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# **CONTEMPT OF COURT V. FAIR CRITICISM (PRASHANT BHUSHAN CASE)**

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## **ABSTRACT**

There is a thin line between criticism and vilification, criticism refers to critical analysis of pros and cons of literally anything whereas vilification means abusively derogating something through words or gestures. Although these words may be used interchangeably in daily life but they make a huge difference when seen through the eyes of the law. The Contempt proceeding on Prashant Bhushan works with the same distinction between Criticism and Vilification of the Judiciary. The Supreme Court of India took suo motu cognizance of the tweets posted by Adv. Prashant Bhushan and initiated contempt proceedings against him. The objective of this research paper is to provide critical analysis of the case in regards to Contempt proceedings against him and to check if the judgment of the court affects the right to freedom of speech and expression (Article 19 (1)(a) of the Constitution of India) of an individual. This paper will focus on Contempt of Court, its types, procedure under the act and defenses in regard to the Contempt proceedings against Adv. Prashant Bhushan.

**Keywords** – *Contempt of Court, Contempt proceedings, types of Contempt, Contempt of Courts act 1971, Article 19(1)(a).*

## **INTRODUCTION**

According to Oswald “Any Conduct that tends to bring the authority and administration of law into disrespect or disregard or to interfere with or prejudice parties or their witness during litigation is considered to be contempt of court”. But the Contempt of court is defined very vaguely under the Indian Legislation i.e. Contempt of Courts Act 1971 defines Contempt of Court under Section 2(a) – “Contempt of Court means Civil Contempt and Criminal Contempt.

In this Case of *Re Prashant Bhushan vs Court*<sup>1</sup> contempt proceedings were initiated against Adv. Prashant Bhushan in relation with two tweets he posted on Twitter, where the allegedly criticised the present Chief Justice of India Justice Sharad Arvind Bobde on 29th June 2020 that the CJI was

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<sup>1</sup> Re Prashant Bhushan vs Court SUO MOTU CONTEMPT PETITION (CRL.) NO.1 OF 2020

posing on a Harley Davidson worth 50 lakhs without mask or helmet, on the other hand, deprived the common people access to justice by keeping the court closed amidst Covid19 pandemic. He also expressed his views on the role of the Supreme Court (last four judges) in destroying the democracy of India through Twitter on 27th June 2020.

**Article 129<sup>2</sup> of the Indian Constitution** states that the Supreme Court shall be a court of record and shall have all the powers to punish for contempt of it. Subsequently, the Apex Court initiated criminal contempt proceedings under **Section 2(c)<sup>3</sup> of Contempt of Court Act, 1971** against Prashant Bhushan for his derogatory remarks against the judiciary. On 20th August, the Apex Court heard the matter to decide the quantum of punishment to be awarded to Mr. Prashant Bhushan and the court gave him time to submit an unconditional apology by 24th August if he wished. Bhushan in a supplementary affidavit filed on 24th August refused to apologize and contended that an insincere apology would be contempt of his conscience and added that it was his **bonafide impression** about the working manner of the Supreme Court in the past few years. Prashant Bhushan stated- “I am pained, not because I may be punished, but because I have been grossly misunderstood. I am shocked that the court holds me guilty of *malicious, scurrilous and calculated attacks* on the administration of justice. I can only reiterate that those two tweets represented my bona fide belief and the public interest which should be permissible in the world’s largest democratic nation. I believe that open criticism must be allowed to protect the sanctity of the Indian Constitution.”

Attorney General KK Venugopal urged the court not to punish Prashant Bhushan as he had done a lot of good work in the public interest and let him go after a warning. The court stated – “**fair criticism of judicial acts is not contempt provided it should not attribute motives to judges because they cannot go to the press to defend themselves and can only speak through judgments**”.

In India, every citizen is ruled by the Constitution and the Supreme Court is known to be the Guardian of the Constitution and independence of the judiciary and judicial review is part of the

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<sup>2</sup> Article 129 -Supreme Court to be a court of record The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself

<sup>3</sup> Section 2(c)-criminal contempt- means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which.

basic structure of the Constitution, but the question, in this case, is if the power is given to the Judiciary seldom violates the Constitution?

## **CONTEMPT OF COURTS ACT, 1971**

### **Types of Contempt**

According to Oswald “Any Conduct that tends to bring the authority and administration of law into disrespect or disregard or to interfere with or prejudice parties or their witness during litigation is considered to be contempt of court”. Contempt of court refers to actions which either defy a court's authority, cast disrespect on a court or impede the ability of the court to perform its function.

Contempt of Courts Act 1971 defines Contempt of Court under Section 2(a) – “Contempt of Court means Civil Contempt and Criminal Contempt.

**Civil Contempt** is defined by Section 2(b)<sup>4</sup> of the Contempt of Courts act 1971, according to the definition given in the act Civil Contempt of Court can arise from the following situations

#### **1. Willful disobedience of any judgement, decree, order, writ or any other process of a court**

For the charge of civil contempt to occur there should be willful disobedience of any Valid order of the court. Neglecting or disobeying any judgment, decree, order, writ of the court with intent to disobey.

