hours to a few months. In some cases, the Court only imposes a fine, without any imprisonment.¹⁴⁵ Such fines are also usually not very high and can range anywhere between a token amount to a few thousand.

There are few recognisable principles, if any, that emerge from the Court’s decisions. A sincere apology by the contemnor is the most common mitigating factor, resulting in reduced punishments. Yet, there were cases where despite an apology, significant sentences were awarded by the Court.¹⁴⁶ A noticeable trend was also that persons well-known, or of standing or eminence, were usually awarded only token punishments.



For instance, EMS Namboodiripad was ordered to pay a fine of Rs. 50,¹⁴⁷ Arundhati Roy was sentenced to simple imprisonment for one day and a fine of Rs. 2,000, and Prashant Bhushan was ordered to pay a fine of Re. 1 even though none of them had tendered an apology to the Court. This was in contrast to ordinary litigants who were more likely to be awarded higher sentences of simple imprisonment for a month or more.¹⁴⁸

In some questionable instances, punishments other than those provided under the Act were also awarded.



The most problematic example is of Vinay Chandra Mishra who was a practising lawyer and was awarded a suspended sentence of six weeks subject to the condition that he would not be convicted for contempt for the next three years. More importantly, however, he was also prohibited from practising as a lawyer for three years. The Court also dismissed the argument that this interfered with his fundamental right under Article 19(1) (g) to practice any profession.¹⁴⁹ This was a contentious exercise of power since neither the Act nor Article 129 of the Constitution give the Supreme Court the power to suspend a member from the legal profession.¹⁵⁰ Another example is the *Wah India* magazine's case, where the Delhi High Court gave an interim order directing the Delhi Police to seize and confiscate copies of the particular issue of the magazine wherever it was being sold.¹⁵¹ Thus, going beyond imprisonment or fine as prescribed under the law, courts also impose other punishments as they find fit.



ENDNOTES

72 Original jurisdiction of a court refers to the jurisdiction of that court to hear a particular category of case before any other court either superior or subordinate to it. Appellate jurisdiction refers to the jurisdiction of a court to review or revise a subordinate court's decision.

73 The latin phrase being '*nemo judex in causa sua*'.

74 M.R. Parashar v Dr. Farooq Abdullah, (1984) 2 SCC 343, (India).

75 Dr. Prodip Kumar Biswas v Subrata Das, (2004) 4 SCC 537, at 580, (India).

76 Rama Dayal Markarha v State of Madhya Pradesh, (1978) 2 SCC 630, at 641 (India); In Re S. Mulgaokar, (1978) 3 SCC 339, at 348 (India); Supreme Court Bar Association v Union of India, (1998) 4 SCC 509.

77 Mulgaokar *supra* note 76.

78 S. Abdul Karim v M.K. Prakash, (1976) 2 SC 975, (India).

79 In Re: Harijai Singh and In Re: Vijay Kumar, (1996) 6 SCC 466, (India).

80 Rajendra Sail v Madhya Pradesh High Court Association, (2005) 6 SCC 109, at 123, (India).

81 *Id.*

82 Brahma Prakash Sharma, 1953 SCR 1169, (India); Sambhu Nath Jha v Kedar Prasad Jha, (1992) 1 SCC 573, at 577, (India).

83 Perspective Publications (P) Ltd. And Ors. v State of Maharashtra, AIR 1970 SC 221 (India).

84 Matter of a Special Reference from the Bahama Islands, 1893 AC 138, (United Kingdom).

85 In Re: Arundhati Roy, (2002) 3 SCC 343, (India).

86 Brahma Prakash Sharma, *supra* note 82.

87 Bathina Ramakrishna Reddy v State of Madras, AIR 1952 SC 149, (India).

88 Brahma Prakash Sharma, *supra* note 82.

89 A later case, Perspective Publications, disregarded Brahma Prakash Sharma's assumption that good faith could be a defence in defamation cases and ruled that truth is not a valid defence.

90 Dr. D.C. Saxena v Hon'ble The Chief Justice of India, (1996) 5 SCC 216, at 246, (India).

91 Hari Singh Nagra & Ors. v Kapil Sibbal, (2010) 7 SCC 502, (India).

92 Baradakanta Mishra v The Registrar of Orissa High Court, (1974) 1 SCC 374, at 392 (India).

93 *Id.* at 393.

94 EMS Namboodiripad v T. Narayanan Nambiar, (1970) 2 SCC 325, at 332 (India).

95 Dr. D.C. Saxena, *supra* note 90.

96 Baradakanta Mishra, *supra* note 92, [quoting Rex v Almon, (1765) Wilmot's Opinions 243:97 ER 94].

97 Advocate General, State of Bihar v Madhya Pradesh Khair Industries, (1980) 3 SCC 311, at 315, (India). In this case, the Respondent's conduct in repeatedly filing applications and petitions before different benches of the Patna and the Calcutta High Courts solely to escape its obligations to deposit cash and bank guarantees as

directed by different courts, was considered by the Court to be contempt.

98 *Dhananjay Sharma v State of Haryana*, (1995) 3 SCC 757, (India).

99 *Chandra Shashi v Anil Kumar Verma*, (1995) 1 SCC 421, (India).

100 *Id.* According to the Supreme Court, this was the first time that a person was convicted for contempt for the act of filing a fabricated document.

101 *Secretary, Hailakandi Bar Association v State of Assam*, (1996) 9 SCC 74, (India).

102 *J.R. Parashar and Ors. v Prashant Bhushan and Ors.*, (2001) 6 SCC 735, (India).

103 *B.K. Kar v Hon'ble the Chief Justice and His Companion Justices of the Orissa High Court*, AIR 1961 SC 1367, (India).

104 *In Re: Vinay Chandra Mishra*, (1995) 2 SCC 584, (India).

105 *L.D. Jaikwal v State of U.P.*, (1984) 3 SCC 405; *In Re: Roshal Lal Ahuja*, (1993) Supp (4) SCC 446, (India).

106 *In Re: Ajay Kumar Pandey, Advocate*, (1998) 7 SCC 248, (India).

107 *Advocate General, State of Bihar*, *supra* note 97.

108 *Arundhati Roy*, *supra* note 85.

109 *In Re: Prashant Bhushan*, AIR 2020 SC 4114, (India).

110 *E.M.S. Namboodiripad*, *supra* note 94.

111 *P.N. Duda v P. Shiv Shanker*, 1988) 3 SCC 167, at 187, p. 28, (India).

112 *In Re: Prashant Bhushan*, *supra* note 109.

113 *R.C. Cooper v Union of India*, (1970) 2 SCC 298, at 301 (India).

114 *P.N. Duda*, *supra* note 111.

115 *Baradakanta Mishra*, *supra* note 92.

116 *Brahma Prakash Sharma*, *supra* note 82.

117 *Rama Dayal Markarha*, *supra* note 76; *R.C. Cooper*, *supra* note 113.

118 *In Re: Roshan Lal Ahuja*, *supra* note 105.

119 *EMS Namboodiripad*, *supra* note 94.

120 *Id.*

121 *Brahma Prakash Sharma*, *supra* note 82; *R.C. Cooper*, *supra* note 113.

122 *P.N. Duda*, *supra* note 111.

123 *Id.* at p. 13.

124 *Rama Dayal Markarha*, *supra* note 76.

125 *P.N. Duda*, *supra* note 111 at p. 18.

126 *Dr. D.C. Saxena* *supra* note 90, at p. 42.

127 *S. Abdul Karim* *supra* note 78; *Mrityunjoy Das v Sayed Hasibur Rehman*, (2001) 3 SCC 739, (India).

128 *Mrityunjoy Das* *supra* note 126.

129 *M.R. Parashar v Dr. Farooq Abdullah*, (1984) 2 SCC 343, (India), (However, it is not clear why the Supreme Court did not seek any other external evidence, such as the statements of other persons present in the rally).

130 *Rajendra Sail*, *supra* note 80, at p. 125.

131 *In Re: Harijai Singh*, *supra* note 79, p.11.

132 *I* note 83 at p.18.

133 *The Contempt of Courts Act*, *supra* note 2, at Section 13(b).

134 *Indirect Tax Practitioners Association v R.K. Jain*, (2010) 8 SCC 281, (India).

135 In Re: Prashant Bhushan, *supra* note 109.

136 Vitasah Oberoi v Court of its Own Motion, (2017) 2 SCC 314, (India).

137 *Id.* at p.12.

138 P.N. Duda, *supra* note 111.

139 Bal Thackerey v Harish Pimpalkhute and Ors., (2005) 1 SCC 254, (India).

140 Amicus Curiae v Prashant Bhushan and Anr., 2010 Cri. L.J. 4466, at Order dated 14.07.2010, (India).

141 *Id.* at p.14.

142 *Supra* note 109.

