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# CONTEMPT OF COURT IN INDIA: NEED FOR HARMONISING ARTICLE 19(1)(A) WITH JUDICIAL INDEPENDENCE

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Sameeksha Tripathi, Lucknow Bench, Allahabad High Court

## ABSTRACT

A fundamental component of India's democratic system is the right to freedom of speech and expression, which is protected by Article 19(1)(a) of the Indian Constitution. The legislation pertaining to contempt of court is one of the "reasonable restrictions" listed in Article 19(2) that apply to this fundamental right. Enshrined in Articles 129 and 215 for the Supreme Court and High Courts, respectively, the ability to punish for contempt is meant to protect judicial dignity, uphold public trust in the legal system, and guarantee the unbiased and fearless administration of justice. The delicate balance between the judiciary's inherent authority to penalize for contempt and the valued right to free speech is critically examined in this research paper, with a focus on the contentious offence of "scandalizing the court" under the Contempt of Courts Act, 1971.

The study makes the case that, although honest and impartial criticism of the way the judiciary operates is necessary for accountability in a democracy, the expansive and somewhat ambiguous character of contempt laws may possibly discourage justifiable dissent.

In order to ensure that the rule of law is enforced without unduly compromising the constitutional goal of free expression and democratic accountability, the paper concludes by suggesting judicial and legislative reforms.

**Keywords:** Contempt of Court, Rule of Law, Article 19 (1) (a), Judiciary, Democracy

## INTRODUCTION

Rule of law in a democratic setup is an important pillar which governs a society.<sup>1</sup> Everyone is under the supremacy of law even if one is not aware about it. The Constitution is the physical body that is governing the rule of law. As said by the first president of India late Dr. Lal Bahadur Shastri – “*The rule of law should be respected so that the basic structure of our democracy is maintained and further strengthened.*”<sup>2</sup> The Judiciary is the body that has been provided by the Constitution, the work of protecting and establishing the concept of law by performing the rights and duties effectively. The power and dignity of the courts are always meant to be respected and safeguarded in a democratic setup as the kind of reputation and faith it holds in a society. Democracy is something that defines India as a Nation on the global level and is mentioned in the preamble of Indian Constitution. It is directly related to human rights and it is not possible to have one without other. Therefore, Democracy and rule of law both are those important elements of a society that lead to a path of a well-balanced sustainable nation.

The concept of CONTEMPT OF COURT traces its origin not only after the codification of contempt law in 1971 but going through the history of India one can see that there are several incidents in the past too that can very well explain the meaning and the requirement of it. Earlier during the time when a hierarchical system of governance was followed in India whenever anyone used to disrespect the king or the law prescribed in the state was punished in order to maintain the dignity and the supremacy of the authority of the king. The psychological perspective of the contempt laws deals with creating in the minds of the people a sense of supremacy and admiration for the legal Justice system in India. But then the question arises is that whether the respect of a premier institution gets degraded when people through lights of criticism on it? And if the answer is “yes” then would it not be the hampering of the basic right of ‘freedom of speech and expression’ guaranteed under Article 19 of the Indian Constitution? It is an attempt of this paper to address this contradiction between the law of contempt and Democratic Rights that has always been a matter of debate in India and results with serious punishments by the courts.

## RECOGNITION OF CONTEMPT LAW IN INDIA –

The law of contempt basically deals with disrespecting an authority having a legal significance.

<sup>1</sup> Arundhati Roy v. Unknown, AIR 2002 SC 1375

<sup>2</sup> Ibid

Like many other laws in India contempt laws too trace their origin from England Statute. The first Act that got passed related to the contempt laws in India was Contempt of court Act, 1926 which later got repealed and replaced by the Contempt of Court Act, 1952. The 1952 Act was not justifying enough to explain what contempt of court, followed by many other flaws which became the reason of its further repealment and coming of the Contempt of Court Act, 1971. The basic objective of this act was to limit and define the power of contempt.<sup>3</sup> As said by one of most prominent members of the India Bar, Mr. Fali Nariman in one of his speech on “The law of Contempt – is it being stretched too far?” said that the *offence of 'scandalizing the court' is a mercurial jurisdiction in which there are no rules and no constraints.*<sup>4</sup> He mainly talked about the certainty and not uncertainty in law as a person has full right to know where he or she stands. There was no proper definition of contempt law until 1952 Act and later got introduced under Section 2 of the contempt of court Act, 1971. But the ambiguity regarding the fact that what constitutes contempt of court remained there as a behaviour or conduct considered as dishonourable towards the court earlier may not be considered as disrespectful in today's time.

