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# Analysis of Criminal Contempt in India

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## ABSTRACT

*Criminal Contempt restricts free speech. Due to this, the problem is how much use of Contempt can be made today? Some liberals argue that we should completely do away with criminal Contempt. This project revolves around law relating to Contempt in India, judicial approach with respect to Contempt in India, analysis of various cases on criminal Contempt. From the holistic understanding of different aspects, this work tries to find out the possible solutions and suggestions in this regard.*

*In this project, various legal provisions dealing with Contempt under the Constitution, Code of Criminal Procedure, 1973 and Contempt of Courts Act, 1971 are analysed. After this, the various landmark and controversial judgements are analysed to find out what are the problems relating to criminal Contempt and what should be the approach adopted to tackle such problem. In this regard, the aid of Primary sources like judgements, statutes and the Constitution is taken. Apart from this, secondary sources like articles, editorials and books are also used.*

## I. INTRODUCTION

Criminal Contempt in India is taken too seriously these days. In the year 2020, a lot of cases have been filed against various people. Actors, businessmen, politicians and even stand up comedians are charged with Criminal Contempt for giving statements of opinion with respect to the judiciary. Due to a large number of cases in Criminal Contempt in 2020, it is argued by many scholars that Free Speech and democracy is hampered. Freedom of Speech and Expression is a fundamental right, but it is not an absolute right and may be restricted. But, the question is to what extent can it be restricted? How much is the State justified in imposing the restriction? One thing is to be kept in mind is that, while exercising restriction, a state cannot do away with the environment of Free Speech. Denial of Free Speech has shaken democracy and may lead to autocracy. Harsh punishment and huge conviction in crimes related to speech may impede dissent, bona fide criticism, debate and discussion and ultimately democracy.

In the light of this, this project aims to analyse the law and judicial approach with respect to criminal Contempt in India. In this, the principles enunciated by the court about how the court should approach with respect to contempt cases are analysed.

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### (A) Research Objective

The objective of this project is to analyse the principles and standards by which criminal Contempt should be approached. As criminal Contempt puts a direct hindrance on free speech; hence principles and course of action in such cases is important.

### (B) Research Question

This project focuses on laws relating to Contempt in India. In this, following are the research questions

- What were the legal provisions with respect to Contempt?
- What approach has the Supreme Court followed in criminal Contempt?
- Whether criminal Contempt can be done away with in today's scenario of Liberty and democracy.
- How should a court respond in contempt cases? What sort of punishment(harsh or mild) may be awarded by the court
- Whether criminalising Contempt is a good method to maintain the image of the court in the eyes of the public?
- What should be the possible solutions in this regard?

### (C) Scope of Study

In this research, the main areas of focus are legal provisions and judgements relating to the Contempt of courts.

### (D) Limitation of Research

One of the limitations of this research is that it focuses on an aspect of criminal Contempt in India; It does not specifically deal with civil Contempt. Only that much aspect of civil Contempt is analysed as is necessary for Criminal Contempt. The project does not deal with civil Contempt as a separate topic. Contempt in India is of two types, i.e. Criminal Contempt and Civil Contempt. Civil Contempt means disobeying any order or decree of the court. Criminal Contempt, on the other hand, covers scandalising the image of a court or interfering in the course of judicial proceedings and administration of justice.

## II. LAW RELATING TO CONTEMPT OF COURTS IN INDIA

### (A) History

The origin of contempt law is Victorian; it was enacted in 1926 in the British era. Later, it was replaced in 1952 and then in 1971 by the Contempt of Courts Act, 1971. The 1971 Act did not provide for truth as a defence. It was added in 2006 by way of amendment.

### (B) Legal Provisions

**In the Constitution**, Article 19(1)(a) guarantees the right to free speech and expression, which can be restricted under **19(2)**. Contempt is one of the grounds under 19(2). The Constitution of India, under **Articles 129 and 215,** empowers the Supreme Court or the High Court as the case may be to punish for the Contempt of itself. According to the said articles, these courts are treated as *"courts of record."*[2] This term means

[2]INDIA CONST. art. 129

that the proceedings of the court are recorded and are of evidentiary value. To give more impetus to these rights court gets the power to punish for its Contempt. Further, **Article 142** gives two-fold powers to the Supreme Court, one to pass any order in the interest of justice, and two to secure – attendance of a person, production of a document, and *investigation/punishment of Contempt.*[3]

The Constitution, through the way of lists under VII Schedule, grants the appropriate Legislature to make laws with respect to Contempt. **Entry 77 List I** empowers the Parliament to make any law relating to the Contempt of any Supreme Court. **Entry 14 of List III** empowers the Parliament and the State Legislature both to make laws w.r.t. Contempt of any Court, except Supreme Court.

