

# Contempt of Court

February 14, 2019

## Manifest Pedagogy

Powers of the Judiciary have been in news owing to activism in various fields. Contempt powers are usually neglected by aspirants, even if studied, excessive focus is given only on SC powers. Usually the procedure and contempt powers of HC and Subordinate Judiciary are left out. Prelims questions on these topics are a possibility.

## In news

The issue of Contempt Notice against Prashant Bhushan

## Placing it in the syllabus

1. Indian Polity :
  - Indian Judiciary
  - Fundamental Rights

## Static dimensions

1. Constitutional provisions related to Contempt of Court
2. Contempt of Court Act, 1971

## Current dimensions

1. Frequent and arbitrary use of Contempt powers and need for changes

## Content

### Contempt of court

Anything that curtails or impairs the freedom of the limits of

judicial proceedings and results in hampering of the administration of Law and is interfering with the due course of justice , necessarily constitutes Contempt of Court.

Oswald defines contempt to be constituted by 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 witnesses during litigation.

Halsbury defines contempt as consisting of words spoken or written which obstruct or tend to obstruct the administration of justice.

### **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.

Power to punish for contempt of court under Articles 129 and 215 is **not subject to Article 19(1)(a)**.

### **Contempt of Court Act 1971 : Provisions**

#### **Types of contempt in India**

- **Civil Contempt**

Under Act, 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 Act, 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:

1. Scandalises or tends to scandalize, or lowers or tends

- to lower the authority of, any court, or
2. Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or
  3. Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

**Under the act innocent publication and distribution of matter, not contempt:**

- According to the Act, which deals with certain exceptions, a person shall not be guilty of contempt of court on the ground that he has published any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at the time of publication, if at the time he had no reasonable grounds for believing that the proceeding was pending.
- Further, a person shall be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned, if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid.

**Provided that this provision shall not apply in respect of the distribution of :**

1. Any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in Section 3 of the Press and Registration of Books Act, 1867.
2. Any publication which is a newspaper published otherwise than in conformity with the rules contained in section 5 of the said Act

**Fair and accurate report of judicial proceeding not contempt:**

According to the Contempt of Courts Act, 1971 a person shall

not be guilty of contempt of court for publishing a fair and accurate report of the judicial proceeding or any stage thereof. The words "judicial proceeding" means day-to-day proceedings of the court.

**Fair criticism of judicial act not 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.

**Complaint against presiding officers of subordinate Courts when not contempt:**

A person shall not be guilty of contempt of court in respect of any statement made by him in good faith concerning the presiding officer or any subordinate court to:

1. Any other subordinate court, or
2. The High court to which it is subordinate.

Another section of the act deals with the situation where a person publishes a fair and accurate report of a judicial proceeding before any court sitting in chambers or in camera it shall not be contempt of court except under the following cases:

1. Where the publication is contrary to the provisions of any enactment for the time being in force.
2. Where the court on ground of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published.
3. Where the Court sits in chambers or in camera for reason connected with public order or the security of the State.

**Punishment for the contempt of court:** A contempt of Court may be punished with simple imprisonment for a term which may

extend to six months, or with fine which may extend to two thousand rupees, or with both. Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

**Power of High Court to punish contempts of subordinate Courts:**

Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of Courts subordinate to it and it has and exercise in respect of contempts of itself. Provided that no High Court shall take cognisance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

**Power of High Court to try offences committed or offenders found outside jurisdiction:**

A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any Court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits.

**Contempts not punishable in certain cases:** Notwithstanding anything contained in any law for the time being in force, no Court shall impose a sentence under this Act for a contempt of Court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice.

**Contempt by judge, magistrate or other person acting judicially:**

. It is not only that an outsider or a third person is to be held liable for contempt of court. The Presiding Judge of the Court can also be held liable for contempt under the contempt law. To establish contempt it would depend upon the facts and circumstances of each case.

**Limitation for actions for contempt:** No Court shall initiate

any proceedings if contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

**Act not to apply to Nyaya Panchayats or other Village Courts:**

Nothing contained in this Act shall apply in relation to contempt of Nyaya Panchayats or other village Courts, by whatever name known, for the administration of justice, established under any law.

**Power of the Supreme Court and High Court to make rules:** The Supreme Court or, a case may be, any High Court, may make rules, not inconsistent with the provisions of this Act, providing for any matter relating to its procedure.

**Defenses allowed in a Contempt proceeding**

Under Contempt of Court Act, 1971 that was introduced recently by 2006 amendment, it allows the accused to raise the defense of justification by truth of such contempt, if the court is satisfied that it is in public interest and the request for invoking the said defence is bona fide.

**Issue related to Prashant Bhushan**

Recently the Supreme Court issued notice to lawyer Prashant Bhushan in two separate contempt petitions moved against him by Attorney General KK Venugopal and the Union government.

The petitions relate to comments Bhushan made on Twitter on February 1, in which he accused the Union government of misleading the Supreme Court regarding the appointment of M Nageswara Rao as the interim director of the Central Bureau of Investigation on January 11. Bhushan had moved the court on January 14, challenging Rao's appointment.