Section 2 of the contempt of court Act 1971, classifies it into civil contempt and criminal contempt. The definition provided under this act is too exhaustive in nature leaving mostly to the discretion of the Judges that what constitutes a contempt of court as there is not particularly any guideline provided under the definition so as to be followed for the judicial interpretation of the contempt proceedings.

## **CONTEMPT OF COURT AND FREEDOM OF SPEECH AND EXPRESSION -**

The right to free expression and speech as envisaged in Article 19 (1) (a) of the Constitution of India provides the right to hold and express the opinion and ideas related to any subject however to reasonable restrictions that were imposed in clause (2) of the same article. On the other hand, the supporters to the freedom of speech and expression argued that they should be allowed to write or publish any sort of criticism but must be devoid of any proceeding regarding contempt

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<sup>3</sup> Remove the Uncertainty available at <https://www.outlookindia.com/website/story/remove-the-uncertainty/233827#:~:text=In%20a%20speech%20delivered%20on,no%20rules%20and%20no%20constraints>. Last seen 10/09/2025.

<sup>4</sup> G.V. Mahesh Nath, Audhi Narayana Vavilli, *Contempt of Court & Free Expression- Need for a Delicate balance*. Social Science Research Network, 01, 03, (2008), <https://poseidon01.ssrn.com/delivery.php?> Last seen 10/09/2025

from the court of law.

The right to scrutinize, discuss and comment on judiciary has been raised time and again calling for reforms in the law relating to contempt of court. Various thinker, learned jurists, policy makers and reformists, are simultaneously since from a very long period seeking change and modification in the rules of contempt of court. Here are the wording of some of the jurist who have given distinct aspect regarding the reforms of contempt laws in India like **Mr. Soli Sorabjee** said “Justified robust criticism of the judgements of Hon’ble court; however, severe and painful but necessary for the effective functioning of the judiciary under a democratic setup.” and as said by<sup>5</sup>**Lord Atkin** ,“Justice is not the cloistered virtue; she must be allowed to suffer the scrutiny of respectful even though outspoken, comments of ordinary man”

As spoken by Sethi.J in Arundhati Roy’s case in 2002, that the rule of law is that machinery from which the society operates. The guardianship of that rule of law is given to the court of law and in addition the courts are awarded with the third and cardiac pillar that is a democratic setup.<sup>6</sup> For judiciary, to perform its duty effectively and remain true to the spirit with which it is sacredly entrusted and to protect the dignity and authority of the court is of primary importance.<sup>7</sup> He further said that the confidence in the court of justices , which people possess, cannot in anyway be allowed to be tarnished, diminished or wiped out by the contumacious behaviour of any person.

Now the question that arises in anyones mind is-

1. That is criticism the right way to generate the results or reforms ?
2. Criticism encroaching the dignity and by showing disrespect to the court of law is the accurate process to guard the democracy on the basis of Article 19 (1) (a)?

The above-mentioned questions create an overriding effect on the two aspects related to contempt laws over the fundamental rights and it has always been a burning issue among the jurists and legal experts.

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<sup>5</sup> Supra 4.

<sup>6</sup> *In re: Vinay Chandra Mishra*, AIR 1995 SC 2348

<sup>7</sup> Supra 1.

While Article 19 (1) (a) guaranteed the freedom of speech and expression, Article 19 (2) showed that it was also intended that contempt of court should not be committed in exercising that right. The liberty of free expression is not to be compounded with the licence to make unfounded allegations of corruptions against judiciary.<sup>8</sup> The abuse of liberty of free speech and expression carries the cases nearer the law of contempt.

The contempt of court jurisdiction is exercised not only to protect the dignity of an individual judge but to protect the administration of justice from being maligned. Thus, a defamatory attack on the judge may be libel as far as the judge is concerned and it would be open to him to proceed against the libeller in proper actions if he so chooses. But in case of any publications of disparaging statements that is calculated to interfere with the due course of justice and the proper administration of justice delivery, it can be punished summarily as contempt.

