

Contempt of Court in India – An Overview

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Abstract

Whenever there is any conscious attempt to scandalize the court, one needs to understand that it hits the confidence of the litigant public and this challenges the fair procedure of the judiciary. It also creates a setback for the idea of rule of law, if a court allows a lawyer or a litigant to malign a judge just to get orders in his favor, the judicial system of that country is compromised at that very instance. This article has tried addressing certain basic questions that evolve around the concept of Contempt of Court by analyzing the Prashant Bhushan's tweet controversy on Former CJI S.A Bobde. The origins of this concept in India and the legal updates that have been followed. The article has also analyzed the inherent powers of the Constitution, distinction between Criminal Contempt of Court and Defamation & the Law Commission's report on the need for Criminal Contempt of Court.

Keywords- Criminal Contempt, Defamation, Free Speech, Scandalize the court and Inherent contempt powers.

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Historical Background of Contempt of Court in India

The origins of the contempt of court lies in the pre-independence era in the 19th century. After the East India Company took charge of India, a charter was issued by the King of England to set up corporations in presidency towns. Initially the Mayor courts were only established in Calcutta, Madras and Bombay. They were all covered under the ambit of the Charter of 1726.

The courts in Madras and Bombay were superseded as the recorders court and in Calcutta as the Supreme Court. The recorder courts were also later abolished and replaced to Supreme Courts and they all shared similar powers of Contempt as practiced by the Supreme and Recorder courts in England². These courts were then replaced by High Courts under the Indian High Courts Act of 1861. These courts had inherent powers to initiate and preside over contempt proceedings³.

Till the year 1926, the powers of Contempt were interpreted by the courts itself in comparison to courts powers in England. However, the first statute on the subject was introduced in the year 1926 as the Contempt of Court Act, 1926⁴. This act defined the powers of the courts to initiate a contempt proceeding.

This act was later repealed in the year 1952 and was superseded by the Contempt of Courts Act 1952⁵. This act was introduced to broaden the ambit of the term “Courts” in the legislation and hence it included Courts of Judicial Commissioner as well as Chief Courts. This was the period just after independence, when the country was going through major constitutional changes. It was observed that laws related to contempt as per the established act were vague and ambiguous.

Recognizing this issue, a bill was tabled on April 1 1960, with the objective of amending the existing contempt laws in the country. A special committee was created after this in the year 1961 under the chairmanship of Shri H.N. Sanyal. He was the Assistant solicitor general of India. The committee, after analyzing the act, submitted its suggestions and recommendations in 1963.

The report was universally accepted by the government and it was later sent to the Join Select committee for ratification. They suggested certain changes including introducing the idea of

² Report of the Committee on contempt of courts, February 1963, <https://dspace.gipe.ac.in/xmlui/handle/10973/33748> (last visited Apr 27, 2021).

³ *Id.*

⁴ coca1946228.pdf, <http://www.asianlii.org/mm/legis/laws/coca1946228.pdf> (last visited Apr 27, 2021).

⁵ Report274.pdf, <https://lawcommissionofindia.nic.in/reports/Report274.pdf> (last visited Apr 25, 2021).

limitation period on initiation of contempt proceedings. Finally in the year 1971, the government introduced the Contempt of Courts Act, 1971⁶.

The act divided the concept of Contempt into two sections:

- i) 'Civil Contempt'
- ii) 'Criminal Contempt'

The act limited the powers of issuing contempt proceedings to the Supreme Court and the High courts. The act highlighted those fair comments and criticism shall not be equated with contempt. **Section 2** makes this clarification and defines contempt of court.

Civil contempt generally means a willful disobedience of an order, direction or any other order of the court or process of the court whereas Criminal Contempt refers to the publication of any matter through any means which:

- 1) scandalizes or tends to scandalize or lowers or tends to lower the authority of, any court; or
- 2) prejudices, or interferes with, the due course of any judicial proceedings; or
- 3) interferes or tends to interfere with, or obstructs or tend to obstruct, the administration of justice in any other manner⁷;

Section 10 empowers the High Court to initiate contempt proceedings for subordinate courts. **Section 12** prescribes the punishment and **section 14, 15** lays down the procedure that shall be involved when a contempt proceeding is initiated. **Section 16** also includes under its ambit, the scope of contempt through any judge or magistrate, or any judicial person.

