

Scandalising as contempt: On proceedings against Prashant Bhushan

Time to revisit the idea of 'scandalising' in contempt law, usher in judicial accountability

The initiation of proceedings for criminal contempt of court against lawyer-activist Prashant Bhushan has once again brought under focus the necessity for retaining the law of contempt as it stands today. In an era in which social media are full of critics, commentators and observers who deem it necessary to air their views in many unrestrained and uninhibited ways, the higher judiciary should not really be expending its time and energy invoking its power to punish for contempt of itself. While it may not be reasonable to expect that the courts should ignore every allegation or innuendo, and every piece of scurrility, there is much wisdom in giving a wide latitude to publicly voiced criticism and strident questioning of the court's ways and decisions. Mr. Bhushan is no stranger to the art of testing the limits of the judiciary's tolerance of criticism. He has made allegations of corruption against judges in the past, and has been hauled up for it. The latest proceedings concern two tweets by him, one a general comment on the role of some Chief Justices of India in the last six years, and another targeting the current CJI based on a photograph. How sensitive should the country's highest court be to its outspoken critics? What would be more judicious — ignoring adverse remarks or seeking to make an example of some principal authors of such criticism to protect the institution? The origin of this dilemma lies in the part of contempt law that criminalises anything that "scandalises or tends to scandalise" the judiciary or "lowers the court's authority". It may be time to revisit this clause.

Few would disagree that 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 attacks and prevent a sudden fall in the judiciary's reputation in the public eye. However, it has been recognised by jurists that each time the offence of 'scandalising' the court or lowering the court's authority is invoked, some tend to believe that the court has something to hide. It was believed in 18th century England that it was necessary "to be impartial and universally thought so", so that the "blaze of glory" around judges would stay undiminished. However, the contempt doctrine fell into disuse, and England abolished the offence of "scandalising the court" in 2013. In contemporary times, it is more important that courts are seen to be concerned about accountability, that allegations are scotched by impartial probes rather than threats of contempt action, and processes are transparent. Unfortunately, in a system in which judges are not expected to disclose the reason for recusing themselves, and even charges of sexual harassment are not credibly investigated, it is only the fear of scandalising the judiciary that restrains much of the media and the public from a more rigorous examination of the functioning of the judiciary.

1. **scandalise** (verb) – insult, offend, affront. 'Scandalising the Court' broadly refers to statements or publications which have the effect of undermining public confidence in the judiciary.
2. **contempt** (noun) – it refers to the offence of showing disrespect to the dignity or authority of a court (& its officers).
3. **criminal contempt** (noun) – it includes any act or publication which: (i) 'scandalises' the court, or (ii) prejudices any judicial proceeding, or (iii) interferes with the administration of justice in any other manner.
4. **civil contempt** (noun) – it refers to the wilful disobedience of an order of any court.
5. **proceedings** (noun) – legal action, prosecution.
6. **usher in** (verb) – start/begin, initiate, pave the way for, get going.
7. **accountability** (noun) – responsibility, liability, answerability.
8. **initiation** (noun) – introduction, admission, admittance, installation.
9. **activist** (noun) – a person who supports a political or societal change/cause.
10. **necessity** (noun) – (essential) requirement, prerequisite, indispensable thing.
11. **as it stands** (phrase) – in its present condition.
12. **critic** (noun) – commentator, observer, analyst; fault-finder, censurer.

