**Maintaining Judicial Authority While Upholding Free Speech: A Constitutional and Doctrinal Analysis of Contempt of Court Law**

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***Abstract***

*Constitutional Courts in India are entrusted with the task under the Constitution to interpret the law and also to interpret the law on the touchstone of the Constitution. While it is important for the Constitutional courts to perform its tasks effectively, it is equally important that the decorum and public image of the courts should also be protected and maintained. The control of the constitutional courts to penalize for the contempt is an indispensable deterrent in the hands of higher judiciary to avert intrusion with the institution of justice. The power of Contempt of court ensures that the authority of the Courts are respected and maintained. On the other hand, under the constitution, freedom of speech has been accorded as a fundamental right of the citizens. However, this freedom as provided under Article 19(1)(a) of the Constitution is subject to reasonable restrictions under Article 19(2) as contempt of court is one of the ground for reasonable restriction.**This paper analyses the recent judicial trends of the Constitutional Courts in India to punish for contempt which has on several occasions conflicted with the freedom of speech and expression of individuals. It also takes into account the changing contour of contempt of court laws in United Kingdom and suggests the way out as to how the inconsistency is to be resolved so as to protect the administration of justice and its decorum on one hand at minimum sacrifice of freedom of speech and expression on the other.*

***Key words:*** Scandalizing the Court, Contempt of Court, Freedom of Speech and Expression

**I Introduction**

Rule of Law is one of the fundamental pillars of the Indian Constitution.[[3]](#footnote-4) To maintain and uphold the Rule of Law, Constitutional courts have been entrusted with the task under the Constitution. While it is important for the courts to perform its tasks of upholding the rule of law effectively, it is equally important that the decorum and public image of the courts should not be allowed to be distorted.[[4]](#footnote-5) This power to maintain and uphold the majesty of the courts has been conferred to the Supreme Court of India and all the High Courts under Articles 129[[5]](#footnote-6) and Article 215[[6]](#footnote-7) respectively by being the Court of record.[[7]](#footnote-8) Contempt of Court Act, 1971[[8]](#footnote-9) supplements this power of the Constitutional courts in addition to the Constitutional provisions. The authority of the constitutional courts to punish for contempt is an indispensable deterrent in the hands of higher judiciary to avert interference with the administration of justice. This power to punish for Contempt of court envisions mainly to deal with any such action throbbing the decorum and the authority of the courts.

On the other hand, freedom of speech and expression is a valuable privilege and a fundamental right of the citizens. Constructive reproach is one of the central components for the expansion of democracy and it is the duty of the Constitutional Courts to protect it. Contempt of court is one of the ground for reasonable restriction under Article 19(2) of the Constitution whereas the freedom of speech and expression is provided under Article 19(1)(a)[[9]](#footnote-10). While fair criticism of the Courts would not be unlawful, ascribing inopportune motives and inclining to bring the judges or the courts in disrepute, will undoubtedly be well contained by the contempt of court jurisdiction of the Constitutional Courts.[[10]](#footnote-11)

However, the power to punish for contempt has sometimes conflicted with the freedom of speech and expression of an individual as given under Article 19(1)(a) of the Constitution of India. This inconsistency is required to be fixed in a manner to maintain a delicate balance between contempt of court and freedom of speech and expression.

**II Origin and genesis of Contempt of Court law in India**

The evolution of the power of contempt in India has its roots to the English monarchic rule where contempt was considered as an offence directly against the authority of the Sovereign. As civilization evolved, as per the delegated mandate, the king's powers came to be bestowed on the Judge.[[11]](#footnote-12) This authority of the judge was analogous to the authority of the king which was beyond question. Any criticism or comment on the courts was considered as an accusation on the king. This power is taken as a necessary attribute of the superior court of record.[[12]](#footnote-13) This practice was recognized in the judgment of R v. Almon[[13]](#footnote-14) wherein it was reiterated “that any slanderous act aimed towards the judicial institutions will be equivalent to challenging the king’s honour and authority.”[[14]](#footnote-15) The judgment of R v. Almon[[15]](#footnote-16) (which is repeatedly considered to have the foundation of the contempt jurisdiction) it was further observed by Wilmot J.