143 *Id.*

144 *Id.*

145 Khair Industries *supra* note 97; Baradakanta Mishra, *supra* note 92; Ram Dayal Markarha *supra* note 76.

146 C.K. Daphtary *supra* note 69.

147 E.M.S. Namboodiripad *supra* note 94; In Re Arundhati Roy *supra* note 85.

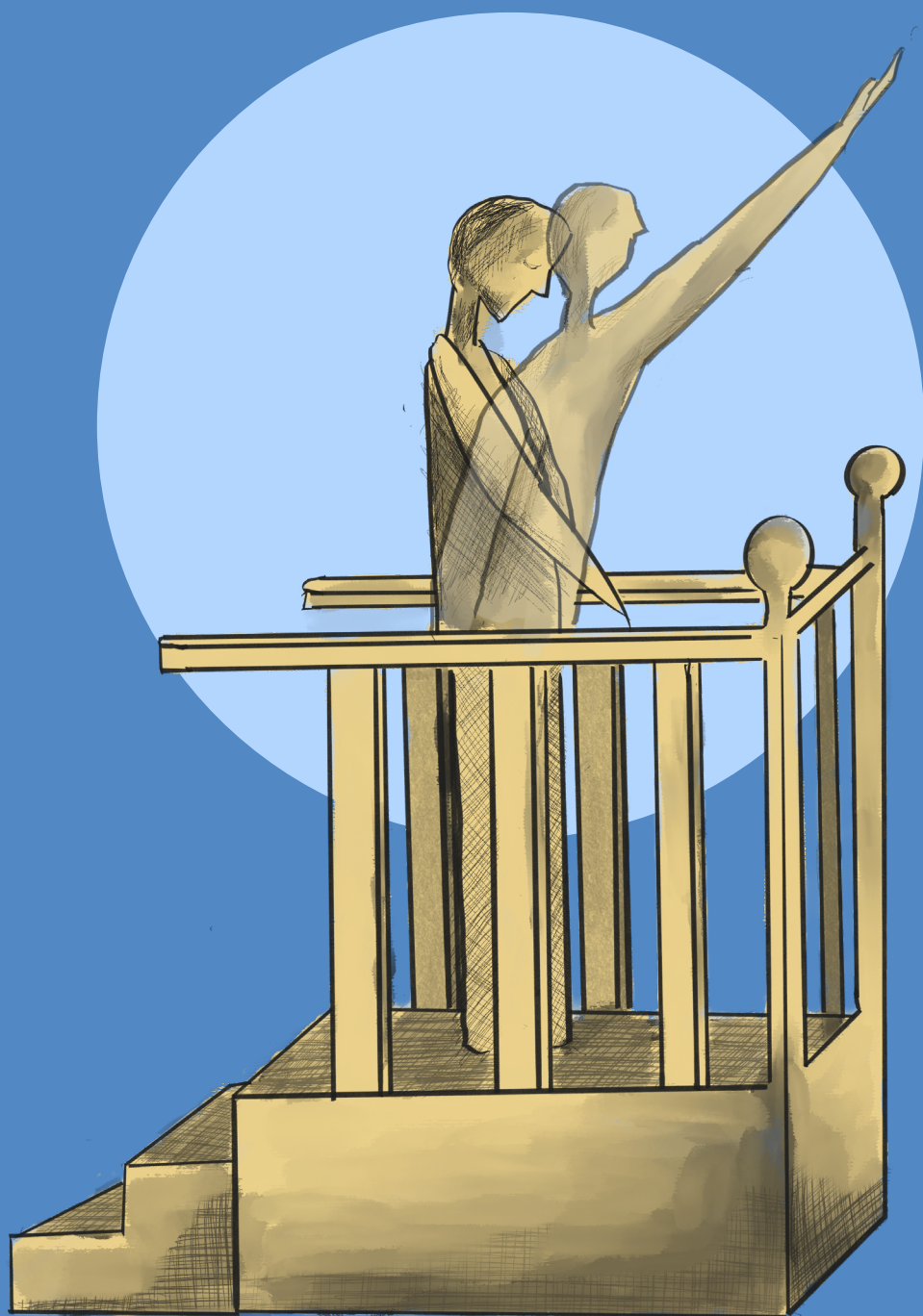
148 Dr. D.C. Saxena *supra* note 90; Roshan Lal Ahuja *supra* note 105; and Pritam Pal v High Court of Madhya Pradesh, Jabalpur through Registrar, 1992 SCR (2) 864, (India).

149 The Court's rejection of this argument was most unsatisfactory, without providing any basis for its exercise of power to impose this particular punishment. Instead, the Court's response was that the right to practice in the legal profession was subject to contempt of court. However, as is clear from a reading of Article 19, only the freedom of speech and expression is subject to contempt of court, and not the freedom to practice any profession, as the Court wrongly stated.

150 Later decisions of the Supreme Court

have clarified its powers to punish advocate contemnors. In Supreme Court Bar Association v Union of India, (1998) 4 SCC 409, at 438, it was held that the Supreme Court in its contempt jurisdiction under Article 129, or its plenary jurisdiction under Article 142, does not have the power to suspend a lawyer's right to practice. Only the Bar Council of India, or the state Bar Council could take such action. However, in *Ex. Capt. Harish Uppal v Union of India*, (2003) 2 SCC 45, it was further clarified that the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Thus, a lawyer convicted for contempt cannot be punished by suspending their right to practice, but they can be denied the right to appear in courts. *Also see* R.K. Anand v Registrar, Delhi High Court, (2009) 8 SCC 106, (India).

151 V. Venkatesan, *Contempt and punishment*, Frontline, The Hindu, (July 07, 2001, 00:00 IST), <https://frontline.thehindu.com/other/article30159732.ece>.



PART C

PROBLEMS WITH THE CONTEMPT LAW

This part of the report attempts to identify and analyse some of the contentious issues on contempt, especially as they relate to problems in the law or its application by the judiciary, their impact on free speech and expression and judicial accountability. It also uses a comparative lens to examine some features of contempt of court in foreign jurisdictions to better understand the faults in Indian law. The last chapter presents some reforms to make the law more effective, reduce arbitrariness and misuse of the law, and lower its undesirable effects on the freedom of speech and accountability of the judiciary.



CHAPTER 4

What ails contempt?

✦ Conflict of interest: Being judges in their own cause

As discussed in Part B, contempt cases usually have the same judge donning multiple hats of the aggrieved party, the prosecutor, and the deciding judge, creating a conflicting set of interests.

In a given case, the same judge takes cognizance of contempt, issues notice to the accused, hears the case, records evidence, and determines the guilt of the accused.¹⁵² However, the judge may also be directly or indirectly aggrieved by the contempt and be prosecuting it with the intention of convicting. These various motivations are fundamentally at odds with each other. Being a judge requires them to be objective, dispassionate, and personally uninterested in the outcome of the litigation. This is a well-known principle of natural justice.¹⁵³ But if the judge is interested in a particular outcome of the case, like they might be in cases of contempt, then they are less likely or unlikely to be unbiased and dispassionate.

Failure to conform to this principle can create an appearance of bias to the accused or the public at large, which would lower the credibility of the system of administration of justice in the minds

of the people (much in the same way that contempt of court does). Therefore, a valid argument can be made against the very same judge hearing the contempt case.

★ Contempt of court is textually vague and overbroad

Textual vagueness in the wording of the contempt law, and the consequential overbroad scope of the offence of contempt is one of the biggest concerns with the contempt law. The ‘vagueness doctrine’ is a rule rooted in the U.S. Constitutional law as part of the due process clause.¹⁵⁴ It requires that a penal statute define the criminal offence with sufficient definiteness so that ordinary people can understand what conduct is prohibited, and do so in a manner that does not encourage arbitrary and discriminatory enforcement.¹⁵⁵ Thus, an individual must be given fair notice of the conduct prohibited by the statute.¹⁵⁶ Laws falling short of this requirement are said to be ‘void for vagueness’.¹⁵⁷

Indian constitutional law also recognises the vagueness doctrine. A constitutional bench decision in 1970 ruled that laws could be considered bad for sheer vagueness, and a vague law affecting fundamental rights may be struck down as void.¹⁵⁸ If a law is or appears vague, then the court must first try to construe it in a manner that best captures the intention of the legislature. But if this cannot be done, and its interpretation and application remain uncertain, then it can be ruled as being void for violating the constitution. The invalidity arises “from the probability of the misuse of the law to the detriment of the individual.”¹⁵⁹ Thus, a provision of law so vague that it is capable of wanton abuse to take away the personal liberty of the people by its application is “flagrant violation of the fairness and justness of procedure . . . implicit in the provisions of Article 21”.¹⁶⁰

Additionally, in *Shreya Singhal v. Union of India*, the use of nebulous expressions in penal provisions, and the lack of a demarcating line conveyed by such expressions, was found to render a penal provision constitutionally vague.¹⁶¹ As per this case, a penal provision that restricts the right to free speech must be couched in the narrowest possible terms and cannot cast a wide

net. General words like ‘offensive’, ‘annoyance’, or ‘inconvenience’, were subjective and so what was offensive or annoying to one person may not be so for another. Thus, a criminal statute has to clearly demarcate the conduct that it seeks to penalise.

‘Scandalising or lowering the authority of the court’ is the vaguest part of the offence of contempt of court. As discussed in Part B, scandalising the court is understood as disrespecting, disregarding, or undermining the authority of the court, or creating a disaffection or dissatisfaction in people’s minds towards the court that would make them unwilling to obey the law. However, the word ‘scandalising’ is general and not legal. It is defined as shocking someone with an action or opinion thought of as immoral or wrong,¹⁶² or offending the moral sense.¹⁶³ Like the words deemed vague in *Shreya Singhal*, scandalising is also subjective. Whether a publication is scandalous towards the court will vary from person to person, and from judge to judge. A tolerant and liberal judge may have a higher threshold for what statement is scandalous towards the court.



For instance, in *Mulgaokar*, the Court expressed the view that the judiciary should adopt a magnanimously charitable attitude towards critical statements, even if the criticism itself is uncharitable and unfair but has been made out of bona fide concern for improvement.¹⁶⁴

But it is not difficult to imagine a different scenario where the judge hearing the contempt case is strict or conservative in their approach, or is prone to being scandalised easily. Add to that the fact that the judge hearing the case may also be aggrieved by the speech and not a dispassionate third party. Seen together, their likelihood of being scandalised becomes higher. Thus, the prospect of an adverse outcome against the accused in this scenario is much greater.

Vagueness in the contempt law, therefore, harms the constitutional free speech goals in the following ways.

Firstly, without clearly demarcating what objectively constitutes ‘scandalising the court’, an ordinary person would not know what is prohibited by the law.¹⁶⁵ And so persons not intending to commit the offence of contempt may do so unknowingly because they have not been sufficiently warned about what the offence is.

Secondly, lack of clarity about what would or would not scandalise the court encourages arbitrary and possibly discriminatory enforcement of the law by a judge on the basis of their own predispositions. This also gives greater scope for bias in judicial decision-making to creep in.

Thirdly, because most persons would want to avoid violating the law even by accident (and since it is unclear what objectively constitutes scandalising the court), they will engage in self-censorship which will inhibit their free speech right. This self-censorship will suppress critical questions or commentary that are necessary for the functioning of a democracy where institutions must necessarily be put under scrutiny.

The situation so created is described appropriately by senior lawyer and jurist Fali Nariman:

”

“There are no rules and no precise circumstances as to when it can be said that the administration of justice is brought into ‘contempt’. Judgments of courts are strewn with pious platitudes that give little guidance to newsmen (and newswomen), editors or commentators.” ¹⁶⁶

While “scandalising the court” is the most evident and obvious instance of vagueness in the Act, it is not the only one. Other kinds of criminal contempt, i.e., prejudice to or interference with due course of judicial proceedings, and interference or obstruction of the administration of justice, are also not clearly defined in the Act. Further, while the defence of truth must be *bona fide* and be backed by a public interest, what is ‘public interest’ is not defined by the Act, but left to the court to interpret.¹⁶⁷ Thus, not only is the offence of contempt itself vague, even the statutory defence of truth has the same problem.¹⁶⁸

The offence of contempt is also overbroad and consequently, includes within it instances which are wrongly treated as contempt. As discussed in Part B, the offence of contempt is unusual, as it does not require *mens rea* i.e., a culpable, guilty intent. This is known as the strict liability rule, where a person is liable for the consequences of their criminal acts whether they intended them or not. Contempt also does not require any actual harm on the court due to the contempt, such as the lowering of its authority, or obstruction with the administration of justice, or interference with the due course of judicial proceedings etc. A mere tendency to cause the above is sufficient. This is an excessive restriction on speech since the danger of contempt of court is remote and conjectural.¹⁶⁹ Thus, the threshold for prosecuting a person for contempt is very low. Theoretically, a person can be tried and punished for contempt even if they never meant to commit the offence and no identifiable harm was caused to the court or the administration of justice.

