
STUDY ON THE POWER OF THE SUPREME COURT IN MATTERS OF 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 in India plays a vital role in upholding the Constitution, protecting the rights of citizens, and maintaining the rule of law. The Indian judiciary is a single, integrated, and hierarchical system, with the Supreme Court at the apex, followed by High Courts at the state level, and Subordinate Courts at the district level. This research paper explores the constitutional and legal dimensions of the Supreme Court of India's power to punish for contempt of court. Contempt jurisdiction is a powerful mechanism to ensure respect for the judiciary and to preserve the sanctity of the judicial process. The paper discusses the nature, scope, and classification of contempt of court, with particular focus on Article 129 of the Constitution and the Contempt of Courts Act, 1971. Special attention is given to the recent case of *Re: Prashant Bhushan & Anr.* (2020), an important judgment highlighting the tension between freedom of speech and the dignity of the judiciary. This study aims to analyze how contempt powers are exercised, the need for checks and balances, and their importance in maintaining public confidence in the judicial system.

INTRODUCTION

The Supreme Court of India, as the apex judicial authority, plays a pivotal role in safeguarding the Constitution and ensuring the effective administration of justice. Among its many powers, the power to punish for contempt of court stands out as a crucial tool to protect the dignity, independence, and authority of the judiciary. Without such power, the very foundation of the justice system would be vulnerable to disrespect, disobedience, and disruption.

The concept of contempt serves not to shield judges from criticism, but to uphold the integrity of the judicial process. Recognized as an inherent power under Article 129¹ of the Constitution, the Supreme Court has the authority to punish for contempt of itself. Article 142² which allows the Court to provide punishment for contempt, subject to any other law. Among these two provisions, the Court further clarified that its primary source of contempt power is under Article 129, as the power under 142 is qualified by any law the Parliament makes.

This is further supported by the Contempt of Courts Act, 1971³, which defines and categorizes contempt into civil and criminal forms. Civil contempt refers to wilful disobedience of court orders, while criminal contempt includes any act that scandalizes the court or prejudices judicial proceedings and also The Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975 (Rules)⁴ form the legal framework to govern contempt proceedings.

However, the exercise of contempt powers often raises significant constitutional questions, especially regarding the freedom of speech and expression under Article 19(1)(a)⁵. This paper aims to study the nature, scope, and constitutional basis of the Supreme Court's contempt powers, analyse key judicial pronouncements, and evaluate the balance between judicial authority and democratic rights. The research also touches upon the debate over the misuse vs. necessity of this power in a modern, transparent legal system.

RECENT JUDGEMENT - Re Prashant Bhushan Case (2020)⁶

This case brought national attention to the scope and limits of the judiciary's contempt

¹ INDIAN CONSTI. Art 129.

² INDIAN CONSTI. Art 142.

³ *The Contempt of Courts Act, 1971*, No. 70 of 1971, INDIA CODE (1971).

⁴ *The Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975*, available at <https://main.sci.gov.in/rules> (India).

⁵ INDIA CONST. art. 19(1)(a).

⁶ 2020 SCC OnLine SC 646

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?

CONTENTIONS OF PETITIONER AND RESPONDENT:

The Supreme Court who took suo moto proceedings contended that-

The Supreme Court, taking suo motu cognizance, argued that the tweets made by Prashant Bhushan were scandalous in nature and had the potential to lower the authority of the Court in the eyes of the public. The Court emphasized that since Bhushan was a senior advocate with a public following, his statements would be taken seriously by the general public and could shake their confidence in the judicial system. One of the tweets commented on the CJI riding a motorcycle without a mask during the COVID-19 lockdown, implying judicial inaction. The Court saw this as a personal attack on the head of the judiciary, thereby harming the institution itself. The Court claimed that these tweets satisfied the definition of criminal contempt under Section 2(c)(i) of the Contempt of Courts Act, 1971⁷, and thus warranted punishment to protect the integrity of the institution.

While the respondent Prashant Bhushan contended that-

He argued that his tweets were an expression of fair and reasonable criticism of the judiciary and its functioning, which is permissible in a democracy. He strongly defended his right to freedom of speech and expression, stating that criticism of public institutions, including the

⁷ *The Contempt of Courts Act, 1971*, § 2(c)(i), No. 70 of 1971, INDIA CODE (1971).

judiciary, is essential for a healthy democracy and judicial accountability. Bhushan claimed that his statements were based on facts and personal opinions about the declining accountability of the judiciary and were not made with any intention to lower the authority of the court. He emphasized that his comments were made in the interest of public discourse and judicial reforms, and not to interfere with the administration of justice or to disrespect the court.