*“The power which the Courts in Westminster Hall have of vindicating their own authority is coeval with their first foundation and institution; it is a necessary incident to every Court of Justice, whether of record or not, to fine and imprison for a contempt to the Court, acted in the face of it. And the issuing of attachments by the Supreme Courts of Justice in Westminster Hall, for contempt out of Court, stands upon the same immemorial usage, as supports the whole Fabric of the Common Law”[[16]](#footnote-17)*

In India, the first statute on contempt of court was enacted in the form of Contempt of Court Act, 1926. This Act was later repealed since it was not found to be all-inclusive and replaced by the Contempt of Court Act, 1952. Subsequently, it was found that the 1952 Act has numerous flaws including no definition as to what constitutes contempt of the court. Subsequent to the formation of Sanyal Committee in 1961 and its recommendation after exhaustive study of contempt law of other jurisdictions, the 1952 Act was also repealed and the Contempt of Court Act, 1971[[17]](#footnote-18) was enacted. Even though the 1971 Act also did not define the contempt of court but rather it provides for its classification. Section 2 of the Contempt of Court Act, 1971 bifurcated contempt into two types, civil and criminal contempt. While Section 2(b) deals with civil contempt, section 2(c) provides for criminal contempt. Civil contempt “refers to the willful disobedience to any judgement, decree, or order of a court.”[[18]](#footnote-19) Whereas, “criminal contempt deals with any act which scandalizes or tends to scandalize the court or prejudices or tends to prejudice any judicial proceeding or interferes or tends to interfere with the administration of justice.”[[19]](#footnote-20) ​

**III Conflict with freedom of speech and expression**

Despite having its roots in the English Law, which has evolved over a period of time and changed its contour, contempt law in India has not progressed as per the changing times. Lack of clarity in definition of contempt and its constituents including ‘scandalizing the court’ or ‘prejudices or interferes with the course of justice’ has become unruly horses without any limit. Even if the legislature provides the definition of ‘scandalizing the court’ or the definition of ‘prejudices or interferes with the course of justice’, the ambit of these terms are constantly progressing. Though the Contempt of Court Act provides for fair criticism which is not regarded as contempt of court.[[20]](#footnote-21) However, this power to decide whether a criticism is fair or not is entrusted in the hands of the Court which also happens to be the aggrieved party in contempt of court matters. This vagueness in the application of these terms by the Supreme Court was evident in two of the earlier cases E.M. Sankaran Namboodiripad v. T. Narayanan Nambiar[[21]](#footnote-22) and P.N. Duda v P. Shiv Shankar[[22]](#footnote-23). In the first case, Namboodripad who happened to be the Chief Minister of Kerala was convicted of contempt for a merely theoretical comment from a Marxist point of view on the duty of the courts. In divergence, in the later case, the contemnor who happened to be the Minister of Law, Justice and Company Affairs, Government of India as that time who while addressing a meeting of Bar Council of Hyderabad made derogatory remarks towards the Supreme Court judges attributing to the Court partiality towards affluent people, as foreign exchange violators, anti-social elements and bride burners but this was not held as contempt of court. This disparity in the interpretation of the phrase ‘scandalizing the court’ makes it evident that the range of contempt law is too vague and indeterminate. In fact, in Baradakanta Mishra v. Registrar of Orissa High Court & another Hon’ble Supreme Court had observed “that the offence of scandalizing the court has to be handled with care and used sparingly.”[[23]](#footnote-24)

