

# **FREEDOM OF SPEECH AND EXPRESSION VIS-À-VIS CONTEMPT OF COURT WITH SPECIAL REFERENCE TO PRASHANT BHUSHAN CASE**

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## **ABSTRACT**

The present research paper explores the intricate matters pertaining to freedom of expression and contempt of court in the Indian context. The article commences by emphasizing the significance of freedom of speech and expression as a fundamental human right that is ensured by the Universal Declaration of Human Rights (UDHR) and the Constitution of India.

It focuses on the examination of the right to freedom of speech and expression in India, and its safeguarding through the constitutional provision of Article 19(1)(a). Notwithstanding, the entitlement to this right is not without limitations, and certain constraints are necessary to forestall any act of defamation or contempt of court. According to the Constitution's Article 19(2), invoking Article 19(1) necessitates additional deliberation.

This paper explores the notion of contempt of court in India and its classification as either a civil or criminal offense in accordance with the Contempt of Court Act of 1971. The primary objective of the law is to safeguard the judicial system from undue political interference and unjustifiable censure, and it employs legal measures to penalize individuals who seek to undermine its integrity. Despite their similarities, it is worth noting that the consequences for contempt of court are comparatively less severe than those for defamation.

This research offers a comprehensive examination of the Prashant Bhushan case, underscoring the intricate equilibrium between the fundamental right of freedom of speech and expression

and the offense of contempt of court. Prashant Bhushan, a prominent legal practitioner, faced allegations of contempt of court due to a tweet that expressed criticism towards the judiciary. The aforementioned case ignited a nationwide discourse regarding the boundaries of unrestricted expression and the judiciary's responsibility in safeguarding its standing.

The study concludes that the imperative of safeguarding the judiciary and averting contempt of court necessitates a harmonization with the entitlement to freedom of speech and expression. Although the Indian Constitution provides for the fundamental right to freedom of expression, it is constrained by specific restrictions. The Contempt of Court Act of 1971 offers a means of penalizing individuals who exhibit behaviour that is deemed contemptuous. However, it is imperative that this mechanism is employed with discretion to prevent the suppression of free expression. The case of Prashant Bhushan underscores the necessity of adopting a nuanced methodology in reconciling the divergent interests at play.

**Keywords:** - *Contempt of court, Freedom of speech, Fundamental rights, Constitutional Law, Judiciary*

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## **PROLOGUE**

After having a place to sleep and eat, the freedom to express oneself is one of the most essential needs for human development and the advancement of nations.

One of the greatest blessings that God has given to us is the capacity to interact with one another via the exchange of meaningful language. If you want your message to be understood by everyone, then it is essential that you utilise it in an honest manner. The power of words may be likened to that of a handgun in the sense that they can be employed not just for self-defence but also for the commission of a homicidal act. Due to this fact, the application must be done carefully. Thus, reasonable people throughout history have always battled for the right to freedom of speech.<sup>i</sup>

Through the power of language, human beings have the ability to freely communicate with one another their most private thoughts, emotions, and perspectives. In addition, the right to freedom of speech is something that is inherently present in each and every human person. The

Universal Declaration of Human Rights (UDHR), which was adopted in 1948, states that "Everyone has the right to freedom of thought and expression;" this right includes the freedom to hold views without interference as well as the freedom to seek out, receive, and transmit information and ideas through any means and without regard to boundaries.

The Preamble of the Indian Constitution, much like the Preambles of all other constitutions, outlines the broad objectives and primary reasons for why the instrument was written. The Preamble of the Indian Constitution, which truly depicts the Constitution's actual spirit, guarantees individuals the freedom to express their opinions, speak their minds, practise their religions, and worship as they see fit. In a similar manner, the same spirituality and notion are reflected and described at length in Article - 19(1)(a) of the Indian Constitution. Part - III of the Constitution of India outlines the Fundamental Rights that are guaranteed to each and every person of the nation.

## **FREEDOM OF SPEECH AND THE CONSTITUTION OF INDIA**

India has developed into one of the democracies that is best able to be managed by its citizens thanks to the fact that the Indian Constitution was drafted with great care and all relevant factors were taken into account. The particular framework of the Fundamental Rights that are only guaranteed to citizens is spelled out in Articles 12-35 of Part - III of the Indian Constitution. These provisions of the Constitution are only applicable to citizens of the nation.

A difficult and politically complex issue in India is the right to freedom of speech, which is protected by Article 19(1)(a). If you make negligent use of it, you run the possibility of being prosecuted with defamation as well as contempt of court. As a consequence of this, the line must be drawn with the utmost accuracy in order to prevent having a catastrophic effect on the system.

