



THE CONCEPT OF THE CONTEMPT OF COURT

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ABSTRACT

"Justice is not only to be done but must also be seen to be done."

– Lord Hewart

The judicial system of India is extremely important for the maintenance of the constitution, protection of the rights of its citizens, and the rule of law.

Indian judiciary is a unified, hierarchical, and single body consisting of the Supreme Court, High Courts, and Subordinate Courts. The present research paper is devoted to the analysis of the issues connected with the constitutional and legal aspects of the Supreme Court of India's powers of punishing for the contempt of court. The concept of contempt of court is one of the most powerful ways of guaranteeing the respect of the judicial authorities and the sanctity of the judicial process. This research paper will discuss the issues of the nature, scope, and classification of the contempt of court, paying particular attention to the Article 129 of the Constitution of India and the Contempt of Courts Act, 1971.



KEYWORDS: *judicial system, constitution, protection, judicial authorities.*

INTRODUCTION

For any civil society, maintenance of law and order is paramount, as in absence of it there can be no social development because of the lack of honest, fearless endeavor. It is, therefore, imperative that justice is administered without fear and favour. This can only be achieved when the courts and judges are protected from insults, annoyance and unfair criticism. The dignity of court should not be allowed to be lowered by any undignified words or acts of any party so that the faith and respect of the people in the institution of judiciary does not suffer. The law of contempt, enacted in 1971¹, empowers the High Courts and the Supreme Court to proceed against those who commit contempt of these courts and also of the subordinate courts.

The Constitution of India also has provisions for the courts so as to punish for their own contempt. Contempt of court may be civil, where defiance of a court order is there, or criminal, where the dignity of the court is lowered by actions like assault on the judge or inappropriate behavior inside the courtroom.

Anything that curtails or impairs the freedom of limits of the judicial proceedings must of necessity result in hampering of the administration of Law and in interfering with the due course of

¹ The Contempt of Courts Act, 1971, No. 70 of 1971, INDIA CODE (1971)

justice. This necessarily constitutes contempt of court. Oswald defines contempt to be constituted by any conduct that tends to bring the authority and administration of Law into disrespect or disregard or to interfere with or prejudice parties or their witnesses during litigation. Halsbury defines contempt as consisting of words spoken or written which obstruct or tend to obstruct the administration of justice. Black Odgers enunciates that it is contempt of court to publish words which tend to bring the administration of Justice into contempt, to prejudice the fair trial of any cause or matter which is the subject of Civil or Criminal proceeding or in any way to obstruct the cause of Justice. Contempt of court, often referred to simply as "contempt", is the offence of being disobedient to or disrespectful towards a court of law and its officers in the form of behavior that opposes or defies the authority, justice, and dignity of the court.² It manifests itself in willful disregard of or disrespect for the authority of a court of law, which is often behavior that is illegal because it does not obey or respect the rules of a law court.

The Act empowers the Supreme Court and High Court to punish acts of contempt. The Supreme Court and High Courts being courts of record have the constitutional validity to punish for contempt of court and the Contempt of Courts Act, 1971, according to the jurisdiction. Contempt of court can be understood as an offence of defying the court authority by disobeying the instructions laid by the court. The Act defines civil contempt under section 2(a) as contempt of court means civil contempt or criminal contempt. The two types of contempt are different in character and very difficult to differentiate.

STRICT LIABILITY CONTEMPT

Under the Contempt of Court Act 1981 it is criminal contempt of court to publish anything which creates a real risk that the course of justice in proceedings may be seriously impaired. It only applies where proceedings are active, and the Attorney General has issued guidance as to when he believes this to be the case, and there is also statutory guidance. The clause prevents the newspapers and media from publishing material that is too extreme or sensationalist about a criminal case until the trial or linked trials are over and the juries have given their verdicts. Section 2 of the Act limits the common law presumption that conduct may be treated as contempt regardless of intention: now only cases where there is a substantial risk of serious prejudice to a trial are affected.³

Section 2(b) of the 1971 Act not only encompasses willful disobedience to any judgment, decree, direction, order etc. of a court, but it also takes in its fold a willful breach of an undertaking given to a court of law. The civil contempt is wrong of private nature. It injures the interests of the party, entitled to get benefit from the disobeyed order, whereas criminal contempt is an offence against the society where the contemnor undermines the authority of the court by his words or actions.⁴

Section 2 (c) defines the 'criminal contempt' as the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act, whatsoever which; (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.⁵

Furthermore, **Article 129 and 215** of the Constitution of India empowers the court to take action against the contempt. Article 129 empowers the Supreme Court, whereas Article 215 empowers High Courts. Whereas, Section 10 of The Contempt of Courts Act, 1971 has given them special powers to the respective High Courts to punish contempt of subordinate courts.