On the other hand, to strengthen the element of freedom of speech and expression, the Contempt of Court Act, 1981 of the United Kingdom has abolished contempt on account of scandalizing the court altogether. In 1980, Justice Diplock observed in the case of *Defence Secretary* *v Guardian Newspapers[[24]](#footnote-25)* that “the type of contempt which consists of scandalizing the judges is practically outmoded in England and may be snubbed.” Similar observation was made in the 1911 case of *King v. Nicholls[[25]](#footnote-26)* where it was opined that “if there is a just cause for challenging the veracity of a judge, it is not to be contempt of court.”[[26]](#footnote-27) In the United Kingdom on the suggestions of the U.K. Law Commission, scandalizing the court as a form of contempt has been excluded as provided under the Crime and Court Act, 2013.[[27]](#footnote-28) However, on the contrary, the Law Commission of India observed that it was unwanted to eradicate the provision of scandalising the court as it has the potential to decline the esteem of the courts.[[28]](#footnote-29)

Evidently, it is observed that the courts’ are not absolutely immune from condemnation and it should be amenable to fair criticism which will enhance its respect. Unfortunately, Courts in India have still not evolved its contempt jurisdiction in comparison to other common law jurisdiction wherein contempt law has its origin.

**IV Recent trends:**

In the recent past, there are certain key judgments delivered by the Supreme Court on contempt of court law which were quite contentious due to its overstretching the scope of contempt. Three of them are discussed below:

1. **In re: Prashant Bhushan & Anr.[[29]](#footnote-30)**

This criminal contempt matter was initiated based on two of the tweets of Senior Advocate Prashant Bhushan. On June 27th, 2020, he tweeted on the social media platform that “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.”[[30]](#footnote-31) Another tweet was published on twitter on June 29th, 2020 stating that “CJI rides a 50 Lakh motorcycle belonging to a BJP leader at Raj Bhavan Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access justice.”[[31]](#footnote-32) While taking suo moto cognizance of these tweets Supreme Court was prima facie of the view “that the aforesaid statements on Twitter have brought the administration of justice in disrepute and are capable of undermining the dignity and authority of the Institution of Supreme Court in general and the office of the Chief Justice of India in particular, in the eyes of public at large.”[[32]](#footnote-33)

Mr. Prashant Bhushan in his defense stated with respect to the first tweet that “it had three distinct elements which are his bona fide opinion about the state of affairs in the country in the past six years and the role of the Supreme Court and in particular the role of the last four Chief Justice of India.”[[33]](#footnote-34) First portion of his tweet contains his opinion “that democracy has been substantially destroyed in India during the last six years.” The second portion of the tweet opined that “the Supreme Court has played a substantial role in allowing the destruction of the democracy” and the third part of his opinion “regarding the role of the last four Chief Justices in particular in allowing the destruction of the democracy.”[[34]](#footnote-35) Mr Bhushan further contended that “it is the essence of a democracy that all institutions, including the judiciary, function for the citizens and the people of this country and they have every right to freely and fairly discuss the state of affairs of an institution and build public opinion in order to reform the institution.”[[35]](#footnote-36)

With respect to the second tweet, Mr Bhushan submitted that “it was made to highlight the strangeness of the situation where the Chief Justice of India, Justice S.A.Bobde on one hand keeps the court virtually in lockdown due to COVID fears, with hardly any cases being heard and those heard, also by an unsatisfactory process through video conferencing and on the other hand is seen in a public place with several people around him without a mask.[[36]](#footnote-37) He argued that if this is regarded as a contempt, it would throttle free speech and would constitute an unreasonable restriction on the right of a citizen under Article l9(1)(a) of the Constitution.” It was also submitted that “to bona fide critique the actions of a Chief Justice of India, or a succession of Chief Justice of India, cannot amount to scandalizing the court, nor does it lower the authority of the Court as Chief Justice of India is not Supreme Court.”[[37]](#footnote-38) He made this observation as constructive criticism of the act of the then CJI in public while the COVID protocol was in place due to which everyone including the Chief Justice of India was obligated to follow the same.

