

LIMITS OF THE LAW: CONTEMPT AND VEXATIOUS LITIGATION IN THE BOMBAY HIGH COURT

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This paper details how the courtroom may be thought of as a theatrical space, which institutes ceremony, symbolism, and ritual in its everyday proceedings. By being a participant observant in the courtrooms of the Bombay High Court, I have focussed on how the court images justice, regulates images that lower its dignity or majesty and punishes those who offend the court. By looking at the metaphor of the visual, the regulation of the representation of law and the way in which judges conserve the image of law, I analyse the tenuous relationship between law, legitimacy, and violence. Further, I argue that judges conserve the image of the law through two important enactments, The Contempt of Courts Act, 1971 and The Maharashtra Vexatious Litigation (Prevention) Act, 1971. Additionally, I evoke Robert Cover's work on the relationship between law and violence and the idea that law exercises a certain kind of monopoly over violence which it legitimises through actions of contempt and various enforcement orders. The law, and the courts, require to maintain a certain image of dignity and majesty and therefore, the law is often in a legitimacy crisis and there is a constant attempt to maintain this legitimacy. Observing these legitimising tools of justice leads to the question, "What is complete justice?" Understanding these different aspects in the context of viewing the court as a theatre display how law is invested in organising court proceedings in a manner that justice must appear to be done and it controls this idea through different hierarchical and legitimising tools.

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Keywords: Bombay High Court, Contempt, Vexatious Litigation, Images of Law, Law and Violence.

I. INTRODUCTION

This research paper is situated in the Bombay High Court to detail how the courtroom may be thought of as a theatrical space, which institutes ceremony, symbolism, and ritual in its everyday proceedings. By studying everyday courtroom proceedings in the Bombay High Court, I have focused on how the court images justice, regulates images that lower its dignity or majesty and punishes those who offend the court. I have emphasised how the law visualises itself and explored the proposition that the law is invested in organising court proceedings in a manner that justice should be seen to be done, yet it prohibits other methods of visualising or representing court proceedings. By looking at the metaphor of the visual, the regulation of the representation of law and the way in which judges conserve the image of law, I analyse the tenuous relationship between law, legitimacy, and violence.

In this paper, I argue that the place of visibility in legal discourse is central, whereby justice has to be seen to be done on one hand, but on the other hand, different methods are used to prohibit and control the court proceedings such as the threat of contempt and vexatious litigation. I argue that judges conserve the image of the law through two important enactments, The Contempt of Courts Act, 1971 and The Maharashtra Vexatious Litigation (Prevention) Act, 1971. Observing these legitimising tools of justice leads to the question, “What is complete justice?” Understanding these different aspects in the context of viewing the court as a theatre display how law is invested in organising court proceedings in a manner that justice must appear to be done and it controls this idea through different hierarchical and legitimising tools.

For my research in this paper, I use the method of ethnographic fieldwork with interviews and participant observations. I have analysed the law on contempt of court through the stories on contempt shared with me during my fieldwork to trace the nature of pronouncements and punishments that have sought to preserve the sanctity of the administration of justice and dignity of the court. Documented law on contempt of court in this respect was unavailable as case laws mostly deal with contempt in terms of a party not following an order passed by the court. I document stories about contempt which circulated in the Bombay High Court. These contempt cases range from inappropriate utterances in court, newspaper writings, academic work or images such as taking photographs or making recordings of court proceedings which in turn monitor not only litigants in court but even the general public.

The paper first explains the relationship between law, legitimacy, and violence. Here I evoke Robert Cover's work on the *jurispathic tendency of law*. The next two sections zoom into the law's violence through the two legislations on contempt and vexatious litigation. These sections detail stories from the field in the Bombay High Court and provide examples of the different tools used by courts to control its image. The paper concludes by identifying the various limits on the law in the given context.

II. LAW, LEGITIMACY, AND VIOLENCE

The representation of courts of law as sacral, at a distance from the quotidian, cannot be completely understood without referring to the way the law is foundationally violent. In *Politics as a Vocation*, Max Weber¹ argues that the state exercises authority over its territory by maintaining a monopoly over the legitimate exercise of violence. Weber writes that power which is legitimised is understood as authority.² Therefore, with the exception of self-defence, the exercise of violence by individuals or groups is constructed as illegitimate and often criminalised. The architecture of violence, legitimised by state law, has been variously analysed since Weber's formulation. In Michel Foucault's *Discipline and Punish* we encounter descriptions of torture when he writes about the 'body of the condemned'³ and the shift of this idea to the disciplinary power of state law through the use of the Panopticon for surveillance in prisons. Foucault states that punishment has become the most hidden part of the legal process wherein disciplinary power is annexed to state power. Therefore, in this case, the court legitimises its power to be violent through legislative Acts like the law on contempt which does not directly manifest itself to be a disciplinary power but ends up acting as a surveillance means for the court over its subjects.

Here, I evoke Cover's famous statement that "legal interpretation takes place in the field of pain and death".⁴ Cover argues that law is '*jurispathic*', killing the diverse legal traditions that compete with the state.⁵ This is an indication of law's tendency to destroy its own meaning, the juris-generative tendency in law. Cover says that the violence of legal interpretation makes it different from interpretations in literature and political philosophy. Therefore, he states that this act of legal interpretation is a direct signal of an imposition of violence on others which even extends to constituting justification for this violence. He attributes this to

¹ Max Weber, 'Politics as a Vocation' in David Owen and Tracy Strong (eds), *The Vocation Lectures* (Hackett Publishing 2004) 32.

² *ibid.*

³ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (2nd edn, Vintage 1995; trans. Alan Sheridan 1977) 34.

⁴ Robert Cover, 'Violence and the Word' in Martha Minow, Michael Ryan and Austin Sarat (eds), *Narrative, Violence, and the Law: The Essays of Robert Cover* (The University of Michigan Press 1995) 203.

⁵ *ibid* 214.

the logic of the legal profession that is one of complete domination even though eventually that domination might not materialise. This is manifested in the idea of punishment, where Cover argues that there is a difference in punishment as an ideology in professional literature and political debate and its understanding in the context of legal acts of trial, sentencing, and execution.