Contempt of Court in Foreign Jurisdictions

In the United States of America, contempt is in its crude sense is disobedience of an order by court. It also as per the Federal Rules of Civil Procedure code, under rule 70, defines the same in great detail. Further, the courts also take into consideration the criminal contempt of court, which is dependent on two major things i.e. substance of the matter and character of the relief⁸.

⁶ Contempt of Courts Act, 1971, AN ACT TO DEFINE AND LIMIT THE POWERS OF CERTAIN COURTS IN PUNISHING CONTEMPT'S OF COURTS AND TO REGULATE THEIR PROCEDURE IN RELATION THERETO. (1971), <http://indiacode.nic.in/handle/123456789/1514> (last visited Apr 27, 2021).

⁷ *Id.*

⁸ Contempt of Court, LII/ LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/contempt_of_court (last visited Sep 18, 2021).

Australia also recognizes the concept of contempt of court, however there is no specific legislation to address the same. The courts have laid down necessary tests and principles through which the laws are governed. The law commission in 2017 has again recommended the legislature to bring a statutory legislation to address the issue of Contempt of Court and abolish the common law methods⁹.

Even Canada has only one provision left of the common law and that is the law of contempt. These are powers that the court exercises under the ambit of its inherent powers¹⁰. This includes both civil as well as criminal contempt of court. Civil contempt is majorly with respect to disobedience of order and criminal contempt like other jurisdictions is majorly based on the idea of obstruction of administration of justice.

Constitutional Provisions related to Contempt of Court

The constitution recognizes the Supreme Court and the High Court as the court of record and hence also provides inherent powers to punish for contempt of court. Article 129 states, “*Supreme Court to be a court of record The Supreme Court shall be a court of record and shall have all powers of such a court including the power to punish for contempt of itself*”¹¹.

The High Courts have similar powers under Article 215 of the Constitution. The term Court of record has not been defined under article 129 or any other article in the constitution, however it was clarified by the Supreme Court in the judgment of *Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat*¹² that any court whose actions are enrolled for a “*perpetual memory and testimony*” is considered as court of record and such court shall also have the powers to initiate contempt proceedings.

These courts are required to maintain a record of the proceedings, these are presumed to be accurate and cannot be impeached, as per the Black’s law dictionary. The second important constitutional provision that is especially important is the conflict between article 19 and the concept of contempt of court as a reasonable restriction on article 19.

⁹ Canberra corporate Name=Commonwealth Parliament; address=Parliament House, *Law of Contempt*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/LawofContempt/Report/c01 (last visited Sep 18, 2021).

¹⁰ Yes, you can go to jail for that: contempt of court in Canada, NIRWAN LAW CORPORATION, <https://nirwanlawcorp.com/yes-you-can-go-to-jail-for-that-contempt-of-court-in-canada/> (last visited Sep 18, 2021).

¹¹ Article 129 in The Constitution of India 1949, <https://indiankanoon.org/doc/927019/> (last visited Apr 27, 2021).

¹² AIR 1991 SC 2176.

Article 19(1) (a) of the constitution defines the freedom to the citizens, however these are not absolute in nature and are subject to article 19(2) i.e. reasonable restrictions on freedom. Contempt of Court is also considered as one of the reasonable restrictions to maintain the dignity of the court and to ensure that no one interferes with 'administration of justice.'

There have been various judgments that have upheld the judicial scrutiny of Contempt as a reasonable restriction on freedom of speech. In the case of *Aswini Kumar Ghose & Anr.v. Arabinda Bose*¹³ The court clearly mentioned that a fair comment, or a fair criticism made in good faith of any judgment is accepted and is an exception under the Contempt act.

However, if there is any attempt to impute that judges of court and their decisions depend on the consideration they get, this will be a clear contempt of court. Right to free speech under no circumstances includes the right to commit contempt of court.

The last constitutional provision related to Contempt of Court is defined under article 142(2). This section is not covered under the ambit of the Contempt Court Act, 1971 and is part of the inherent powers of the Supreme Court. It states that the Supreme Court, subject to the provisions of any law, has the power to order the attendance of any person or document, and has the power to investigate or punish the accused under Contempt of Court.

Criminal Contempt of Court or Defamation?

Senior advocate of the Supreme Court Shri Dushyant Dave while arguing for his client Mr. Prashant Bhushan stated that the actions of his client are mere libel or defamation, and are not as grave as contempt of court. The conflict of these two terms have been always in question and this has also brought into question whether a remark on a Judge in his or her personal capacity is also Contempt of Court.

