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Scandalising the Court Revisited: A Critical Study of Contempt of Court Jurisprudence in India

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"The court must act with seriousness and severity where justice is jeopardised by a gross and unfounded attack on the judges, but it should not be hypersensitive and should act with restraint in matters of contempt."

- Justice Krishna Iyer *In Re*: *S. Mulgaokar*

The power to punish for contempt of court inhabits a unique and contentious position within Indian constitutional jurisprudence. Though intended to preserve the authority and effective functioning of the judiciary, the offence of 'scandalising the court' has frequently been criticised for its tendency to suppress legitimate criticism and democratic dissent. This paper undertakes a critical examination of the evolution of contempt of court jurisprudence in India, tracing its development from colonial precedents to contemporary constitutional adjudication. Through an analysis of landmark judicial decisions, the study explores how the courts have progressively attempted to balance judicial dignity with the fundamental right to freedom of speech and expression. The paper further evaluates statutory developments, particularly the Contempt of Courts Act, 1971, and its successive amendments, to assess whether the existing framework adequately reflects constitutional values in a democratic society. The study argues that although Indian courts have shown snowballing judicial restraint and tolerance, the continued retention of the offence of scandalising the court raises unresolved concerns regarding accountability, transparency, and balance.

Keywords: *contempt of court, scandalising, freedom of speech, judicial accountability, criminal contempt, constitutional law.*

RESEARCH PROBLEM

Despite the constitutional guarantee of freedom of speech and expression under Article 19(1)(a) of the Constitution of India, Indian courts do exercise contempt jurisdiction, particularly criminal contempt, through the offence of scandalising the court.[1] This power, constitutionally recognised under Articles 129 and 215,[2] has its origins in colonial common law and remains largely undefined in statutory terms. The Contempt of Courts Act, 1971, does not provide a precise definition of what establishes 'scandalising the court,' thereby leaving its interpretation to judicial discretion.[3]

The discretionary and subjective application of this offence has raised persistent worries regarding arbitrariness, the chilling effect on legitimate criticism of the judiciary, and its compatibility with democratic principles and constitutional morality. Judicial decisions have attempted to balance the need to preserve public confidence in the administration of justice with the fundamental right to free speech,[4] yet inconsistencies in approach and outcome continue to surface across cases. This paper hence addresses the core problem of whether the evolving judicial interpretation of contempt law has successfully reconciled judicial authority with constitutional freedoms, or whether structural ambiguities and normative tensions persist within the doctrine of contempt of court in India.

RESEARCH QUESTIONS

1. How did the offence of 'scandalising the court' originate and develop within Indian contempt jurisprudence?
2. What doctrinal changes can be identified through landmark judicial decisions on contempt of court?
3. How have Indian courts balanced judicial dignity with freedom of speech and expression?

[1] Constitution of India 1950, art 19(1)(a)
[2] Constitution of India 1950, arts 129 and 215
[3] Contempt of Courts Act 1971, s 2(c)
[4] *Brahma Prakash Sharma & Ors v State of Uttar Pradesh* AIR 1954 SC 10; *S Mulgaokar, In Re* (1978) 3 SCC 339

4. What impact have statutory reforms, particularly the Contempt of Courts Act, 1971 and the 2006 amendment, had on contempt jurisprudence?
5. Is it consistent with modern judicial accountability and constitutional democracy to keep the offence of scandalising the court in place?

SCOPE AND METHODOLOGY

This paper adopts a doctrinal and analytical research methodology, relying exclusively on secondary sources, including judicial decisions, statutes, constitutional provisions, and scholarly writings. The scope is limited to Indian contempt jurisprudence, with brief comparative references where necessary to contextualise reform debates. Analysis is case-centric, focusing on judicial reasoning rather than empirical evaluation.

INTRODUCTION: CONCEPTUAL AND CASE-LAW FRAMEWORK

The jurisprudence on contempt of court in India has advanced significantly through judicial interpretation instead of legislative clarity. The offence of 'scandalising the court,' specifically, has evolved through a series of landmark decisions that reveal shifting judicial attitudes towards authority, accountability, and free expression. A systematic examination of these cases demonstrates how the Indian judiciary has attempted to reconcile the protection of judicial dignity with constitutional freedoms, though inconsistently.

Colonial Origins: Authority-Centric Conception of Contempt: The concept of contempt of court in India is a sheer influence from English common law, introduced during the colonial period primarily to reserve the authority of colonial courts. Early judicial reasoning treated the judiciary as an institution where the legitimacy depended on insulation from public criticism.