In a related sense, law exercises a similar monopoly over violence which it legitimises in the form of various enforcement orders. What is established is that law is not a simple text but one that generates a form of violence, whether symbolic or actual, and these acts are in furtherance of law attempting to maintain a particular legitimacy. Hence, law is often in a legitimacy crisis and there is a constant attempt to maintain its legitimacy. For this, law visualises itself in a particular manner and has an image of itself. To preserve this image, the law has different methods of symbolic violence that it uses to uphold its own image through restricting other images in a courtroom space that have the potential to undermine its authority.⁶

The law on contempt in a courtroom plays this very role. *The Contempt of Courts Act, 1971* ('the Contempt Act') bestows these powers upon courts to hold in contempt persons who violate certain statutory obligations. Peter Goodrich argues how *The Contempt of Courts Act, 1981* in the United Kingdom acts as a form of obedient procedure in the court.⁷ The controlled order and speech that is expected from the court is supported by legislations such as the Contempt Act wherein strict sanctions are attached to certain actions of persons while present in a courtroom. Goodrich describes instances when observers have been punished for contempt for the act of laughing in court. The Indian courts have not been far behind. The legitimacy of the law plays its dynamics here wherein the court maintains its power and authority through the tool of contempt. The court, therefore, constructs what constitutes as insulting language for itself, language which intends to lower the dignity of the court and challenge the authority of the judiciary. This leads to the question of what constitutes calculated malice and disrespect towards the judiciary and what does scandalising the court eventually mean, and does this meaning change over time, indicating to us the changing nature of the judiciary, specifically in India? It has been argued by the judiciary⁸ that statements and behaviour which are defamatory and generate scepticism towards the ability of judges to judge in public discourse, lowers the credibility of the judiciary, thereby obstructing the performance of justice.

⁶ Cover (n 4) read with Peter Goodrich, 'Modalities of Legal Annunciation: A Linguistics of Courtroom Speech' in Peter Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (Weidenfeld & Nicolson 1990) 179-208.

⁷ *ibid.*

⁸ This is seen through orders and judgments on the contempt of courts as detailed later in the paper.

Another tool used by the court to control how it images itself is the rule that bans photography in court. The court safeguards its own image in order to construct judicial authority and dignity in a way that upholds its majesty. The rulings on contempt of court and the ban on photography in court offer a window to analyse the way in which the court constructs how wrong done to a judge or an incorrect publication of an image of a judge amounts to an obstruction of the administration of justice. Contempt proceedings then become a way in which the court regulates representations and images of law's violence and executes its violence towards people, representations or objects that challenge this authority.

Contempt proceedings may be viewed as one form of *jurispathic* tendency of the judiciary in its process of evolving justice. Further, contempt proceedings give the law the authority that it requires to maintain its legitimacy through a variety of speech and actions that it controls in a courtroom space. Contempt cases regulate the way in which the image of law is represented, prevent it from being sullied, and levy punishment in order to communicate law's violence.

I also analyse allied laws such as *The Maharashtra Vexatious Litigation (Prevention) Act, 1971* which permits looking at how the court constructs the figure of the vexatious litigant, and tries to reign in what it perceives as the harassment and wastage of the time of the court by a litigant who pursues vexation instead of justice. From the point of view of a legal anthropologist, the very existence of a vexatious case signals some form of social conflict, and the deciding authority of the status of such cases are the judges themselves. This only reiterates the authoritative power that the judiciary prefers to retain contributing to its stately image for the public at large. However, the violence of the law, which conserves the majesty of law, must also extend to the judiciary itself — to follow how superior courts discipline lower courts or specific judicial officers. Contempt of court proceedings therefore play a role in the didactic organisational structure of the courtroom and, to some level, influence proceedings on the symbolic image of justice as being all-encompassing. Such privileges, in the hands of the judges, reinforce the social distance and unfamiliarity of the existing courtroom structure.

III. LAW'S VIOLENCE: ON THE CONTEMPT OF COURTS ACT, 1971

The power of contempt is a tool that allows the court to control and regulate its procedure. The general understanding of contempt of court is this: when the court passes an order or judgment and the parties involved in the case do not follow this order, the parties are held in contempt. The cases that are documented and available in the case books mostly deal with contempt in this context. The contempt of court that I look at in this paper is the use of the power of contempt by the court to control and regulate its proceedings in a manner that maintains the dignity and the majesty of the court. This form of contempt occurs mostly

during court proceedings and is dealt with immediately in court itself. Most cases are not documented widely through case law.

The stories of contempt in the Bombay High Court that I use in my ethnographic study are based on the interviews that I have conducted.⁹ The Contempt Act does provide for punishments for actions that tend to lower the authority of the court and those that interfere with the proceedings of the court, but in most cases, the judges warn a contemptuous person and let them go and therefore, the recording of these cases in case laws is reduced. However, it is the very existence of the idea of holding a person contemptuous of an act in court that is evidence of the tool used by the court to legitimise its actions. In most instances, it is for the judges to decide what actions can be considered as contempt of court and to interpret the statutory definition as provided by the Contempt Act. Therefore, the provisions of the Contempt Act are a method by which the tenuous relationship between law, legitimacy, and violence can be analysed. For acts of contempt that tend to lower the dignity of the court, the judges have discretion as to what can be considered contempt and what can be let off. It is this power in the hands of the actors of the court that is a symbol of how the court controls the various images of itself that it chooses to project to the common man. The provisions of this law, therefore, are important in understanding this legitimising instrument of the court.

To understand what is meant by contempt in the context of the courts, it is important to read the Contempt Act and its provisions. Though most of the provisions are geared towards orders of the court that are not followed or enforced, there are significant and important provisions that deal with contempt that affects the dignity of the court. Looking at these provisions of the Contempt Act is therefore important.

