WEEKLY NEWS AND VIEWS FOR THE CIVIL SERVICES EXAMINATION
Contempt of court
1. WHY IN THE NEWS

• Contempt of court now days has gained media mileage because of the initiation of contempt proceedings by the Supreme Court of India, on its own motion, against advocate-activist Prashant Bhushan.

• The tweets in question were critical of the top court and posted by Bhushan on Twitter on June 27 and June 29. The June 27 tweet said, “When historians in future look back at the last 6 years to see how democracy has been destroyed in India even without a formal Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs.”

• The June 29 tweet included a photo of CJI S.A. Bobde riding a Harley Davidson motorcycle, and said, “CJI rides a 50 lakh motorcycle belonging to a BJP leader at Raj Bhavan, Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access Justice!”
1. (a) What is contempt of court

- Contempt of court, as a concept that seeks to protect judicial institutions from motivated attacks and unwarranted criticism, and as a legal mechanism to punish those who lower its authority.

- Contempt of court often referred as “contempt”, is the offence of being disobedient to or disrespectful toward a court of law and its officers in the form of behaviour that opposes or defies the authority, justice and dignity of the court.

- A similar attitude towards a legislative body is termed contempt of Parliament.

There are two categories of contempt:
1. Being disrespectful to legal authorities in the courtroom.
2. Willfully failing to obey a court order.

Contempt proceedings are especially used to enforce equitable remedies, such as injunctions. In some jurisdictions, the refusal to respond to subpoena (a writ ordering a person to attend a court), to testify, to fulfil the obligations of a juror (a member of a jury), or to provide certain information can constitute contempt of the court.

The law codifying contempt classifies it as civil and criminal.

- Civil contempt is committed when someone willfully disobeys a court order or wilfully breaches an undertaking given to the court.
Criminal contempt is more complex as it consists of three forms: (a) words, written or spoken, signs and actions that “scandalise” or “tend to scandalise” or “lower” or “tends to lower” the authority of any court (b) prejudices or interferes with any judicial proceeding and (c) interferes with or obstructs the administration of justice.

2. What are constitutional as well as statutory provisions of contempt of court.

Statutory basis for contempt of court:

- In India, the concept of Contempt of Court is defined in **Section 2(a) of the Contempt of Courts Act, 1971** which has broadly described it as civil contempt or criminal contempt.

There were pre-Independence laws of contempt in India. Besides the early High Courts, the courts of some princely states also had such laws. When the Constitution was adopted, contempt of court was made one of the restrictions on freedom of speech and expression.

Constitutional Provision:

The expression ‘contempt of court’ has not been defined by the Constitution but there are two Articles in the Constitution of India which talk about the Contempt of Court and these are **Article 129 and Article 142(2)**.
Article 129:

Article 129 says that the Supreme Court shall be the ‘Court of Record’ and it has all the powers of such courts including the power to punish for contempt of itself.

Note:

1. The ‘Court of Record’ means a Court having its acts and proceedings registered for everlasting memory or that memory which has no end and as evidence or proof.

2. The truth of these records cannot be questioned and also these records are treated as a higher authority. And anything stated against the truth of these records comprised Contempt of Court.

Article 142(2)

Article 142(2) says that when any law is made by the Parliament on the provisions mentioned in clause 1 of this Article, the Supreme Court has all the power to make an order for securing any person’s attendance, production of any documents or has the power to give punishment to anyone for its contempt.

Article 215

Article 215: Grants every High Court the power to punish for contempt of itself.
3. How the powers of supreme court and high court varies in contempt of court.

- 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.

- In **1991**, the **Supreme Court has ruled** that it has the power to punish for contempt not only of itself but also of high courts, subordinate courts and tribunals functioning in the entire country.

- On the other hand, **High Courts have been given special powers to punish contempt of subordinate courts**, as per **Section 10 of The Contempt of Courts Act of 1971**.

4. What includes in the administration of justice

Administration means management and justice means to right and equitable implication. By the **administration of justice is meant the maintenance of right with in a political community by means of the physical force of the state**. For sound administration of justice, physical force of the state is prime requirement. There are two essential functions of every State:
1. War, 2. Administration of Justice

There are **three point to define administration of justice**

- Political organized society
- Physical force of the state and
- Maintenance of right as the object
The chief function of the judiciary is to apply the law to specific cases or in settling disputes. When a dispute is brought before the courts it ‘determines the facts’ involved through evidence presented by the contestants. The law then proceeds to decide what law is applicable to the case and applies it. If someone is found guilty of violating the law in the course of the trial, the court will impose a penalty on the guilty person.

5. Critically evaluate the basis of reasonable restriction on freedom of speech on the basis of contempt of court

- The Indian Constitution is based upon the concept of Rule of Law and for achieving this cherished goal, the framers of Indian Constitution have assigned the special task to the judiciary.

- In order to facilitate the judiciary to perform its duties and functions effectively, the dignity and authority of the courts have to be respected and protected at all costs.

- The right to free expression and speech as envisaged in Article 19(1) (a) of Constitution of India provides the right to hold and express opinions and ideas subject however to reasonable restrictions imposed under Clause (2) of the article.

- The rights to scrutinize, discuss and comment on the judiciary has been raised time and again calling for reforms in the law relating to the contempt of court.

I. Mr. Soli Sorabjee, Ex Attorney General justified robust criticism of judgments; however, severe and painful, as necessary for effective functioning of the judiciary under a democratic set-up.

II. According to Lord Atkin’s, “Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny of respectful, even though outspoken, comments of ordinary men.
• The debate of overriding effect of the contempt law over the fundamental right under article 19(1) (a) has been a burning issue among jurists, policy makers and reformists.