Article 19(2) stipulates that more deliberation must take place before Article 19(1) may be invoked. He runs the possibility of being charged with defamation and maybe criminal contempt if the required constraints are not imposed, but these risks can be mitigated by exercising such restraints.

In accordance with Article 129, the Indian Supreme Court is referred to as the "Court of Record," and it has the ability to impose sentences on convicted individuals for contempt of court. The High Court is referred to as "a court of record" under Article 215 of the Constitution of India, which provides it with power that is comparable to that of the subordinate courts. Both the Supreme Court and the High Courts have the authority to hear and rule on matters involving criminal contempt of court.

## **CONTEMPT OF COURT**

According to section 2(a) of the Contempt of Court Act, 1971, (hereinafter referred as Act) being in contempt is a civil or criminal offence. It protects the judicial system from political attacks and unwarranted criticism and uses the law to punish those who would harm it. The existing contempt of court law is confusing and inadequate since it touches on two of the most fundamental rights of the people: the freedom of speech and expression given by Article 19 of the Indian Constitution and the right to personal liberty protected by Article 21. The punishment for Contempt of court is much lower than defamation, although being similar (section 500 of IPC, 1860).<sup>ii</sup>

The Supreme Court of India may penalise contempt of itself under Article 129, whereas the High Court can under Article 215. These powers provide the court significant latitude in interpreting the law and determining specific cases. Abuse of these skills limits free speech since there are no constraints.<sup>iii</sup> Citizens may no longer criticise the court. The Contempt of Courts Act, 1971 defines contempt by listing its various types.

### ***Civil contempt***

Section 2(b) of the Contempt of Courts Act, 1971 defines "Civil contempt" as "wilful disobedience by a person to any order, verdict, decree, direction, writ, or undertaking submitted to the court". Disobeying a court order will result in contempt of court. To add insult to injury, violating a court pledge might result in contempt of court.

### ***Criminal contempt***

According to Section 2(c) of the Contempt of Courts Act, 1971, “Criminal contempt” is the distribution of any information that scandalises the court, biases or interferes with judicial procedures, or obstructs or disturbs justice whether it is spoken or written, by words, or by signs.

Contempt defendants must be punished. Courts have not uniformly characterised scandalous behaviour warranting contempt of court consequences. Several contempt of court cases have been filed merely for criticising a High Court or Supreme Court judge.

## **JUDICIAL INTERPRETATION**

### ***Contempt of Court against Prashant Bhushan<sup>iv</sup>***

After receiving a complaint from Mahek Maheshwari, the Supreme Court took *suo moto* notice of activist and attorney Prashant Bhushan's Twitter posts and declared him guilty of contempt for undermining the court's authority.<sup>v</sup>

#### ***Arguments:***

Prashant Bhushan (Contemnor No.1): He argued that he tweeted on June 27, 2020, to express his sincere desire that over the course of the previous 6 years, India's democracy has been severely damaged. The Supreme Court's constitutional neglect has hurt India's young democracy. He further added that last four Chief Justice of India contributed to democracy's downfall. "The Chief Justice of India is the Supreme Court, and the Supreme Court is the Chief Justice of India" attacks the Supreme Court of India. You can't compare the Supreme Court to Chief Justice Isaac or even four consecutive CJIs. He states about his June 29, 2020 tweet that he was obligated to voice his anguish about the Supreme Court's inability to convene physical sessions for more than three months, which has prohibited the court from safeguarding the constitutional rights of detainees and others with significant and urgent complaints.

Second, he intended for the photo of the Chief Justice of India on a bike to draw attention to the irony of the court being essentially on lockdown because of fear of COVID-19 while he was out in public with a large group of people and not wearing a mask. Thus, voicing his



displeasure at this disparity was not contempt of court. If you think that, you're unconstitutionally suppressing his free speech.

Twitter Inc. (Contemnor No.2)- They argued before the court and stated that twitter is a global social network where members may read and comment to 140-character postings. It is just an "intermediary" under section 2(w) of the Information Technology Act,2000, not the originator or source of the tweets. It displays tweets as-is. Twitter erased and blocked the infringing messages after this court's 22.07.2020 judgement. Since Contemnor No. 1's tweets are fake, the court found him guilty of criminal contempt and fined him INR 1. In addition, if Bhushan does not comply, he will be imprisoned for three months and forbidden from practising law for three years.