Contempt of court in some other countries, is neither defined so broadly, nor is it always a strict liability offence. Under the U.S. federal law, contempt is a narrow offence, limited to obstructing justice by misbehaving inside or nearby court,¹⁷⁰ misbehaviour of court officials in official transactions,¹⁷¹ disobedience or resistance to lawful writ, process, order, rule, decree or command (i.e., civil contempt),¹⁷² and the knowing or intentional violation of a child witness or victim.¹⁷³ Thus, contempt of court is limited spatially (inside or nearby court) or in the nature of disobedience of court order.

In the U.K., contempt of court is broader than the U.S., but with limitations on its applicability. Like in India, contempt includes the tendency to interfere with the course of justice in a legal proceeding regardless of intent. Thus, strict liability exists under the UK law,¹⁷⁴ but it is limited in its applicability only to cases when the contemptuous publication is addressed to the general public,¹⁷⁵ and when the publication creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced.¹⁷⁶ This creates certain essential pre-requisites to contempt prosecutions. Moreover, publications that are part of a discussion on public affairs or other matters of general public interest, made in good faith, are not to be treated as a contempt of court under the strict liability rule if the risk of impediment or prejudice to a legal proceedings is merely incidental to the discussion.¹⁷⁷ Apart from this, making and publishing recordings of court proceedings,¹⁷⁸ wilfully insulting a judge, witness, or lawyer attending court business,¹⁷⁹ and wilfully interrupting court proceedings or misbehaving in court are also treated as contempt of court.¹⁸⁰ Thus, contempt of court usually requires *mens rea* as a necessary ingredient, and even in strict liability cases, there has to be a substantial risk of impeding or prejudicing the course of justice. Additionally, there is an added protection for publications on issues of public interest.

✦ **The arbitrary enforcement of the contempt law by the judiciary**

As discussed before, textual vagueness in the law invites its arbitrary application by judges. Legal scholars have commented that contempt powers are couched in extremely wide language, falling prey to the predilections of judges, defeating the very purpose of such power.¹⁸¹ This wide language also facilitates the imposition of greater restraints on free press.¹⁸²

There are several instances where innocuous actions have been held by courts to be in contempt. Many of them have already been discussed. Additionally, there are other unusual cases where courts have found contempt to be committed.



For instance, the Allahabad High Court found that a traffic constable stopping and questioning a judge's car for having a red light, had committed contempt of court.¹⁸³ The same High Court has also issued notice against a court clerk for writing a letter alleging that district court judges and employees were murdering the Constitution.¹⁸⁴

Such seemingly arbitrary application of the contempt of court powers is enabled by the textual vagueness and failure of superior courts to enforce the law in its correct letter and spirit.

✦ Insiders and outsiders

Inequality in the application of contempt is most visible in cases of institutional criticism and democratic accountability of the judiciary. This is different from criticism or targeted attacks on particular judges.¹⁸⁵ The Supreme Court's varying approach in the cases of E.M.S. Namboodiripad and P. Shiv Shanker has already been demonstrated in Part B.



In Arundhati Roy's case, she had filed an affidavit in the Supreme Court against contempt notices issued to her by the Court. In the affidavit, she wrote that the Court had shown a disturbing willingness to issue notice, and it showed a disquieting inclination to silence criticism and muzzle dissent to harass and intimate those who disagree with it.¹⁸⁶ For her affidavit, a second contempt proceeding was initiated against her *suo motu*. She filed an affidavit in the second case defending her earlier affidavit, and further wrote that she was merely exercising her right to criticise the judiciary. She also wrote that if the judiciary removed itself from public scrutiny and accountability, the resulting judicial dictatorship would be no worse than a totalitarian rule. During arguments, P. Shiv Shanker's case was cited to argue that no action had been taken for his statement that the class composition of Supreme Court judges indicated their predisposition and prejudices in favour of the ruling classes and the *Zamindari* class. He had also stated that anti-social elements had found safe haven in the Supreme Court. Thus, like Shiv Shanker, proceedings against

her should also have been dropped as she had only criticised the judiciary.



In convicting her, the Supreme Court introduced a new, seemingly arbitrary classification of its critics with no basis in precedent or law. It stated that Shiv Shanker's case was different from Roy's, because he had been a High Court judge and was a Minister at that time and had expressed his opinion after studying the system. Roy, on the other hand, had not claimed to be possessing any special knowledge of the law and the working of the judiciary, nor had she claimed to have made any special study regarding the workings of the Supreme Court or the judiciary. She had only claimed to be a writer of repute and had cited her fundamental right to freedom of speech and expression to back her statements about the Court. Thus, according to the Court's reasoning, "insiders" like Shiv Shanker had a special privilege to criticise the judiciary without consequences, which "outsiders" like Roy did not.

Another instance of this differential classification is the case of retired judge V.R. Krishna Iyer. In 1983 a contempt case was filed against him before the Kerala High Court for his statements that the judiciary was biased in favour of the propertied classes and against the proletariat, that it had been influenced by the executive and the judiciary, and that India's judicial approach had a certain independence from civilised behaviour.¹⁸⁷ The High Court dismissed the petition and held that Iyer's statements should be understood in the background of his contributions as a Judge, as a member of the Law Commission of India, and a proponent of the cause of judicial reforms. Through his statement, he was pointing out the weak spots in the judicial system to alert the people about the need for change instead of them rejecting the whole system. His comments were not of someone who wants to bring disrepute to the judiciary but of a person whose bona fides in the cause of the judiciary were beyond doubt. Thus, contempt notice was not issued to him.

This differential treatment of “insiders” vis-a-vis “outsiders” does not have any basis in law. It is also completely illogical and unjust. Firstly, the fundamental right to free speech and expression, the reasonable restriction of ‘contempt of court’, and the Act, do not recognise any special protections for ex-judges or legal experts for their statements criticising the judiciary. Their statements should be treated at par with those of writers like Roy, or ordinary citizens. Put differently, the yardstick for contempt should be the same for all persons. Shiv Shanker and Iyer’s statements on the class bias that exists within the judiciary is a fundamental criticism that challenges its characterisation as being an independent and impartial arbiter. Secondly, such differential treatment violates the fundamental right to the equal protection of law, i.e. Article 14 of the Constitution. Courts appear to have made a separate classification of retired judges because they possess special knowledge of the working of the judicial system. However, giving them special protection from a contempt prosecution for criticism is not reasonable (which is legally required), but arbitrary, unfair, and unjust, which is impermissible.¹⁸⁸ Lastly, this “insider” exception is also applied by the Court selectively. E.M.S. Namboodiripad was a retired high court judge and Prashant Bhushan, though not a judge, did have a significant standing as a lawyer. Yet, the Court convicted them.

✦ Arbitrary sentencing

Discretion in punishment and sentencing is a feature of penal laws in India, and most offences, like contempt, prescribe only a maximum punishment. It then becomes the judge’s discretion to decide what sentence should be awarded in any case. This gives rise to arbitrariness, since every judge awards punishments differently, creating uncertainty and raising doubts about equity in the law’s application. The issue of the lack of a sentencing policy has been noted in government reports,¹⁸⁹ but the problem persists.

Arbitrariness in punishment is often no less than that in the prosecution itself. As discussed in Parts A & B, the Act only provides a maximum punishment of 6 months or fine of two thousand rupees or both. Judges have the discretion to award a sentence of imprisonment between zero and six months.

Neither the Act, nor the decisions of the Supreme Court provide guidelines on how to regulate the exercise of this discretion. However, it has been seen (as shown in Part B) that the punishments imposed on ordinary persons were usually higher than those imposed on well-known persons.

One widely recognised mitigating factor is an unconditional and sincere apology tendered by the accused. This can result in contempt proceedings being dropped or a lesser sentence being awarded. However, such apologies must be seen in the context of the power that judges hold in contempt cases. Given the conflict of interest, an accused may feel pressured into apologising since the same judge they have allegedly offended may try and punish them. So, apologising may seem like the only option available if they want to escape carceral punishment. Thus, some accused may come to the calculated conclusion that it is less inconvenient for them to plead their guilt, offer an apology to the court, and get away with a slap on the wrist, even if they believe they are innocent.

✦ **Does contempt place the judiciary above the law?**

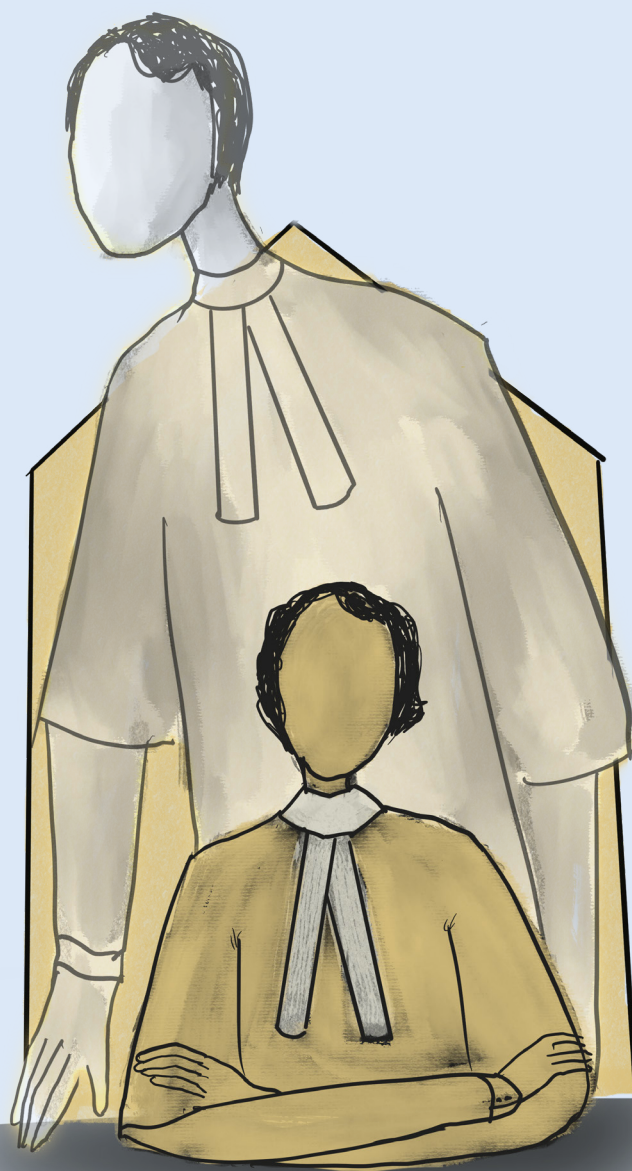
A major criticism of contempt power is that it limits the democratic accountability of the judiciary. In a constitutional democracy such as India, all public institutions must make themselves available for criticism by the people. This is a manifestation of the people's right to freely comment upon and criticise public institutions, going to the very root of the right of free speech. And in the process of such criticism or discussion by the public or the media, there are bound to be some statements about either institutions or individuals that are defamatory and

lower their reputation. Against such a defamatory statement, they can go to court in civil or criminal defamation. Thus, for all public individuals and institutions, defamation is considered sufficient legal remedy to redress any injury to their reputation. They do not enjoy any special protection from public criticism.

