
FREEDOM OF EXPRESSION VS. CONTEMPT OF COURT: A BALANCING ACT

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ABSTRACT

Freedom of expression is that fundamental right on which democratic governance thrives. It empowers people to voice their opinions, criticize institutions, and make the power that is rendered accountable. On the other side, contempt of court is a situation where a person or organization gets dismissed for disrespecting the court, as judged to have shown disrespect towards court proceedings. Nevertheless, however vital this right may be, the judiciary, being one of the fundamental officers in the enforcement of the rule of law and the delivery of justice, cannot be without contempt of court, which covers scandalising the judiciary, to protect the authority and dignity of judicial institutions to maintain public confidence in the law.

This balance is even tougher when criticism targets what courts do or decide. Constructive criticism helps build transparency and accountability while unfounded attacks or lies strip away judicial credibility. Judicial restraint to make contempt powers available only where genuinely needed to maintain their integrity dictates that freedom of expression be protected so that an overly sensitive judiciary cannot silence legitimate discourse.

This discussion adds another layer because the digital platform and social media add more room for the spread of misinformation or defamation to be more uncontrollable. Globalization further adds another dimension as content can easily move across borders and national laws.

This balance may, however, be achieved by articulating contempt laws, exerting judicial restraint, and the responsible exercise of the media. Those things needed for the use of the two principles, truth as a defence in contempt cases, public education regarding both principles and international cooperation in regulating digital content should be given much importance. In the long run, this equilibrium is therefore well held to both freedom of speech and judicial integrity to stand in a successful democracy.

INTRODUCTION

Freedom of expression is that most important human right covered under the law systems of many countries, including the Indian Constitution under Article 19(1)(a). Indeed, it is the bedrock on which democratic societies flourish, allowing the community to not only voice its opinions but share information and actively participate in the discourse. Freedom of expression stands out as a great check against power: it encourages transparency, accountability, and citizen participation in governance. However, no freedoms are absolute in nature. They come with reasonable restrictions placed upon it in respect of protection of interests of the state, society, and other individuals. A classic example of such a restriction is that of the legal concept of contempt of court, which is a judicial mechanism meant to uphold dignity, authority, and efficacy of the judiciary.

Contempt of court means acts or words evincing disrespect or tendency to bring the authority of a court or its officers into disrespect, contumely, or disregard. In India, contempt is broadly classified into civil and criminal contempt. Wilful disobedience to any judgment, decree, or order of a court is termed as civil contempt. Criminal contempt is scandalizing or lowering authority of the judiciary, obstructing or interfering with judicial proceedings, or tending to obstruct or delay the administration of justice. The law concerning crimes of contempt in India is the Contempt of Courts Act 1971. This law basically sets that the judiciary should be run without any undue interference or disrespect in a manner that allows public confidence in its impartiality and authority.¹

Yet it has, for many years, been the subject of considerable contention regarding freedom of speech and contempt of court. The right to express views and even criticize the judiciary, in this context, forms a constituent part of any dynamic democracy. While criticism of judicial decisions is perfectly acceptable if it is fair and reasonable, any statement crosses into that boundary belittling the jurisdiction of the judicial system. This is not only the case, but there is, of course, an in-built tension between these two principles: protection of the dignity of courts on one hand and the right of citizens to criticize, debate, and scrutinize judicial decisions on

¹ Shobha Gupta, *Law Of Contempt Of Court- In A Face-Off With Right To Freedom Of Speech And Expression Which Includes Right Of Fair Criticism*, (Aug. 21, 2020), <https://www.livelaw.in/columns/law-of-contempt-of-court-in-a-face-off-with-right-to-freedom-of-speech-and-expression-which-includes-right-of-fair-criticism-161770>.

the other.

This very sensitive balancing act often makes the line between valid criticism and contemptuous acts very thin on the part of the courts. Of course, the judiciary does acknowledge that its criticism, if fair, is healthy, constructive, and crucial for improvement. Yet, what is fair criticism and what is contemptuous behaviour is very thin and subjective and incapable of being clearly distinguished. While determining whether what was said or done was contempt, the courts weigh the hurt caused to judicial authority with the right to free expression.

It has faced a number of cases with such an antinomy. Sometimes in landmark judgments, the Court has tried to strike such a delicate balance and found that while it cannot be immune to public criticism, any kind of criticism or obstruction of justice which is motivated by malice, scandal or to ventilate its contempt of the judiciary should be restrained. These are ample reasons the courts must be made accountable, although the authority or independence of such courts should not be undermined. This is very important for the health of democracy and the rule of law.