The use of the words like “DEMOCRATIC REPUBLIC” in the preamble of the Indian Constitution itself signifies that it is the Constitution for the people, by the people and of the people. It was the wisdom and understanding of the people that gave effect to the requirement of a machinery in the name of judicial courts that lead to peaceful settlement of the disputes between the people in a society for its effectual working. Therefore, it cannot be denied that judiciary plays a very important role in settling the grievances of a society and it is very hard to work without it as it can result in huge amount of violence in public in the absence of it.

In the absence of any test to determine what constitutes a contempt of court there are several incidents or cases (Prashant Bhushan Case, 2020) where the rights mentioned under Article 19 of the Indian Constitution get somehow limited by the power of contempt given to the higher Judiciary under <sup>9</sup>Article 129 and 215. People are punished even for expressing their views and beliefs sometimes which is absolutely allowed in a democracy provided these views do not fall under the ambit of Article 19 (2). <sup>10</sup>And it would not be wrong to say that in these kinds of cases court works on the basis of pre conceived notions and the punishment is declared even without waiting for the allegations to be proved.

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<sup>8</sup> E.M. Sankaran Nambodiripad v. T. Narayanan Nambiar [AIR 1970 SC 2015]

<sup>9</sup> Art. 129 and Art 215, The Constitution of India.

<sup>10</sup> Krishnadas Rajagopal, *Prashant Bhushan contempt case | Supreme Court overreacted, says Soli Sorabjee*, available at <https://www.thehindu.com/news/national/soli-sorabjee-interview-supreme-court-overreacted-in-prashant-bhushan-contempt-case/article32420327.ece#:~:text=Sorabjee%20said,,-Prashant%20Bhushant%20case&text=The%20authority%20and%20dignity%20of,for%20simply%20making%20an%20allegation.> Last seen 15/09/2025.

<sup>11</sup>The idea of the contempt laws in India is like many other laws in India is derived from the British rule but at that time when India was not independent and the British rulers were supreme and which is totally opposite to the scenario in today's time where democracy has already marked its existence. There was no such existence of Constitution constituting Article 19(A) which definitely further brings in minds of the people a question that how a law of those days is applicable today when the situation is completely different from the past?

### **SUGGESTION –**

In the whole research study, we came to see that, the issue of contempt is the subject of endless discussions and debate. Different people have different opinions and versions of it. Although Right to Freedom of Speech and Expression is an important pillar of democracy which gives people right to express their views but these views when used against a person (Defamation) have different repercussions from that when used in order to criticize the Judiciary or the Justice System (contempt). Criticism is always good for an effective and proper functioning of a system but it has certain limitations when the matter is against such an eminent body on which people's faith rests that is the Judiciary. While passing remark one should not forget it not only about the person himself but also about the significatory post that a person holds in the name of Judiciary. On the other hand, it becomes the duty of the representatives of such a respectable body too to maintain the dignity and supremacy of the authority. Court is the place where disputes of the society gets resolved and people look upto it as a trustworthy and absolutely sovereign authority. Therefore, there needs to be a finite balance to be maintained between the contempt laws and the democratic rights as both are part of one Constitution and legal system and required for proper functioning of a nation.

### **CONCLUSION –**

Since from decades the court of law is trying to give various interpretations upon various cases and still it's unable to derive any conclusion on the topic that the whole paper deals with. The free expression is the fountain on the head of the democracy. This right of free expression does not allow any person to denigrate the rights and liberties of any other person as those are subjected to some reasonable restriction. The freedom of expression bestowed under the Constitution of India and Judiciary are two major setups of Judiciary. The independent working

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<sup>11</sup> Supra 3.

of Judiciary with any criticism within the limits and the right of free expression with reasonable restriction are crucial and also important for rationalising the 2 competing issues for public interest in the society. No doubt, healthy and constructive criticism are necessary features for strengthening the democracy.

In the countries like England and the United States contempt jurisdiction is sparingly exercised giving much scope to the fair and constructive criticism which is considered as the pedestal of modern democracy. In the country like India it is extremely important to change the traditional approach in dealing with the contempt proceedings. Realizing the need for doing away with the tradition and conservative approach the Indian legislation brought “The Contempt Of Court Amendment Act, 2006” and introduced through amendment a new section 13 (b) the states, “the court may permit, in any proceedings for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide” with this statutory amendment now defence of truth can be pleaded in the contempt proceedings if such is in the public interest. This initiative by the legislature geared up the balance between the maintenance of the freedom of speech in the society and as well as to change the pre-judged notion of approach of the judiciary.