RULING BY COURT:

The Supreme Court of India held Advocate Prashant Bhushan guilty of criminal contempt of court under Section 2(c)(i) of the Contempt of Courts Act, 1971. The Court found that two tweets posted by Bhushan were not mere expressions of opinion, but statements that had the potential to scandalize the Court, undermine public confidence in the judiciary, and affect the administration of justice. The Court emphasized that although freedom of speech is a fundamental right under Article 19(1)(a) of the Constitution, it is subject to reasonable restrictions under Article 19(2), especially when such speech interferes with or obstructs the due process of law.

The Court further observed that as a senior advocate, Bhushan had a greater responsibility to uphold the dignity of the institution and that his tweets carried significant influence. In its reasoning, the Court stated that constructive criticism is welcome in a democratic society, but statements that target the integrity of the judiciary without factual backing and are intended to create distrust are not protected under the freedom of expression. However, while holding him guilty, the Court adopted a balanced approach in sentencing. On August 31, 2020, it imposed a token fine of ₹1, with a warning that failure to pay would result in three months of simple imprisonment and debarment from practicing in the Supreme Court for three years.

RATIONALE OF LAW

In Articles 129 and 215 of the Indian Constitution, the Supreme Court and the High Court are given the authority to penalize for contempt. The Contempt of Courts Act, of 1971, which was created in response to the Sanyal Committee's recommendations and serves as the basic legislative framework for contempt of courts in India, supplements these articles. The law's Section 2 distinguishes between civil and criminal contempt, with S.2(b) addressing civil contempt and S.2(c) addressing criminal contempt. Wilful defiance of a court's ruling, decree, or order is referred to as civil contempt. Criminal contempt addresses any behaviour that

defames the court, affects any legal proceedings, or obstructs the administration of justice.

Joseph Moscovitz described contempt of court as the “Proteus of the legal world,” reflecting its vague and variable nature. The term “scandalizes the court” has sparked numerous legal debates due to its ambiguity. In cases like *E.M. Sankaran Namboodripad v. T. Narayanan Nambiar* and ⁸*Re: Arundhati Roy*, courts have used wide judicial discretion to punish acts that didn’t clearly fall under the statutory definition of contempt. This raises concerns of arbitrary limits on free speech under Article 19(1) and may harm public perception of the judiciary.

SUGGESTIVE MEASURES –

The following measures can be applied for smooth functioning of judiciary and to prove its independency in matters of contempt of court with having no conflicts with fundamental rights specially freedom of speech and expression –

1) Clearer Definition of ‘Scandalizing the Court’

The term should be clearly defined in the **Contempt of Courts Act, 1971** to reduce subjectivity and avoid arbitrary use of contempt powers, especially in cases involving public criticism.

2) Codified Guidelines for Contempt Proceedings-

The Supreme Court can frame uniform guidelines or a judicial code outlining what constitutes contempt, especially in the context of social media and public commentary, to ensure consistency and fairness in future cases.

3) Limiting Suo Motu Powers in Contempt Cases

The Court’s suo motu powers in contempt matters should be used sparingly and only in cases where there is a clear and substantial threat to the administration of justice, not to suppress dissent.

4) Independent Review Committee Before Initiating Contempt

An independent judicial panel or senior advocate committee could review contempt allegations

⁸ AIR 2002 SC 1375; 2002 Cri LJ 1792

before formal proceedings begin, to ensure that contempt action is not misused.

5) Amendments to the Contempt of Courts Act

Parliament may consider amending the Act to align it with evolving democratic values and international standards on freedom of speech and judicial accountability.

These measures would help to bring a distinction and make a fair process to be followed in cases of contempt of court.

CONCLUSION

The power of the Supreme Court to punish for contempt plays a vital role in preserving the dignity, authority, and independence of the judiciary. However, in a constitutional democracy like India, this power must be exercised with caution and responsibility. The case of *Re: Prashant Bhushan (2020)* highlights the delicate balance between judicial respect and freedom of speech. While it is essential to shield the judiciary from baseless attacks that may erode public trust, it is equally important to protect the citizens' right to express reasoned criticism.

A democratic judiciary must remain open to public scrutiny and accountability. Excessive use of contempt powers, especially against dissenting voices, may create a chilling effect on free speech and weaken the very foundation of participatory democracy. Therefore, there is a pressing need for clearer legal definitions, consistent guidelines, and judicial restraint in contempt matters. Strengthening this balance between respect for the institution and the right to express will ultimately reinforce the integrity and credibility of the Supreme Court in the eyes of the public.

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