In the contempt stories I gathered during my fieldwork, provisions of the Contempt Act were not applied directly. It is the existence of this Act itself that gives the power to carry out certain actions to instantly protect the court's majesty and therefore it is relevant to understand the background of the provisions of the Contempt Act and read them along with the stories of contempt that have occurred in the Bombay High Court. The Black's Law Dictionary very directly defines contempt as, "...Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable, usually by fine or imprisonment".¹⁰ The term contempt is always attached to something that affects the "dignity" of the court. It is to protect this dignity that the court has been given extensive powers through contempt laws. The Indian law on contempt is no different from these definitions. It also

⁹ The interviews and field research were conducted in parts during the years 2012-2013, 2015-2016 and 2020-2021.

¹⁰ Bryan Garner, *Black's Law Dictionary* (8th edn, Thomson West 2004) 336.

categorically views contempt as a means to control an act that tends to lower the authority of the court.

*The Contempt of Courts Act, 1971*¹¹ is an Act promulgated by the Parliament of India to, “...define and limit the powers of certain Courts in punishing contempts of Courts and to regulate their procedure in relation thereto”. In this context, it is important to understand what Parliament defined as “contempt” under this Act. Section 2(a) defines contempt as civil or criminal contempt. As per Section 2(b) civil contempt refers to any disobedience of any judgment or other process of the court. This form of contempt occurs when an order passed by the court is not followed by the parties to the proceedings, and for this act, the party is punished. There is a third part to this section. Section 2(c) defines criminal contempt. Section 2(c) of the Contempt Act says that criminal contempt,

“...means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which –

*(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner....”*¹²

It is this notion of contempt of court that I refer to in this ethnographic study. The important words used in this defining section are the visible representation of “any” act that scandalises or lowers the dignity of the court. Therefore, there is scope for a wide understanding of what actions are contemptuous and which actions are not. This concept has been upheld by the Supreme Court of India (‘the Supreme Court’) in *Prodip Kumar Biswas v. Subrata Das*¹³ wherein the court clearly defines the use of the tool of contempt along with its limitations. The Supreme Court held that “Contempt of Court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions”.¹⁴ The Supreme Court is, therefore, categorical when it says that any individual person’s actions should not shake the public’s confidence in the judicial system. The controlling use of contempt is important to secure this action of people wherein the particular maintained image of justice is sustained.

¹¹ The Contempt of Courts Act 1971 (India) (emphasis added).

¹² *ibid.*

¹³ (2004) 4 SCC 573.

¹⁴ *ibid* 9.

The Supreme Court further elaborates in the same paragraph of the above-mentioned case,

*“This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the Courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law. The contempt proceedings should not be initiated lightly”.*¹⁵

The act of holding one in contempt, therefore, has at its very core the upholding of the majesty and dignity of the court as exemplified by the Supreme Court. Further, the court is clear when it states that the entire purpose of the Contempt Act is to uphold this very majesty and dignity of the court. This view of the Supreme Court clearly lays down the rationale of the Contempt Act and its function that should be carried out by the judges who have the responsibility of maintaining the said image. The Supreme Court does not end at upholding a particular image of the court. It continues to specify that such an act should not be treated lightly as this is the basis from which the court gains its legitimacy, and if this image is tarnished by acts of contempt in court, then the court would not be able to deliver judgments with the force that they are able to do so in the current judicial system. Therefore, along with the awe and admiration geared towards court proceedings, the court has another method that further controls and legitimises its action. The tool of contempt is what the court uses to control visual representations of itself and its functioning.

The Supreme Court has dealt with several cases of contempt where the authority and dignity of the court has been lowered. The court has been clear that these cases should not be treated leniently and the punishment given should be a display of the authority of the court which would indirectly maintain the reverence that people have towards the court and its actors. In a 2002 case that was heard by the Supreme Court, the court illustrated the relation between an act of contempt in court and its direct effect on the judicial system itself. The case of *Prem Surana v. Additional Munsif and Judicial Magistrate*¹⁶ brought about this strong reaction from the court. The Supreme Court held that,

*“The slap on the face of the Judicial Officer is in fact a slap on the face of the justice delivery system...and as such question of apology or an undertaking does not and cannot arise, nor can there be any question of any leniency as regards the sentence”.*¹⁷

¹⁵ ibid 9 (emphasis added).

¹⁶ (2002) 6 SCC 722.

¹⁷ ibid 16.

The Supreme Court took a stern view on the contemptuous act of a slap and held that it directly affected how the judicial system was viewed and therefore it was against the majesty and dignity of the court.

In *Babu Ram Gupta v. Sudhir Bhasin*,¹⁸ the court has held that,

*“this power [to punish for contempt] has to be exercised not casually or lightly, but with great care and circumspection and only in such cases where it is necessary to punish the contemnor to uphold the majesty of law and the dignity of the courts”.*¹⁹

Although precedent is an important aspect of the Indian judicial system and the high courts would look at case law from the Supreme Court to deal with a case of contempt, the Supreme Court has held in a 1973 case that the absence of precedent should not preclude an act from being considered as contempt. The court further elaborated this to add that, “The absence of precedent should, however, put the Court on guard so that the area of contempt is not unduly expanded”.²⁰ The court is, therefore, constantly striving to control a particular image of itself and in turn it controls all the methods that hamper this image through different ways and means. The court is also particular that the meaning of what is contemptuous should not be expanded in any way by the actors of the court. The key is to keep it confined and within the controllable limits of the court.

The Contempt Act altogether has twenty-four sections that deal with different aspects of contempt that include exceptions to the rule and punishments for the same. In this context, Sections 5 and 6 deal with fair criticism of a judicial act that does not amount to contempt and complaints against presiding officers of a court that do not amount to contempt respectively. The meaning of these two sections is clear from *Perspective Publications (P) Ltd v. State of Maharashtra*²¹ where the Supreme Court held that,

*“It is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity or even to make a proper and fair comment on any decision given by him ...”.*²²

To explain why the court considers this as non-contemptuous is because, “Justice is not a cloistered virtue; she must be allowed to suffer scrutiny and respectful, even though outspoken, comments of ordinary men”.²³ This understanding is in sync with Sections 5 and 6 of the Contempt Act dealing with

¹⁸ (1980) 3 SCC 47.