The judiciary, however, is an exception to this, and is the only public institution that receives a special protection from criticism. This takes the form of contempt of court. Moreover, this power is also self-administered, and the judiciary can *suo motu* summon, prosecute, try, and punish persons for contempt. Hence, a remedy in libel law, whether civil or criminal, is considered insufficient protection.¹⁹⁰

This creates a dichotomy regarding the accountability of the judiciary as a public institution. The judiciary performs a crucial democratic function of dispensing justice based on the constitution, laws, rules, norms etc. Naturally, like other institutions, it must also be amenable to public criticism. And judges have acknowledged this, noting that they are not immune from it,¹⁹¹ and need to face independent criticism that should not be repressed by an indiscriminate resort to contempt power.¹⁹²

The problem then arises because the judiciary possesses the contempt power to shut down critical commentary and shield itself from it. What constitutes contempt is stretched “to squash the mildest criticism or disagreement,” which amounts to restricting the right of the citizen to question the conduct of the judiciary.¹⁹³ Contempt law, therefore, places the judiciary above the law, by providing a special protection to them not available to other institutions.¹⁹⁴ As shown below, there have been multiple instances when courts have resorted to a questionable use of the contempt power against persons or the media that have critically examined judicial conduct.





The *Mid-Day* case is perhaps the best example of blatant misuse of contempt power by the courts to shield judges from allegations of corruption. In May 2007, the *Mid-Day* newspaper published a series of stories highlighting instances of improper conduct by Y.K. Sabharwal, the former Chief Justice of India, prior to his retirement. It was stated in the reports that three companies belonging to his two sons were registered at his official residence. Also, as the CJI, he called for and dealt with a major case dealing with the sealing of commercial properties in Delhi around the same time when his two sons were forming partnerships with some major mall and commercial complex developers, which according to the story, benefitted the companies of his sons.¹⁹⁵ It was alleged that industrial and commercial land had been allotted to his sons' companies below market price by the U.P. Government when he was hearing a major corruption case involving a senior politician belonging to the ruling party in U.P.¹⁹⁶ These reports were followed up by a cartoon that ostensibly mocked Y.K. Sabharwal on the basis of these allegations.¹⁹⁷

When these news reports were brought to the notice of the Delhi High Court by a senior lawyer, it took *suo motu*¹⁹⁸ cognizance. The newspaper, its editors, and the cartoonist were summoned for contempt of court. In a bizarre five-paragraph decision, the Delhi High Court held that although the reports and the cartoon appeared to single out the former CJI, it actually tarnished the image of the entire Supreme Court.¹⁹⁹ It tended to erode the confidence of the general public that other judges were also party to fulfilling the CJI's allegedly corrupt plans. Notably, the decision did not discuss any established legal principles about fair criticism and comment, except for holding that the accused had crossed the "*laxman rekha*." Without conducting any significant analysis on whether the ingredients of the offence of contempt had been met, whether any defence raised by the accused was satisfied, or whether the right to free speech protected the journalists from contempt action, it convicted all four accused and imposed a high sentence of four months' imprisonment.

The Supreme Court set aside the conviction, but purely on technical grounds, skirting around the visible abuse of the contempt power by the High Court. It ruled that an inferior court, like the Delhi High Court, could not take suo motu cognizance of the alleged contempt of a superior court, such as the Supreme Court.²⁰⁰ Thus, the contempt proceedings were bad in law. But while the Supreme Court acquitted the editors and the cartoonist, it missed an opportunity to haul up the High Court for the abuse of its powers, and read an additional safeguard into the law to prevent future misuse of the contempt law by judges.



The 2002 Mysore sex-scandal case was another example of hasty resort to the contempt power by the judiciary to silence media reporting. Fourteen newspapers were alleged to have scandalised the image of the judiciary by carrying multiple news stories that three sitting judges of the Karnataka High Court were involved in a sex-scandal involving “call girls” and promise of a position for female judiciary aspirants in exchange for sexual favours.²⁰¹ A high-level judicial inquiry constituted by the CJI, after the contempt proceedings were started, found no evidence of wrongdoing, although the report was never made public.²⁰² Consequently, a full bench of the Karnataka High Court summoned fourteen major newspapers and their editors for contempt.²⁰³ The Supreme Court later stayed the proceedings²⁰⁴ But Fali Nariman, who was appointed *Amicus Curiae* by the Supreme Court in this case, had suggested that the full truth behind the allegations never came out during the judicial inquiry because the media was concerned that if they revealed the information with them during inquiry, it may be used as evidence of contempt against them.²⁰⁵ Legally, however, contempt proceedings in this case were also questionable because at the most, the media reporting could be considered defamatory against the accused-judges. But it was never a case of contempt, since the allegedly offending reporting was targeted at judges in their personal capacity, not at the institution of the judiciary. Thus, the court failed to differentiate between contempt of judge and contempt of court.²⁰⁶



Haste in resorting to contempt was also evident in the *Wah India* case, where journalist Madhu Trehan, amongst others, were convicted for contempt by the Delhi High Court. In 2001, the magazine *Wah India* had published an article titled ‘Judged Out!’ carrying a performance review of the judges of the Delhi High Court, based on a survey of 50 unnamed ‘senior lawyers’. It had also rated the judges on court manners, reputation for personal integrity, quality of judgments delivered, depth of knowledge of law, punctuality, and receptiveness to arguments addressed by lawyers, all based on scores awarded to them from the survey answers.²⁰⁷ The court called the article offensive, intimidating, and “a scurrilous attack on the integrity, honesty and judicial competence and impartiality of Judges.”²⁰⁸ It also held that the article had seriously shaken the system of administration of justice by bringing it down to disrespect and disrepute and impaired the confidence of the people in the court. While the article may not have conformed with the standards of good journalism,²⁰⁹ the court’s conclusions appear to be unfounded. There was simply no basis to the finding that the article had shaken the system, interfered with the administration of justice, and impaired the people’s confidence in it. And there was little to suggest that the magazine had intended to scandalise the court, lower its authority, erode people’s confidence in the judiciary, or interfere with the administration of justice. The court’s perception lacked substance and appeared exaggerated,²¹⁰ going against well-established precedents that have advised the exercise of restraint in the use of contempt powers.

These cases also show the violation of established legal principles by the judiciary to gag the media by initiating contempt prosecutions. In the *Mid Day* case, investigative reporting exposing possible wrongdoing by a judge resulted in contempt prosecutions for the journalists. In the Mysore sex-scandal case, what was evidently libel against judges was treated as contempt by the High Court. The *Wah India* prosecution showed a disturbing haste to punish their external performance evaluation based on an unproven claim of harm having resulted from the article. These cases show a hypersensitivity by judges to quash critical conversations about them.



A famous English case shows a contrasting approach towards seemingly contemptuous publications. In a 1968 case, a senior barrister named Quintin Hogg had written an article strongly critical of the Court of Appeal for one of its decisions on the existing betting and gambling statute.²¹¹ He wrote that the decision had made the statute unenforceable and instead of accepting blame for it, the Court of Appeal was passing the buck onto lawyers, the legislature and the police. He also advised the courts to remember the “golden rule” for judges i.e., silence is always an option. The Queen’s Bench ruled that it was not contempt but an expression of his right to criticise courts, however harshly. Even though Hogg had admitted to some errors in the article, that by itself did not make it contempt of court, nor did he owe the court any apology for his remarks. It was also irrelevant that the article was inaccurate, unfair, or in bad taste. More importantly, it also held that contempt jurisdiction could not be used to uphold a court’s dignity, which must rest on surer foundation, nor to suppress those who speak against judges.

✦ **Contempt restricts speech more than other speech-related crimes**

Part A explained how restrictions on the freedom of speech and expression are allowed by the Constitution for certain interests. These interests are: India’s sovereignty and integrity, State security, friendly relations with foreign States, public order, decency or morality, contempt of court, defamation, or incitement to an offence.²¹² For these interests, the State has a law-making power that can even limit free speech, as long as it is a “reasonable restriction.” The larger purpose behind them is that certain restrictions on free speech are necessary.

Some of these restrictions serve the same purpose: protecting the authority of the State and its institutions. Contempt of court is one such restriction, intended to protect the authority of courts. Another such restriction is the offence of sedition, which protects public order by criminalising seditious libel. Sedition is defined as words that bring or attempt to bring into hatred or contempt, or excite or attempt to excite disaffection towards the Government

established by law in India.²¹³ Thus, protecting the authority of State institutions is an interest for which free speech can be reasonably restricted. The argument is that if the authority of the institutions is diminished, they will not be able to perform their functions effectively.

However, the constitutional tests or standards for limiting speech and expression for criminal contempt of court are much lower compared to public order, making the restriction excessive. The test in case of sedition is that speech and expression can be restricted only if it incites violence or public disorder.²¹⁴ For public order, the test is that there has to be a direct or imminent link between the speech and expression and the breach of public order.²¹⁵ A direct causal link is understood to be the equivalent of a 'spark in a powder keg'.²¹⁶ Therefore, speech and expression cannot be restricted for public order simply because its content might lower governmental authority in the eyes of the public, and create disrespect for the law and the State, leading to breaches of public order.²¹⁷ In comparison, for contempt of court, a mere tendency to scandalise or lower the authority or interfere or obstruct with the judicial proceedings or the administration of justice is sufficient. It does not require something more to happen, such as any actual disruption of justice caused by the people's loss in the confidence of the judiciary.²¹⁸ Thus, unlike the executive or legislature, speech and expression can be restricted for merely disrespecting the judiciary.