FREEDOM OF EXPRESSION IN INDIAN CONSTITUTION

Article 19(1)(a) of the Indian Constitution guards freedom of expression as a matter of right. Every citizen of this great nation has a right freely to express his opinions, ideas, and thoughts in speech, writing, or any manner whatsoever. This is the bedrock of democracy because people can take part in discussions in public forums and dissuade the government against unjust practices without fear of oppression.

This freedom of expression relating to communication involves the right to express opinions and access information. It is an essential component in ensuring openness and accountability in the governance of the State. It also reflects press freedom, which forms an integral part of democracy. Through the media, the public might acquire information about the steps being undertaken by the government, problems society has to face, and incidents going on in different parts of the world, thus participating in democratic processes more knowledgeably and proactively.

It, however, does not guarantee absolute freedom of speech. Article 19(2) puts reasonable

restrictions so that the rights guaranteed in it would not affect adversely the other interests in society or state. This is done to strike a balance between individual liberties and societal goodwill at large. Also, it will restrict the freedom of speech and expression in the interest of the sovereignty and integrity of India, security of state, friendly relations with foreign states, public order, decency or morality; or about contempt of court, defamation or incitement to an offence.

Freedom of speech is a thing of utmost importance in the pluralistic society of India, which harbours divergent views, culture, and beliefs. With its aid, it can easily achieve open debates on issues relating to governance, politics, social justice, or culture. However, it shall not undermine public order and national interest. It is an evolutionary right because judgment evolves along with changing social norms in the constitutional structure of India.²

CONTEMPT OF COURT ACT, 1971

This is an important legislation put in place by the Indian government to safeguard the authority and dignity of the courts. It refers to the definition and regulation of contempt of court so as to ensure that courts discharge their functions without obstruction and impediments and with full dignity. It is through this legislation that the law maintains public trust in the judicial system as part and parcel of the rule of law.

History of the Contempt of Courts Act, 1971:

The concept of contempt of court has origins in English common law which provided the foundation for the legal principles that India inherited during the British colonial period. Contempt of court was deemed to be vital in respect of the respect that judicial proceedings should be accorded and to ensure courts could function independently, not being intimidated from outside.³

In India, the contempt laws actually predated independence. In fact, the first Contempt of Courts Act was in 1926. However, this act was considered too narrow in defining exactly what

² *Freedom of Speech and Expression and Contempt of Court*, The Amikus Qriaie (Feb. 13, 2021), <https://theamikusqriaie.com/freedom-of-speech-and-expression-and-contempt-of-court/>.

³ *Law Commission of India Reports*, AdvocateKhoj

<https://www.advocatekhoj.com/library/lawreports/contemptofcourts/1.php?STitle=History+of+Contempt+of+Court+in+India>.

was defined as contempt of courts and not specific enough in laying out the processes to handle it. So the Contempt of Courts Act of 1952 was enacted to fill these holes, incorporating some improvements but much still leaving to be desired in the way of clarity and comprehensiveness.

The demand for a more strengthened and very comprehensive law resulted in the enactment of the Act called Contempt of Courts Act, 1971⁴, which now serves as the governing law on contempt in India. Recommendations of the Sanyal Committee, instituted in 1961, mainly to scrutinize the law on contempt and suggest amendments eventually became the foundation for the enactment of this Act. The 1971 Act consolidated and clarified the law by clearly defining contempt and outlining procedures for its observance.⁵

Importance of Contempt of Courts Act, 1971:

The importance of the Contempt of Courts Act, 1971, is that it safeguards the integrity as well as the authority of courts. Courts have a significant position in advancing the rule of law so that justice is provided and the rights and freedom of citizens are safeguarded. If courts are desecrated or power discredited, the legal system can collapse along with public confidence in the judiciary. Therefore, the Act gives courts protection from any interference or undue influence through its function. The types of contempt according to the Act refer to civil contempt and criminal contempt.⁶

Civil contempt includes wilful disobedience of any judgment, decree, direction, order or other processes of a court. It also includes a wilful breach of an undertaking given to a court.