Article 129⁶ of the Constitution of India states that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

² **Contempt: definition of contempt in Oxford dictionary (American English) (US)**, Oxforddictionaries.com; **West's Encyclopedia of American Law**, TheFreeDictionary.com.

³ <https://indiankanoon.org/doc/1396751/>

⁴ <https://indiankanoon.org/doc/1396751/>

⁵ <https://indiankanoon.org/doc/1396751/>

⁶ 1 INDIAN CONSTI. Art 129

Article 215⁷ of the Constitution of India states that every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

There are broadly two categories of contempt:

- Being rude or disrespectful to legal authorities in the courtroom, or
- Willfully failing to obey a court order.⁸

Contempt proceedings are especially used to enforce equitable remedies, such as injunctions.⁹

When a court decides that an action constitutes contempt of court, it can issue a court order that in the context of a court trial or hearing declares a person or organization to have disobeyed or been disrespectful of the court's authority, called "found" or "held in contempt"; this is the judge's strongest power to impose sanctions for acts that disrupt the court's normal process. A finding of being in contempt of court may result from a failure to obey a lawful order of a court, showing disrespect for the judge, disruption of the proceedings through poor behavior, or publication of material or non-disclosure of material, which in doing so is deemed likely to jeopardize a fair trial. A judge may impose sanctions such as a fine or jail for someone found guilty of contempt of court. Judges in common law systems usually have more extensive power to declare someone in contempt than judges in civil law systems. The client or person must be proven to be guilty before he/she will be punished.

Contempt of court is essentially seen as a form of disturbance that may impede the functionality of the court. The judge may impose fines and jail time upon any person committing contempt of court. The person is usually let out upon his or her agreement to fulfill the wishes of the court. Civil contempt can involve acts of omission. The judge will make use of warnings in most situations that may lead to a person being charged with contempt. It is relatively rare that a person is charged for contempt without first receiving at least one warning from the judge. Constructive contempt, also called consequential contempt, is when a person fails to fulfill the will of the court as it applies to outside obligations of the person. Indirect contempt is something that is associated with civil and constructive contempt and involves a failure to follow court orders. Criminal contempt includes anything that could be called a disturbance such as repeatedly talking out of turn, bringing forth previously banned evidence, or harassment of any other party in the courtroom. Direct contempt is an unacceptable act in the presence of the judge (in facie curiae), and generally begins with a warning, and may be accompanied by an immediate imposition of punishment. Yawning in some cases can be considered contempt of court.¹⁰

BRIEF HISTORY

The origin of the law of Contempt in India can be traced from the English law. In England Superior Courts of record have from early times, exercised the power to commit for contempt persons who scandalized the Court or the Judges. The right of the Indian High Courts to punish for contempt, was in the first instance recognized by the Judicial Committee of the Privy Council which observed that the offence of the contempt of court and the powers of the High Courts to punish it are the same in such courts as in the Supreme Court in England. It also observed that the three chartered contempt. Almost all the High Courts in India, apart from the chartered High Courts have exercised the jurisdiction inherent in a court of record from the very nature of the court itself. It has been judicially accepted throughout India that the jurisdiction was a special one inherent in the very nature of the court.¹¹

⁷ INDIAN CONSTI. Art 215

⁸ Legal Dictionary | Law.com, Dictionary.law.com.

⁹ Samuel Bray, *The Myth of the Mild Declaratory Judgment*, Duke Law Journal, 63:1091, (2014).

¹⁰ Caitlin Liu, *Sleepy Juror Gets Rude Awakening*, Los Angeles Times, 20 April, 2005.

¹¹ https://www.scribd.com/document/536017303/CONTEMPT-OF-COURT-HISTORY-by-PATNA-LAW-COLLEGE#google_vignette

England and Wales

In English law (a common law jurisdiction) the law on contempt is partly set out in case law, and partly specified in the Contempt of Court Act 1981. Contempt may be a criminal or civil offence. The maximum sentence for criminal contempt is two years.

Disorderly, contemptuous, or insolent behavior toward the judge or magistrates while holding the court, tending to interrupt the due course of a trial or other judicial proceeding, may be prosecuted as “direct” contempt. The term “direct” means that the court itself cites the person in contempt by describing the behavior observed on the record. Direct contempt is distinctly different from indirect contempt, wherein another individual may file papers alleging contempt against a person who has willfully violated a lawful court order.