However, the Supreme Court did not find merit in the submission of Mr. Bhushan. It was observed by the Court that “no doubt that it may be better in many cases for the judiciary to adopt a magnanimously charitable attitude even when utterly uncharitable and unfair criticism of its operations is made out of bona fide concern for improvement. However, when there appears some scheme and design to bring about results which have the tendency of damaging the confidence in our judicial system and demoralizing the Judges of the highest court by making malicious attacks, those interested in maintaining high standards of fearless, impartial and unbending justice will have to stand firmly. If such an attack is not dealt with requisite degree of firmness, it may affect the national honour and prestige in the comity of nations. Fearless and impartial courts of justice are the bulwark of a healthy democracy and the confidence in them cannot be permitted to be impaired by malicious attacks upon them.”[[38]](#footnote-39) Based on this, court found Mr. Bhushan guilty of criminal contempt and instead of imposing any severe punishment by showing magnanimity, sentenced him with a nominal fine of rupee one.

This contempt case was decided in a hurried manner which took little more than a month's time that too during COVID lockdown restrictions were in place and courts did not have regular hearing. There were many matters of considerable importance pending at that time before the Supreme Court but “instead of taking up matters of absolute urgency in these peculiar times of COVID restrictions, the Supreme Court of India chose to take umbrage at two tweets.”[[39]](#footnote-40) As it was observed in the celebrated U.S. case of Bridges v. California[[40]](#footnote-41) that “an enforced silence would probably engender resentment, suspicion, and contempt for the bench, not the respect it seeks.”[[41]](#footnote-42) It cannot be the case with the Supreme Court of India that muzzling criticism will harness respect for it in the eyes of the people.[[42]](#footnote-43) It is therefore important for the court to balance the right to freedom of speech and expression vis-à-vis contempt of court.

1. **Abhyudaya Mishra v Kunal Kamra[[43]](#footnote-44); Shrirang Katneshwarkar and Ors. v. Kunal Kamra[[44]](#footnote-45) and Skand Bajpai v Kunal Kamra[[45]](#footnote-46)**

In the bunch of these criminal contempt cases filed by different individuals against stand-up comedian Kunal Kamra who had posted quite a few tweets on the social media platform twitter with respect to the Supreme Court granting interim bail to the news editor Mr. Arnab Goswami. All these petitioners had sought the necessary permission from the Attorney General for India to initiate a criminal contempt case against Mr. Kamra which was granted by the Attorney General. While granting permission Mr. AG pointed out that “after having gone through each of the alleged contemptuous tweets, they were not only in bad taste but also crossed the line between humour and contempt of the court.”[[46]](#footnote-47) It was further observed by the AG that “I   find   that   today   people   believe   that   they   can boldly and brazenly condemn the Supreme Court of India and its judges by exercising what they believe is   their   freedom   of   speech.   But   under   the Constitution, the freedom of speech is subject to the law of contempt and I believe that it is time that people understand that attacking the Supreme Court of   India   unjustifiably and   brazenly   will attract   punishment   under   the   Contempt   of   Courts Act, 1972.”[[47]](#footnote-48)

These cases are still pending. It will be a test for the Supreme Court as to how it maintains the balance of freedom of speech and contempt of court law? Whether the court finds such tweets have the potential to scandalize the court and lower its authority? Or like the case of Attorney General v. Guardian Newspaper[[48]](#footnote-49) wherein the newspaper Daily Mirror which was outraged by the decision of the House of Lords restraining the publication of the book ‘Spycatcher’ on the ground of confidentiality and prejudicial to national security, published a headline on the next day along with upside down photographs of the majority Judges and the caption it ‘YOU FOOLS’ which was not taken up as contempt by the courts in England whether the Supreme Court of India will also ignore such tweets of Mr. Kamra.

Whether comments by the public on the role and function of the court can be regarded as contempt? In this respect observation of Justice Katju that “a judge should have the equanimity and inner strength to remain unruffled in any situation so with broad shoulders shrug off baseless criticism without being perturbed”[[49]](#footnote-50) is a guiding light for the judges while entertaining such criminal contempt petitions.