In this regard, the Parliament enacted the **Contempt of Courts Act, 1971.** This is major legislation in Contempt. Under S. 23 of this Act, Rules to regulate proceeding for Contempt of Supreme Court, 1975 and Contempt of Court Rules 1992 are made for further implementation.[4]

Last but not least, under the Indian Penal Code, 1860, Section 228 deals with intentional insult or interruption to public servants during the course of a judicial proceeding. Under this, the trial courts are empowered to punish for the interruption or insult of itself. Section 195 of the Code of Criminal Procedure 1973 states that the court cannot take cognisance of an offence under 228 IPC except when a complaint in writing is made by that trial court. After cognisance, Section 345 and 346 deal with the further procedure.[5]

**(C) What is Contempt?**

In India, Contempt is of two kinds: Civil Contempt and Criminal Contempt, S.2(1)(a). As per Section 2(1)(b), Civil Contempt means willful disobedience of judgement, decree, order, etc. or wilful breach of undertaking. Section 2(1)(c) defines Criminal Contempt is doing any of the following

i. Scandalising or Lowering the authority of the court
ii. Interfering with the course of Judicial Proceeding
iii. Interfering with Administration of Justice

Point ii requires interfering with judicial proceedings means causing annoyance or disturbance in a judicial proceeding. Point iii requires interference with the administration of justice like threatening or inducing the witness, giving false evidence, threatening the victim, etc. Both the points are very objective in nature. On the basis of evidence, the fact is established, and guilt is made out. However, point I is controversial as it requires proof that the statement resulted in scandalising/ lowering the authority of the court. Due to this, the decision of whether a statement did result in scandalisation or lowering the authority is subjective in nature and depends on the discretion of the judge. Due

[3] INDIA CONST. art. 142
[4] Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, Contempt of Courts Rules 1992
[5] Code of Criminal Procedure 1973, No. 2, Acts of Parliament, 1973

to this, this project puts a major emphasis on the judicial approach with respect to point iii.

The word scandalises has been explained in *P. N Duda v. Shiv Shankar and Others*[6] and *C.K. Daphtaray Case*; in these cases, the word scandalises was interpreted. Scandalises means to attack the judiciary or a judge as a judge and not as a person. It does not include scandalise judge as a person; wrt his personal life in such cases, it is not Contempt.

One of the important points of analysis here is that in Civil Contempt, disobedience should be wilful, whereas this is not required in Criminal Contempt. Hence, when it comes to Criminal Contempt, the standard of proof is less as compared to Civil Contempt. This goes against the very cardinal principle of proof in Civil and Criminal Cases, which requires a higher standard of proof in criminal cases.[7]

**(D) Who has the power to initiate the proceeding?**

S 15 of the Contempt of Courts Act, the High Court or the Supreme Court can take cognisance of Contempt in the following manner

- Suo Motu
- Motion made by Advocate General or any person with consent in writing of Advocate General(or in case of Delhi Law officer designated by Central Government's notification)

As per Section 22, the Contempt of Courts Act is "in addition" and not "in derogation" of other Acts for the time being in force. Due to this, the Supreme Court can punish for Contempt under Article 142 also.[8]

**(E) What can be ordered**

After the charge of Contempt is proved, the contemnor can be punished

| Statute | Punisment |
|---|---|
| Section 12 Contempt of Courts Act | Maximum imprisonment of 6 months or fine of 2000 rupees |
| Article 142 | The court can pass any order in the "interest of justice." Under this, the court can basically order anything |

**(F) Defences available**

Under the Contempt of Court Act, the following defences are available

- Innocent publication[9]
- Fair and accurate report of a judicial proceeding[10]

[6] AIR 1988 SC 1208

[7] In Criminal Trial, the proof beyond reasonable doubt is required. In Civil Trial, the principle of balance of probability is applied which requires just a proof of possibility.