¹⁹ *ibid* 8.

²⁰ *Baradakanta Mishra v. Bhimsen Dikshit* (1973) 1 SCC 446, ¶10.

²¹ 1968 SCC OnLine SC 118 : (1969) 2 SCR 779.

²² *ibid* 17.

²³ *ibid* 11.

fair criticism. However, there is also Section 12 that defines the punishment for contempt.

Section 12 states that punishment for contempt can be simple imprisonment for a term that may extend up to six months or a fine for up to Rs. 2,000 or both. This section has a disclaimer that states that an accused may be discharged or the punishment awarded may be remitted on an apology being made to the satisfaction of the court. In the examples that I was told of in the Bombay High Court it was this disclaimer that was in use by the court as, in many cases, an apology tendered was sufficient for the court to let the contemptuous act be forgiven. Interestingly, in *Pushpaben v. Narandas v. Badiani*,²⁴ the Supreme Court analysed Section 12 of the Contempt Act closely. The court held that this section, "...leaves no room for doubt that in normal circumstances a sentence of fine alone should be imposed...Imprisonment is an exception; fine is the rule".²⁵ It appears that the Bombay High Court follows this precedent when holding persons in contempt on account of hurting the majesty and dignity of the court.

There are two cases where the opinion of the courts, through their written judgments, directly identify the aspect of the concept of how the court regulates the representation of law and the way in which judges conserve the image of law through the law on contempt. The first case is of *Abdul Jabbar Taj v. R K Karanjia*²⁶ where the Bombay High Court reflected on an apology tendered. The high court was of the opinion that an unreserved, clean, and immediate apology tendered at the earliest opportunity must be given greater weight than a delayed apology which is made after the realisation of the grave consequences of one's act. According to the Bombay High Court, a belated apology made, after some discussion and thought, "...becomes instead, the cringing of a coward shivering at the prospect of the stern hand of justice about to descend upon his head".²⁷ Therefore, the actors of the court are confident of the particular image of justice having a "stern" hand and therefore contempt issues are not treated very leniently as this would alter the fear of the strict actions of justice in front of which every person should bow down.

The second case from the Supreme Court that exemplifies this even further is the case mentioned above, that is, *Prem Surana v. Additional Munsif and Judicial Magistrate*.²⁸ The court's words in this context are imperative as their understanding of the majestic image of the court is clearly brought out. The court held that,

²⁴ (1979) 2 SCC 394.

²⁵ *ibid* 6.

²⁶ 1968 SCC OnLine Bom 47 : AIR 1970 Bom 48.

²⁷ *ibid* 22.

²⁸ (2002) 6 SCC 722.

“True, the judges should not be hypersensitive but that does not mean and imply that they ought to maintain angelic silence also. Immaterial it is as to the person but it is the seat of justice which needs protection: it is the image of the judicial system which needs protection. Nobody can be permitted to tarnish the image of the temple of justice. The majesty of the Court shall have to be maintained and there ought not to be any compromise or leniency in that regard”.²⁹

The judges in this case expressed the idea of the majesty of the court in clear terms. As the judges pointed out, it is the “image” of the judicial system that always needs to be protected. Contempt is the method that the court implements in order to prevent the tarnishing of this image. Therefore, it is clear that the basic aim of the law on contempt is to control and protect the image of justice. In addition, the courts are clear that no compromise or leniency should be tolerated in this regard. Thus, the general law of contempt is utilised in this manner and understood in this context. The judgments of the Supreme Court are a precedent for the Bombay High Court and therefore the idea of the protection of the majesty of the image of law is carried forward to this court.

A. CONTEMPT NARRATIVES IN THE BOMBAY HIGH COURT

In this section, I document the stories around contempt which I heard in the Bombay High Court. These narratives, which indicate the use of contempt as a force of law which maintains judicial hierarchy, are directed both at those who are outside the legal system and those who are within the stratified legal system. Cover describes law’s monopoly over violence which the law legitimises through different orders, and in a similar sense, contempt is both a method of governing courts as well as punishing those who offend the majesty of law.³⁰ The definition of what constitutes contempt is not a matter of concern here, as much as how various actors view contempt. I suggest that contempt is constitutive of legal subjectivity, modes of address, dress, and behaviour. The circulation of contempt narratives as a resource to teach people how to walk, dress, talk, behave, and sit in court finds explication in the descriptions below.

1. *Justice Cannot Wait*

The first conversation on contempt in court that I had was with an official from the Judge’s Library of the Supreme Court. The official told me that the process in the Supreme Court is such that the personnel from the judge’s library have to provide the necessary books for the use of the judges in the courtrooms. These books are connected to the matters that the judge will hear on the given date.

²⁹ *ibid* 10.

³⁰ Cover (n 4).

Therefore, the books are required to be in court before the court commences for the day. The official explained, that on one day, a librarian delivered the required books with a two-minute delay, after court had commenced. On seeing this, the judge reacted and said, “You are in contempt, why shouldn’t you be put in jail? You have wasted two minutes of the court’s time”. The judge scolded the librarian and then let the librarian go. Although this is a story from the Supreme Court, it is important to understand how contempt is treated in everyday proceedings. Not only are acts of contempt held against people who are outside the judicial system, but it also affects actors of the court. For the judge, the court’s time was most precious, and justice could not wait for librarians, lawyers, or clients. More importantly, it was pertinent for the judge to indirectly inform the other members of the court that time was of the essence and no one was permitted to waste the time of the court. This was an example where contempt was held against an officer of the court who was questioned in order to maintain a particular image of the court.