**Ashok Paper Kamgar Union and Ors. vs Dharam Godha And Ors.**<sup>5</sup> – In this case, the Supreme Court held that the term ‘Willful’ under Section 2(b) means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done.

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<sup>4</sup> “civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

<sup>5</sup> **Ashok Paper Kamgar Union and Ors. vs Dharam Godha And Ors.** AIR 2004 SC 105

## **2. Willful breach of an undertaking given to the court**

Breach of solemn undertakings given to the court willfully will give rise to Civil contempt, it is required in the public interest that the undertakings given to the court should not be breached willfully.

**Balasubramaniam v. P. Janakaraju & Anr.**<sup>6</sup>– In this case, the High Court of Karnataka observed that the orders of Courts have to be obeyed unless and until they are set aside in appeal or revision.

**Criminal Contempt** is defined under Section 2(c)<sup>7</sup> of the Contempt of Courts act 1971, according to the definition given in the act, Criminal Contempt of Court can arise from the following situations

### **1. Publication or act which lowers the authority of Court**

In a country where free speech and expression is valued, the courts are also open to scrutiny unless that criticism does not lower the authority of the court, In the case of *PN Dua v Shiv Shankar and others*, the Supreme Court held that mere criticism of the Court does not amount to contempt of Court.

### **2. Publication or act which prejudices or interferes proceedings of the Court**

In *Pritam Lal v. High Court of M.P.*, the Supreme Court held that to preserve the proceedings of the Courts from interference and to keep the streams of justice pure, it becomes the duty of the Court, to punish the condemner in order to preserve its dignity.

### **3. Publication or act which interferes or obstructs the administration of justice**

In *Brahma Prakash Sharma v State of Uttar Pradesh*, the Supreme Court had held that it was enough if a defamatory statement is likely or in any way tends to interfere with the proper administration of justice

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<sup>6</sup> S. Balasubramaniam vs P. Janakaraju And Anr. ILR 2004 KAR 2442, 2004 (5) KarLJ 338

<sup>7</sup> (c) “criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which –

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

In the case in question, derogatory remarks were published on a social media platform, which according to the court lowered its authority, therefore the Supreme court took Suo motu cognizance and initiated criminal Contempt proceedings against Adv. Prashant Bhushan and concluded it within 3 weeks of the start of the proceedings.

## **DEFENSE AGAINST ORDER OF PUNISHMENT**

### **1. Apology**

The Contemner in this case may submit an unduly apology to the court in return of which the may remit the punishment ordered to the contemner if the apology is made with a real sense of Redemption. An apology shall not be considered when the court is going to impose punishment, apology seeks to help the contemner in case his explanation has been rejected by the court.

In *M.C Mehta vs. Union of India*<sup>8</sup>, the supreme court said that apology should not be used as a weapon in case of contempt rather the parties may apologise at the earliest opportunity.

### **2. Appeal**

The act gives the right to appeal against the orders of the High Court to punish for contempt prior to the act the high court under Article 134 of the constitution could grant the certificate for appeal, and in case the High court refuses the same, the appellant could go to the Supreme court under Article 136 for appeal by granting special leave. Under the act, the appeal could be only made once.

In this case, the Supreme Court gave Adv. Prashant Bhushan a chance to apologise twice, for the act which he denied clearly as according to him no wrong has been done by him, for an apology to arise there should be a wrong committed by the person. He filed an affidavit in the court stating that he would not apologise for his actions to which the bench gave him 30 minutes to rethink his

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<sup>8</sup> M.C Mehta vs. Union of India [1987] 4 S.C.C. 463

stance on the same. He explained those tweets as his "bona fide belief" on the state of the judiciary to the bench.

He also rephrased the statement of the father of our nation Mahatma Gandhi- *"I do not ask for mercy. I do not appeal to magnanimity. I am here, therefore, to cheerfully submit to any penalty that can lawfully be inflicted upon me for what the court has determined to be an offence, and what appears to me to be the highest duty of a citizen."*

### **CONTEMPT OR FAIR CRITICISM?**

Article 19<sup>9</sup> of the Indian Constitution empowers the citizen's freedom of speech and expression but such freedom is not absolute and reasonable restrictions can be imposed on them. Freedom of speech also gives the right to dissent or fairly criticize the government or any public institution but every right comes at the cost of restrictions, Each authority/Institution is subject to public examination wherein the overall mass can openly criticize the performance of the institution and so is the Judiciary, it is also additionally open for public examination wherein the individuals and the public reserve the option to remark and censure any Judicial act as given in Section 5<sup>10</sup> of the Contempt of Courts act 1971, but what does and does not come under the purview of this section is yet to be decided clearly.

**C. K. Daphtary & Ors vs O. P. Gupta & Ors 1971**<sup>11</sup>- Supreme Court held that contempt of court is a reasonable restriction to the fundamental right of freedom of speech and expression.

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<sup>9</sup> **19. Protection of certain rights regarding freedom of speech etc** - (1) All citizens shall have the right (a) to freedom of speech and expression; (2) Nothing in sub clause (a) of clause ( 1 ) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

<sup>10</sup> Fair criticism of judicial act no contempt. - A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided.