1. **Aditya Kashyap v Rachita Taneja[[50]](#footnote-51)**

In this case, Rachita Taneja, a 25 years old comic artist who had tweeted three post on the social media platform including cartoons involving the news editor Mr. Arnav Goswami’s urgent hearing before the Supreme Court and role of the court in granting interim relief in a hurried manner which was alleged to scandalise and lower the authority of  the Supreme Court by a law student Aditya Kashyap who sought permission from the Attorney General for India to initiate a criminal contempt case against her as required under the provisions of Contempt of Court Act, 1971[[51]](#footnote-52) which was duly granted. Appearing on behalf of Ms. Taneja, Senior Advocate Mukul Rohatgi argued that the Supreme Court’s foundation is very strong which cannot be shaken by such tweets as criticism cannot be treated as contempt. It is still to be seen in what manner the Supreme Court exercises the power of contempt with respect to such tweets to be considered as contemptuous and interference in the administration of justice as the manner is still pending but while doing so the Court also has the duty to balance the right of freedom of speech and expression of the citizens.

**V Conclusion**

In a democratic country like India, the judiciary is one of the organs of the government. In this scheme of government, the authority of the judges is hailed from the citizens through the constitution and therefore they must remain accountable to them who have the right to make constructive criticism of the judgments as well as the conduct of the judge inside and outside the court. In a democratic country, a law like contempt which attempts to silence disagreement and criticism from the people is very much against the constitutional ethos. Courts cannot demand respect by showing its authority and silencing dissent but respect must be commanded by introducing confidence through its engagements with the people.

Recurrent usage of the contempt power by the court reveals the fundamental insecurity of the court only. It is therefore important that the powers of contempt of courts should be exercised sparingly and only when it hampers the proper functioning of the courts. The Supreme Court of India should also take lessons from the developments in the application of contempt jurisdiction in other common law jurisdictions in general and the United Kingdom in particular. Having a more broad and accommodative approach towards constructive criticism and public opinions will rather strengthen people’s faith and confidence in the judiciary instead of diminishing it.

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3. Kesavananda Bharati v. State of Kerala AIR 1973 SC 1461. [↑](#footnote-ref-4)
4. Mohd. Iqbal Khandey v. Abdul Majid Rather, 1994 SCC (4) 34 [↑](#footnote-ref-5)
5. INDIA CONST. art 129 [↑](#footnote-ref-6)
6. *Id.* [↑](#footnote-ref-7)
7. See generally, Delhi Judicial Service Association, Tis Hazari Court v. State of Gujarat, AIR 1991 SC 2176, In re Vinay Chandra Mishra, AIR 1995 SC 2348. [↑](#footnote-ref-8)
8. Contempt of Court Act, 1971, No. 70, Acts of Parliament, 1971 (India). [↑](#footnote-ref-9)
9. *Id.* [↑](#footnote-ref-10)
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12. Rex v Almon (1765) 97 ER 94. [↑](#footnote-ref-13)
13. *Id.* [↑](#footnote-ref-14)
14. *Id.* [↑](#footnote-ref-15)
15. *Id.* [↑](#footnote-ref-16)
16. *Id.* [↑](#footnote-ref-17)
17. Contempt of Court Act, 1971 (Act 70 of 1971) [↑](#footnote-ref-18)
18. *Id* at s. 2(b) [↑](#footnote-ref-19)
19. *Id.* at s. 2(c) [↑](#footnote-ref-20)
20. *Id.* ats. 5 - “Fair criticism of judicial act not contempt - A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided.” [↑](#footnote-ref-21)
21. E.M.S. Namboodiripad, Supra note 9 [↑](#footnote-ref-22)
22. (1988) 3 SCC 167 [↑](#footnote-ref-23)
23. (1974) 1 SCC 374. [↑](#footnote-ref-24)
24. (1985) 1 A.C 339, 347. [↑](#footnote-ref-25)
25. 12 CLR 280 (1911, High Court of Australia) [↑](#footnote-ref-26)
26. *Id.* [↑](#footnote-ref-27)
27. Report No. 335, Law Commission of United Kingdom (2012) [↑](#footnote-ref-28)
28. Report No. 274, Law Commission of India (2018) [↑](#footnote-ref-29)
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