Criminal contempt refers to acts that scandalize or lower the authority of court, prejudices, or interferes with judicial proceedings or obstructs the administration of justice. This includes: making scandalous or contemptuous remarks against judges, disrupting the conduct of court proceedings, or publishing materials that influence the outcome of a trial.⁷

⁴ <https://www.indiacode.nic.in/bitstream/123456789/1514/1/197170.pdf>

⁵ *The Historical Perspective Of The Contempt Of Courts In India*, <https://www.legalserviceindia.com/legal/article-2815-the-historical-perspective-of-the-contempt-of-courts-in-india.html>.

⁶ <https://www.manoramayearbook.in/india/special-articles/2020/09/02/contempt-of-court-in-india.html>

⁷ *Power of Contempt: Divine Origin, Colonial Evolution, and Judicial Devolution*, SCC Times (July 5, 2022), <https://www.scconline.com/blog/post/2022/07/05/power-of-contempt-divine-origin-colonial-evolution-and-judicial-devolution/>.

The Act allows courts to put contempt into imprisonment and also to fines. And so, it gives the provisions teeth, and judicial decisions are complied with.

Rationale and Need for the Contempt of Courts Act:

The Contempt of Courts Act is needed to make judges and courts free from intimidation, disrespect, and undue pressure so that an independent judiciary and thus the very core of democracy may be ensured. The judicial process may get compromised without such protection, as it can lead to improper decisions and miscarriage of justice and further resultant erosion of trust in the legal system by people.

The Act also ensures court orders are obeyed and followed to the letter. If people were allowed to disregard court orders, then the intended goal of the judicial system would be defeated. The law helps in the observance of the legal rulings and makes it effortless for the courts to execute their verdicts effectively.

Further, it prevents obstruction of the administration of justice. For example, prejudging the outcome of pending court cases through print in the media or making accusations that are unfounded against the judiciary would influence the outcome of cases. Providing penalties to this effect, the Act ensures justice delivery is fair and without bias.

INTERPRETATION AND APPLICATION

The Contempt of Courts Act was indeed subjected to serious judicial scrutiny in the years immediately following its enactment. Early years of judicial interpretation: During these years, courts began to put flesh and substance into the "what is contempt" and "when can contempt be instituted" issue.

However, the judgment in *Re: Arundhati Roy* (2002) produced as much heat as light. The Supreme Court ruled that statements scandalizing the judiciary could be contempt. The court emphasized that even though Article 19(1)(a) of the Constitution protects freedom of speech and expression, this freedom cannot be absolute, and statements insulting the authority of the judiciary will not be tolerated. The present case would be an example of how free speech clashes with the dignity courts of law are supposed to carry.

The courts have recognized, however, that there must be some balance: The Supreme Court, in *Brahma Prakash Sharma v. State of Uttar Pradesh* (1953), held that not all criticism of the judiciary amounts to contempt. The Court further postulated that fair criticism of a judgment does not amount to contempt if the administration of justice is not impaired and the functioning of the court is not interfered with. This judgment has been used up until this day to set apart fair critique and contempt.

2006 Amendment: Accountability Toughened:

One of the landmark developments in the history of the Contempt of Courts Act was, of course, the amendment of 2006, enacted straight on the back of misuse concerns relating to how the contempt law was being used. This amendment brought into position the defence of "truth" relating to contempt proceedings, as long as the statement had been made in good faith in the public interest rather than by a motive to scandalize the court itself.⁸

This amendment was, therefore, important in bringing out a balance between judicial accountability and the protection of its authority. Before this amendment, truth could not be used as a defence; that is, even a factually correct statement that criticized the court would still have attracted contempt charges. The amendment of 2006 thus opened up the channels for greater transparency and allowed legitimate criticism, so long as this criticism was done in good faith and for public interest.

Evolving Context: Contempt, Media, and Social Media:

The judiciary-media relationship recently gained more visible significance in the development process of the Contempt of Courts Act. Digitalization and growing social media create new challenges in handling contempt by courts. Due to the more widespread use of social media, the public has developed increased criticism against the judiciary, resulting in various instances wherein such comments in the form of online material led to contempt cases being filed against them for the comments.

The recent high-profile cases include lawyer and activist Prashant Bhushan in 2020, held in contempt of court by the Supreme Court, citing his tweets that criticized the judiciary. The

⁸ Dr. Vidyottma Jha, *Freedom of speech & expression and the contempt of court: An analysis*, LawArticle (Dec. 8, 2020), <https://lawarticle.in/analysis/freedom-of-speech-and-contempt-of-court/>.