[8] Under Article 142(2) the Supreme Court has power to order

i. discovery and production of document or
ii. investigation or
iii. punish for contempt of itself

[9] The Contempt of Courts Act, 1971, No.70, Acts of Parliament,1971, S. 3

[10] The Contempt of Courts Act, 1971, No.70, Acts of Parliament,1971, S. 4

- Fair criticism of merits of a decided case[11]
- Court is satisfied that the nature of Contempt is such that it does not exist substantially interferes with due course of justice[12]
- Truth as a defence can be allowed by the court if the court is satisfied that
    - truthful Contempt is made in public interest and
    - in bona fide manner[13]
- Contempt of Nyaya Panchayat or village courts[14]

## III. JUDICIAL APPROACH

### (A) Important Principles

In *R Mulegaonkar case*,[15] *Justice Krishna Iyer* gave the following set of guidelines for the judge to follow

i. Wise economic use of contempt jurisdiction. This court may ignore "majestic liberalism" trifling and menial offences. He said, "the dogs may bark the caravan will pass."

ii. There must be Harmonious interpretation of constitutional values, i.e. Right to Free criticism and Reasonable restriction under 19(2)

iii. Must avoid confusion between personal protection of libelled judge and prevention of obstruction of public justice.

iv. Media being the fourth estate of a democracy, it should be given an atmosphere of free space, including in critical attention of courts, supreme court, etc., within the responsible limits.

v. Even when distortion and criticism overstep their limit, the judges must not be hypersensitive while dealing with such cases. Oversensitivity may disturb free speech

vi. After evaluating the above points, if the statement is still scurrilous, offensive, intimidatory, or malicious and beyond condonable limits, then only he can be punished for Contempt.

In *Baradakanta Mishra v. the State of Orissa*,[16] the court gave the following important principles:

i. Firstly, one must check whether the scandalisation of the judge is as a judge or as an individual. If it is as an individual, then it will not be a case of Contempt. In this, the court relied on the case of *Queen v. Gray*. Further, the court clarified if it is criticism of a judge "as a judge," then the court must exercise the contempt power *"scrupulous care",* and in cases *"beyond reasonable doubt"*, only the conviction can take place.

[11] The Contempt of Courts Act, 1971, No.70, Acts of Parliament,1971, S. 5
[12] The Contempt of Courts Act, 1971, No.70, Acts of Parliament,1971, S. 13(1)(a)
[13] The Contempt of Courts (Amendment)Act, 2006, No.6, Acts of Parliament,2006, S. 2. The amendment added, S. 13(1)(b) in 1971 Act
[14] The Contempt of Courts Act, 1971, No.70, Acts of Parliament,1971, S. 21
[15] AIR 1978 SC 727
[16] (1974), 1 SCC 374

ii. Secondly, the degree of harm in respect to the administration of justice must be seen. If the harm or effect is slight, then the court should not exercise contempt power.

iii. Further, to uphold the dignity of the judge, the judge must rely on their own conduct

iv. The power of Contempt may exist with respect to administrative acts of the judge. Here, the test is whether the Contempt affects the administration of justice or not.

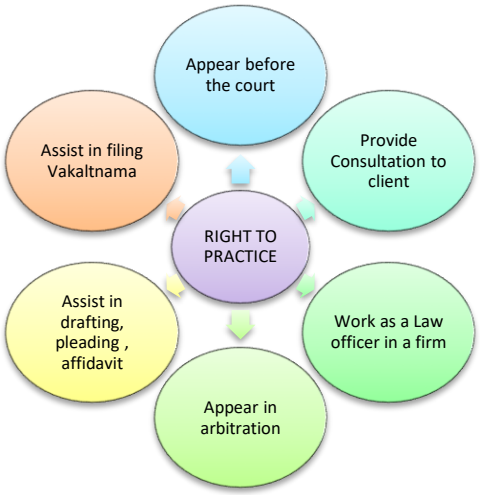
**(B) Powers in Contempt Cases**

Although under the Contempt of Courts Act, 1971, the Supreme Court or the High Court may punish with a maximum sentence of 6 months. However, under Article 142, it has wide powers to order any form of punishment depending on the nature of the contempt case. Here an important question arises, whether the court can bar the license of an advocate while exercising its contempt jurisdiction?