13. **deem** (verb) – regard as, consider; view as.
14. **air** (verb) – express, voice, make public, state.
15. **unrestrained** (adjective) – uncontrolled, unbounded, unrestricted, uninhibited.
16. **expend** (verb) – spend, waste; use up, utilize.
17. **invoke** (verb) – cite, refer to, adduce.
18. **allegation** (noun) – charge, accusation, complaint.
19. **innuendo** (noun) – insinuation, indirect remark, slur, allusion (indirect comment), insulting comment/gesture.
20. **scurrility** (noun) – abuse, defamation, insult, libel.
21. **latitude** (noun) – freedom, independence, liberty, unrestrictedness, leeway, elbow room.
22. **voice** (verb) – express, make public, announce.
23. **strident** (adjective) – in an excessively forceful way; high-pitched, loud & harsh.
24. **is no stranger to** (phrase) – experienced in something; knowledgeable about something; to be well informed about a particular experience or activity.
25. **tolerance** (noun) – forbearance, self-control, open-mindedness, patience, acceptance.
26. **haul up** (phrasal verb) – to force (someone) to appear for trial (in a court of law).
27. **outspoken** (adjective) – forthright, straightforward, open/candid; vociferous, uninhibited.
28. **judicious** (adjective) – wise, sensible, prudent, thoughtful, well-advised.
29. **adverse** (adjective) – unfavourable, disadvantageous, bad.
30. **seek** (verb) – try, attempt, work towards.
31. **author** (noun) – creator, initiator, instigator, planner.
32. **dilemma** (noun) – quandary, predicament, difficulty.
33. **lie in** (phrasal verb) – be present, be contained, exist.
34. **criminalise** (verb) – make something (an activity) illegal.
35. **clause** (noun) – term, condition, provision, requirement.
36. **wilful** (adjective) – deliberate, intentional, purposeful.
37. **overt** (adjective) – clear, visible, noticeable.
38. **insulate** (verb) – protect, keep safe, shield.
39. **fall** (noun) – collapse, failure, decline.
40. **the public eye** (phrase) – the spotlight, the limelight, the focus of attention.
41. **jurist** (noun) – an expert in law.
42. **offence** (noun) – breach, violation of the law.
43. **impartial** (adjective) – unbiased, unprejudiced, neutral, fair.
44. **blaze** (noun) – outburst, burst, eruption of something.
45. **a blaze of publicity/glory** (phrase) – a lot of attention (from the public).
46. **undiminished** (adjective) – unabated, unmoderated, undiluted.
47. **doctrine** (noun) – order, command, rule, decree, directive.
48. **fall into disuse** (phrase) – be out of use; not being used.
49. **contemporary** (adjective) – modern, present-day.
50. **scotch** (verb) – put an end to, bring to an end.
51. **recuse** (verb) – challenge a judge as being incompetent and remove him/her from a position of judicial authority from a case.
52. **harassment** (noun) – persecution, persistent annoyance, coercion/intimidation.
53. **credibly** (adverb) – believably, convincingly.
54. **restrain** (verb) – control, restrict, limit, regulate.

A Governor's test: On convening Rajasthan Assembly

Governors should not act at the behest of the party ruling at the Centre

Rajasthan Governor Kalraj Mishra could have sought a floor test in the State Assembly to ensure that the government of Chief Minister Ashok Gehlot has a majority, as soon as a rebellion in the ruling Congress cast a shadow on it. Far from that, Mr. Mishra now appears to be bending over backwards to delay a trust vote. The Governor has cited six reasons for his procrastination in calling an Assembly session. But the Supreme Court has settled that the Governor has no discretionary powers in summoning a session of the Assembly, and he or she is bound to act according to the aid and advice of the CM and the Council of Ministers. The Governor can require the CM and the Council of Ministers to seek a trust vote if he or she has reasons to believe that they have lost the confidence of the Assembly. Either way, the only appropriate way forward for Mr. Mishra is to convene the session and allow the democratic process to take its course. Now that the State cabinet has reiterated its demand for a session, specifying a date and an agenda as demanded by the Governor, he should not look for more excuses and bring embarrassment to the high office he holds.

The CM has said the Governor is acting under pressure from the Centre, as he took the battle to the streets. Congress MLAs supporting the CM held a dharna at the Governor's residence, and a public protest is to be held on Monday. It is instructive to compare Mr. Mishra's conduct with that of Lalji Tandon, the former Governor of Madhya Pradesh, when similar sabotage brought down the Congress government led by Kamal Nath in March. Mr. Nath had said Congress MLAs were held captive, and the voting could be vitiated, but the Governor declared that the failure to take an immediate floor test would be presumed as a lack of majority. Mr. Mishra wants to ensure that all MLAs are free to move around before a session could take place, though there is no public knowledge of anyone complaining to him being restrained. He requires the government to take into consideration the spread of the novel coronavirus, but in Madhya Pradesh, the reasoning was the opposite — the Governor did not want any delay on account of the pandemic. These arguments of two Governors four months apart in two States certainly appear contradictory, but also partisan in favour of the Bharatiya Janata Party. The BJP's imprint is unmistakable in the crisis in Rajasthan, its denial apart. The Raj Bhavan should not be a tool of the BJP to dislodge and install governments as and when it wants. Mr. Mishra too has a test to pass, of constitutional morality.