The decision in Surendranath Banerjee v Chief Justice of Calcutta High Court[5] is regarded as the earliest authoritative pronouncement on contempt in India. The case arose from critical newspaper publications against the functioning of the judiciary. The court held that any publication tending to scandalise the court or lower its authority constituted criminal contempt. Significantly, the judgment did not engage with questions of public interest or free

[5] *Surendra Nath Banerjee v Chief Justice of Calcutta High Court* (1883) ILR 10 Cal 109

expression; instead, it proceeded on the postulation that judicial authority must remain unchallenged. This was a function of colonial conceptions of government, wherein courts were not considered public institutions per se, but rather, even then, as extensions of royal power. Contempt jurisdiction was wielded here as an absolute power to protect pride rather than public trust.

Post-Constitutional Shift: Contempt and Fundamental Rights: The adoption of the Constitution of India in 1950 marked a normative shift in Indian public law, introducing fundamental rights and democratic accountability into judicial discourse. The continual exercise of contempt jurisdiction, however, raised an immediate constitutional tension between Articles 129 and 215[6] on the one hand, and Article 19(1)(a) on the other.

This tension was first substantively addressed in Brahma Prakash Sharma v State of Uttar Pradesh.[7] The Supreme Court elucidated that contempt jurisdiction is not intended to protect judges as individuals but to safeguard public confidence in the administration of justice. The Court recognised that criticism of judicial acts, if made in good faith and in the public interest, does not necessarily amount to contempt.

This decision represents an early attempt to constitutionalise contempt law by subjecting it to democratic reasoning. Nevertheless, the Court stopped short of laying down specific standards, thereby retaining broad judicial discretion. While the tenor shifted from colonial rigidity to constitutional accommodation, the underlying ambiguity of scandalising the court remained intact.

STATUTORY CONSOLIDATION: CONTEMPT OF COURTS ACT 1971

The enactment of the Contempt of Courts Act, 1971, marked a significant legislative intervention aimed at codifying contempt law and limiting judicial arbitrariness. The Act classified contempt into civil contempt and criminal contempt, with the latter explicitly including acts that 'scandalise or tend to scandalise' the authority of the court.[8]

[6] Constitution of India 1950, arts 129, 19(1)(a) and 215
[7] *Brahma Prakash Sharma v State of Uttar Pradesh* AIR 1954 SC 10
[8] Contempt of Courts Act 1971, s 2(c)

Despite codification, the statute failed to define the expression 'scandalising the court,' thus continuing reliance on judicial interpretation. This void became evident in E M S Namboodiripad v T N Nambiar,[9] where a former Chief Minister's ideological critique of the judiciary was held to amount to contempt. The Court stressed that while judges are not immune from criticism, imputations that undermine public confidence in judicial impartiality cross the acceptable boundary. The judgment exemplifies the Court's cautious approach during this period, accepting democratic criticism in principle while penalising speech seeming as threatening to institutional credibility. The emphasis remained on protecting the image of the judiciary, rather than assessing the proportionality of restrictions on speech.

Emergence of Judicial Restraint and Democratic Sensitivity: A notable doctrinal shift occurred in the late 1970s with increasing judicial introspection about the use of contempt powers. In S Mulgaokar, In Re,[10] Justice Krishna Iyer articulated a traditional guiding principle advocating judicial restraint. He observed that courts should not be hypersensitive to criticism and that contempt jurisdiction must be exercised sparingly, only when the administration of justice is substantially threatened.

This reasoning reframes contempt as a confidence-based doctrine, suggesting that public trust in the judiciary is reinforced through tolerance rather than punishment. The emphasis moved away from shushing criticism to assessing its actual impact on judicial functioning.

The approach was further reinforced in P N Duda v P Shiv Shanker,[11] where criticism of the judiciary by a law minister was challenged. The Supreme Court refused to initiate contempt proceedings, holding that robust and even harsh criticism is an inevitable feature of democratic discourse. The Court recognised that freedom of expression plays a constructive role in ensuring judicial accountability.

Together, these cases signify a maturation of contempt jurisprudence, aligning it more closely with constitutional values of free speech and democratic engagement.

[9] *E M S Namboodiripad v T N Nambiar* (1970) 2 SCC 325
[10] *In Re: S. Mulgaokar v Unknown* (1978) 3 SCC 339
[11] *P N Duda v P Shiv Shanker & Ors* (1988) 3 SCC 167

Truth as Defence and the Role of Public Interest: Despite the judicial ceiling, uncertainty persisted regarding the permissibility of factual allegations against judges or judicial institutions. This issue gained importance with the 2006 amendment to the Contempt of Courts Act, which introduced truth as a valid defence, provided it is invoked in the public interest and is bona fide.[12]

Judicial endorsement of this development can be seen in Indirect Tax Practitioners' Association v R K Jain,[13] where the Supreme Court acknowledged that exposing systemic flaws through truthful criticism serves the public interest and does not necessarily undermine judicial authority.