Grant or withdrawal of an advocate's license is the function of the Bar Council of India (BCI) under the Advocates Act, 1961. Under the Act, the license may be withdrawn by BCI through disciplinary proceedings for "professional misconduct." Hence, the question lies can the Supreme Court take away the license of an advocate while exercising contempt power. In the *Vinay Chandra Mishra case*,[17] the court suspended the license of an advocate for three years. Later this was challenged in *Supreme Court Bar Association v. Union of India.*[18]The court *overruled Vinay Mishra Case* and held that the Supreme Court could not take away the license of an advocate as it is the function of BCI. While exercising power under 142 r/w 129 of the Constitution, the court cannot supersede its limit and usurp the functions fixed by a statute. However, it was clarified that the court has the power to bar appearance in the courtroom of the contemnor advocate.

Suspension or revocation of license is different from preventing appearance from the court. Within the courtroom, the court has all power of supervision of conduct. Hence, it may pass an order to exclude a particular advocate from appearing. Hence withdrawal or suspension of license is within the domain of Bar but ensuring conduct inside the courtroom remains within the domain of the court. These two powers are different; the jurisdiction is different, their source is different, and also their procedure is different. In *Harish Uppal v. Union of India,*[19] the difference between barring appearance and suspension of license was made out. Barring appearance from the court does not mean complete termination of practice. The advocate may perform all other functions such as providing consultation to clients, drafting and pleading, participating in conferences, working as a law officer in a firm, etc.

[17] (1995) 2 SCC 58
[18] 1998(4) SCC 409
[19] (2003) 2 SCC 45




Hence from the diagram, it is clear that appearance in the courtroom is one of the functions of an advocate. This one aspect is controlled by the court. When the license is suspended by the Bar, the entire right to practice is taken away.

This was further clarified by *Bar Council v. the State of Kerela*.[20]In this case, Rule 11 of High Court Rules, which empowered the High Court to bar the appearance of an advocate if found guilty of Contempt, was challenged. The Bar contended that such rules trespasses their power. The court held that the rules are valid as conduct inside the court can be regulated by the court and not BCI. As the two jurisdictions are different hence when the court debars appearance, it does not transgress upon the power of the Bar. It also relied on *Pravin Shah v. Mohammed Ali*,[21] in which it was stated that Rule 11 is in respect to Contempt of court and not all forms of professional misconduct. Hence court has the power.

In this, it must also be kept in mind that the court may debar the appearance of an advocate in exercising of power under Contempt only and not for other powers. This was held in *Muthukrishnan v. Registrar General*.[22] Recently the court barred the appearance of the advocate in a contempt case. These were *R.K.Anand v. Registrar*[23] and *Re Nedumpara case*.[24]

### (C) Recent Cases

***Re Nedumpara and Re Vijay Kurle case*[25]**

In the case of *Indira Jaising v. Supreme Court of India*, the court gave various directions in respect to the designation of an advocate as a "Senior Advocate." From this judgement, a review petition was filed, and it was heard by the bench of *Justice Nariman* and *Justice Saran*. While hearing this petition, the advocate Nedumpara made the following remark, "Judges of the court are wholly unfit to designate persons as Senior Advocate as they only designate Judges' relatives as Senior Advocate." In this, he pointed out the name of *Shri Fali S. Nariman*. The court took these remarks as Contempt and took suo motu cognisance of the matter. It said this was an attempt to "browbeat" Justice Nariman. As a punishment, he was imprisoned for 3 yrs and was barred from appearing before the court for 1 year. This was *Re Nedumpara Case.*

After this, the following people i) Vijay Kurle: President of Maharashtra Bar Association, ii) Rashid Khan: National Secretary of Human Rights Council, iii) Nedumpara and iv) Nilesh Ojha: Advocate, wrote two letters addressed to

[20] (2004) 6 SCC 311
[21] (2001) 8 SCC 650
[22] AIR 2019 SC 849
[23] (2009) 8 SCC 106
[24] Suo Motu Contempt Petition (CRL.) No. 1 OF 2019
[25] (2019) 9 SCC 521

Chief Justice of India and President. In this, they opposed the sentence passed against Nedumpara. In the letter, the main points are summarised as follows: The judges were not empowered to take cognisance, proper procedure was not followed, Nedumpara's action was not mala fide as he did not give a proper explanation to save J Nariman from being exposed. While passing the order, the court has used material in its personal knowledge without disclosing the source. Nedumpara denied his role in the letter hence was discharged.