Statutory basis for contempt of court

Pre-independence contempt laws in India existed. Not only did the earliest High Courts have such laws, but even some of the princely states' courts had similar laws. With the constitution coming into effect, contempt of court became an exception to freedom of expression. In addition to that, Article 129 of the constitution vested in the Supreme Court the right to punish contempt of court. Similarly, Article 215 of the constitution vested in the High Courts the same power. The Contempt of Courts Act, 1971, gives statutory recognition to the doctrine.¹²

Essentials of Contempt of Court

To prove an offence in the court, it is very necessary to fulfil the essentials of it first. Every offence in India has certain exceptions that have to be fulfilled for making the person liable for doing the act. To understand the requirement of fulfilling the essentials, let us go through with an example. If a person named Sudhakar has to prove that the other person named Sanjay is the guilt of committing an act which is unlawful and an offence in the court of law, then the liability to prove Sanjay guilty relies on Sudhakar, which includes fulfilling the essential required to commit that act or not. Similarly, the contempt of court also has certain essentials that are as follows:

1. Act of disobedience to any type of court proceedings, its orders, decree, judgment, etc. should be done ‘**willfully and purposely**’ in case of Civil Contempt.¹³
2. Talking about criminal contempt, “**publication**” is one of the major things and this publication can be either in the form of spoken or written, or by words, or by signs, or by visible representation.¹⁴
3. The action of the doer should be deliberate, and it should also be clearly disregard of the court’s order.
4. The court should in its best capacity, always try to make a “**valid order**” and this order should be in knowledge of the respondent.

Essentials of Contempt of Court

To prove any crime in the court, it is very important to fulfill the requirements of that particular offence. All the offences in India have certain exceptions which have to be proved to make the person liable for doing such an act. To make ourselves clear about the requirements of fulfilling the essentials of an offence, we can consider an example. If there is any offence done by a person Sanjay and a person Sudhakar has to prove that the other person Sanjay has committed an act that is an offence, then the liability of proving Sanjay guilty falls upon Sudhakar.¹⁵ The essentials for the contempt of court are as follows:

An act of defiance of any kind of court proceeding, court orders, decree, judgment, etc., in case of civil contempt must be committed willfully and intentionally.

¹² https://www.scribd.com/document/536017303/CONTEMPT-OF-COURT-HISTORY-by-PATNA-LAW-COLLEGE#google_vignette

¹³ <https://indiankanoon.org/doc/1396751/>

¹⁴ <https://indiankanoon.org/doc/1396751/>

¹⁵ <https://alc.edu.in/blog/contempt-of-court-an-academic-perspective>

Now, considering the case of criminal contempt, "Publication" becomes a key issue and such publication may either be oral or written or by words, by signs, or visible representation.

The action by the doer must be done deliberately and that too in the clear contempt of the order of the court.

It is always the duty of the court, in its capacity, to try to make a "valid order" which must be known to the respondent.

What is not a contempt of court?

Reporting of judicial processes truthfully and accurately will not constitute contempt of court. In the latter scenario, any criticism of the merits of the court ruling after the hearing and disposal of the matter will not constitute contempt of court either.

Truth: The only defense against a contempt charge?

For a number of years now, the only defense against contempt was the truth. It was an unwritten belief that the judiciary always protected the reputation of its individual members, in the name of maintaining the reputation of the institution. The Act was amended in 2006 to include truth as a genuine defense if it was in the public interest.¹⁶

Procedure of the court proceedings

The procedures as per the Contempt of Court Act, 1971 have to be followed, which is provided under Article 129 & 215 of the Indian Constitution. An individual may follow any one of the above mentioned ways against the contempt.

- He may bring forward the information to the court and ask the court to take action.
- He may bring forward the information to the Attorney General and ask him to take action.

A person charged with contempt is entitled to get notice and opportunity of hearing before pronouncing the order for the contempt.¹⁷

PUNISHMENT OF CONTEMPT OF COURT

Supreme Court and High Court are granted the power to punish the contemnor for contempt of the court.

According to Section 12 of Contempt of Court Act, 1971, punishment for the contempt of the court can be the simple imprisonment up to six months, or fine up to Rs. 2000, or both.¹⁸

But in case of civil cases, if the court thinks that penalty does not meet the end of justice and there is a need of imprisoning, then instead of imposing sentence of simple imprisonment, court shall order that he be detained in civil prison for the period up to six months.¹⁹

The punishment of the accused shall be discharged through apology being made by the accused to the satisfaction of the court. No excuse can be rejected on the ground if accused makes it in good faith.²⁰

Limitation Period

Section 20 of the Contempt of Courts Act, 1971 talks about the limitation period for initiating these actions against the contempt. According to it, the limitation period is one year from the date of the commission of the contempt.²¹