1. **convene** (verb) – summon, call, assemble, gather together.
2. **behest** (noun) – instruction, requirement, demand, wish/desire.
3. **rebellion** (noun) – defiance, disobedience, dissent, nonconformity, subversion.
4. **cast a shadow on** (phrase) – spoil, diminish, let down.
5. **far from** (phrase) – the opposite of.
6. **bend over backwards** (phrase) – try/strive, work hard; do all one can, make every effort.
7. **trust vote** (noun) – a confidence motion, or a vote of confidence, or a trust vote, is sought by the government in power on the floor of the House in order to prove the majority.
8. **cite** (verb) – refer to, adduce, make reference to, invoke.
9. **procrastination** (noun) – delaying tactics, stalling, the action of postponing something.
10. **call** (verb) – convene, summon, assemble.
11. **discretionary** (adjective) – optional, voluntary, non-mandatory, up to the individual.
12. **discretionary power** (noun) – a power that a person can use if that person thinks that it is suitable given the situation and circumstances.
13. **bound to** (adjective) – certain/sure, very likely, guaranteed.
14. **aid and advice** (phrase) – real authority to take decisions lie in the elected government. This is the meaning of 'aid and advice'. Titular head (LG) has to act in accordance to aid and advice. (Courtesy: [The Hindu](#))
15. **confidence** (noun) – trust.

16. the way forward (phrase) – something (a plan/action) that leads to success in the future.
17. run/take its course (phrase) – develop naturally in its own way without interference & come to a completion.
18. reiterate (verb) – repeat, say again, restate.
19. look for (phrasal verb) – search for, try to find, seek.
20. embarrassment (noun) – shame, humiliation, awkwardness, uneasiness, discomfort.
21. hold (verb) – have or occupy (a job or position).
22. come out on the streets/take to the streets (phrase) – (of a crowd) to come together in the streets to display communal harmony in either celebration or opposition.
23. instructive (adjective) – useful, informative, instructional, revealing, explanatory, telling.
24. conduct (noun) – behaviour, way of behaving, performance.
25. sabotage (noun) – wrecking, destruction, impairment, damage.
26. bring down (phrasal verb) – topple, unsettle, unseat.
27. take/hold captive (phrase) – detained, confined, keep in captivity.
28. vitiate (verb) – destroy, impair, spoil, ruin.
29. presume (verb) – assume, suppose, guess/believe.
30. restrain (verb) – control, restrict, limit, regulate.
31. take into consideration (phrase) – consider, take into account, foresee, anticipate.
32. novel coronavirus (nCoV) (SARS-CoV-2) (noun) – a new strain (type/variety) coronavirus that has not been previously identified in humans. (Courtesy: **WHO**)
33. on account of (phrase) – because of, owing to, due to, by virtue of.
34. pandemic (noun) – the worldwide spread of a new disease; The illness spreads around the world and typically affects a large number of people across a wide area.
35. contradictory (adjective) – opposed, at variance, conflicting.
36. partisan (adjective) – biased, prejudiced, one-sided.
37. in favour of (phrase) – giving support to, approving of.
38. imprint (noun) – influence, impression, impact.
39. unmistakable (adjective) – noticeable, evident, striking, clear-cut.
40. tool (noun) – instrument, puppet, pawn.
41. dislodge (verb) – remove, unseat, bring down, topple.
42. install (verb) – introduce, appoint, admit to office, swear in, inaugurate.
43. constitutional morality (noun) – the principle of constitutional morality basically means to bow down to the norms of the Constitution and not to act in a manner which would become violative of the rule of law or reflectible of action in an arbitrary manner.