An examination of the constitutional standards for restriction of speech for criminal contempt in other jurisdictions also shows the restrictions in India to be excessive. In Canada, the test for restriction of speech for criminal contempt is the "serious risk" test, closer to the public order test in India. It requires proof that the speech caused a serious, real and imminent risk of obstruction of justice, accompanied by a dishonest intention or bad faith.²¹⁹ Without such proof, the offence of scandalising the court would infringe the freedom of expression under the Canadian Charter.²²⁰ The U.S., which has higher free speech standards than most foreign jurisdictions, prescribes the "clear and present danger" test, which requires that the speech and the circumstances of its

making must create a clear and present danger that they will bring about the substantive evils, before they can be restricted.²²¹ It is now also applied to restrictions for the purposes of contempt of court.²²²

✦ The risk inherent in demanding judicial accountability

Contempt prosecutions for questioning, evaluating, or probing judges also raise a larger concern related to judicial accountability. The judiciary in India is notorious for being a closed group, known to close their ranks when one of their own is questioned.²²³ It is not subject to any transparent system of accountability, not by the public, the government, and not even by itself. And so, assessments and evaluation of judges is often left to individuals. But any person criticising a judge faces potential exposure under the contempt law, regardless of whether their claims are justified or not. Their allegations could be of corruption, bias, or other kinds of impropriety. Under the contempt law, any person truthfully attributing motives to a judge, questioning their objectivity, or alleging that they were acting corruptly in the performance of their judicial duties, can be charged with contempt of court. This is because such allegations will have the necessary consequence of lowering the authority of the court in the eyes of the general public.

Although the defence of truth has now been recognised legally, it can be difficult to establish. The main reason being that even credible allegations can be difficult to prove, especially with the sword of contempt hanging over those who may be able to substantiate them. As noted by Nariman, the media is hesitant to publish corruption allegations against judges even if backed by proof.²²⁴ Further, this defence also has the added requirement of showing *bona fide* and ‘public interest’ which is to be determined by the court.



A case in point is Prashant Bhushan’s 2020 contempt case,²²⁵ where he argued the defence of truth. He argued that his tweets criticising the then-CJI S.A. Bobde and the past four CJIs were

intended at raising the issue of judicial accountability. He also invoked his extensive prior work in taking up issues of judicial accountability. The Court instead ruled that his tweets could not be considered *bona fide* in the public interest because they were false, malicious, tended to scandalise the court, and brought the administration of justice into disrepute. As per the court, being a lawyer of 30 years standing, Bhushan was not expected to make such tweets. However, apart from stating its conclusion, the Court's opinion lacked any analysis about whether the tweets were *bona fide*, whether they touched upon a question of public interest, and if so, whether they were made in public interest.

This raises the question: how can one allege corruption, bias, or impropriety against a judge without attracting a contempt charge?



This important question is sought to be answered by the Court in another case involving Bhushan. There, he gave an interview to Tehelka magazine in 2009 accusing at least half of the previous sixteen CJIs of being corrupt, and that the then-CJI S.H. Kapadia had passed an order that benefited the company Sterlite Industries, while he had shares in that company.²²⁶ In 2020, the Court framed the following issues in the case:

- i **Would any statement regarding corruption by a judge *per se* amount to contempt of court?**²²⁷
- ii **If a statement alleging corruption by a judge is permissible, under what circumstances and on what basis can it be made, and are any safeguards required to be observed?**²²⁸
- iii **What procedure should be adopted by a person making a complaint containing allegations against a sitting Judge?**

iv Whether allegations of corruption against a retired judge that shakes the confidence of the general public in the judiciary be considered contempt of court?

The Supreme Court's findings on these issues will decide the law on contempt of court, where allegations have been made against judges. Any rule that the Court lays down in this case will control how criticisms about corruption against sitting and retired judges will be made in the future.

★ The politicisation of contempt by third parties

The Supreme Court's expansion of the contempt jurisdiction to entertain contempt motions by private, third parties, has led to a noticeable rise in the number of motions by such persons. This can take both forms, *suo motu* proceedings on contempt brought to the court's notice, or with the consent of the law officer of the government. Many of these motions are visibly ideologically motivated, filed by lawyers, activists, political persons, or law students. They often target persons on the opposite side of the ideological spectrum for their criticism or comments on courts or the judiciary. Aside from the possible free speech implications of this ease of initiating cases, which by itself has a chilling effect, they also contribute to the politicisation of the judiciary as courts are seen as forums where political and ideological fights are played out.

Allowing third parties to initiate contempt petitions has arguments on both sides.

It allows more instances of contempt to be brought before the courts, ones that might have missed the court's attention. It also democratises the application of the contempt law, since this permits any individual to approach a high court or the Supreme Court seeking initiation of *suo motu* contempt proceedings for contemptuous statements or acts. This supports the idea

that citizens have an equal right in upholding the judiciary's authority and dignity. However, there are drawbacks to third parties' involvement in this manner. For one thing, contempt is a jurisdiction that should be used sparingly, as the Supreme Court has often said. Bringing every instance of contempt to the court's notice is not desirable. There is a reason why the courts are not supposed to notice and prosecute every instance of contempt, because not all of them deserve notice.

However, by allowing third parties to routinely approach the court for contempt motions means that even those instances of contempt that would be best ignored, are given undue attention and visibility, and take up scarce judicial time. Furthermore, persons with motivated interests file frivolous petitions to get publicity for themselves and negative attention on the persons they target. Further, the democratisation effect is limited, since ultimately, the gatekeeping about whether to initiate contempt proceedings remains with the judiciary or the executive.



ENDNOTES

152 As explained in Part A, Chapter 3, this was also a concern raised during the deliberations of the Constituent Assembly on contempt as a reasonable restriction to the freedom of speech and expression.

153 Raipur Development Authority v Chokhamal Contractors, (1989) 2 SCC 721, at 741, (India).

155 Due process in U.S. constitutional law is understood as a fundamental protection against unreasonable government interference depriving individuals of “life, liberty, or property, without due process of the law” under the Fifth Amendment. See Emily M. Snoddon, *Clarifying Vagueness: Rethinking the Supreme Court’s Vagueness Doctrine*, 86 CHICAGO UNIV. L. R. 2301, 2313 (2019).

156 Kolender v Lawson, 461 U.S. 352, 357 (1983).

156 Snoddon, *supra* note 153.

157 The vagueness doctrine is based in the due process clause of the Fifth and Fourteenth Amendments to the U.S. Constitution.

158 K.A. Abbas v Union of India, (1970) 2 SCC 780, at 798, (India), (reversing the rule in Municipal Committee, Amritsar v The State of Rajasthan, AIR 1960 SC 1100, that striking down a competent legislation on the ground of vagueness is alien to our constitutional system).

159 *Id.* at 799.

160 A.K. Roy v Union of India, (1982) 1 SCC 271, at 319, (India).

161 Shreya Singhal v Union of India, (2015) 5 SCC 1, at 163, (India), This decision of the Supreme Court struck down Section 66A of the Information Technology Act, 2000, which punished the sending of offensive messages through technological devices.

162 *Scandalize*, Cambridge American Dictionary, <https://dictionary.cambridge.org/dictionary/english/scandalize>.

163 *Scandalize*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/scandalize>.

164 In Re: S. Mulgaokar, (1978) 3 SCC 339, at 348, (India).

165 Kartar Singh v State of Punjab, (1994) 3 SCC 569, (India), (holding that “. . . laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that [they] may act accordingly. Vague laws may trap the innocent by not providing fair warning.”).

166 FALI S. NARIMAN. THE STATE OF THE NATION, Chapter 6, (2014).

167 Rahul Donde, *Uses and Abuses of the Potent Power of Contempt*, 42 ECONOMIC AND POLITICAL WEEKLY, No. 39, pp. 3919-3922.

168 Sukumar Mukhopadhyay, *Truth on Its Way to Half a Victory*, 41 ECONOMIC AND POLITICAL WEEKLY, No. 7, p.564; The recommendation for the truth defence to include the public interest clause came from the National Commission to review the working of the Constitution, which was opposed by Parliament’s standing committee.

169 S. Rangarajan *supra* note 66.

170 18 U.S. Code, § 401, §§ (1).

171 *Id.* at § 401 §§ (2)

172 *Id.* at § 401 §§ (3), (This is similar to the offence of civil contempt in India).

173 *Id.* at § 403.

174 Contempt of Court Act 1981, Chapter 49, Section 1, <https://www.legislation.gov.uk/ukpga/1981/49>.

175 *Id.* at Section 2(1).

176 *Id.* at Section 2(2).

177 *Id.* at Section 5.

178 *Id.* at Section 9.

179 *Id.* at Section 12(1).

180 *Id.* at Section 12(2).

181 Donde, *supra* note 166, at 3920.

182 *Id.* at 3921.

183 Red light on the Cars of the Hon'ble Judges of the High Court v State of Uttar Pradesh, AIR 1993 All. 211, (India).

184 Sheetal Joon, *HC Convicts Man for Contempt: He called Judges Dishonest and Murderers of Constitution*, (April 07 2022), <https://www.latestlaws.com/latest-news/hc-convicts-man-for-contempt-he-had-called-judges-dishonest-and-murderers-of-constitution-read-order-184304>.

185 In instances of attacks on specific judges, however, courts have convicted sitting or retired judges even. For example, contempt proceedings against C.S. Karnan, then sitting judge of the Calcutta High Court, and proceedings against Markandey Katju, retired judge of the Supreme Court.

186 Arundhati Roy, *supra* note 85.

187 Vincent Panikulangara v V.R. Krishna Iyer, 1983 KLT 829, (India); Invoking biblical references, he compared the judiciary to the Roman governor Pontius Pilate, stating that it was crucifying Jesuses (i.e. the good people) and protecting the Barabbases (i.e. criminals).

188 Navtej Singh Johar v Union of India, (2018) 10 SCC 1, at 209, (India).

189 COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM, REPORT, at 170 (2003); COMMITTEE TO DRAFT A NATIONAL POLICY ON CRIMINAL JUSTICE, DRAFT NATIONAL POLICY ON CRIMINAL JUSTICE, at 18 (2007).

190 Madhu Bhaduri, *The Contempt of Evidence*, 42 ECONOMIC AND POLITICAL WEEKLY, (Oct.13, 2007, Updated August 26,2021), <https://www.epw.in/journal/2007/41/commentary/contempt-evidence.html>.

191 R.C. Cooper v Union of India, (1970) 2 SCC 298, at 301, p.6, (India).

192 Baradakanta Mishra *supra* note 92.

193 *Id.*

194 Madhu Bhaduri *supra* note 189.

195 M.C. Mehta v Union of India, AIR 1987 SC 1086, (India).

196 Madhu Bhaduri *supra* note 189.

197 V. Venkatesan, *Truth as Defence*, Frontline: The Hindu, (October 19, 2007), <https://frontline.thehindu.com/the-nation/article30193133.ece>, (stating that the cartoon depicted Justice Sabharwal in his robes holding a bag bursting with currency. It also depicted a man sitting on the sidewalk saying, Help! The mall is in your court.).