2. *Noise is Contemptuous*

If audibility, as Goodrich argues, structures how law is visualised, equally the regulation of noise meets law’s voice.³¹ With the introduction of mobile phones, a newer form of contempt narrative circulates in courts. In an interesting case in the Bombay High Court, a notice was issued to an Assistant Commissioner of Police who took a call on his mobile phone while sitting in court.³² The court later withdrew this notice on the premise of the police officer issuing an unconditional apology for his act. This example from the Bombay High Court is a clear indication as to what it constitutes as insulting to the court and how it maintains its own legitimacy by disciplining police officers who are seen to obstruct court proceedings by taking calls during court proceedings. The rulings on contempt of court offer a window to analyse the way in which the court constructs how wrong done in court amounts to an obstruction of the administration of justice by creating a public perception of an inefficient judiciary.

Reminiscing about earlier days, a senior solicitor told me that courts used to be stricter about the rule of contempt, which is necessary to prevent disrespect of the court and to uphold the prestige of the court. The solicitor explained that in the pre-independence Bombay High Court era, courts were very strict and lawyers were disrobed for contempt of court. The solicitor recalled that once a barrister refused to appear in court and returned a brief as the fee offered was not sufficient. On finding this out, the judge passed strictures against the barrister and held him in contempt of court. In contrast today, the solicitor said, judges are

³¹ Goodrich (n 6).

³² Sunil Baghel, ‘ACP Answers Phone Call in HC, Served Contempt Notice’ *Mumbai Mirror* (20 January 2012) <<https://mumbaimirror.indiatimes.com/mumbai/other/ACP-answers-phone-call-in-HC-served-contempt-notice/articleshow/16198814.cms>> accessed 6 November 2024.

more lenient. If a mobile phone rings in court, then the *chopdar*³³ is expected to confiscate the mobile phone and submit it to the registrar of the high court. The concerned person then goes and collects the mobile phone from the registrar's office at the end of the day after paying a fine of Rs.500.

3. *What can One Read in Court?*

Another aspect that was subjective with respect to being held as contempt of court was reading of a non-legal book or novel and reading a newspaper in court. When I was interning in the high court, I was once sitting with some lawyers and a senior lawyer in the Bombay Bar Association room on the third floor. I had the book *India After Gandhi* authored by Ramachandra Guha in my hand. Looking at me, the senior said, it is inappropriate and contemptuous to read or carry this book in court, as it is not a legal document. The senior warned that I should not have carried the book along. During this conversation, another lawyer mentioned even the reading of a newspaper in court is considered contemptuous. During my interviews, I asked a few lawyers whether they felt reading a newspaper was contempt of court and if they had come across such incidents. Most of them had not heard of the idea and did not consider it as contempt. This incident showed that the idea and view of contempt varies amongst the different actors of the court, and each actor has a different view of what the particular image of the court should be. Contempt then becomes a modality of power to control juniors by impressing upon judicial mentalities that demand specific sorts of behaviour.

4. *Speaking Contemptuously*

Many cases of contempt revolve around how litigants and lawyers address the court and use insulting language against the court. What the court constructs as insulting language against its majesty and dignity is pertinent to understand. One solicitor with forty-one years of practice gave me an example of the same. The solicitor narrated that in one case, there was a party-in-person standing in the witness box. This litigant was hurling abuses at the judge and screaming, "I do not have faith in you. You are corrupt". The judge kept quiet but called for the sheriff³⁴ and had the litigant arrested. When lawyers also use 'unparliamentarily language' in court, the solicitor said, they are threatened with the calling of the sheriff.

Another solicitor, with two years of practice, had a different experience with contempt. In the case the young solicitor narrated, a lawyer was representing the

³³ A *chopdar* is the person who walks with the Judge to and from Court and announces the arrival of the Judge in the Court.

³⁴ The Sheriff of Bombay is an apolitical titular position in the city of Bombay. One of the functions of the office of the sheriff is the service of proceedings, that is, the delivery of notice, papers and proceedings in any matter in court to the parties concerned.

litigant. The litigant was addressing the lawyer in a loud, audible way, suggesting that the court was not doing its job properly. The judge immediately reacted, telling the litigant, “You are being represented in court by a lawyer. Conduct yourself well in open court or we will get you arrested for contempt”. In this case, the judges threatened and cautioned the lawyer and the litigant that they would be booked for contempt. According to the young solicitor, this was sufficient to bring the court decorum in order. The existence of this tool of contempt leads to a threat only when it is mentioned without it even being implemented. Such is the power of this tool that it plays a vital role in maintaining the required image of the court. Another lawyer with twenty-five years of practice gave me one more instance of a litigant speaking rudely to a judge. The judge held the litigant in contempt instantly and sent him to jail. This shows that talking inappropriately to a judge and insulting the court by using unsuitable language is contained by the threat of contempt.

5. *Slapping and Throwing Contempt*

A lawyer with twelve years of practice narrated an animated story about how contempt was slapped in a case that was being heard in the judge’s chamber between the lawyer and a party-in-person. The judgment was being dictated in the judge’s chamber itself, during which the party-in-person, “...slightly lost his mind and started making allegations about all the people in the chamber including the judge and myself. Previous division benches had already not upheld his matter...” and here too, the judge dismissed the petition. On hearing his dismissal, the party-in-person went forward to slap the judge, and the lawyer held him back on realising that he was going to do this. By stopping the party, the act of contempt was averted. The lawyer also narrated an incident from the year 2003 when the lawyer was appearing with a senior lawyer in a labour dispute. In the decision, which the lawyer termed as a ‘fair decision’, one company had to pay all the dues and another company’s workers were not compensated. Forty workers from the latter company charged towards the judge to beat him in open court, “...they *gheraoed* [surrounded] the judge”. The police were called in and they handled the situation. Here, these different acts of persons in court generated the use of the Contempt Act.

One journalist that I spoke to had a comment on the contempt law in court. The journalist had not witnessed contempt proceedings in the Bombay High Court but had observed contempt in a MCOCA Court (*Maharashtra Control of Organised Crime Act, 1999*), where, in a railways blasts matter, a judge was not hearing a bail plea. The litigant gathered some papers, his socks, picked up someone else’s slipper and threw it at the judge. The police were called in to take him out.