¹⁶ <https://alc.edu.in/blog/contempt-of-court-an-academic-perspective>

¹⁷ <https://bombayhighcourt.gov.in/bhc/libweb/bhcrule/OSRules/ch58.pdf>

¹⁸ <https://indiankanoon.org/doc/1396751/>

¹⁹ <https://indiankanoon.org/doc/1396751/>

²⁰ <https://indiankanoon.org/doc/1396751/>

²¹ <https://indiankanoon.org/doc/1396751/>

Remedies against an order of Punishment

Contempt of Court Act, 1971 underwent an amendment in the year 2006, whereby Section 13 of the said Act was brought into effect. Since then, it came to be known as Contempt of Court Amendment Act, 2006. As per Section 13 of the said Act, punishment cannot be awarded for any contempt of court under certain conditions or certain instances. Under clause (a) of Section 13 of the Contempt of Court (Amendment) Act, 2006, no court shall be punished for the contempt of court if and only if it is satisfied that the contempt tends to substantially interfere with the due course of justice. Clause (b) of Section 13 of the Contempt of Court (Amendment) Act, 2006 allows the court to give a defense on the basis of truth in cases where it finds that the act done in the public interest and the request for invoking that defense is bona fide.

CONTEMPT OF COURT CASES

Supreme Court Bar Association of India vs. Union of India & Anr AIR 1998 SC 1895²²

In the above-mentioned case, it was held that the procedure aspect of the Contempt of court is still subject to regulation by the parliament in such a way that it can be used in both the Supreme Court as well as in the High Court. Therefore, in this case, Section 12(1) of the Contempt of court Act, 1971, which imposes a maximum fine of Rs. 5000 and a term of six months' imprisonment, will apply.

T. Sudhakar Prasad vs. Govt. of A.P. and Ors. 2000 (1) SCC516²³

In the above case, once again, the Supreme Court held that the power of punishing for contempt is an inherent and in-built power which was recognized by the provisions of the Constitution. However, it should be noted that the provision of contempt of court cannot be used in such a way that it affects the exercise of jurisdiction given under Article 129 and Article 215 of the constitution.

Re Prashant Bhushan Case (2020)²⁴

This case brought national attention to the scope and limits of the judiciary's contempt jurisdiction. The Supreme Court initiated contempt proceedings against Bhushan for two tweets which the Court found to be derogatory and capable of undermining the public's faith in the institution of the judiciary.

The court here framed two key issues regarding the tussle between freedom of speech and express and contempt of court-

- Whether or not Prashant Bhushan's tweets qualified as a "fair criticism" of the system made in good faith for the sake of the greater good under Article 19(1) of the Constitution.
- Whether Prashant Bhushan's tweets fall under clause 2(c)(i) of the 1971 Contempt of Courts Act as being in contempt of court?

Ruling by the court

The Supreme Court of India convicted Advocate Prashant Bhushan for contempt of court on the grounds that his tweets, which were allegedly made under Section 2(c)(i)²⁵ of the Contempt of Courts Act of 1971, were capable of tainting the court, reducing the public confidence in the judicial system and interfering with the administration of justice. It was established by the Supreme Court that while freedom of expression is a fundamental right provided in Article 19(1)(a)²⁶ of the constitution of India, the same is not absolute and is bound by certain restrictions as per Article 19(2)²⁷.

The Court further noted that being a senior advocate, Bhushan had more of a duty to maintain the dignity of the institution and his tweets carried substantial weight. According to the Court, in its

²² <https://indiankanoon.org/doc/1666530/>

²³ <https://indiankanoon.org/doc/727569/>

²⁴ 2020 SCC OnLine SC 646

²⁵ *The Contempt of Courts Act, 1971*, § 2(c)(i), No. 70 of 1971, INDIA CODE (1971).

²⁶ INDIA CONST. art. 19(1)(a).

²⁷ INDIA CONST. art. 19(2)

reasoning, constructive criticism is appreciated in any democratic society, but any statement that is aimed at undermining the judiciary in general and is devoid of any factual information cannot be protected under the freedom of expression. Nevertheless, the Court took a balanced view when deciding upon punishment even as it declared him guilty. On August 31, 2020, the Court fined him a token amount of Rs.1, or he would have to face three months of simple imprisonment along with disbarment from appearing in the Supreme Court for three years.

CONCLUSION

The ability of the Supreme Court to impose sanctions for contempt is an important tool to maintain the dignity, integrity, and independence of the judiciary. But in a constitutional democracy like India, this ability must be wielded with great care. In the recent judgment of *Re: Prashant Bhushan* (2020), we see how difficult this balancing act can be. While it is important to ensure that the judiciary is not subject to baseless attack, which could shake its credibility, it is also important to defend the citizens' right to criticize the same. The judiciary in a democratic setup should be open to criticism. The excessive use of powers to punish someone with contempt, particularly against those who express dissent, could be an indication of a "chilling effect" on freedom of expression, undermining the very foundation of participatory democracy. Thus, there is a need for clear definitions and guidelines in contempt cases so that the court can act with restraint. This will go a long way in strengthening the Supreme Court's image in the eyes of the people.