198 *Notice and One Queer Duck*, TIME AND TIDE (Sep.16, 2014), <https://vitusha.com/2014/09/16/notice-and-one-queer-duck/>; Interestingly, it had been reported a few days prior that the very same senior lawyer R.K. Anand had himself called for the prosecution of Y.K. Sabharwal. Ironically,

however, R.K. Anand was himself convicted of contempt of court two years later, for trying to influence witnesses in the BMW hit-and-run case where he was the defence counsel.

199 Court on Its Own Motion v M.K. Tayal, 2007 (98) DRJ 41, at 42, (India).

200 Vitasah Oberoi, *supra* note 135.

201 Parvathi Menon, *A Scandal That Was Not*, FRONTLINE: THE HINDU (February 28, 2003), <https://frontline.thehindu.com/other/article30215788.ece>.

202 *Supra* note 165.

203 *Karnataka HC to Hear Mysore Sex Scandal*, ZEE NEWS INDIA (February 18, 2003), https://zeenews.india.com/news/nation/karnataka-hc-to-hear-mysore-sex-scandal-case_81417.html

204 *Supreme Court breather for journalists in Mysore sex scandal case*, REDIFF (Nov. 18, 2003), <https://www.rediff.com/news/2003/nov/18sc.htm>.

205 Nariman, *supra* note 165.

206 Donde, *supra* note 166, at 3922.

207 *Id.*

208 Surya Prakash Khatri and Anr. v Madhu Trehan and Ors., 2001 Cri. L.J. 3476, (India).

209 Venkatesan, *supra* note 150.

210 *Id.*

211 R. v Commissioner of Police of the Metropolis, *Ex parte* Blackburn, [1968] 2 Q.B. 150, (United Kingdom).

212 INDIA CONST., art.19 §2.

213 PEN. CODE No. 45 of 1860, INDIA CODE 1860, Section 124A.

214 Kedar Nath Singh v State of Bihar, AIR 1962 SC 955, (India).

215 The Superintendent, Central Prison, Fatehgarh v Ram Manohar Lohia, AIR 1960 SC 633, (India).

216 S. Rangarajan v P. Jagjivan Ram, (1989) 2 SCC 574, at 594 (India).

217 Gautam Bhatia, *Free Speech and Contempt of Court II*, IND. CON. LAW AND PHIL., (June 13, 2014), <https://indconlawphil.wordpress.com/2014/06/13/free-speech-and-contempt-of-court-ii/>

218 *Id.*

219 R. v Kopyto, (1987) 62 O.R.(2d) 449 (C.A.), (Canada).

220 Canadian Charter of Rights and Freedoms, *reprinted in* R.S.C. 1985, App. II, No. 44, at Section. 2(b).

221 Schenck v United States, 249 U.S. 47 (1919), at 52.

222 Bridges v California, 314 U.S. 252, at 263 (1941).

223 Nariman, *supra* note 165, at p. 352.

224 *Id.*

225 In Re: Prashant Bhushan *supra* note 109.

226 Bhushan also said in the interview that he did not have proof in support of his allegations.

227 In Re: Prashant Bhushan *supra* note 109, at Order dated 10.08.2020.

228 *Id.* at Order dated 17.08.2020.



CHAPTER 5

Critical questions on the future of Contempt of Court

Questions about the need and extent of the contempt power are very relevant today. As argued above, contempt power under the law is vague, excessive, and applied arbitrarily by the courts.

Scrutiny of the judiciary by the media and critical commentators is at an all-time high. This is partly due to courts becoming battlegrounds for contests over policy and ideology. Commentators are critically discussing judicial decisions, performance, and the routine functioning of courts. A proliferation of mass media, especially online social media, has also contributed to this increase in judicial scrutiny. This takes traditional forms such as critical opinions, news reporting, public speeches, satirical pieces, cartoons, as well as contemporary forms like social media posts and videos, etc. Increasingly, persons making such comments are being charged with contempt of court. An examination of whether contempt of court should still remain an offence then becomes important, even more so since retired judges of the Supreme Court have themselves advocated for the removal of criminal contempt as an offence.²²⁹

✦ The necessity of civil contempt

Despite the extensive criticism of contempt powers in Chapter 5 above, certain kinds of contempt are arguably still necessary. For courts to enforce their authority and ensure unobstructed functioning of the administration of justice, an argument can be made for penalising certain kinds of conduct as contempt of court. Civil contempt, for instance, criminalises disobedience of court orders, directions, etc. and wilful breaches

of an undertaking given to court. Without the threat of contempt of court, litigants would defy court orders or refuse to comply with their own undertakings given to courts. These would impair and undermine the authority of courts and the administration of justice. Thus, the power of courts to issue orders or give directions must, by necessary implication, also carry with it the means to make that power effective.²³⁰ Without those means, there would be no incentive for persons to comply with court orders that are inconvenient for them to follow. Civil contempt therefore provides courts the powers necessary to ensure compliance.

Civil contempt also provides an avenue for accountability through which courts can ensure performance of duties by public officials. This is necessary, since unlike private persons, the executive holds considerable power and has legal protections for its officials. And therefore, courts must possess the power to force the government and its officials to perform their duties by penalising non-compliance.



There are several recent instances of courts holding public officials liable for civil contempt.

- In June 2022, the Telangana High Court convicted four police officials including an IPS officer for violation of the directions of the Supreme Court and sentenced them to four weeks imprisonment.²³¹
- In December 2021, the Delhi High Court convicted a Delhi police official for a similar violation and sentenced him to imprisonment for a day.²³²
- The Supreme Court also convicted 9 government officials of the Tamil Nadu government in 2021 for non-compliance of its judgment.²³³

Nevertheless, these instances are exceptions, and courts do not actively prosecute government officials in most cases. In most cases, the threat of contempt is often itself sufficient to make government officials comply.²³⁴ This approach has also been adopted by the Constitutional Court of South Africa, which has distinguished between coercive and punitive contempt orders. The former is similar to a civil contempt proceeding, where an accused is given the opportunity to avoid imprisonment by complying with the original order and desisting from the offensive conduct. No such opportunity is available in the latter, which is more concerned with asserting the authority and dignity of the court.²³⁵

✦ The debatable need for criminal contempt

Whether criminal contempt should remain an offence depends on which aspect of the offence is being discussed.

The first subcategory covers instances of prejudice or interference with due course of judicial proceedings and obstruction or interference with the administration of justice. These offences are more objective and identifiable, and their impact on the justice system more visible and discernible, as compared to the other subcategory of criminal contempt.

One real world example is the influencing of a prosecution witness by a defence counsel in the famous BMW hit-and-run case.²³⁶

One argument against this form of criminal contempt is that such actions are already penalised under the IPC. Offences under Chapters X and XI of the IPC include the acts of obstructing a judge in the discharge of their duties, disobeying an order by a judge, threatening injury to a judge, perjury, giving false information, fabricating evidence, refusing to appear in court on receipt of summons, refusing to answer questions, refusing to produce documents in court, etc. Thus, if these offences already

exist, then the need for contempt of court as a separate offence no longer exists. A response to this argument can be that obstruction, interference, or prejudice under criminal contempt covers a wider set of actions than offences under the IPC. For instance, filing repeated frivolous petitions with an intention to abuse the process of the court amounts to obstructing the administration of justice that is not covered by any offence under the IPC.²³⁷

✦ **Should scandalising the court be abolished?**

There are several arguments against the second subcategory of criminal contempt i.e., “scandalising or lowering the authority of the court”.

As already stated before, it is textually vague and overbroad, and subjective and arbitrary in its application. Its restriction on speech is disproportionate to its object of preventing contempt of court. Secondly, it prevents democratic accountability of the judicial institution through self-censorship and allows contempt prosecutions for probing, assessing, or evaluating judges. Further, its origins are colonial, based in a time when the colonised population was not supposed to criticise judges.²³⁸ In a modern, democratic legal system where the judicial institution is subject to public scrutiny just like any other, ‘scandalising the court’ appears to be archaic and anachronistic. Fourthly, given how prolifically opinions are shared on social media platforms, including on judges, prosecuting several instances of contempt is a wastage of the court’s limited time and resources.

One must also duly consider the arguments in favour of its retention. The foremost is its role in ensuring respect for the authority of the courts and the administration of justice. The

second is that removal of the offence will create a gap in the law because some forms of criminal contempt would not be covered by part of the text that remains. For instance, contempt out of court by a third party in the form of a knowingly false attack on the integrity or impartiality of a particular judge with the intention of eroding people's faith in their decisions, is strictly speaking, neither obstruction of the administration of justice, or prejudicing or interfering with the due course of judicial proceedings. Thirdly, judges can rarely, if ever, respond to such attacks, since the very nature of their work requires them to be discreet, and the offence provides them a form of protection. Fourthly, instances of misuse are insufficient basis for a repeal of the provision itself.

However, there are counter-arguments to these.

Respect for the courts should not come from a fear of the contempt power, but from the actions of the judges and courts as perceived by the people,²³⁹ earned through quality judgments and fairness and impartiality of the approach of the court. This should not be linked to oppressive actions of contempt.²⁴⁰

Stifling of criticism through contempt, whether in the form of speeches, writings, cartoons, or jokes and satire, only exposes the court to greater contempt and ridicule in the minds of the people. It also assumes that people are incapable of making up their own minds and need to be protected from certain forms of speech.²⁴¹



As noted in one debate in the House of Lords, the public's confidence in the judiciary is undermined far more by legal proceedings that suggest that "the judiciary is a delicate flower that will wilt and die without protection from criticism" than by a hostile book or newspaper comment that would otherwise have been ignored.²⁴²

Finally, the response to the gap-in-the-law argument is that judges can sue for libel in cases of individual attacks against them.

Some foreign jurisdictions have abandoned this offence, while others have retained it. The Crime and Courts Act 2013 abolished the offence in the U.K.²⁴³ One major argument for repeal was that it was no longer being enforced, since no person had been prosecuted for it since 1931.²⁴⁴ Another was that attempts to enforce the law would provoke ridicule of the judiciary, and judges would appear to be stifling criticism.²⁴⁵ In countries like India and Pakistan, it continues to be an offence.