6. *Contempt as a Tool to Deal with Excesses*

One journalist with six years of reporting practice narrated an incident in one courtroom of the Bombay High Court. There was a lawyer who constantly wanted to get onto the dais of one of the judges of the Bombay High Court. This lawyer would cover his face with his own robe, would go and stand in front of the judge's dais and start laughing and cackling in front of the judge. The judge informed the police and this lawyer was banned from his court. The journalist told me that it was rumoured that, "...this lawyer was gay and that he had a crush on the [Judge]".

One of the Judges I interviewed spoke about an incident of contempt when the Judge was a lawyer. In the case, the court passed a contempt petition stating that the party-in-person was disrupting court proceedings. However, according to the Judge, the case was not one that should have been considered as contempt. Actually, the party-in-person was being very emotional which appeared as if the court proceedings were being disrupted. Therefore, with the tool of contempt, the court has an overarching power to consider issues that only affect the majesty of the court without considering the individual present in court. Contempt is important as it places the court's decorum above the personal decorum of any individual, however distressed the court proceedings might be for the said individual.

Another Judge did not have a story of contempt to narrate but expressed views on contempt proceedings. The Judge felt that contempt proceedings depended on the situation in court and how a judge reacts to it. The Judge said, "People do not have decency anymore. They forget the purpose of the legal system. Everyone should co-operate but they all have their own agenda". Therefore, the Judge felt that contempt was now needed to bring back the forgotten decorum of the court which would in turn uphold the majesty of the court. One Judge had an experience of holding a person in contempt in court. A lawyer passed a remark to the Judge saying that there was an improper motive on the part of the Judge. The Judge served a notice to the lawyer under Section 228 of *The Indian Penal Code, 1860*.³⁵ Along with this, some evidence had been tampered with in the Judge's court. The Judge explained to me that if someone insults the Judge then you can accept an apology but contempt of a procedure of court should not be forgiven.

When I was working as a judicial clerk in the Bombay High Court, I was once sitting in a court where the mistress of a man who had died was claiming his property. She was carrying a lunch box and a *puja thali* (prayer plate) with her. She did an *aarti* (a form of worship) of the judge and told him to adjudge in her favour. She also said she was willing to go to jail, and that is why she was

³⁵ The Indian Penal Code 1860, §228.

carrying her lunch box with her. The judge called out the next matter in court and did not heed to any of her requests. In this case, the judge did not consider this action to be contemptuous of court. Instead, the judge dealt with it by letting it be and moving on to another case.

One of the court personnel I spoke to said that the personnel had not seen any contempt cases in the Bombay High Court. In this personnel's opinion, it was because it was the high court and here, mostly lawyers argue and therefore, there are less cases of contempt. This comment directly attributed contempt to being caused by those who do not belong to the court because they are the people who do not know how to uphold the dignity of the court. Another court associate experienced contempt when a defendant was arguing in person in court. The lady was shouting at the judge in a family dispute. The judge called a female police officer and told her to take the lady out. The lady was not using abusive language but was screaming as she felt she was not getting justice.

One private secretary to a judge had an elaborate story on contempt. This incident occurred when the secretary was attached to the Chief Justice's chamber.³⁶ A young boy came to the chamber saying that he wanted to become a judge and that he wanted to occupy the Chief Justice's chair. This boy came for two days continuously and on the second day, he became violent. So, the court personnel called the police but told the police not to harm the boy. The boy had earlier provided a contact number. They called the contact number and his father came and picked him up. According to this secretary, "Litigants come with many problems to the court, it is important to take care of them and handle them with care". Although this incident did not occur in a courtroom, it occurred in a very important space of the court — the Chief Justice's chamber. Many people feel that if they cannot find justice inside a complicated courtroom proceeding, then they might be able to seek justice through alternative means and by direct interaction with a judge. However, the court cannot entertain such requests and therefore, contempt is used as a reason for the same.

It is clear that not every judicial actor interprets contempt in one routine manner. What is significant is that there is a law of contempt that allows for the different actors of the court to express and maintain their understanding of the particular image of the court. For this, they are provided with the Contempt Act, which can liberally be used to interpret different actions as being contemptuous. Not only does this Act provide for a fine but can also lead to imprisonment. Other than the fact that a person can be imprisoned for contempt is the fact that they can be humiliated and subjected to live up to the majestic image of the court and court procedure against which they are facing the distress caused to them.

³⁶ This private secretary is no longer attached to the Chief Justice of the High Court.

IV. WHO VEXES?: THE MAHARASHTRA VEXATIOUS LITIGATION (PREVENTION) ACT, 1971

Taking the Contempt Act one step further is *The Maharashtra Vexatious Litigation (Prevention) Act, 1971*³⁷ ('the Vexatious Litigation Act'). The Contempt Act holds a person in contempt for not upholding the majesty and dignity of the court or for disrupting the court proceedings. The Vexatious Litigation Act provides for a litigant to be held as a vexatious litigant and does not permit such a person to continuously file cases in the court. The existence of an Act that allows the court to debar a person from litigating in court is problematic as it is a tool that directly prevents a person from seeking justice from an institution that is built to deliver justice to the people. Here again, Cover's argument on law using different symbolic and literal methods to maintain its legitimacy becomes relevant.³⁸ All the lawyers and judges that I interviewed were clear and categorical that the Vexatious Litigation Act is required and a method by which the court can maintain its decorum and dignity. The question I asked was whether it was appropriate to consider any litigant as vexatious or should all litigants be given a chance to appear before a court? The universal response was that this law is appropriate and required and must be implemented.