On April 27 2020, the three advocates were found guilty of Contempt, and on May 4 2020, a sentence of 3 months imprisonment with a fine of 2000 rupees was imposed. This was decided by a bench of *Justice Deepak Gupta*. The court considered the letter as scandalous and a "proxy war" for Nedumpara. Later, based on these orders, some applications to call back the orders were made. Then again, a review of the judgment was filed. In the review petition, *Justice Nageshwara Rao* and *Justice Amitava Bose* dismissed the petition. The bench considered it as an attempt to abuse the process of law and hence imposed an exemplary cost of Rs. 15000.

***Prashant Bhushan case***[26]

This case relates to contempt proceedings against Senior Advocate *Prashant Bhushan* for two tweets he made on June 29, 2020. In the first Tweet, he said that the CJI rides a 30 Lakh Motorcycle of a BJP leader without wearing a mask or helmet, while he kept the Supreme Court closed and denied the fundamental rights. According to the second tweet, the destruction of democracy was mainly due to the Supreme Court's role in the past 6 years (especially of the last four CJI). In response to the tweet, *Mahek Maheshwari* filed a complaint; however, as the complainant was "other person", u. s. 15, and there was no consent of the Attorney General. Hence the cognisance was questioned. In this, the administrative side of the court allowed the listing, and the matter was put before the bench. The bench, on 22.7.2020, observed that the tweets scandalised the judicial institution, especially the office of the Chief Justice of India. It considered it grave and ordered for taking *suo motu* cognisance of the case.

*Shri Dave* raised a preliminary objection that since the present proceedings were initiated by a petition filed by *Mr Maheshwari*, it cannot be treated as a *suo motu* contempt petition. Here, the consent of the Attorney General was not obtained. It was held that courts could deal with contempt proceeding *suo motu* under Article 129. The court observed that Section 15 of Contempt of Courts Act, 1971(COCA, 1971) is not the source of power relating to Contempt. It gives a mere procedure of taking cognisance. The court held that the "source of power" in Contempt derives from Article 129, which is a constitutional remedy. The Supreme Court relied on two recent decisions of the hon'ble court, namely: *National Lawyers Campaign for Judicial Transparency and Reforms and others vs. Union of India and others*[27] and *Re: Vijay Kurle & Ors(2020)*[28] In these cases, the court

[26] 2019 SCC Online SC 411
[27] 2019 SCC Online SC 411
[28] Supra 24

undertook suo motu contempt proceedings against advocates.

The court held that both the tweets were very well within the ambit of Contempt. The court relied on observations in past judgements. In this, the nature, purpose & interpretation of Contempt was analysed. Relying on this, the court concluded that Article 19(1) protects free speech and expression, but this right is subject to restrictions under 19(2). Hence, if an individual passes his limits and scandalises, then the court will not remain a silent spectator. As far as fair criticism is concerned, the court relied on the following legal point:

As submitted by *Shri Dave*, relying on the observation made *by Krishna Iyer, J*, in the case of *Baradakanta Mishra* (supra), if constructive criticism is made in order to enable systemic correction in the system, the court would not invoke the contempt jurisdiction. However, as observed by the same learned judge in *Re: S. Mulgaokar*, the court will act with seriousness and severity where justice is jeopardised by a gross and/or unfounded attack on the judges and where the attack is calculated to obstruct or destroy the judicial process. *Justice Krishna Iyer* further observed that after evaluating the totality of factors, if the court considers the attack on the Judge or Judges to be scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike a blow on him, who challenges the supremacy of the rule of law by fouling its source and stream.

The court held that it was not a bona fide statement as

- The extent of publication is very wide as Twitter is an online platform
- The contemnor is an experienced advocate with an established practice of more than 30 yrs. Hence he should have been aware of protecting the

*First Tweet*

In the first tweet, the court concluded that the first part was that 'CJI rides a 50 lakh motorcycle belonging to a BJP leader at Raj Bhavan, Nagpur without a mask or helmet'. It could be a criticism against CJI as an individual and not as CJI. However, the second part 'at a time when he keeps the SC in lockdown mode denying citizens their fundamental rights to access justice'. Undisputedly, the said part of the statement criticises the CJI in his capacity as the Chief Justice of India, i.e. the Administrative Head of the judiciary of the country. The court concluded that the said tweet is capable of giving an impression to a layman, that it has kept the Supreme Court in lockdown and hence denied fundamental right to access justice. It further observed that (i) At that time, the court was on vacation, (ii) Even in lockdown, the virtual proceedings were held, and in some matters, even the contemnor appeared as a pleader. Hence, the statements made in the tweet were factually incorrect and scurrilous.