The American approach to contempt of court has shown substantially more deference to the robust free speech right that exists under the first amendment of the U.S. Constitution. In *Bridges v. California*,²⁴⁶ the U.S. Supreme Court reversed the conviction of the president of a labour union for publishing a telegram threatening a union strike if a local court gave a certain decision in a particular case. It held that the court below had convicted him to prevent two substantial evils: disrespect for the judiciary and the disorderly and unfair administration of justice. On the former, the Supreme Court held that silence enforced through contempt, solely in the name of preserving the dignity of the bench, was more likely to cause resentment, suspicion, and contempt in the minds of the public, than it would enhance respect. On the latter, it held that to convict him for influencing the administration of justice would be imputing to the trial judge a lack of firmness, wisdom, or honour. The court also observed that judges had no more immunity from criticism than any other person or institution. Notably, this case also laid down the 'clear and present danger' test wherein contempt can be punished if the substantive evil by the statement is imminent and extremely serious. Thus, in this and other cases, the U.S. Supreme Court has rejected the idea that preserving the authority of judges by suppressing certain forms of speech can be an end in itself.²⁴⁷



ENDNOTES

229 Mehel Jain, *There Should Be No Criminal Contempt, If The Criticism is Well Founded It Is Fine, If It Is Not Forget About It: Justice Madan Lokur*, LIVELAW (Jan. 09, 2021), <https://www.livelaw.in/news-updates/justice-madan-b-lokur-contempt-of-court-judiciary-n-ram-supreme-court-judges-168183>

230 Sakiri Vasu v State of Uttar Pradesh, (2008) 2 SCC 409, at 414, (India); This is a principle of statutory construction known as the doctrine of implied powers.

231 Jakka Vinod Kumar Reddy v. A.R. Srinivas, Contempt Case No. 826 of 2021, decided on 06.06.2022; The police officials had violated the directions issued by the Supreme Court in Arnesh Kumar v State of Bihar, (2014) 8 SCC 469. In this case, the Supreme Court attempted to curb the misuse of the police's arresting power by requiring investigating officers to first issue notice to accused or suspects under Section 41-A of the Code of Criminal Procedure. The purpose of this notice is to secure effective participation of the accused in the investigation and avoid their arrest. This procedure is only applicable in cases involving offences punishable up to 7 years.

232 Rakesh Kumar v Vijayanta Arya (DCP), Contempt Case (Civil) No. 480/2020, decided on 07.12.2021, https://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=243463&yr=2021.

233 V. Senthur v M. Vijayakumar, Contempt Petition (Civil) No. 638 of 2017, decided on 01.10.2021; However, the court pardoned them and did not impose any punishment.

234 Mehel Jain, *After Supreme Court Warns Of Contempt, Indian Army Undertakes To Grant Permanent Commission To Eligible Women Officers*, LIVE LAW (Nov.12, 2021), <https://www.livelaw.in/top-stories/indian-army-permanent-commission-supreme-court-contempt-185399>

235 Fakie N.O. v CCII Systems (Pty) Ltd., 2006 (4) SA 326 (SCA), (South Africa).

236 R.K. Anand v Registrar, Delhi High Court, (2009) 8 SCC 106, (India); This happened in the famous BMW hit-and-run case, where Senior Advocate R.K. Anand was convicted for contempt of court for interfering with the due course of a judicial proceeding.

237 Khair Industries, *supra* note 97.

238 Sukumar Mukhopadhyay, *supra* note 167, at p.563.

239 Prashant Bhushan, *Securing Judicial Accountability: Towards an Independent Commission*, 42 ECONOMIC AND POLITICAL WEEKLY, No. 43, p.16.

240 Donde, *supra* note 166, at pp. 3919-3922.

241 Bhatia, *supra* note 216.

242 LAW COMMISSION, CONTEMPT OF COURT: SCANDALISING THE COURT, Consultation Paper No 207, 29 (2012), https://www.lawcom.gov.uk/app/uploads/2015/06/cp207_Scandalising_the_Court.pdf.

243 Crime and Courts Act, 2013 c. 22, Section 33.

244 *Id.* at 23.

245 *Id.*

246 Bridges v California, 314 U.S. 252 (1941), (United States of America).

247 Bhatia, *supra* note 216.



CHAPTER 6

How do you solve a problem like contempt?

✦ Possible reforms

Based on the preceding discussion, there are a number of corrective steps that can be taken to reform the contempt law.

- 1 Remove vagueness from the law by clearly and strictly defining the offence of criminal contempt.²⁴⁸ Expressions like ‘interference’, ‘obstruction’, ‘prejudice’, ‘lowering the authority’ and ‘scandalising’ are vague. This measure will reduce the likelihood for arbitrary application of the law by judges.
- 2 Contempt by way of interference, obstruction, or prejudice, should be tangible and demonstrable, and not merely perceived. Put differently, for the offence to be proved, actual interference, obstruction, or prejudice should have resulted.

- 3 The offence of “scandalising the court” should be repealed or its scope should be greatly reduced to only certain extreme cases. Also, like the offence of criminal defamation,²⁴⁹ the speech should have resulted in an actual lowering of the authority or dignity of the court. This has to be established, and not just perceived in the mind of the judge.
- 4 Courts must establish or adopt a higher constitutional test for proof of criminal contempt, similar to the ‘public order’ test, especially for ‘scandalising or lowering the authority of the court’. A direct or imminent link between the speech and expression, and the lowering of the authority of the court must be established before convicting a person.
- 5 Actions that seek to hold the judges accountable, especially by the media, should be firmly excluded from the scope of this offence unless provably *mala fide*, with the onus of proof on the Court/prosecution.
- 6 *Mens rea* should be made a necessary ingredient for the offence of criminal contempt. A positive intention to interfere with the course of justice must be established before a person is punished for contempt.²⁵⁰
- 7 The defence of truth should be a standalone defence without requiring that *bona fide* or public interest be shown as well

- 8 Powers of contempt should be exercised fairly and equally. For example, all persons being tried for contempt of court for ‘scandalising or lowering the court’s authority’ should be held to the same standard and be provided equal protection under the law. There must not be a different standard for retired judges or public figures and the ordinary public.²⁵¹
- 9 The principle of ‘no one should be a judge in their own cause’ should be given full effect to. Thus, a necessary procedural reform is that judges against whom contempt has been committed should not participate in any part of the contempt proceedings, to reduce bias and the appearance of bias.
- 10 The law should be amended to introduce a procedure for intra-court appeal against contempt convictions passed by the Supreme Court in its original jurisdiction.
- 11 The Supreme Court should not attempt to regulate the manner of making corruption allegations against judges in any way that hinders or discourages such allegations in the future.

★ What comes next?

Going forward, we are headed into a new era of contempt jurisprudence that will have wide implications on free speech, particularly over social media. As said earlier, highly polarised political opinions, and courts becoming battlegrounds for all

nature of political and ideological contests, have led to an exponential growth in criticism of court decisions, judges, and the judiciary. This is increasingly happening on the less regulated social media, both by ordinary individuals, and by commentators with large followings. Other issues such as user anonymity, instant gratification through likes, and popular support for their ideas within echo-chambers, also contribute to the voluminous rise in criticism of courts. Expectedly, a small part of this criticism borders or crosses the boundaries of contemptuous speech, is often malicious or false, and may amount to be criminal contempt. In July 2022, a sitting judge of the Supreme Court stressed regulation of social and digital media for the unbridled expression of opinion against judges because this was harming the judiciary and lowering its dignity.²⁵²

This creates a challenging situation for the judiciary. Prosecuting all such instances of contempt is impossible, since it will consume already precious resources. It is also, in some sense, a futile exercise, because prosecutions would only generate more ideologically polarised reactions about the judiciary.

In the coming months and years, the Supreme Court will hear several important cases of contempt. In most of these cases, the Attorney General has granted consent to initiate proceedings.

This includes comedian Kunal Kamra, who tweeted a picture showing the flag of the BJP hoisted on the building of the Supreme Court.²⁵³ It also includes the case of cartoonist Rachita Taneja, who made a cartoon of the Supreme Court's building with the flag of the RSS hoisted on it and another one showing former CJI Ranjan Gogoi giving Prime Minister Narendra Modi the decision in the Ram Janmabhoomi case in exchange for a seat in the Rajya Sabha.²⁵⁴ Another case is of political commentator and youtuber Ajeet Bharti, against whom the Attorney General has given consent for initiation of contempt proceedings in two cases for using abusive and vulgar language towards the Supreme Court and the High Courts.²⁵⁵ The Attorney General has also granted consent for a contempt petition against a religious leader

accused of frequently giving hate speeches against Muslims, Yati Narsinghanand, who said in a speech that “Those who believe . . . in the Supreme Court . . . will all die the death of a dog.”²⁵⁶

Whatever side of the political spectrum one may lie on, the cases in the pipeline will have a lasting impact on contempt jurisprudence in India. It is worth noting that in the Indian legal system, the process is usually itself the punishment. When charged with contempt for legitimately exercising one’s freedom of speech, long drawn-out prosecutions and the threat of punishment, are both part of the punishment itself and strong deterrent factors against the exercise of that speech.



ENDNOTES

248 Donde, *supra* note 166, at 3921.

249 Pen. Code, *supra* note 212, at Section 499.

250 Donde, *supra* note 166, at 3922.

251 *Id.*

252 Padmakshi Sharma, *Personal Attacks On Judges Harm Rule Of Law; Social & Digital Media Employed Frequently To Politicise Legal Issues : Justice JB Pardiwala*, LIVE LAW (July 03, 2022), <https://www.livelaw.in/top-stories/personal-attacks-on-judges-harm-rule-of-law-social-media-employed-frequently-to-politicise-legal-issues-justice-jb-pardiwala-202851>.

253 ...

254 LiveLaw News Network, *Breaking: Supreme Court Issues Contempt Notice To Rachita Taneja For Caricatures Of 'Sanitary Panels' About Judiciary*, LIVE LAW (Dec. 18, 2020), <https://www.livelaw.in/top-stories/rachita-taneja-sanitary-panels-contempt-of-court-supreme-court-167385>.

255 Shruti Kakkar, *Attorney General Grants Sanction To Initiate Criminal Contempt Proceedings Against Ajeet Bharti For 'Scurrilous' And 'Derogatory' Remarks Against Supreme Court*, LIVE LAW (Sep.14, 2021), <https://www.livelaw.in/top-stories/attorney-general-criminal-contempt-ajeet-bharti-youtube-video-against-sc-judges-181615>.

256 Shrishti Ojha, *Breaking: Attorney General Grants Consent To Initiate Contempt Proceedings Against Yati Narsinghanand For Remarks Against Supreme Court*, LIVE LAW (Jan. 21, 2022), <https://www.livelaw.in/top-stories/breaking-attorney-general-grants-consent-to-initiate-contempt-proceedings-against-yati-narsinghanand-for-remarks-against-supreme-court-190044>



ANNEXURE 1

History & Evolution of Contempt Law

✦ Colonial legacy

The history of contempt jurisdiction goes back to thirteenth century England. It began as a natural vehicle for ensuring the dignity of the monarch.²⁵⁷ The law of contempt is, thus, not a law of a democratic people, it is the law of kings.²⁵⁸ With societies becoming more diverse and complex, the king delegated its governmental powers to representatives, including to courts.²⁵⁹ The contempt powers of those courts were derived from a presumed contempt of the king's authority. In other words, judges punished contempt because when litigants disrespected the judge, they ultimately disrespected the King.²⁶⁰ Over time, contempt powers became a necessary and inherent characteristic of courts themselves.²⁶¹

Contempt as an offence and its procedures for trial and punishment also underwent evolution and change. Originally, it addressed contempt 'in the face of the court'. Action was taken for default or improper acts of parties, assaults and disturbances in court, insults to judges, and misconduct by officers of the law in courtrooms.²⁶² Cases were tried in the ordinary course of law.²⁶³ However, beginning in the fifteenth century, a distinction was

drawn between “contempt in Court”, and “contempt out of Court”, the latter referring to the actions of strangers who were neither parties, nor present before the court. Contempts in Court were tried and punished summarily,²⁶⁴ but contempts out of Court were tried in ordinary course of law. By the eighteenth century, all contempt was punished summarily, without question as to where it was committed.