Supreme Court said that his comments are scandalous to a degree whereby they might shake public confidence in the judicial system. And yet, it again posed a question on the contours of contempt law and whether it infringes the right to freedom of speech, which, in the new social media platforms, opinions are hurled about with very little inhibitions.

The Bhushan case is yet another that goes to show that the Contempt of Courts Act accommodates bends to the changing digital landscape-the fine line of what constitutes just criticism, and what amounts to contempt keeps getting thinner.

INTERNATIONAL PERSPECTIVES ON THE OFFENCE OF SCANDALISING THE COURT: A COMPARATIVE ANALYSIS OF LEGAL FRAMEWORKS

Traditionally scandalising the court was a criminal contempt aimed at protecting the dignity and authority of the judiciary by penalising action or speech, which, from the public's viewpoint, jeopardized public confidence in the judicial system. However, in recent centuries, many legal systems have reassessed the offence in light of changing social values, most strikingly of course, the increase in the importance of freedom of speech and the role of public scrutiny in a democratic process. Each country took a different response towards scandalising the court. Some retained it as an indispensable arm of the arsenal for the defence of judicial power, while others abolished or restricted it, due to an enlightened realization of the need for free speech.

• United Kingdom:

A country that gave rise to the common law offence of scandalising the court, the UK has travelled a long way from the original stand it had on this matter. Having always been interested in an offence meant to prevent statements as proved to have maltreated and undermined the judiciary, the UK went considerably away, largely due to the contention with the free speech rights, from prosecuting individuals for scandalising the court over the years.

Another landmark case was **R v. Gray (1900)**, in which a conviction for contempt of the newspaper editor was imposed, as he published an article criticizing the judge. The court relied upon the doctrine that scandalizing the court was a species of contempt for the reason that it

conflicted with public confidence within the judicial structure.⁹ However, this time the offence has become regarded as archaic. The UK formally abolished the offence of scandalising the court by passing the Crime and Courts Act in 2013 based on recommendations made by the Law Commission which advocated that in a modern democratic society, the said offence no longer serves its purpose.¹⁰

The report further argued that the judiciary should not be spared from criticism and criticism; the laws as of then which dealt with defamation and incitement were enough to check any threats to judicial dignity. The abolition thus constituted a turning point in deciding between protecting judicial dignity and freedom of expression, in this case, with the UK side marking the latter.

- **United States:**

The United States does not recognize scandalising the court as a distinct offence. The U.S. legal system accords great value to freedom of speech protected under the First Amendment of the U.S. Constitution. The judiciary is generally subjected to public scrutiny, and criticism of judges or judicial decisions forms a part and parcel of the democratic process.¹¹

In **Bridges v. California, 1941**, the U.S. Supreme Court held that charges of contempt for comment about then-pending litigation have to meet a high standard lest they violate the right of free speech. The Court ruled that the dignity of the judiciary should not be protected at the expense of constitutional freedoms and declared public debate of judicial decision-making to be essential in a democratic society.¹²

The New York Times Co. v. Sullivan (1964) solidified the principle that public figures, such as judges have to tolerate derogatory speech also. The Supreme Court held that discussion on public affairs should be "uninhibited, robust, and wide-open," particularly regarding officers

⁹ *Contempt of Court: A Global Comparison*, <https://www.legalserviceindia.com/legal/article-6264-contempt-of-court-a-global-comparison.html>.

¹⁰ <https://www.article19.org/data/files/pdfs/publications/foe-and-contempt-of-court.pdf>.

¹¹ Full Bio, *Contempt of Court: Definition, Essential Elements, and Example*, (July 15, 1955), <https://www.investopedia.com/terms/c/contempt-court.asp>.