Defamation is defined under section 499¹⁴ of the Indian Penal Code, 1860. To understand whether remarks on a judge are covered under Contempt of Court or Defamation, or both, it is important to understand the objective of both the provisions. The broader intention of Contempt of Court is to maintain the dignity and respect of the court in society.

It covers comments made on the Supreme Court as well as the judges subject to the conditions of Criminal Contempt of Court. The reason being that comments or allegation like such

¹³ AIR 1953 SC 75.

¹⁴ Section 499 in The Indian Penal Code, <https://indiankanoon.org/doc/1041742/> (last visited Apr 27, 2021).

hampers the public confidence in the institution as a whole and raises questions in their minds which eventually leads to disruption of administration of justice.

It was further clarified in the case of *Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat and Ors*¹⁵, where the court mentioned that it can include anyone who tends to interfere or tries to lower the authority of the court. The judgment highlighted that the courts are provided with the duty of looking after public interest and hence it is important that the court shall be given the power of contempt of court. The objective is not to preserve the dignity of the court but to ensure that the administration of justice is not interfered with, obstructed or perverted.

The objective of defamation on the other hand is vastly different, under this provision of law, the idea is to prevent an individual from maliciously maligning anyone else's reputation which is an especially important aspect of article 21, which is Fundamental Right to Life. For criminal defamation there must be an imputation where the objective should have been to harm the reputation of the person or even cause to harm the reputation of an individual.

Coming back to the case of Prashant Bhushan, where his counsel relied on the judgment of *Brahma Prakash Sharma and Others vs The State of Uttar Pradesh*¹⁶, where a clear distinction was made on the actions that a judge could take in a situation like this. The court clarified in this judgment that there is a distinction between a remark that has been made on a Judge in his personal capacity and a comment on his judicial capacity.

The former would lead to libel or defamation at large, however the later would lead to Contempt of Court, however it is for the judge to decide how to proceed for the same. If the remark in any way tends to create any apprehensions among an average mind regarding the credibility of the institution or by any means if it tends to interfere in the administration of justice, that remark will be considered as contempt of court.

The confusion of the same was again cleared by the Supreme Court in the case of *S. Mulgaokar*¹⁷, where the Supreme Court mentioned, "*The third principle is to avoid confusion between personal protection of a libeled judge and prevention of obstruction of public justice and the community's confidence in that great process. The former is not contempt, the latter is, although overlapping spaces abound.*"

¹⁵ *Supre note 9.*

¹⁶ 1953 SCR 1169.

¹⁷ *S. Mulgaokar*, AIR 1978 SC 727.

30. Because the law of contempt exists to protect public confidence in the administration of justice, the offence will not be committed by attacks upon the personal reputation of individual judges as such. As Professor Goodhart has put it:

Scandalizing the court means any hostile criticism of the "judge as judge; any personal attack upon him, unconnected with the office he holds, is dealt with under the ordinary rules of slander and libel.

Similarly, Griffith, C. J. has said in the Australian case of *Nicholls* (1911) 12 C.L.R. 280 that:

In one sense, no doubt, every defamatory publication concerning a judge may be said to bring him into contempt as that term is used in the law of libel, but it does not follow that everything said of a judge calculated to bring him into contempt in that sense amounts to contempt of Court."¹⁸

It was also observed in various other judgments like *Haridas Das v. Smt. Usha Rani Banik and Ors. And Apu Banik*¹⁹, that there could be a possibility that sometimes a comment might be libelous to a judge individually, but it might also be a possibility that such a remark could be contemptuous depending on the gravity of the remark and if it tends to lower the authority of the court. This is one of the reasons that in the case of Mr. Prashant Bhushan, the Supreme Court recognised that the tweet was in the judicial capacity of the Judge and not in his personal capacity, and hence it was not adjudged under the ambit of defamation, but a case of contempt.

Hence it is noticeably clear that two simultaneous proceedings can also be initiated in a case depending on the facts of the cases. The discretion solely lies with the Judge to decide whether the adjudication shall be for Defamation or Contempt, or both.

Criminal Contempt of Court and the Law Commission report

The idea of Criminal Contempt of Court has always been in debate and has always been construed as an unreasonable restriction on free speech. Adding to this discussion the department of Justice submitted a reference to the Law commission of India on 8th March 2018 to examine the amendment to the Contempt of Courts Act, 1971.