One of the leading and oft-cited decisions on contempt of court is the 1765 case of *R. v. Almon*.²⁶⁵ In this case, the contemnor Almon published a pamphlet by an anonymous author, accusing the Lord Chief Justice Lord Mansfield, of acting “officiously and arbitrarily”. The pamphlet also questioned his honesty, impartiality, and respect for precedent and suggested that he was politically biased. However, while judgment was never delivered in this case, the opinion prepared by Justice Wilmot became the foundation of the modern doctrine of contempt for “scandalising the court”. The case also extended the concepts of contempt, and so what began as contempt of the court, became contempt of the administration of justice.²⁶⁶ However, the decision has since received much criticism, particularly for condoning the power to punish summarily.²⁶⁷

✦ Contempt in India

The powers of courts to punish for contempt as they currently exist in India are English in origin, although historical texts have contained traces of similar crimes. In the *Arthashastra*,²⁶⁸ insulting the king, defaming one’s village or nation, and misconduct by a judge such as threatening or unjustly silencing a “disputant” were penalised.²⁶⁹ Thus, the violation of the sanctity of the administration of justice, either by those who administered it or by those for whom it was administered, incurred a penalty, the highest being reserved for those who were responsible for administering the law.²⁷⁰ Yet, contempt law as it exists today in India is neither similar to nor modelled after the *Arthashastra*, but derives from the British common law system.

Contempt power was introduced as part of the establishment of ‘courts of record’ by the British.²⁷¹ The earliest such court of record was the Court of Mayor and Corporation of Madras under the East India Company’s Charter of 1687, and it possessed the powers to punish for contempt.²⁷² Later charters created Supreme Courts at Bombay, Calcutta and Madras (as they then were), that possessed the same power to punish for contempt as the superior courts of England. The subordinate courts, however, did not have this power since they were not courts of record. These Supreme Courts were then succeeded by the High Courts established under the High Court Act of 1861.²⁷³

The historical development of the power to punish for contempt in India was noted by the Calcutta High Court in 1879 in *Martin v. Lawrence*.²⁷⁴

” **“The jurisdiction of the Court, under which this process issued is a jurisdiction that it has inherited from the old Supreme Court, and was conferred upon that Court by the Charters of the Crown, which invested it with all the process and authority of the then Court of King’s Bench and of the High Court of Chancery in Great Britain.”**

At that time, the offence of contempt of court was not grounded in any legislation, but inherent in the powers of the High Courts, including in the power to summarily try and punish.



In 1883, Surendranath Banerjee, a nineteenth century political leader was arrested and tried for publishing remarks in his newspaper that were contemptuous of the High Court of Calcutta. In rejecting his argument that his remarks may constitute libel and therefore had to be tried under the regular procedure prescribed by the Code of Criminal Procedure and not under summary procedure for contempt, the High Court ruled:

“It is an offence which by the common law of England is punishable by the High Court in a summary manner by fine or imprisonment, or both. That part of the common law of England was introduced into the Presidency towns when the late Supreme Courts were respectively established by the Charters of Justice. The High Courts in the Presidencies are Superior Courts of Record, and the offence of contempt, and the powers of the High Court for punishing it, are the same there as in this country, not by virtue of the Penal Code for British India and the Code of Criminal Procedure, 1882, but by virtue of the common law of England.”²⁷⁵

However, the offence of contempt has always had one problem: uncertainty and vagueness. Contempt as an offence had no clear definition, constituent ingredients, defences, procedure for trial, or prescribed punishment and procedure for appeal in case of conviction. The Calcutta High Court even termed this power “arbitrary, unlimited and uncontrolled.”²⁷⁶ The British government of the time attempted to rectify this by proposing bills to codify the law on contempt. After failed efforts in the early 20th century in this regard, legislation was finally enacted on contempt.

The first Contempt of Courts Act of 1926 clarified the powers of the High Courts in regard to the offence of contempt, but only to a limited extent.²⁷⁷ For instance, for contempt of subordinate courts, the High Courts were granted the same jurisdiction, powers, and authority, to follow the same procedure and practice, that they had for contempt of themselves.²⁷⁸ This was important at the time, since the opinions of the Madras and Bombay High Courts that they had the jurisdiction to also deal with contempt of their subordinate mofussil courts conflicted with the opinion of the Calcutta High Court which held that it did not have such a jurisdiction.²⁷⁹ However, these powers of the High Courts

were restricted in cases where the contempt of a subordinate court was also an offence under the Indian Penal Code, 1860 (“IPC”).²⁸⁰ The law also prescribed a maximum punishment of simple imprisonment up to six months, or a fine of up to two thousand rupees, or both.²⁸¹ An apology by the contemnor to the satisfaction of the court, was grounds for their discharge from the proceedings or remittance of the punishment.²⁸² Yet most crucially, the law’s biggest shortcoming was that it lacked, both, a definition of the offence of contempt, and articulation of what procedure should be followed by courts.

A post-independence Contempt of Courts Act of 1952 repealed and replaced the earlier law.²⁸³ It specifically clarified that the sentencing power of the court for contempt could not exceed what was provided in the law.²⁸⁴ It also allowed the High Courts to inquire and try extra-jurisdictional contempt, which had been either committed outside its territorial jurisdiction or where the alleged contemnor was outside its territorial jurisdiction.²⁸⁵ Courts of Judicial Commissioners were also given the same contempt powers as the High Courts.²⁸⁶ But the law still did not clearly explain what constituted “contempt of court”, allowing courts to ascertain it from case law, which was voluminous and not always consistent.²⁸⁷ In 1961, the government constituted a committee to examine the law on contempt of courts, in particular, the procedures for punishment, to suggest amendments to clarify and reform the law, and make recommendations for codification.²⁸⁸ In 1971, based on the recommendations of the committee and the draft bill authored by it, a new legislation was enacted, which remains in place till today.



ENDNOTES

257 Ronald Goldfarb, *The History of the Contempt Power*, 1961 WASHINGTON LAW REVIEW QUARTERLY, 1, 6 (1961), https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=3241&context=law_lawreview.

258 *Id.*

259 *Id.*

260 Emile J. Katz, *The “Judicial Power” and Contempt of Court: A Historical Analysis of the Contempt Power as Understood by the Founders*, 109 California Law Review, 1913, 1927 (2021) <https://doi.org/10.15779/Z38HM52K8B>).

261 Goldfarb, *supra* at note 256, at 9.

262 *Id.* at 10.

263 Ordinary course of law in this context means that contempt cases were tried like other crimes before a jury.

264 Summary procedure refers to a process for trials which is expedited, by shortening the trial and reducing the formality of a full proceeding.

265 *R v Almon*, (1765) Will. 243.

266 Goldfarb, *supra* at note 256, at 11.

267 *Id.* at 12, (noting Justice Wilmot’s reasoning for summary procedure that before the court the party could acquit himself by his own oath, whereas a jury might improperly convict him upon false evidence.)).

268 *Arthashastra* (or *Arthashastra*) is an ancient treatise on statecraft, political science, economic policy, and military strategy, believed to have been authored by Kautilya at the time of the Mauryan Empire in 2nd century BCE.

269 KAUTILYA’S ARTHASASTRA, 222, 254, 260 (Dr. R. Shamasastri trans., Mysore Printing and Publishing House, 3d ed. 1929) (1915), <https://archive.org/details/kautilyasarthasast/raenglishtranslationshamasastri.1929/page/n173/mode/2up>.

270 MINISTRY OF LAW, GOVERNMENT OF INDIA, Report of the Committee on Contempt of Courts, Ministry of Law, Government of India, February 1963, 4, <https://dspace.gipe.ac.in/xmlui/bitstream/handle/10973/33748/GIPE-096171.pdf?sequence=2&isAllowed=yhttps://dspace.gipe.ac.in/xmlui/bitstream/handle/10973/33748/GIPE-096171.pdf?sequence=2&isAllowed=y>.

271 *Courts of Record*, Black’s Law Dictionary (9th Ed., 2009); Explained simply, courts of record are courts that are required to keep a record of their proceedings and those records are presumed accurate and cannot be impeached. They also possess the power to fine and imprison persons for contempt.

272 MINISTRY OF LAW, *supra* note 269, at 4.

273 *Id.*

274 *Martin v Lawrence*, (1879) I.L.R. 4 Cal. 655.

275 *Surendra Nath Banerjee v The Chief Justice and Judges of the High Court*, I.L.R. (1883) Cal 109 PC.

276 *Legal Remembrancer v Matilal Ghose*, I.L.R. (1913) 41 Cal. 173.

277 Contempt of Courts Act, No. XII of 1926, INDIA CODE (1926).

278 *Id.* at Section 2(1).

279 K. BALASANKARAN NAIR, LAW OF CONTEMPT OF COURT IN INDIA, 30 (2004).

280 Contempt of Courts Act, *Supra* at 276 note 22, at Section 2 cl.3; Meaning that when an act of a person a general offence under the Indian Penal Code as well as constituted, the general offence prosecution was prevail and the High Court had no power to try for the contempt offence.

281 *Id.* at Section 3. This is considered to be the “greatest service” of the law. See Report of the Committee on Contempt of Courts, *supra* note 269 at 7.

282 *Id.*

283 Contempt of Courts Act, No. 32 of 1952, INDIA CODE (1952).

284 *Id.* at Section 4.

285 *Id.* at Section 5.

286 *Id.* at Section 2.

287 Report of the Committee on Contempt of Courts, *supra* note 269 at 9. See also M.Y. Shareef v The Hon’ble Judges of the High Court of Nagpur and Ors, (1955) 1 S.C.R. 757, at 766, where the Supreme Court observed “In this case the learned Judges (of the High Court) themselves had to wade through a large volume of English and Indian case-law before they could hold that the act of the appellants constituted contempt.”

288 Report of the Committee on Contempt of Courts, *supra* note 269 at



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