¹² U.S. Supreme Court, *BRIDGES v. STATE OF CALIFORNIA. TIMES-MIRROR CO. et al. v. SUPERIOR COURT OF STATE OF CALIFORNIA, IN AND FOR LOS ANGELES COUNTY.*, US Law (Oct. 13, 1941), <https://www.law.cornell.edu/supremecourt/text/314/252>.

of government. This decision reflects the U.S. position, which strongly advocates freedom of speech rather than protection of judicial authority against scandalization.¹³

- **Australia:**

Australia retains the offence of scandalising the court, although its application has changed. In **R v. Dunbabin; Ex parte Williams (1935)**, the High Court of Australia convicted a newspaper editor for contempt after publishing articles attacking the judiciary. The Court held it necessary to maintain public confidence in the administration of justice.¹⁴

On the other hand, **Attorney-General (NSW) v. Munday (1972)** was a landmark development of the New South Wales Court of Appeal, holding that public criticism of the judiciary is permissible on the general premise that it would not negatively affect the administration of justice. This judgment shifted big time towards allowing free speech in judicial review but retaining scandalising of court offence for extreme cases.¹⁵

- **Canada:**

In Canada, scandalising the court remains on the statute book, but is used only in the most exceptional circumstances. The Canadian courts recognized the need to balance Section 2(b) of the Canadian Charter of Rights and Freedoms on freedom of expression with the requirement for respect of the courts.

R v. Kopyto (1987) is considered by the Ontario Court of Appeal whether scandalising the court could be compatible with the Charter. In this case, the lawyer against whom the judgment was pronounced took up criticizing the judiciary. The Court ruled that free speech would protect the courts' criticism but at the same time, contempt charges would be justified, if such criticism badly affected the administration of justice. It represented the case study of Canada's cautious approach towards developing scandalising the court as an offence.¹⁶

¹³ *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), Justia U.S. Supreme Court Center <https://supreme.justia.com/cases/federal/us/376/254/>.

¹⁴ <https://classic.austlii.edu.au/au/journals/MelbULawRw/1985/18.pdf>.

¹⁵ *410 Gone*, <http://classic.austlii.edu.au/au/journals/DeakinLawRw/2003/6.html>.

¹⁶ (Apr. 25, 2013), <https://clp.law.utoronto.ca/sites/clp.law.utoronto.ca/files/documents/Criticizing-the-Court-The-Limits.pdf>.

- **India:**

Similar to most other common law countries, India borrowed the offence of scandalising the court from British law. Indian contempt law is governed by the Contempt of Courts Act, of 1971 and criminal contempt includes scandalising the court. Indian courts have been keen to safeguard the need for the protection of dignity within courts but have struggled to balance it with Article 19(1)(a) of the Constitution which protects freedom of speech.

C.K. Daphtary v. O.P. Gupta (1971):

This is one of the earliest judgments and quite a landmark on the issue of contempt of court involving the media. The Supreme Court declared that making scandalous allegations against judges or the judiciary itself amounts to contempt of court as that undermines public confidence in the judiciary. Nevertheless, fair criticism of judicial decisions is permissible but personal attacks against the judges are not permissible.¹⁷

Re: P.C. Sen (1969):

In the case of P.C. Sen, then Chief Minister of West Bengal, the Supreme Court held that the speech made by him was contempt of court for commenting upon the sub-judice matter, prejudicial to the administration of justice. The judgment went on to record the dictum that any public comment about a case pending before it may be well construed as contempt if it obstructs the due process of law.¹⁸

Sahara India Real Estate Corp. v. SEBI (2012):

In the case, it was contended that the media was restrained from reporting on sub-judice matters. The Supreme Court held that even though the right to see through transparency has much to do with the media, freedom of the press would have to be balanced against the right to a fair trial. The courts then established "postponement orders whereby courts may temporarily restrain reports by the media on sub-judice matters for ensuring the fairness of the

¹⁷ *Eastern Book Company*, Practical Lawyer <https://www.ebc-india.com/lawyer/articles/2003v4a2.htm>.

¹⁸ *In Re: P.C. Sen Vs*, Legal Authority <https://www.legalauthority.in/judgement/in-re-p-c-sen-vs-35384>.

trial.¹⁹

The most significant case in which media houses were held in contempt is In Re: **Harijai Singh & Anr. (1996)**. Here, the Supreme Court held two journalists, Harijai Singh and R. K. Karanjia of the Blitz Magazine, committed criminal contempt in publishing patently incorrect and misleading reports about the dealing of the court with a medical admission case. The Court concluded that the articles were not only factually wrong but had the potency to dent public confidence in the judiciary as it implied that the court was not impartial. The judgment underlines that although the media acquires a crucial status in revealing transparency, its freedom cannot be extended to the extent of scandalizing the judiciary and threatening its dignity and authority.²⁰