The Vexatious Litigation Act is a short Act comprising only four sections. The statement of objects and reasons of this Act states that the purpose of this Act is, "...to prevent the institution or continuance of vexatious proceedings in court". Section 2 of the Vexatious Litigation Act is very important. Section 2 (1) states that,

*"If, on an application made by the Advocate General, the High Court is satisfied that any person has habitually and without any reasonable ground instituted vexatious proceedings, civil or criminal, in any Court or Courts, whether against the same person or against different persons, the High Court may, after hearing that person or giving him an opportunity of being heard, order that no proceedings, civil or criminal, shall be instituted by him in any Court (and that any legal proceedings instituted by him in any Court before the order shall not be continued by him)..."*³⁹

The important aspect of this section is that it defines how a person is finally determined to be a vexatious litigant. At the first instance, the Advocate General of the State of Maharashtra has to make an application stating that a particular person has been instituting vexatious litigations in court and therefore the high court should take up the matter. After this step, the high court gives the person a chance to be heard. If the person is found to be a vexatious litigant, then it

³⁷ The Maharashtra Vexatious Litigation (Prevention) Act 1971.

³⁸ Cover (n 4).

³⁹ The Maharashtra Vexatious Litigation (Prevention) Act 1971.

is ordered that the said person cannot institute any proceedings, either civil or criminal, in any court. Therefore, it is not a direct order of the court that determines a party as a vexatious litigant. However, it is in the power of the court to adjudge someone as being vexatious once the issue is brought before a judge. The judge is then permitted to order that no proceedings are permitted to be brought about by this litigant in any court. The Vexatious Litigation Act does not prevent the person from litigating permanently. The Act provides in Section 2(1)(a) and Section 2(1)(b) that for any further litigation, the person can only do so with the leave of the high court or the district and sessions judge. Therefore, although it is not a permanent punishment, it comes with an important exception of taking the leave of the court.

The aspect that the Advocate General has to initiate the proceedings is a fact that most interviewees mentioned to me during my fieldwork. Judges clearly stated that it was not dependant on the judge or the court itself. The court only acted on an application by the Advocate General. Interestingly, all court actors agreed with the existence of the law, and they did not think that not permitting a person to litigate was a harsh law against the basic principles of the judicial system. For this, they narrated several stories.

The Vexatious Litigation Act does not define what it means by a “vexatious litigant”. Therefore, the understanding of the concept is open to interpretation. In *Goolam E Vahanvati v. Anil Gulabrai Gidwani*,⁴⁰ Hon’ble Mr Justices B H Marlapalle and A M Thipsay recognised that the Vexatious Litigation Act does not define vexatious or vexatious proceedings. The judges noted that in common parlance, “...to vex means anger by a slight or a petty annoyance; irritate. Vexation means the act or an instance of vexing or annoying or distressing thing”.⁴¹ The court noted that the, “Black’s Law Dictionary...defines the word... vexatious litigant [as] a litigant who repeatedly files frivolous lawsuits”.⁴² In this case, the judges did not hold the person as a vexatious litigant as the number of cases he had filed in the different courts was not high enough in number. However, the court noted that the petition concentrated on vexatious proceedings that were objectionable to the victim lady and to the judges hearing these cases. The judges stated that the courts by themselves had sufficient, proper, and effective powers and provisions to tackle such a conduct of the litigant and the support of the Vexatious Litigation Act is not required for the same. Important is the idea that the court has powers to control its proceedings in any event, with or without the Vexatious Litigation Act and even if the said Act was not applicable in a particular instance or the Advocate General had not brought the case to court, the court could still use alternate means to contain the majesty of the court.

⁴⁰ 2011 SCC OnLine Bom 619 : (2011) 4 AIR Bom R 382.

⁴¹ *ibid* 8.

⁴² *ibid* 10.

In another case before the Bombay High Court, the judges explained the purpose of the Vexatious Litigation Act. In *R S Bhonsale, Advocate General of the State of Maharashtra v. Anand Prakash Arya*,⁴³ the opponent had filed several criminal complaints against people who came in his way while he attempted to acquire a certain property. The court understood that these complaints were frivolous and only to harass the opposite party and therefore directed the opponent to stop instituting such suits except with the leave of the court. The court noted that,

*"It is precisely to stop the vexatious activities of such busy bodies as the opponent, that the Act has been placed on the statute book. This is, therefore, one of those cases where the Act must step in aid of the victims".*⁴⁴

Therefore, the court does not take away the right of the person to litigate permanently but does so with an exception of taking the leave of the court. In this manner, the court can control the proceedings of a vexatious litigant and protect the image of the court.

From the examples I gathered during my fieldwork, all respondents were clear and categorical that there was a need for the Vexatious Litigation Act and that the judges were not responsible for directly instituting such proceedings, but it was through the Advocate General that such proceedings were initiated. One Judge remembered a vexatious litigant issue when the Judge was still practicing as a lawyer. The Judge said that the man in question was barred from litigating. This was because his entire conduct was one of harassment and an addiction to file suits in court. He kept filing one case after the other and needed, 'psychiatric help'. Another Judge also agreed that there are persons who continuously file cases and are permanently agitating and the Vexatious Litigation Act is for such people.

A lawyer I interviewed explained that the Vexatious Litigation Act requires the Advocate General's permission and when there is a prima facie opinion on the same, only then the court, after giving a hearing to the persons involved, passes an order for vexatious litigation. According to the lawyer, these provisions are an example that the court is open to all and the court does not throw you out, it will hear everyone. A young solicitor felt that the Vexatious Litigation Act was necessary and that people who continuously file frivolous cases must be held as vexatious litigants. This is because Bombay is a commercial city and therefore there had to be a deterrent for such vexatious and frivolous cases that are filed. A lawyer with twelve years of practice was also of the opinion that such an Act must exist as people are more prone to misuse the court and harass the court and therefore such laws are required. One senior lawyer also strongly believed and was in favour of the Vexatious Litigation Act. The lawyer said that this law is correct

⁴³ 1979 SCC OnLine Bom 71.

⁴⁴ *ibid* 23.

as several cases are continuously recycled in court and people can be held as vexatious litigants for filing cases incessantly.