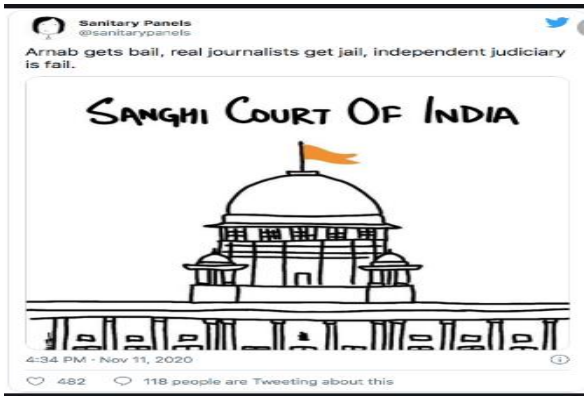
*Second Tweet*

The court concluded that the highlighter part is directed against the Supreme Court, tending to give an impression that the Supreme Court has a particular role in the destruction of democracy in

the last six years and the last four CJIs had a more particular role in the same.

***Rachita Taneja case*[29]**

The contemnor made following caricatures and tweets w.r.t. Supreme Court. In the contempt petition, the Attorney General granted consent in this case. The matter is yet to be decided.


***Kunal Kamra Case*[30]**

After *Arnab Goswami's* interim bail, comedian *Kunal Kamra* made a series of tweets against the Supreme Court. The Attorney General granted consent and considered such tweet *"highly objectionable."* According to Attorney General, "people believe they can boldly and brazenly condemn the Supreme Court of India and its judges by exercising free speech." They can't do so. Free speech is subject to a ground of Contempt. In the affidavit, Kamra pointed out, "My tweets were not published with the intention of diminishing the faith of the people in the highest court of our democracy. It is funny, though, how little faith the Petitioner appears to have in the people of this country. The suggestion that my tweets could shake the foundations of the most powerful court in the world is an overestimation of my abilities. Just as the Supreme Court values the faith the public places in it (and seeks to protect it by the exercise of its criminal contempt jurisdiction in the judiciary is founded on the institution's own actions and not on any criticism or commentary about it…I believe that constitutional offices, including judicial offices — know no protection from jokes. I do not believe that any high authority, including judges, would find themselves unable to discharge their duties only on account of being the subject of satire or comedy,"


[29] 'Foundation Of Supreme Court Is Much Stronger, Criticism Can Never Be Contempt: Mukul Rohatgi Submits For Rachita Taneja' (2021), Live Law Network, available at https://www.livelaw.in/top-stories/rachita-taneja-sanitary-panels-contempt-of-court-supreme-court-169077 (last accessed on 15 April 2021)

[30] Srishti Ojha, *Kunal Kamra's 'Scandalous Tweets' Can't Be Labelled Jokes; They Undermine Public Faith In Judiciary : Law Student's Rejoinder In Supreme Court* (2021), LIVE LAW NETWORK (Apr. 26 2021, 7:30 PM), https://www.livelaw.in/top-stories/kunal-kamras-scandalous-tweets-cant-be-labelled-jokes-they-undermine-public-faith-in-judiciary-law-students-rejoinder-in-supreme-court-171128


The matter is pending before the Supreme Court.

***Justice Ranjan Gogoi's contempt case***[31]

Former Chief Justice of India and nominated member of Rajya Sabha made the following statements about the Supreme Court.

- "You want a 5 trillion dollar economy, but you have a ramshackle judiciary",
- "If you were to go to the court, you would be only washing your dirty linen in the court; you won't get a verdict. I have no hesitation in saying it",
- "Only corporations willing to take chances with their millions of rupees go to Supreme Court."
- "the judicial system has not worked for more reason than one",
- "Unfortunately, there are many judges who are succumbing to criticism made in media".

In this regard, consent of the Attorney General was requested. However, despite the statements being prima facilely contumacious, the Attorney General refused to consent. According to him, these statements were made to cite his *'deep frustration with the ills that undoubtedly beset the justice delivery system.'* Attorney General also said that whatever was said by Justice Gogoi was for the purpose of the good of the institution and will not in any manner scandalise the court or lower its authority in public eyes.