The reference was submitted and an amendment was proposed that the Contempt of Court Act shall only be limited to Civil Contempt and later part which deals with 'Criminal Contempt'

¹⁸ Criminal Contempt Of Court And Criminal Defamation - Initiation Of Simultaneous Proceedings : Yes Or No - Litigation, Mediation & Arbitration - India, <https://www.mondaq.com/india/libel-defamation/549642/criminal-contempt-of-court-and-criminal-defamation-initiation-of-simultaneous-proceedings-yes-or-no> (last visited Apr 26, 2021).

¹⁹ *Haridas Das vs. Smt. Usha Rani Banik and Ors. And Apu Banik*, MANU/SC/3005/2007.

shall be repealed. After examining the whole issue, the commission submitted the report which was maintained under the chairmanship of Justice B.S. Chauhan.

The paper has analyzed various jurisdictions including the ones where Criminal Contempt of Court is abolished. The paper has addressed various issues that were there with the Criminal Contempt and has produced the conclusion that the section shall not be amended as the need of that part exists even today. The report clarified the following points:

1. The need for Criminal Contempt even continues today because of the high number pending criminal contempt cases in our country. As per this record, prior to the report there were around Civil (96, 993) cases and Criminal (583) cases pending in High Courts and the Supreme Court²⁰. The high number of cases justify that the relevance of act sustains because the authority of court shall not be lowered. The commission also mentioned that changes in the definition will lead to reduction in courts authority.
2. The second clarification was with respect to the analogy that is being made with reference to the abolition of Contempt laws in the UK. The commission mentioned that there were two broad differences in the situations of India and the UK. Firstly, the number of cases in India were remarkably high as compared to the UK, where the last case of 'Scandalizing the court' took place in 1931. The second being that even after the amendment in UK, the term 'Scandalizing the court' is still covered in the Public order Act, 1986 and Communication Act, 2003²¹.
3. More importantly the commission clarified that the powers of contempt are not because of the Contempt of Court act, 1971 but because of the Constitutional Scheme. They clarified this by quoting various cases. In the judgment of *Pritam Pal v. High Court of M.P. Jabalpur*²², the court clarified that the contempt jurisdiction of the Supreme Court and various high courts can be regulated through the introduction of a legislation, but the inherent powers of the Supreme court and High courts in terms of Contempt are already defined under article 129 and 215 of the constitution. These cannot be in any way taken away through the means of legislation. The broad point that the commission was trying to highlight was, even if Contempt of Courts Act is amended, the Supreme Court can always use their inherent powers to issue such proceedings.

²⁰ LCI Report Summary Contempt of Court For Upload.pdf, https://prsindia.org/files/policy/policy_committee_reports/LCI%20Report%20Summary%20Contempt%20of%20Court%20For%20Upload.pdf (last visited Apr 25, 2021).

²¹ *Id.*

²² *Pritam Pal v. High Court of M.P. Jabalpur*, AIR 1992 SC 904.

4. Adding to the third point the commission also highlighted that if the definition of the Contempt is amended through the act, there will be more ambiguity because the Supreme Court will use their inherent powers to issue contempt, and the interpretation will be more complicated. It is important to understand that legislation is there to ensure the procedure of the proceedings, however if the Supreme Court uses their inherent jurisdiction, they just need to ensure that there shall be a free and fair trial.

Analyzing the act and the inherent powers of the Court, the commission stated that the act has clearly passed the judicial scrutiny and the existence of this section is also necessary, and hence an amendment is not required. The courts can although ensure safeguards that there is no misuse of this power but an amendment would attract chaos rather than clarity.

Conclusion

It is already established that the Rule of Law is part of the basic structure of the constitution and it also includes, among other things, the right to justice through judicial process. This can only happen if the administration of justice is not meddled with in any way. This is one of the most important aspects of a civilized society.

This is the reason that the Judiciary, being the guardian of rule of law, is provided with powers related to contempt. After analyzing the law commission report one thing is noticeably clear, which is the need for criminal contempt of court in India to maintain the authority of the court and respect in an average citizen's mind. There shall be some provisions that address the misconduct of litigants or lawyers, or anyone who tends to interfere with administration of justice or scandalizes the court.

The distinction of Defamation and Criminal Contempt of Court has also been made noticeably clear and it lies on the wisdom of the Judge to choose how to proceed in the matter depending on the merits and facts of the case.

There is a need for Criminal Contempt of Court in India in the present times and any changes in the definition of the act would lead to a more ambiguous situation, and hence no amendment of Criminal Contempt of Court is required. More importantly, as was highlighted by the Law commission, even an amendment in the act of 1971 could not stop initiating proceedings of criminal contempt as the powers are inherently derived from the constitution and not the act.