While I sat in the Chief Justice's court one day when the court was not in session, a clerk from a private law firm started asking about my research. In the course of the conversation, the clerk shared his observations on the increasing litigation by persons demanding absolutely anything from the court and the court having to hear all persons, listening to this and giving time for such cases. He narrated a case where a litigant came before the court as a party-in-person. The person had filed a public interest litigation (PIL) stating that people do not accept him as god when he was a form of god on earth. The judge asked that, if he himself was god, then why had he come to court and how could a judge help? The litigant replied that this was to make people believe that he was god. The litigant explained to the judge that if he came to his house, he would see his wife, "*aur woh to sakshaat Laxmi hai or main bhagwan Vishnu ka roop hoon*" (who was a personified form of goddess Laxmi,⁴⁵ and he was a form of god Vishnu⁴⁶). Although this was not a case that could be vexatious as the person had not filed several suits in this regard, the clerk felt that such a law and similar provisions should exist to prevent such frivolous litigation from coming to court and the subsequent wastage of the court's time. Instead, the court should focus on many more important matters at hand.

A journalist narrated a story in support of the Vexatious Litigation Act. The journalist who had been attending court proceedings for six years had observed two female litigants, a mother and daughter, who would continuously be in the Chief Justice's court filing different litigations on a regular basis, saying different things to the court. The journalist felt that the Vexatious Litigation Act should be used for such cases. There was another man who also filed similar cases and once he came to the court and told the judges that flamingos had come into him and that the court should remove them. For the actors of the court, it was such cases that were vexatious and needed to be controlled with the promulgation of such an Act.

The issue at hand is deeper than it appears. A person who comes to court claiming that they are a form of god or that flamingos are in their system, comes to the court for a reason. Although unknown, the reasons could be several. The person might not have any other forum to express their feelings or wishes and since the court is supposed to be open to all and for hearing the people, a person feels that this is the appropriate forum for the same. The judges are not directly concerned with the mentality behind someone approaching the court in this manner. Neither are any of the other actors of the court concerned with this aspect. For some people, this is seen as a publicity gimmick. What is important to note is

⁴⁵ Goddess Laxmi is the goddess of wealth and prosperity.

⁴⁶ God Vishnu is considered as the supreme being and Vedic supreme god.

that the court is a system that was made for the public and the basic expectation is that it be open to hear all grievances that the common man has. With Acts like the Contempt Act and the Vexatious Litigation Act, there is a fear to approach the court. Through these laws, the court successfully regulates the representation of law, and judges are able to conserve a particular image of the court system, thus leading to the question on the means by which the law legitimises its actions.

V. CONCLUSION

The search for complete justice is constant. This is because the question always looms as to what can be considered as complete justice and how are these parameters measured and concluded with. The idea and concept of justice changes from individual to individual and within the judicial system also. Not only does the idea of justice change but also the method of providing justice fluctuates based on the notion of what one believes is justice in its full form. One of the Judges that I spoke to described the qualities of a good judge in the form of a quote. A good judge should, “Subdue the raucous, encourage the timid, flatter the old and conspire with the young”. For the Judge, these four qualities were essential for the process of justice to be complete.

I asked a few interviewees whether they thought there was any relationship between law and justice to understand what could be considered as complete justice for the different actors of the court. One lawyer clearly said that, “...law has nothing to do with justice. Sometimes they coincide but that is by accident”. The lawyer explained that many laws are unjust and gave the examples of the “BIFR Act [Board for Industrial and Financial Reconstruction], Rent Act and laws on public premises. All these are unjust laws”. Therefore, there is a thin line between a law and its implementation of justice. Parliament drafts laws that are supposed to be a reflection of society and for the betterment of conditions in society. They are worded keeping in mind certain general societal classifications and the overall impact and outlook of the law on the political and economic system of the country. The laws thus drafted can therefore be completely disconnected from the roots of society and the reality on ground. When this occurs, there is a mismatch between the drafting of the law and its actual purpose. In such a case, the law to control, curtail, or enhance particular societal situations is affected and, in the end, it cannot help the people for whom it was drafted, as justice cannot be served through it. This form of justice is expected through drafted legislations. The other form of justice that is expected is the interpretation of laws in a manner that is just and fair for the person coming to court and seeking justice.

The idea that justice has to only be seen to be done and does not have to happen plays out in this context. One lawyer with twelve years of practice explained this to me with an incident in court. The lawyer narrated that while in court, a judge once said, ‘I am not here to do justice. I am here to do justice in

accordance with the law'. The lawyer personally felt that the ultimate goal should be justice and not in a legalistic form but one where justice is actual. This ties back to the proposition by Goodrich.⁴⁷ The entire ambit of the court structure and majestic courtroom proceedings compel a person to feel that whatever form of justice is being delivered in this awe-inspiring building and through these "lords" in the temple of justice must and will be just in any form. However, the actual effect of a judgment is different and unrealised. The persons themselves might not understand whether justice has been administered or not till after having left the courtroom and out of the majestic aura of proceedings to understand what has happened. After coming to court and being a part of proceedings that seem to be larger than life and out of reach, there is also the fear of contempt and being named a vexatious litigant.

These examples and narratives from the field tie back to Cover's assertion that "legal interpretation takes place in the field of pain and death".⁴⁸ These acts of legal interpretation are a direct imposition of violence on those seeking the law (and justice) coupled with a continued justification for this violence. As is seen through the contempt narratives in the Bombay High Court, ranging from the control of what one can read in court to contempt as a tool to deal with a range of court-defined excesses, Cover attributes these actions to the logic of the legal profession that is one of complete domination even though eventually that domination might not materialise. In the case of contempt proceedings, usually the Contempt Act is not invoked, but instead the matter is dealt with directly in court without any official proceeding being recorded. This allows for the law to uphold its image and restrict other actions in a courtroom space that have the potential to undermine its authority.⁴⁹

Factoring all these situations and observing the court proceedings helps to analyse and identify with the concept that justice must appear to be done irrespective of whether it happens or not along with the inherent tendency of law to be violent to protect its legitimacy and authority. Through the different ideas in legal literature and the work of visuality in the legal discourse, it is possible to understand how all these aspects are controlled overall by the limits of the law through the Contempt Act and the Vexatious Litigation Act.

⁴⁷ Goodrich (n 6).

⁴⁸ Cover (n 4).

⁴⁹ Goodrich (n 6).