***Analysis:***

In accordance with the provisions of section 2(c)(i) of the Contempt of Courts Act, 1971 the major concern in this litigation was determining whether or not the publication of Contemnors scandalises or undermines the authority of the Supreme Court.

It became against the law in the United Kingdom to scandalise the judicial system with the passing of the Unpredictability of High Court and Supreme Court Contempt Powers - Crime and Courts Act. On the other hand, in 2013, in response to a request by the Law Commission, it was removed. According to the findings of the Law Commission, the alleged crime in question constitutes a violation of the constitutionally protected right to freedom of expression and, consequently, ought not to be permitted to continue in its current form in the absence of significant justifications for doing so. In addition, it violated the most fundamental standards of human decency.

The Supreme Court and High Courts have unfettered contempt powers, and the term "Scandalise" is not defined under section 2(c)(i) of the Contempt of Courts Act, 1971. The Supreme Court and High Courts have unrestricted contempt powers. This results in it being more arbitrary and increasing the likelihood that it will be exploited. For this reason, the Supreme Court need to either abolish the offence of "scandalising the court" or clarify the word and set out some guidelines to prevent its misuse.

It is a breach of Article 14 for the decisions or judgements of the High Court regarding its contempt to be appealable under Section 19 of the Contempt of Court Act, which was passed in 1971. It contains processes for appealing both internally and outside, in the event that this becomes necessary. An appeal may be lodged with a bench of the High Court consisting of at least two judges if the order from the High Court was made by a single judge.

In the event that the judgement is rendered by a panel of judges sitting on the High Court, an appeal may be lodged with the Supreme Court. Furthermore, despite the fact that contempt proceedings are quasi-criminal in nature and that their trial is handled in a manner that is comparable to the trial for a criminal matter, the accused contemnor does not have any procedural protection available to them as the alleged criminal does. This is the case even though the trial for a contempt case is conducted in a manner that is similar to the trial for a criminal matter. It is illogical and unfair to deprive a person accused of criminal contempt of the Supreme Court the same procedural protections as are afforded to a person accused of a crime during trial. This violates Article 14 of the Indian Constitution since it is unreasonable and discriminatory.

Article 19(1)(a), which safeguards people's rights to free speech and press, is also the document's ultimate defender of other essential constitutional principles, such as the separation of powers, equal protection under the law, and a level playing field in elections. These principles are all outlined in the United States Constitution. On the other hand, according to Article 19(2) of the Constitution, one of the eight reasons for restricting a person's right to free speech and expression is contempt of court. The word "reasonable bounds" is the most important part of Article 19(2). It states that courts may only use their powers of contempt to promote the administration of justice and may not do so in order to silence individuals who seek the court's accountability for its errors or legitimate omissions.

While Article 21 of the Indian Constitution guarantees every citizen the right to appeal, in the current circumstance, when the Supreme Court itself commences a contempt process against the contemnors, there is no recourse to appeal against the ruling made by the Supreme Court. There is no legal ability to file an appeal against the Supreme Court's decision. There may be a right to appeal, but since the petition would be reviewed by the same panel, there is a lower

probability that it would be heard without bias. However, there is a possibility that there may be a right to appeal.

Contemnor No. 1 submitted a writ petition to the Supreme Court seeking directions to declare that, when the Supreme Court is hearing and deciding a matter at first instance and is not acting as an appellate court, the convicted party does have the right to an intra-Court appeal to be heard by a larger bench. This was done in an effort to establish the proposition that the convicted party does have the right to an intra-Court appeal. His argument was supported by the proverb "*Nemo potest esse simul actor et judex*," which translates to "No one can be both a suitor and a judge at the same time." By this, he meant that the judgment of the High Court should be susceptible to an intra-court appeal, that has been mentioned under section 19 of the Contempt of Courts Act, 1971.

### ***Contempt of Court against Hon'ble Justice Shri C.S. Karnan<sup>vi</sup>***

Contempt of court charges were brought against Justice C.S. Karnan, who was involved in a number of controversies. According to the facts of the case, the infamous Justice Karnan levelled allegations of corruption, bias, and reliance on other justices of the High Court. It was brought to the attention of Prime Minister Narendra Modi that he should take serious action against his fellow judges. To add insult to injury, Justice Karnan said that the then-Chief Justice of the Madras High Court was to blame for overturning one of his decisions.<sup>vii</sup> This statement was made after Justice Karnan had already been insulted. Justice Karnan said that other justices had treated him unjustly due to the fact that he was of a lower caste than they were. In spite of the fact that the Supreme Court had prohibited him from performing any further administrative or judicial tasks, he continued to file many *suo moto* cases against his fellow judges who had voted for his dismissal.