This paradigm reflects a partial realignment of contempt law with transparency and accountability. However, the requirement of judicial satisfaction regarding public interest continued to vest substantial discretion in courts, leaving the doctrine vulnerable to subjective application.

Contemporary Jurisprudence: Persistent Ambiguities: Recent cases reveal that, despite doctrinal evolution, the offence of scandalising the court continues to generate controversy. In Arundhati Roy, In Re, the Supreme Court upheld contempt proceedings arising from public criticism of judicial functioning. The judgment attracted academic criticism for prioritising institutional sensitivity over democratic dissent.

More recently, Prashant Bhushan, in Re, reignited debate on the constitutional legitimacy of criminal contempt. While the Court reaffirmed its power to punish contempt, the case exposed deep divisions regarding judicial accountability, proportionality of punishment, and the chilling effect on public discourse.

These cases demonstrate that although the judiciary has gradually acknowledged democratic criticism, the structural vagueness of scandalising the court continues to permit divergent interpretations.

[12] Contempt of Courts (Amendment) Act 2006, s 13(b)
[13] *Indirect Tax Practitioners' Association v R K Jain* (2010) 8 SCC 281

Conceptual Position Emerging from Case Law: A cumulative reading of the case law on contempt reveals that there are three discernible periods:

1. Colonial absolutism, the aim of which was,
2. Constitutional accommodation, balancing authority with free,
3. Modern conflict is characterised by judicial restraint and unfinished ambiguities in doctrine.

While the courts have moved towards recognising tolerance and transparency as essential to judicial legitimacy, the continued retention of scandalising the court as a ground for criminal contempt remains conceptually fragile in a constitutional democracy.

CRITICAL ANALYSIS: SCANDALISING THE COURT AND CONSTITUTIONAL TENSIONS

The offence of 'scandalising the court' occupies a paradoxical position within Indian constitutional jurisprudence. While formally justified as a mechanism to preserve public confidence in the administration of justice, its continued existence raises serious concerns regarding vagueness, proportionality, and democratic legitimacy. A critical evaluation of judicial trends tells that although courts have increasingly articulated the language of restraint and tolerance, the doctrinal structure of criminal contempt remains internally inconsistent and normatively fragile.

One of the most persistent criticisms of the offence of scandalising the court is its lack of a precise definition. Neither the Contempt of Courts Act 1971 nor constitutional provisions demarcate the contours of conduct that would amount to scandalising the judiciary.[14] This indeterminacy grants courts wide interpretative latitude, enabling subjective assessments of speech based on perceived impact rather than demonstrable harm.

Judicial pronouncements have often relied on abstract notions such as a tendency to lower authority or undermining public confidence, without articulating objective thresholds.[15] Such standards are inherently elastic and risk blending personal discomfort of judges with

[14] Contempt of Courts Act 1971, s 2(c)
[15] *Surendra Nath Banerjee v Chief Justice of Calcutta High Court* (1883) ILR 10 Cal 109

institutional injury. From a rule-of-law perspective, this uncertainty is problematic, as it fails to provide citizens with reasonable foreseeability regarding the legality of their expression.

Chilling Effect on Freedom of Speech and Democratic Criticism: Although Indian courts have repeatedly acknowledged that fair criticism of judicial acts is permissible,[16] the existence of criminal contempt, especially for scandalising the court, creates a chilling effect on public discourse. The threat of contempt proceedings, even when ultimately dismissed, can deter journalists, academics, lawyers, and citizens from engaging in meaningful critique of judicial functioning.

This concern becomes particularly acute in light of Article 19(1)(a), which guarantees freedom of speech as a cornerstone of democratic governance. While reasonable restrictions are permissible under Article 19(2), the offence of scandalising the court does not easily fit within narrowly tailored limitations.[17] Unlike defamation or incitement, scandalising the court does not require proof of actual harm, imminent danger, or malicious intent, thereby lowering the threshold for penal intervention.

Judicial Dignity versus Judicial Accountability: A frequent justification offered by courts for retaining the offence is the need to protect judicial dignity and institutional credibility. However, this reasoning assumes that public confidence in the judiciary is fragile and dependent on insulation from criticism. Contemporary democratic theory, by contrast, suggests that institutional legitimacy is strengthened through accountability, transparency, and reasoned engagement with criticism, rather than punitive suppression.[18]

In S Mulgaokar, the Supreme Court itself recognised that courts command respect not by enforcing silence but by demonstrating tolerance.[19] Yet subsequent cases have revealed inconsistency in applying this principle, particularly when criticism targets perceived judicial conduct rather than abstract institutional functioning. This fluctuation reflects an unresolved tension between viewing courts as sacrosanct authorities and recognising them as constitutional institutions subject to public scrutiny.

