



Contempt of Court

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This article is based on “Scandalising as contempt” which was published in The Hindu on 27/07/2020. It talks about the arguments, in favour and against, for retaining Contempt of Court law in India.

Recently, the Supreme Court of India initiated the proceedings for criminal contempt of court against lawyer-activist Prashant Bhushan. The contempt charges were lodged in the context of the comment made on social media, targeting the current Chief Justice of India.

The contempt power is needed to punish wilful disobedience to court orders (civil contempt), as well as interference in the administration of justice and overt threats to judges.

The reason why the concept of contempt exists is to insulate the institution from unfair criticism and prevent a fall in the judiciary’s reputation in the public eye.

However, this raises the dilemma between the part of contempt law that criminalises anything that “scandalises or tends to scandalise” the judiciary and freedom of speech and expression (under the article 19), especially in the era of social media.

Thus, the current issue has once again brought under focus on the need for reviewing the law on Contempt of Courts.

Note:

- Contempt of Court refers to the offence of showing disrespect to the dignity or authority of a court.
- The objective for contempt is stated to be to safeguard the interests of the public if the authority of the Court is denigrated and public confidence in the administration of justice is weakened or eroded.
- The Supreme Court and High Courts derive their contempt powers from the Constitution.

- The Contempt of Court Act, 1971, outlines the procedure in relation to investigation and punishment for contempt.
- The Act divides contempt into civil and criminal contempt.
 - Civil contempt refers to the willful disobedience of an order of any court.
 - Criminal contempt includes any act or publication which:
 - Scandalises the court,
 - Prejudices any judicial proceeding
 - Interferes with the administration of justice in any other manner.
- ‘Scandalising the Court’ broadly refers to statements or publications which have the effect of undermining public confidence in the judiciary.

Arguments Against

- **Against Civil Liberties:** A law for criminal contempt gets in conflict with India’s democratic system which recognises freedom of speech and expression as a fundamental right.
 - In this manner, the judiciary draws resemblance with the executive, in using laws for a chilling effect on freedom of speech.
 - Former Justice of Supreme Court, V.R. Krishna Iyer, famously termed the law of contempt as “having a vague and wandering jurisdiction, with uncertain boundaries; contempt law, regardless of the public good, may unwittingly trample upon civil liberties”.
- **Wide Scope of Contempt:** The definition of criminal contempt in India is extremely wide, and can be easily invoked. Also, suo motu powers of the Court to initiate such proceedings only serve to complicate matters.

Further, the Contempt of Courts Act was amended in 2006, to add truth and good faith as valid defences for contempt, but they are seldom entertained by the judiciary.
- **International Disuse of Contempt Doctrine:** Already, contempt has practically become obsolete in foreign democracies, with jurisdictions recognising that it is an archaic law. For example:
 - England abolished the offence of “scandalising the court” in 2013.
 - Canada ties its test for contempt to real, substantial and immediate dangers to the administration.
 - American courts also no longer use the law of contempt in response to comments on judges or legal matters.

Arguments in Favour

- **High Number of Contempt Cases:** There still exists a high number of civil and criminal contempt cases pending in various High Courts and the Supreme Court.
The high number of cases justify the continuing relevance of the contempt of court law.
- **Affecting Judiciary's Reputation:** Amendment in the definition of contempt may reduce the overall impact of the law and lessen the respect that people have for courts and their authority and functioning.
Also by abolishing the offence in India would leave a legislative gap.
- **Constitutional Source of Contempt Power:** Supreme Court and High Courts derive their contempt powers from the Constitution. The Contempt of Court Act, 1971, Act only outlines the procedure in relation to investigation and punishment for contempt.
 - Therefore, deletion of the offence from the Act will not impact the inherent constitutional powers of the superior courts to punish anyone for its contempt.
 - These powers will continue to remain, independent of the 1971 Act.
- **Impact on Subordinate Courts:** The Constitution allows superior courts to punish for their contempt. The Contempt of Court Act additionally allows the High Court to punish for contempt of subordinate courts.
Thus, if the definition of contempt is removed, subordinate courts will suffer as there will be no remedy to address cases of their contempt.
- **Adequate Safeguards:** The Commission noted that there are several safeguards built into the Act to protect against its misuse.
 - For instance, the Act contains provisions which lay down cases that do not amount to contempt and cases where contempt is not punishable.
 - These provisions suggest that the courts will not prosecute all cases of contempt.

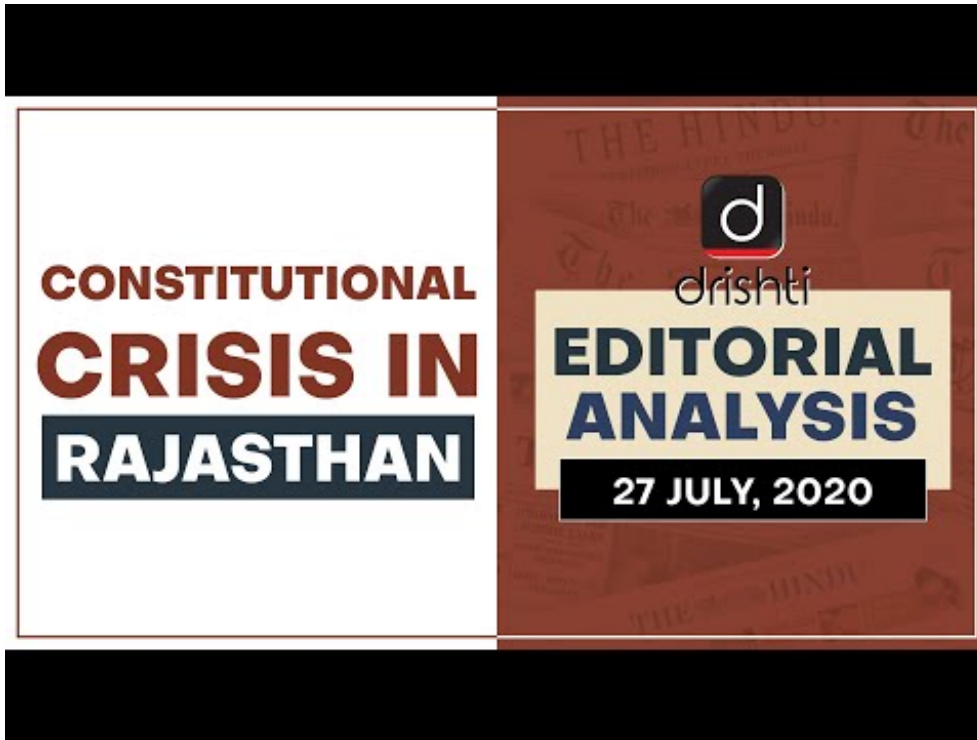
Conclusion

The **Law Commission of India** held that there is a need to retain the provision regarding the contempt of courts. However, it also recommended the definition of contempt in the Contempt of Court Act should be restricted to civil contempt, i.e., willful disobedience of judgments of the court.

Further, in the era of social media, besides the need to revisit the law on criminal contempt, even the test for contempt needs to be evaluated.

Drishti Mains Question

“Judiciary in India should not really be expanding its time and energy invoking its power to punish for contempt of itself”. Critically analyze.



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<https://youtu.be/V7IQLf3AoXo>

This editorial is based on "House Vs Court" which was published in The Indian Express on July 27th, 2020. Now watch this on our Youtube Channel.