The court commented that Justice C.S. Karnan had committed criminal contempt on a consistent basis. The Honourable Justice Karnan has publicly humiliated other judges by accusing them of corruption and a lack of impartiality without giving any evidence against the judges he has accused. The insulting comments that he made in front of the media and the general public, damaged the image of the courts, and they damaged people's faith in the concept



of justice. The behaviour of the contemnor was not only humiliating to the court, but it also caused a disruption in the procedures of the court. The court was obviously taken aback by the conduct of Justice Karnan, and it decided that his actions constituted the most egregious and serious acts of contempt of court that could possibly be committed. The judge found him guilty of criminal contempt of court and handed him a sentence of 6 months in prison as a result.

However, due to the fact that the mechanism used by the court was defective, several injustices were committed. In light of the unusual circumstances surrounding the case, the Supreme Court decided to form a bench consisting of seven justices. In addition, the Court did not take into consideration the written apologies that Justice Karnan had provided. The Court was not able to demonstrate any material issues that were at the heart of the dispute. Because an *amicus curiae* was not appointed in the case, which was an important step that the Court ought to have undertaken, the decision about the ruling was also made in secret.

### ***Contempt of Court against Vijay Kurle and others***<sup>viii</sup>

Vijay Kurle, Rashid Khan Pathan, and Nilesh Ojha sent two letters to India's Chief Justice Ranjan Gogoi on March 20 and 19, respectively. Vijay Kurle was also a signatory on both letters. In the letters that were previously discussed, libellous claims were made against both Justice RF Nariman and Justice Vineet Saran.

The Court had taken notice of the fact that the letters in issue include assertions that are libellous and scandalous about the judges. Such statements should not be made since judges and courts are above the law. The court said that the defendants had neither issued an apology nor shown any hint that they were sorry for their actions. As a consequence of this, the behaviour in question cannot be condoned and calls for a decisive reaction. Before making any comments on or criticising the Court's ruling, the Court said that one must have sufficient expertise to challenge a judge's honesty and authority before doing so. Therefore, the judge found all three attorneys guilty of contempt of court and handed down sentences of imprisonment for a period of three months and a fine of Rs. 2,000 to each of them.

***M.V. Jayarajan v. High Court of Kerala***<sup>ix</sup>

This case stems from a statement that the appellant made in June 2010 during a public rally in Kannur. In that statement, he criticised a ruling by the Kerala High Court that prohibited gatherings in public places such as streets, and he used profanity and made other inappropriate references. The rally was held in response to the ruling, and it was in Kannur. The appellant's use of insulting language resulted in contempt proceedings, and the Kerala High Court ultimately found him guilty and sentenced him to a term of imprisonment lasting 6 months. This decision has been appealed all the way up to the Supreme Court for further consideration.

The Court has expressed its awareness of the significance of prohibiting and combatting the use of profanity in a manner that is directed against the Court or that interferes with the administration of justice. Any problem that the court system has in delivering a judgement is considered as an obstruction to the administration of justice, and it must be overcome in order for justice to be served. The judges have made it quite clear that they will not put up with any threats or verbal abuse that is thrown in their direction. The court also took notice of the fact that the appellant did not express any remorse or guilt for the statements he made about the judges and did not provide an apology for such comments. As a consequence of this, the Court agreed with the decision of the Kerala High Court, but with the modification that the sentence was decreased from 6 months to 4 months.<sup>x</sup>

***Hari Singh Nagra v. Kapil Sibal***<sup>xi</sup>

The 2010 case established the notion of fair and reasonable criticism in respect to contempt proceedings. Kapil Sibal and others, submitted a remembrance to be published by a lawyers' group, in which they voiced concern for the condition of younger members of the Bar and the declining standards of the legal fraternity. The attorneys provided a memento that reflected the circumstances of the case. In the beginning, the souvenir was only sent to those who were already members of the Bar; it wasn't sold, and it wasn't published in the public domain. Some excerpts from the respondent's memento, however, were published in the Times of India while he was vying for office in the Supreme Court Bar Association. They exploited these quotes as campaign ammunition against the responder. The petitioners went on to claim that the

mentioned artefact was manufactured with malice, with the express goal of discrediting the judicial system.