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[16] *Brahma Prakash Sharma v State of Uttar Pradesh* AIR 1954 SC 10
[17] Constitution of India 1950, art 19(2)
[18] Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing 1982) 34–36
[19] *In Re: S. Mulgaokar v Unknown* (1978) 3 SCC 339

Truth as Defence: Progress with Limitations: The introduction of truth as a defence through the 2006 amendment to the Contempt of Courts Act marked a significant reformative step.[20] It acknowledged that truthful disclosure, when made in the public interest, can serve democratic accountability rather than undermine justice. Judicial acceptance of this defence in cases such as Indirect Tax Practitioners' Association v R K Jain further reinforced this shift.[21] However, the defence remains qualified and discretionary, requiring courts to assess bona fides and public interest. This judicial gatekeeping, while necessary to prevent abuse, reintroduces subjectivity into the process. Consequently, truth as a defence operates more as an exception than as a robust safeguard for free expression, particularly in cases involving systemic or institutional critique.

Comparative Perspective and the Question of Retention: A comparative glance at other common law jurisdictions highlights the anachronistic nature of the offence. The United Kingdom abolished the offence of scandalising the court in 2013, recognising that existing laws relating to defamation and obstruction of justice were sufficient to protect judicial functioning.[22] The abolition was grounded in the understanding that modern democracies are resilient enough to withstand criticism of judicial institutions.

India's continued retention of the offence, despite similar constitutional maturity, raises questions about the necessity and proportionality of criminal contempt. While the Indian judiciary operates within a distinct socio-political context, the absence of empirical evidence demonstrating that criticism has materially impaired judicial administration weakens the justification for retaining such a broad offence.

Contemporary Jurisprudence: Symbolic Authority versus Constitutional Morality: Recent contempt proceedings, including Prashant Bhushan, In Re, have underscored the symbolic dimension of contempt law.[23] The case exposed a judicial inclination to defend institutional authority even at the cost of inviting public debate on judicial accountability. While the Court acknowledged free speech concerns, its insistence on preserving judicial dignity through penal sanction reinforced perceptions of intolerance.

[20] Contempt of Courts (Amendment) Act 2006, s 13(b)
[21] *Indirect Tax Practitioners' Association v R K Jain* (2010) 8 SCC 281
[22] Crime and Courts Act 2013 (UK), s 33
[23] *Prashant Bhushan, In Re* (2021) 1 SCC 745

From the position of constitutional morality, such outcomes appear incongruent with a mature democracy where institutions derive legitimacy from public trust rather than enforced reverence. The persistence of scandalising the court as an offence thus reflects not merely a legal doctrine but an unresolved philosophical commitment to authority over accountability.

CONCLUSION

The jurisprudence of contempt of court, and in particular the crime of scandalising the court, in Indian courts has been a complex and nuanced process. What has historically been a tool of authority-driven jurisdiction, meant to shield courts from critical scrutiny, has, in the aftermath of colonialism and the evolutionary process of the Indian Constitution, been brought into harmony with the Indian model of freedom of speech, and the accompanying tenets of openness and accountability.

The post-constitutional era has witnessed a major shift in judicial thought, where the judiciary has realised that the contempt jurisdiction is not created for the security of individual judges, but for the security of the administration of justice. Parliamentary intervention in the form of the Contempt of Courts Act, 1971, and its subsequent amendments, including truth as a defence, demonstrate that there is a clear move to bring the law of contempt in tune with democratisation.

Despite such developments, the offence of scandalising the court remains afflicted with the ills of conceptual ambiguity and judicial discretion. Despite the lack of a clear statutory term and the application of rather subjective criteria, such as tendency and public confidence as the litmus tests for the offence, there appears to be a certain inconsistency in the decisions. Today, it can be seen that the courts, in the name of being principled and progressive, with the symbolic defence of judicial authority at stake, have invariably found in favour of the defendant after being accused directly in matters involving the court.

Thus, the sustained retention of scandalising the court as a charge in the definition of criminal contempt appears to represent an ongoing dilemma within the Indian constitutional tradition. According to one view, a court must necessarily aim to uphold the dignity and authority essential to the effective administration of justice. Conversely, democracy requires

that the judiciary be receptive to criticism. The experience of the common law tradition outside of India appears to confirm that the authority of the judiciary is necessarily based increasingly upon public trust, as opposed to enforcement.

In light of the foregoing discussion, it is clear that the contempt of courts jurisprudence in the Indian legal system has undoubtedly moved from the colonial era of absolutism to the constitutional era of restraint. Nevertheless, the scandalisation of the court as an offence in the Indian legal system is still in a state of normative ambiguity. Therefore, the present and future challenge is not merely in the judicial determination of this issue but in rebalancing the relationship between power and responsibility in the constitutional state.