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Prashant Bhushan Judgement & The Law of Contempt

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This editorial analysis is based on the article, **“Prashant Bhushan judgment spells out a chilling lesson which undermines that most valuable fundamental right, the freedom of speech”** which was published in the Indian Express on 17th of August 2020. It analyses the different dimensions of the verdict.

Recently, the Supreme Court has held the advocate **Prashant Bhushan as guilty of contempt of court** for his two tweets criticising the judiciary.

Bhushan's first tweet pertained to a picture of Chief Justice SA Bobde in which he is seen sitting on a high-end motorcycle. In the second tweet, Bhushan gave an opinion on the role of the last four chief justices of India in the context of the state of affairs in the country.

The provision of contempt of court is necessary to maintain the sanctity of the Judiciary in the public eye. However, many constitutional experts and civil society have criticised the invocation of contempt of court provisions, on the grounds of ambiguity in the legal provisions and arbitrariness.

What is Contempt of Court?

- **Constitutional Provisions: Article 129 and 215** of the Constitution of India empowers the Supreme Court and High Court respectively to punish people for their respective contempt.

Article 142 of the Indian Constitution also empowers the court to punish for its contempt. However what is **contempt of court per se has not been defined by the Indian Constitution.**

- **Statutory Provisions:** The Contempt of Court Act, 1971 elaborately deals with the concept of contempt of court.

Section 10 of The Contempt of Courts Act of 1971 defines the power of the High Court to punish contempts of its subordinate courts.

The Contempt of Court Act, 1971

According to section 2 of the Act, Contempt can be of two types which are Civil and Criminal.

- **Civil Contempt:** Under Section 2(b) of the Contempt of Courts Act of 1971, civil contempt has been defined as 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.
- **Criminal Contempt:** Under Section 2(c) of the Contempt of Courts Act of 1971, criminal contempt has been defined as 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:
 - Scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court, or
 - Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or
 - Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner
- The Supreme Court and High Courts have the **power to punish for contempt of court, either with simple imprisonment for a term up to six months or with fine up to 2,000 or with both.**

The Court's Judgement

Interference: It rejected the argument that the tweet has not really interfered with administration of justice. However, the court relied on past judgements by the Supreme Court to initiate the proceedings against the advocate.

- It held that it is not necessary to prove affirmatively that there has been actual interference with the administration of justice.
 - If a defamatory statement is likely to interfere with the proper administration of justice,** then it can be a ground for contempt.
- Also, **the comments that can have an inevitable effect of undermining the confidence of the public in the judiciary,** can be a ground for contempt.

Scandalising of Court: Regarding what constitutes the 'scandalising of court' the court had already held that the real test is to determine **whether the vilification is of the judge as a judge, or as an individual.**

- **If the latter, the judge is left to his private remedies, and the court has no power to commit for contempt.**
- For ascertaining good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field, and the intended purpose.

The Dichotomy and the Arbitrariness

However there have been issues of arbitrariness and interpretation of the word scandalising court.

- The expression “**scandalising the court**” **has not been defined.**
- The court **also held that fair criticism of judges, if made in good faith in public interest, is not contempt.** But how to ascertain good faith is the million-dollar question as the Act has not defined it as well.
- When Arun Jaitley, the late minister had said that there are two kinds of judges, one who knows Law and the other who knows Law minister, it was not taken as contempt. He had also remarked that pre retirement judgements are inspired by the post retirement jobs.
- When 4 judges in 2018 held a press conference and questioned the integrity of the CJI and the court, it was not taken as contempt.
- In a case involving Bhushan himself in 2001, proceedings against him were dropped. The Supreme Court had held that personal criticism of a judge does not amount to “fair criticism”.
- Another question is that can a mere tweet really obstruct the administration of justice, and whether judicial dignity is so fragile that it would get lowered in mature Indian people’s eyes because of an activist-lawyer’s opinion?

In Shiv Shankar (1988), the Supreme Court held that a **criticism of the court that does not impair and hamper the administration of justice cannot be punished as contempt.**

Consequences

- Prashant Bhushan judgement gives an impression that the court treated Bhushan’s tweets as the occasion for the **Court to flex its muscle and make clear that it will not tolerate criticism. It sends a chilling effect to the constitutional right of freedom of speech and expression.**
- The Court, whom we have always proclaimed to be the defender of the freedom of speech, has by its judgment curtailed that very freedom by the exercise of its contempt jurisdiction, a jurisdiction **where the Court is judge, victim and prosecutor.**
- The court also brought up an 11 year old contempt case against him. That Bhushan’s comments had not lowered the Court’s esteem or brought it into disrepute for 11 years, that it did not merit disposal during a pandemic when matters of far greater importance were pending.

Conclusion

- The right to speech and expression is a fundamental right guaranteed by the constitution itself. **There must be a balance between the right to speech and the court's power to punish its criticism.**
- In a free market place every wing of the State must be open to public criticism. The **Judiciary can't carve a special status for itself because in India every wing of the state is separate and equal.**
- The law is a **colonial legacy** and even England and the USA have upheld freedom to speech over the Judicial criticism.

Many of the developed countries have abolished the scandalising of court as contempt and so Indian courts too must consider this proposition.

- In the words of **Lord Atkin**, “**justice is not a cloistered virtue**”. **Lord Denning** had said that he would never use the contempt jurisdiction to uphold his own dignity for “**that must rest on surer foundations**”. In words that bear repetition, he said: “**We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.**”

Drishti Mains Question

What do you mean by contempt of court? Critically analyse the law related to it in India.



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This editorial is based **“Good steps on tax”** which was based in The Indian Express on August 17th, 2020. Now watch this on our Youtube Channel.