The Court has expanded upon the constraints of traditional contempt processes by developing the concept of "fair" criticism. The Supreme Court has noted that any kind of ridicule aimed at judges and courts must be combated since it erodes public trust in the judicial system and, in turn, threatens the foundation of the justice system. Any criticism, however, that is rational, reasonable, and non-emotional should be welcomed. According to Article 19(1)(a) of the Constitution, the press and the general public are guaranteed the right to freely express their opinions without fear of retaliation for expressing their disapproval of a judicial judgement that they find to be unreasonable. On the other hand, most people consider this a basic human right. This means that valid criticism of how the judges and courts are run may be spoken without fear of being convicted in contempt of court.

#### ***Abhyudaya Mishra v. Kunal Kamra***<sup>xii</sup>

The trial for this case started in 2020 and is still going on at the present day. The concept of showing contempt for the court, on the other hand, has been brought to the forefront as a result of this case. There have been claims made that Kunal Kamra, a well-known stand-up comedian, sullied the court's reputation by undermining the authority of the court via the publication of tweets on social media. The tweets in issue voiced their disagreement with the manner in which the Supreme Court handled the suicide case involving Republic TV's leader, Arnab Goswami. In his approval of the beginning of contempt proceedings against Kamra, Attorney General KK Venugopalan stated that the latter's tweets were in poor taste and that the general public needed to learn that openly insulting the Supreme Court would result in consequences. Venugopalan also stated that the public needed to learn that Kamra's tweets were in poor taste. In January 2021, the respondent stated that the jokes are not reality and do not pretend to be such, and that the idea that such assertions may undermine the basis of the Supreme Court was an exaggeration. The respondent also stated that the idea that such assertions may undermine the basis of the Supreme Court was an exaggeration. The court allowed the parties to submit the rejoinders they requested in response to the respondent's reply.

*Aditya Kashyap v. Rachita Taneja*<sup>xiii</sup>

In this particular case, a cartoonist is being sued since they tweeted something that was derogatory to the court in the form of cartoons. The post that was described before attracted a significant amount of attention and new followers very soon. The Attorney General further said that the posts violated the Supreme Court's rules since their intention was to lower the level of respect that the general public had for the court. The party that was found to have shown contempt for the court contended that legitimate criticism of the court cannot be construed as contempt and that the court's foundation is far more solid than one may first believe.

**EPILOGUE**

It is not the responsibility of the contempt authority in a democratic society to protect the dignity of any particular judge; rather, its mission is to guarantee that the court can function effectively. It is crucial to the existence of the institution that the general public have trust that the judicial system is able to dispense justice without favouritism or prejudice. "Law of contempt is not meant for the protection of judges who may be sensitive to the winds of public opinion," the Constitutional Bench of the Honourable Supreme Court said in the matter of the contempt charge filed against former Madras High Court Judge C.S.Karnan. It is anticipated of judges that they would be men of strength who are able to thrive in difficult conditions.

The concept of contempt of court has been used rather often by the judicial branch in order to ensure the continued validity of the judicial system. It is essential to bear in mind the high regard in which the general public holds the legal system, and it is also essential to be aware that diminishing that regard will inevitably result in conflict. On the other hand, a line has to be defined so that the freedom to free expression guaranteed by the First Amendment is not mistaken with contempt. In order for a court to impose sanctions for contempt, it has to be able to establish that a certain standard of behaviour took place over the course of an inquiry. The publication by the despicable individual ought to provoke broad indignation in the justice system. This in no way indicates that there will be constraints placed on the right to free speech. Thus, the judge is obligated to ensure the power to punish contempt is used with rigour and caution.

## ENDNOTES

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  - <sup>vii</sup>. Somya Jain, “Important Supreme Court judgments on contempt of court from 2010 to 2020” < <https://blog.ipleaders.in/important-supreme-court-judgments-contempt-court-2010-2020/> > accessed on February 1, 2023.
  - <sup>viii</sup>. Vijay Kurlle, 2020 SCC OnLine SC 407.
  - <sup>ix</sup>. M.V. Jayarajan v. High Court of Kerala, AIR 2011 Ker 12.
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  - <sup>xi</sup>. Hari Singh Nagra & Ors. v. Kapil Sibal & Ors, (2010) 7 SCC 502.
  - <sup>xii</sup>. Abhyudaya Mishra v. Kunal Kamra, CONTEMPT PETITION (CRL.) NO.1 OF 2020.
  - <sup>xiii</sup>. Aditya Kashyap v. Rachita Taneja, CONTEMPT PETITION (CRL.) NO.4 OF 2020.