



## The chilling effect of criminal contempt

### Context:

- Initiation of **proceedings for criminal contempt of court** against lawyer-activist Prashant Bhushan.



### Background:

- Prashant Bhushan had recently put out a tweet with a photograph where he criticised the current Chief Justice of India (CJI), S.A. Bobde for riding an expensive motorcycle at a time when the Court is under lockdown.
- A three-Judge Bench of the Supreme Court of India, headed by Justice Arun Mishra, **took suo motu notice** of the tweet and issued a notice of contempt of Court to Mr Bhushan. Mr Prashant Bhushan's actions were considered **undermining the dignity and authority of the Institution of Supreme Court in general, and the office of the Chief Justice of India.**
- The Bench has also taken note of earlier tweets by Mr Bhushan in which he was seen criticizing the previous 4 CJIs. Another citation of contempt has been listed against Mr Bhushan based on a 2009 statement where he alleged that half of India's last 16 Chief Justices were corrupt.

### What is the origin of the contempt law?

- India derives the provision of criminal contempt from the English system.
- The King of England used to deliver judgments himself and the need to uphold the authority of the King led to the provision of "respecting the authority and dignity of the court". In contemporary times, when the judges look after the administration of justice, the law intended to maintain a sense of respect around the judiciary system.

### What are argument in favour of the contempt law?



- The provision of criminal contempt helps prevent attempts to scandalise the judiciary as well as interference in the administration of justice and overt threats to judges.
- The contempt provision **insulates the judiciary from unfair attacks** and prevents a sudden fall in the judiciary's reputation in the public eye.
- The objective of contempt law is to **safeguard the interests of the public**. If the authority of the Court is diminished and public confidence in the administration of justice is weakened, then the judicial system and its ability to dispense justice are adversely impacted thus affecting the citizenry indirectly.

## What are arguments against the contempt law?

- **Asynchronous law:** The law for criminal contempt is completely **asynchronous with the modern democratic system** which recognises freedom of speech and expression as a fundamental right.
- The contempt law may be trampling upon the **civil liberties** of the people.
- The extreme deference to judges does not augur well for the idea of a democracy.
- **Lack of judicial accountability:** The provision of criminal contempt is often used to prevent any criticism of the judiciary. This is an indication of the judiciary's unwillingness to suffer any kind of criticism, regardless of how true the criticism may be.
- The fear of contempt proceedings **restrains much of the media and the public from a more rigorous examination of the functioning of the judiciary.**
- **International practice:** The criminal contempt law has become **practically obsolete in most foreign democracies.**
- Canada evaluates the applicability of criminal contempt to real, substantial and immediate dangers to the administration.
- The U.S. courts no longer use the law of contempt in response to comments on judges or legal matters.

28.07.2020

Tuesday



<http://www.sriramsias.com>

- The U.K. Law Commission in a 2012 report recommended the abolition of the law of contempt. In **England, the legal position on contempt law has evolved**. There has been a perceptible change in the attitude of the judiciary in deciding against the use of contempt proceedings for comments on them.

### What are major concerns?

#### High usage:

- The **definition of criminal contempt in India is extremely wide, and can be easily invoked**.
- It was only in 2006, through an amendment to the Contempt of Courts Act that truth and good faith were recognised as valid defences in the criminal contempt cases. Despite this, there have been numerous previous instances in India where the judiciary has used the criminal contempt law to punish people, despite truth and good faith raised as defences.

#### Timing of the proceedings:

- COVID-19 has brought forth a standstill of the judiciary which has been dealing with a large volume of cases already.
- There are **many urgent and pressing issues** that desperately need the Supreme Court's attention.
- It is disappointing that instead of taking up matters of absolute urgency in these difficult times, the Supreme Court chose to take note of social media comments on the judiciary.

#### Wrong approach:

- **The Supreme Court may be harming its own reputation and credibility** through the contempt proceedings.
- It would be wrong to believe that silencing criticism will harbour respect for the judiciary. On the contrary, efforts to prevent free speech will only worsen the situation further by **engendering resentment and suspicion of the judiciary**.
- The judiciary needs to base its authority and dignity on public confidence rather than seeking to cover it under the law of contempt.



## Way forward:

### Evaluate the need for the law:

- There is the need for an evaluation of the necessity for retaining the law of contempt in these contemporary times.
- Across international jurisdictions, a far **more liberal view** is taken with respect to criminal contempt.
- Though it is important to curb unsubstantiated criticism of the judiciary and self-serving comments on mainstream and social media, there is also a need to **use the contempt law sparingly**, and avoid the impression that it is being used to stifle free speech.

### Evaluating the provisions of the law:

- Besides needing to revisit the need for a law on criminal contempt, even **the test for contempt needs to be evaluated**. Such a test should evaluate whether the contemptuous remarks in question actually obstruct the Court from functioning.
- There may be a need to revisit select clauses in the contempt law like that part of the contempt law which criminalises anything that “scandalises or tends to scandalise” the judiciary or “lowers the court’s authority”.

### Judicial accountability:

- The contempt law should not be allowed to be used as a means to prevent any and all criticism of the judiciary.
- The judiciary is well advised to **give space for publicly voiced criticism and strident questioning of the court’s ways and decisions**. The judiciary should appear to be concerned about accountability.
- There is an urgent need to usher in judicial accountability by **examining the serious allegations through impartial and transparent probes**.