Such was the case of Re: **Arundhati Roy (2002)**, in which the Supreme Court convicted the author of criminal contempt for her comments criticizing the judiciary. The Court held that comments which would have the effect of scandalizing the court or undermining public confidence in its authority had the potential to scandalize the judiciary. The decision faced much criticism for curbing free speech as it raised the question of whether the offence of scandalising the court should continue in a democratic society.²¹

More recently, in **Prashant Bhushan's case (2020)**, the Supreme Court held the lawyer in contempt for his tweets criticizing the judiciary. Though Bhushan's case reignited debates about the limits of free speech in India, the Court remained firm on the principle that criticism, if fair, cannot be contemptuous, and yet it is not possible to allow any attempt to scandalize or lower the authority of the judiciary. This is the case of tension between judicial dignity and freedom of expression in India.²²

¹⁹ Aounkar Anand, *Case Comment: Sahara India Real Estate Corporation Ltd. and Others v. Securities and Exchange Board of India and Another*, MANU/SC/0735/2012, RostrumLegal (Apr. 8, 2023), <https://www.rostrumlegal.com/case-comment-sahara-india-real-estate-corporation-ltd-and-others-v-securities-and-exchange-board-of-india-and-another-manu-sc-0735-2012/>.

²⁰ *Trial by Media free speech and fair trial under Criminal Procedure Code*, Law Library <https://www.advocatekhaj.com/library/lawreports/trialbymediafreespeech/16.php?Title=Trial%20by%20Media%20free%20speech%20and%20fair%20trial%20under%20Criminal%20Procedure%20Code>.

²¹ Dr. Vidyottma Jha, *Freedom of speech & expression and the contempt of court: An analysis*, LawArticle (Dec. 8, 2020), <https://lawarticle.in/analysis/freedom-of-speech-and-contempt-of-court/>.

²² *Compatibility of the Contempt of Court with International Standards*, (Sept. 2, 2020), <https://www.drishitias.com/daily-updates/daily-news-analysis/compatibility-of-the-contempt-of-court-with-international-standards>.

CHALLENGES IN THE MODERN LANDSCAPE

Digital and social media have brought in new challenges to the enforcement of contempt of court laws. What was once deemed more effective in preventing or controlling material that a court finds prejudicial now becomes obnoxiously cumbersome—the ability of digital platforms to immediately, instantly disseminate information across the globe.²³

Social Media:

Twitter, Facebook, and Instagram have transformed communication by giving people an edge in rapidly delivering information. Of course, since these sites are not controlled in any way, content that is contemptuous spreads before the court has any say in it. Social media throws another thick hurdle to the anonymity with which those who may post or publish malignant content, which can be troublesome to trace and therefore hold accountable, It presents a significant challenge to courts to ensure that their judgment processes are not compromised.²⁴

Misinformation:

The most critical issue from this digital era is fake news and misinformation. Misinformation in the form of false or misleading facts relating to a case being dealt with by courts can spread rapidly and be highly influential in shaping public opinion so that it forms misconceptions about the judicial process, which can besmirch the reputation of the judiciary and impair its functioning. However, this problem can only be solved through collaborative action between law enforcers, social networking sites, and media regulatory authorities.²⁵

Globalization of Media:

The global aspect of new media has further blurred the limits of regulating vile content. Such great international cases are amenable to content created in one country to influence public opinion in another, well beyond national law reach. This extraterritorial factor makes contempt

²³ *Committee Reports*, <https://prsindia.org/policy/report-summaries/review-contempt-courts-act-1971>.

²⁴ *Critically Examining the Intersection of Media Coverage*, (June 12, 2024), <https://www.khuranaandkhurana.com/2024/06/12/critically-examining-the-intersection-of-media-coverage-and-freedom-of-expression-implications-for-judicial-integrity/>.

²⁵ Sharmeen Hakim, *Bombay High Court Issues Contempt Notices To Lawyer, Client For Seeking Judge's Recusal Based On 'Fabricated' News Clipping Against Him*, (Feb. 2, 2024), <https://www.livelaw.in/high-court/bombay-high-court/bombay-high-court-orders-contempt-proceedings-against-lawyers-using-fake-news-judge-recusal-248275>.

of court laws increasingly unenforceable because regulations in one country may not have the application for an individual or a media house based in another jurisdiction.²⁶

Instant public judgments:

Modern media further raises the challenge of the tendency of the public to do instant judgments regarding any legal matter. The quick-snap news or social media posts that depict the ongoing legal case with a one-sided approach leave behind only biased opinions even before the court gives its judgment. Such public sentiment puts too much pressure on the judiciary and can even sabotage the administration of justice. After all, the courts must remain fair, and an unchecked tsunami of public commentary online can make it impossible to remove or be blind to external influences altogether.