## IV. ANALYSIS OF PROBLEMS

### (A) Preserving the sanctity of court, whether penalisation appropriate?

As held in *Re Mulegaongar, "constructive criticism"* should be permitted and *"every shadow that darkens"* must not be treated as Contempt.[32] Here an important question arises: Whether penalising is a proper course of action to prevent scandalisation of the image of a court, or are there other methods to preserve the authority of the court?

In this, one must analyse how the image, dignity or sanctity of a court is actually preserved in a legal system. A judgement consists of 'reason' and 'decision.' A judicial system backed by legal principles and rationality is always respected in society. For instance, when the Supreme Court recognised the rights of transgender to gender identity[33] and allowed consensual homosexual intercourse,[34] ensured equal rights of women in

[31]Shrishti Ojha, *For The Good Of The Institution": AG KK Venugopal Refuses Consent For Contempt Proceedings Against Former CJI Ranjan Gogoi* (2021), LIVE LAW, (Mar.30 2021, 2:00 PM)) https://www.livelaw.in/top-stories/cji-ranjan-gogoi-contempt-of-court-ag-kk-venugopal-saket-gokhale-170471

[32] Justice Krishna Iyer, Bardakanta Mishra supra

[33] National Legal Services Authority v. Union of India and Ors., (2014) 5 SCC 438.

[34] Navtej Singh Johar vs. UOI; Akkai Padmashali vs. UOI (2018) 10 SCC 1

armed forces[35] and naval forces,[36] allowed passive euthanasia,[37] etc. After these decisions, the headlines and people regarded the Supreme Court as the highest pedestal of justice in the real sense. Not only, in recent times, in history also, but cases like Maneka Gandhi, Keshavnanda Bharti, E.P Royappa have also brought utmost respect to the judicial system. Through better decisions, through the conduct of the judges itself, respect is revered

Apart from this, dissenting opinions have played a major role in preserving the dignity of the court. When the majority of judges upheld the mutual exclusivity theory of Fundamental rights, personal Liberty confined to physical Liberty, and procedure established by law means a procedural due process in Article 21, *Justice Fazl Ali* recognised that fundamental rights are inter-related and inter-connected, personal Liberty is not limited to physical Liberty, "procedure" under Article 21 means substantive due process.[38] Later, both these aspects were recognised and appreciated in the landmark *Maneka Gandhi v. Union of India.*

Today, in a digitalised world, the protection of privacy remains a big challenge. In 2017, in *Puttaswamy*,[39] the 9 Judge Bench very creatively brought forth the principles of privacy protection. It is wonderful to note that long back in the early 1970s, *Justice Subba Rao* in *Kharak Singh*[40] was able to recognise these principles, which have tremendous application in the current world. Liberty is one of the quintessential rights of a human. *Justice Khanna in ADM Jabalpur*[41] upheld this right at the cost of his Chief Justiceship.[42] Later on, his dissent was upheld by *Justice DY Chandrachud* in *Puttaswamy* when he overruled the majority judgement of ADM Jabalpur. In the 2020s, *Justice Chandrachud* has time and again spoken of the importance of dissent in the country. In recent times he gave very sound dissent in cases like *Sabarimala Review Petition, Aadhaar as Money Bill, etc*.

The point is all such impressive, and creative conduct brings respect and integrity in the true sense and not penalisation and punishment. Allowing constructive criticism of the judiciary itself brings respect rather than using a draconian law against individuals who exercise their free speech and punishing them for any statement they make against the judiciary.

Apart from this, one important point was mentioned by *Professor Faizan Mustafa*. He stated actual respect could be seen when the people obey the decree or order of the court. To ensure that the court must be proactive towards civil Contempt so that decrees are obeyed properly. However, the statistical data shows that more than a lakh of civil contempt cases are pending today.

Hence, the penalisation of people who criticise the judiciary might not be the only remedy. Other

[35] The Secretary, Ministry of Defence v. Babita Puniya & Ors. 2020 SCC OnLine SC 200
[36] Union of India v. Lt. Cdr. Annie Nagaraja & Ors. [2020 SCC OnLine SC 326]
[37] Common Cause v. Union of India (2018) 5 SCC 1
[38] A.K. Gopalan v. State of Madras AIR 1950 SC 27
[39] Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors. (2017) 10 SCC 1
[40] Kharak Singh vs The State Of U. P. 1963 AIR SC 1295
[41] ADM Jabalpur vs Shivkant Shukla (1976) 2 SCC 521
[42] Fali S. Nariman, Before Memory Fades, Hay House India, New Delhi (2010)

means like the conduct of a judge, ensuring proper execution of the decree, and if it is not followed, then strict civil contempt mechanism should be adopted. Hence, Section 2(c)(i) should either be fully removed, or it must be used in the rarest of the rare case only.