<sup>11</sup> C. K. Daphtary & Ors vs O. P. Gupta & Ors 1971 AIR 1132, 1971 SCR 76

**P.N. Duda vs V. P. Shiv Shankar & Others on 15 April, 1988**<sup>12</sup>- It was held that mere criticism of Supreme Court judgments is not contempt of court.

**Brahma Prakash Sharma and ors vs state of Uttar Pradesh, 1954**<sup>13</sup>- It was held that fair criticism of a judge is not contempt of court.

In the first tweet, Prashant Bhushan raised a question on the closure of courts physically and pictured CJI on Harley Davidson bike without a mask and helmet and surrounded by people. It cannot be called contempt as there is a difference between the CJI and the court. Bhushan however apologized for the same. In the second tweet, he stated the role of the last four CJI in the destruction of democracy. His statement was prima facie defamatory but whether it was criminal contempt? This is a question that whether the statement made in good faith and in the public interest be termed as contempt.

If you approach the decision from the lens of political theory, firstly, that we need to read this decision as an instance of judicial ‘violence’ by the Supreme Court; and secondly, that, more than just legal reform, the path towards the rehabilitation of the court may entail a broader recognition of the inherently ‘political’ nature of justice as seen in this case.

The first tweet seems to be the vilification of the authority of the court since he mentions how the democracy has been destroyed through the decisions made by the last 4 CJIs of India, this may also be seen as the right to dissent which is a part and parcel of Right to Free speech and expression, but this tweet was not against 4 individuals rather it was against the Highest Constitutional Authority of India, the tweet tends to shake the public confidence in the institution of the judiciary, said the court.

The tweets were mere criticism of the actions done by CJI Bobde outside his capacity as a judge, not wearing a helmet, gloves or mask, when the whole population is under lockdown shall be considered as mere criticism and not undermining the authority of the CJI, it was a

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<sup>12</sup> P.N. Duda vs V. P. Shiv Shankar & Others 1988 AIR 1208, 1988 SCR (3) 547

<sup>13</sup> Brahma Prakash Sharma And Others vs The State Of Uttar Pradesh 1954 AIR 10, 1954 SCR 1169

bonafide remark contended Mr. Prashant Bhushan, made in anguish of nonfunctioning of the courts at that point of time.

Although looking at the judgement served by the court, the court said, not dealing with malicious attacks against the judiciary “may affect the national honour and prestige in the comity of nations” as it ruled against Prashant Bhushan.

It seems like the court itself is undermining its authority by giving an order which seems like a prank, my question is if the punishment is nearly null, why did the court take such burden of taking cognizance and starting judicial proceedings against the lawyer, if such were the case mere order of the court would have been sufficient,

This final decree given by the court was to submit a fine of mere Re. 1, which makes it seem like the court was rather wary of its own judgment, and also the statements made by Attorney General, KK Venugopal seem to impair the judgment of the Court.

It should also be seen that this is not the first time Adv. Prashant Bhushan in amid a controversy, there is also an ongoing Contempt proceeding going on against him because of some remarks he made in 2009, to criticize or malign the image of the judiciary or democracy by his words or speech. Once he criticized Lord Krishna and compared rapists from Lord Krishna. His behavior before Justice Dipak Mishra or Justice Ranjan Gogoi or Justice Khehar was very well seen by members of the lawyer's fraternity, but since those incidents were not published anywhere no action was taken against him. But this time in anxiety he published his ill thoughts on twitter and that came to the notice of the Judiciary and thus began the contempt proceedings.

## **CONCLUSION**

The freedom of speech ensured under the constitution and the autonomy of the Judiciary are the two fundamental and most significant constituents of a democracy. a critical analysis is the most significant element for the advancement of democracy and the Supreme Court ought to ensure free discourse. Yet, where to take a stand? At the point when the analysis has the tendency of lowering down the authority of the judiciary and even impede the administration of justice, the Court has

the ability to rebuff any such demonstration which will, in general, belittle the value of the judiciary under the Contempt of Courts Act, 1971 ("Act").

While it is to be noticed that the citizens of India are ensured the right to speak freely of discourse and articulation, the disdain of the court is without a doubt one of the reasonable restrictions that can go about as a rider on this right. None of the crucial rights ensured to Indian residents are absolute. The privilege to the right to speak freely of discourse and articulation is additionally dependent upon certain other sensible limitations, for example, slander, respectability and profound quality, public request and instigation of offenses. One could contend that the ambit of the sensible limitations cherished between condition 2 to 6 of Article 19 of the Constitution of India is wide to the point that they confine the very rights that provision 1 of Article 19 reveres. Nonetheless, the reasonable restriction was incorporated with the goal of keeping up the balance as the framers of the constitution knew that if they were to enshrine absolute rights on Indian citizens, desperate conditions would result in failure of the Constitutional Machinery. All things considered, the Constitution of India as we know it is a living document that has been a guardian of rights for more than seventy years now, withstanding the amendments being made and various foiled attempts to dilute the spirit of the Indian Constitution the Constitution still stand strong as the guardian of rights of every citizen of India.