Erosion of Traditional Checks:

The speed at which news travels digitally has also eroded traditional checks that once controlled media behavior. Traditionally, there are journalistic standards and legal requirements that have to be observed by traditional media so that they may avoid contemptuous reporting. With the help of user-generated content, lines blur when talking about responsible journalism, as people and even online platforms are not fully aware of the legal implications in contempt. Consequently, contemptuous statements and coverage rise within crowds and regions.

With the new realms of digital and social media, undeniable advantages to communication and information are conveyed but have also presented many serious challenges to the judiciary. This therefore calls for more stringent regulatory frameworks, public awareness campaigns, as well as technological solutions to identify and curtail prejudicial content before it causes lasting harm to the judicial processes in this fast-paced media landscape.²⁷

BALANCING THE FREEDOM OF EXPRESSION AND JUDICIAL INTEGRITY

Whether democracy and the rule of law coexist depends significantly on achieving an equilibrium between freedom of expression and judicial integrity. Here are seven points that

²⁶ Aequitas Victoria, *Trial By Media: A Hindrance In The Path Of Justice And Fairness*, (Feb. 9, 2021), <https://www.aequivic.in/post/aijacla-trial-by-media-a-hindrance-in-the-path-of-justice-and-fairness>.

²⁷ *Just a moment...*, <https://lawbhoomi.com/contempt-of-court-in-media-law/>.

can help in striking the balance:

Clear Definition of Contempt:

While contempt laws should be clearly defined to handle the question of scandalising the court, it means that everybody is aware of the line beyond which no criticism is allowed. In this way, while upholding contempt, one does not allow arbitrary and excessive use of contempt powers to gag free speech.

Fair Criticism Should Be Allowed:

Judicial decisions and actions must be open to fair and reasonable criticism. After all, the whole point of meaningful criticism is to better the judicial process. So, criticism aimed at bettering should not be penalized, but it should be towards brightening the judicial process. Personal attacks or baseless allegations that dent the authority of the judiciary must then be weighed against such legitimate critique.²⁸

Truth as a Defence:

Truth as an acceptable defence under contempt proceedings was made possible through the 2006 amendment to the Indian Contempt of Courts Act so that individuals may submit factual criticism without the spectre of contempt charges. This would ensure public discourse is factual but protects judicial integrity.²⁹

Public Education and Media:

Educating the public and media about the limits of contempt and the importance of judicial integrity will also minimize instances of contemptuous content. Journalists and social media users have to know that their statements have serious implications on matters concerning the judiciary so that criticism is constructive and non-prejudicial.

TIGHTENING REGIMES OVER CYBERSPACE:

The regimes over these new media platforms or social media, for instance, can be effectively

²⁸ *Contempt of Court: Does Criticism Lower the Authority of the Judiciary?*, (Jan. 4, 2021), <https://www.epw.in/engage/article/contempt-court-does-criticism-lower-authority>.

²⁹ <https://jcil.lsyndicate.com/wp-content/uploads/2023/06/Research-Paper-Harshita-Nayan.pdf>.

tightened so that the diffusive spread of content showing contempt towards the court does not happen easily. The judicial authorities must collaborate with platforms to remove the offending content scandalizing the court without curtailing freedom of expression unduly.

Judicial Restraint in Contempt Litigation:

Courts should exhibit restraint and discretion in bringing contempt actions. Hyper-reaction to criticism may easily fuel popular distrust of the process. An action in contempt should only be moved once there are real apprehensions of an attack on judicial independence or an attack on the rule of law.

Further, it calls for balanced legal frameworks. Contempt legislation should be developed with time to respond to the current changes occurring in the media landscape. The legislation should therefore meet the need between maintaining the authority of the judiciary and the obligation to uphold freedom of speech related to the digital age where opinions are freely shared across borders.

ACHIEVING THE BALANCE

One of the oldest challenges to modern democracies is the tension that exists between freedom of expression and contempt of court. Freedom of expression, protected by constitutions everywhere, remains the bedrock of democratic values and allows people to speak their minds, criticize institutions, and hold accountable the wielders of power. After all, the courts are entrusted with not only the rule of law but also with the administration of justice, which calls for protection from interference or attacks that might compromise its integrity. Contempt of court, about scandalising the court, aims at making this balance: the authority and dignity of the judiciary need to be protected. Maintaining a proper balance between these two fundamental principles continues to pose an ongoing challenge.