### (B) Subjectivity in Criminal Contempt Cases

***By the Supreme Court***

Another problem in Contempt cases is that there is a lot of subjectivity. Despite having legal principles and guidelines, ultimately, what amounts to scandalisation is at the sweet will of the court. Judicial discretion is there in many other cases as well. However, there is some sort of guidelines, principles or framework. However, in Contempt, one can observe a lot of variations and subjectivity.

The court has shown a highly conservative attitude and convicted people for Contempt in some cases, whereas in some cases, it has been too liberal.

| Highly Conservative approach | Highly Liberal approach |
|---|---|
| ***Mohammed Zahir Khan,***[43] **either I am anti-national, or the judges are anti-national**<br>**Held guilty of Contempt** | *P.N.Duda case,* the cabinet minster called Supreme Court Judges, anti-social elements, foreign exchange violaters, bride burners and reactionaries<br>Although this court acquitted him of Contempt |
| ***EMS Namboodripad,***[44] **here CM of Kerala, applied Marxist and Engels ideology for the judiciary and stated that it was an instrument of oppression and must wither away.**<br>**The court itself read the ideology and held him guilty of Contempt.** | |
| ***Vinay Chandra Mishra,***[45] **in this the license was suspended for 3 years** | |
| ***Nedumpara and Vijay Kurle(2019),***[46] **the court barred the appearance of an advocate from the court.** | |

[43] Mohammed Zahir Khan vs Vijai Singh and Others AIR 1992, SC 642
[44] E M Sankaran Namboodiripad vs T Narayanan Nambiar, 1971 SCR (1) 697
[45] Supra note 17
[46] Supra note 24 & 25

**By the Attorney General while Granting Consent**

An analysis of the consent of the Attorney General also reveals that there is a lot of variation in his approach while granting consent. In certain cases which prima facie appear to be a scandalising image of court, but still, consent is not given. Examples of such approaches include refusal of consent for cognisance of contempt cases in the matter of *Ranjan Gogoi's* statement in Rajya Sabha about the judiciary, Contempt against CM *Jeevan Reddy*. In the Rajya Sabha, the former Chief Justice of India made the following statements. However, he considered constructive criticism in social media by *Rachita Taneja* and *Kunal Kamra* as Contempt.

All this shows a high amount of subjectivity and biases in the approach of the Attorney General himself. Hence, the question is, can a person be convicted and penalised on the basis of such subjectivity and variations in approach. Can a person be penalised when an element of politics is also involved? From the theories of Penology, Victimology and Criminology, the answer is negative.

## V. SUGGESTIONS AND CONCLUSION

From the above analysis, it is concluded that contempt law is a controversial law not only because it is draconian and imposes a huge restriction on free speech but also because the approach does not seem to be uniform in all cases. Our criminal system works on the principles of presumption of innocence and proof beyond a reasonable doubt. However, in Contempt, the cognisance and the conviction both are left at the subjectivity of various authorities. In the light of this, the following suggestions are made,

i. Either we should adopt a liberal approach and do away with the contempt law as is done in the countries like the USA,

ii. or the cases must follow a uniform standard or guidelines in order to avoid biases and variations. In this, the conviction in Contempt should be done in extreme cases or in *"rarest of the rare case."*[47] As *Justice Krishna Iyer* said, the court must view contempt cases through the dimension of *"majestic liberalism."*

Recently, Justice Madan Lokur stated, *"There should be no criminal contempt. Judges should not be hyper-sensitive about everything. If the criticism is well-founded, then it is fine. Even if it is not, forget about it! There are so many things in life!."*

At the end of the day, the reputation of the court and the image is maintained not by penalising every criticism but by taking such criticism or dissent in a positive manner and improving the work. Ultimately, it is the judgements and the actions of the court which lead to its respect and integrity.

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[47] Bachan Singh v State of Punjab (1980) 2 SCC 684