• In E.M.Sankaran Namboodiripad v T. Narayananana Nambiar it has been held that while Article 19(1) (a) guaranteed the freedom of speech and expression, Article 19(2) showed that it was also intended that contempt of court should not be committed in exercising that right.

• The liberty of free expression is not to be compounded with licence to make unfounded allegations of corruption against judiciary.

• The abuse of the liberty of free speech and expression carries the case nearer the law of contempt.

• The Contempt of Court jurisdiction is exercised not to protect the dignity of an individual judge but to protect the administration of justice from being maligned.

• It will be injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court’s administration of justice, or if it likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties.

• However, it is observed in the recent past that judges were assigning to themselves the task of reviving their self-esteem under the guise of judiciary dignity, curbing the fundamental right to speech which includes fair criticism.
The Supreme Court in *Rajesh Kumar Sing vs. High court of Judicature of Madhya Pradesh, Bench Gwailor* severely criticized judges for assigning to themselves the task of resurrecting the judiciary’s dignity and observed that judges think the judiciary’s dignity is so brittle that it crashes the moment a judgment is criticized or a judge’s integrity is questioned.

An “activist” judiciary, that intervenes in public matters to provide a corrective to a corrupt, dysfunctional executive, surely has to be more, not less accountable. To a society that is already convulsed by political bankruptcy, economic distress and religious and cultural intolerance, any form of judicial intolerance will come as a crippling blow.

If the Judiciary removes itself from public scrutiny and accountability, and servers its links with the society that it was set up to serve in the first place, it would mean that yet another pillar of Indian democracy will crumble.

A judicial dictatorship is a fearsome a prospect as a military dictatorship or any other form of totalitarian rule.

Should courts become intolerant of criticism or expressions of dissent, it would mark the beginning of the end of democracy.

Bonafide criticism of any system or institution including the judiciary cannot be objected on any pretext, be it under the conferred constitutional power or the statutory contempt law.

The freedom of speech bestowed under the constitution and the independence of the judiciary are the two essential and most important constitutes of democracy in a country.

Reconciling these two competing public interest issues and maintaining a balance, presents a challenge to any given democratic set-up.
• Healthy and constructive criticisms are the necessary feature for the development of the democracy. The Apex court as the guardian of the Constitution must vigilantly protect free speech even against judicial resentment.

• In western countries like England and the United States contempt jurisdiction is very sparingly exercised giving much scope to the fair and constructive criticism which is considered as the pedestal of modern democracy. It is high time in India to do away with the prevalent conservative view of contempt law and bring in the liberal approach advocating free expression pursued by western and other commonwealth countries.

Issues in India
• With adjudicatory role having been handed over to judges, showing extreme deference to judges does not sit well with the idea of a democracy.

• But the definition of criminal contempt in India is extremely wide, and can be easily invoked.

• Justice V.R. Krishna Iyer famously termed the law of contempt as having a vague and wandering jurisdiction, contempt law may unwittingly trample upon civil liberties.

• Criminal contempt is completely asynchronous with our democratic system which recognises freedom of speech and expression as a fundamental right.

• Excessively loose use of the test of ‘loss of public confidence’, combined with a liberal exercise of suo motu powers, can be dangerous.
• It can amount to the Court signalling that it will not suffer any kind of critical commentary about the institution at all.

**Constructive Criticism is essential**
Freedom of speech is a fundamental right guaranteed to every Indian citizen under Article 19(1)(a) of the Constitution, albeit subject to reasonable restrictions under Article 19(2). In *C.K. Daphtary v. O.P. Gupta (1971)*, the Supreme Court held that the existing law of criminal contempt is one such reasonable restriction. That does not mean that one cannot express one’s ire against the judiciary for fear of contempt.

6. How other countries deal with contempt of court

• The United Kingdom had abolished the offence in its contempt laws.

• However, it noted that there were two differences in circumstances in India and the United Kingdom, which warranted a continuation of the offence in India.

I. **India** continues to have a high number of criminal contempt cases, while the last offence of Scandalising the Court in the UK was in 1931.

II. The offence of Scandalising the Court continues to be punishable in UK under other laws.

• **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.

• In Australia, Courts are free to be criticised unless there is any imminent danger to the administration of justice. In the case of Munday in 1972, Justice Hope had observed that there is no more reason why acts of courts should not be trenchantly criticized than acts of public institutions, including parliaments.

Prashant Bhushan’s case:
• The suo motu contempt proceedings initiated by a bench of the Supreme Court against Mr. Bhushan constitutes an abuse of the court’s contempt jurisdiction, which—for good reason—is to be exercised sparingly and with circumspection.

• It is because, according to some experts, there is nothing in Mr. Bhushan’s tweets that qualify as contempt of Court.

1. His tweets are an exercise of his fundamental right under Article 19 (1) (a) to freely express himself by way of comment and criticism on the conduct of the CJI as a private citizen.

2. Also, these tweets in question appear to be in the realm of perception and comment and don’t seem to have transgressed into contempt. The general principle on contempt is that one can criticise a judgment but you can’t attribute motives to the judge.
7. What needs to be done

- In a democracy, People should be at liberty to show their affection towards their country in their own way.
- Besides needing to revisit the need for a law on criminal contempt, even the test for contempt needs to be evaluated.
- If such a test ought to exist at all, it should be whether the contemptuous remarks in question actually obstruct the Court from functioning.
- It should not be allowed to be used as a means to prevent any and all criticism of an institution.