Freedom of speech is that freedom with which individuals are given the latitude to exchange ideas freely promotes democratic discourse, and empowers someone to challenge governmental actions, even judicial decisions, that give it life. Free speech completes this system of checks and balances, defining a working democracy. An unwillingness to protect free speech leaves society in danger of becoming authoritarian with little room to dissent or improve. Nonetheless, such freedom cannot be absolute, at least where the speech in

controversy endangers one of the essential attributes of the judiciary: neutrality, integrity, or independence. Judicial integrity is essential to public confidence in the rule of law.

One of the biggest troubles, however, with reconciliation of these two principles is that concept of contempt; for the power of the judiciary must be preserved, and yet, on the other hand, it should be criticized. When criticism cuts into acts of contempt that violate public confidence in the judiciary, that is when there becomes a problem. Traditionally, contempt laws have been used to gag free speech or punish judicial critics. Such is simply not the practice of a free democracy. Therefore, laws on contempt must be strictly defined and applied narrowly in those instances when the criticism is manifestly malicious or unfounded, done to harm rather than for expression of reputation about the court.

Judicial self-restraint also stands as an essential element to ensure that contempt of court powers are not misused. Therefore, courts must determine whether criticism, even vociferous, threatens judicial integrity before proceeding in contempt proceedings. The jurisprudence of the judiciary must distinguish constructive criticism that has the potential to improve the lawmaking process and baseless attacks intended to discredit it. Courts can maintain their dignity and preserve freedom of expression as a fundamental right by exercising restraint.

The role of the media in this balancing act is equally crucial. As the watchdog of democracy, the media's role is meant to report on judicial matters and hold the judiciary accountable. The judiciary has a role in society and reporting can undermine it if there is sensationalism, misinformation, and irresponsible reporting. So far, Courts have relied on media to act responsibly; however, with the advent of digital platforms and social media, the coverage of mistakes and defamatory content cannot be controlled any more. To that effect, regulations and ethical codes of media have to be taken to a greater height. Media should come to know that their responsibility in court processes should not be compromised yet they respect the right of the public to be informed.

Presently, at this rate, information may now travel around the world rapidly; thus, media globalisation complicates the balance even more. National laws could not readily manage their content once introduced into the global platform with contemptuousness. Digital platforms spread elements extraterritorially, challenging the judiciary to uphold its integrity from foreign influences. It underlines the need for transnational regulations and cooperation at the

international level in addressing contemptuous acts with an international implication.

Another important aspect that would seal judgment would be the acknowledgement of truth as a defence in contempt cases. The public's painful criticism, indeed truthful, of the judiciary is an imperative step in strengthening the trust of people and judicial accountability. Valid critiques that improve functioning should be welcomed, and nothing should be done that might be considered the spreading of misinformation or motivated attacks with no constructive purpose. Truth as a defence ensures people are allowed to write opinions freely without too much harassment if indeed statements are based on fact.

Public awareness and education also play a very significant role in this context. The public needs to be educated as to why free speech is important and why judicial integrity needs to be protected. A campaign to educate the public regarding what constitutes fair criticism and what does not is necessary so that they do not confuse fair criticism with contemptuous conduct. Social media too needs to tighten its content moderation so that material defamatory of courts does not quickly go viral without finding that it is promoting an infringement on free speech that is not necessary.³⁰

Equal treatment of the freedom of expression and contempt of court requires that a fine, nuanced approach seeks to respect the rights to free speech while restraining judicial dignity. Clearly defined contempt, a restrained judiciary, responsible media practices, international cooperation, and public awareness are necessary for achieving this delicate balance. If protecting democratic freedom to criticize coexists with consolidating the authority of the judiciary, then both elements come together to form the necessary viewpoint from which the rule of law and democratic discourse can exist. Not only does this maintain the role of the judiciary but also furthers the ethos of democratic society.

³⁰ *Balancing the Intersections: Free Speech, Social Responsibility, and Press Freedom*, Institute of Law (Feb. 26, 2024), <https://law.nirmauni.ac.in/balancing-the-intersections-free-speech-social-responsibility-and-press-freedom-2/>.