

**Bill No. 46 of 2021**

THE CONSTITUTION (AMENDMENT) BILL, 2021

By

DR. D. RAVIKUMAR, M.P.

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BILL

*further to amend the Constitution of India.*

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 2021.

Short title and  
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Substitution  
of new  
article for  
article 129.

2. For article 129 of the Constitution, the following article shall be substituted, namely:—

“129.(1) The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

(2) The power to punish for contempt referred to in clause (1) shall be subject to law made by Parliament in this behalf, including:— 5

(a) the definition of what constitutes contempt;

(b) the different classes of contempt;

(c) the nature and maximum extent of punishment that may be imposed on a person found guilty of contempt; 10

(d) the period of limitation within which a proceeding for contempt may be initiated for contempt that is not in the nature of a continuing contempt; and

(e) the modes of purging contempt by a person found guilty of contempt.

(3) No proceeding for criminal contempt of the Supreme Court shall be initiated for expression of any subjective opinion as to a judgment, judge or the Court. 15

(4) No proceeding for criminal contempt of the Supreme Court shall be initiated without formal and specific articles of charge personally served upon the person accused.

(5) Any person accused of criminal contempt of the Supreme Court shall be entitled to all rights conferred by or recognised in Part III of this Constitution and the rights recognised as basic due process guarantees of a criminal trial, including :— 20

(a) the right of presumption of innocence and the right not be punished except when proved beyond reasonable doubt to be guilty of such contempt;

(b) the right to be represented by counsel of his choice; 25

(c) the right against being compelled to testify against himself;

(d) the right of such person, if found guilty, to file an appeal within thirty days to a larger bench of the same Court.

(6) No person accused of contempt of the Supreme Court shall be detained or taken into custody in connection with such accusation or proceeding unless he has been found guilty and a punishment of imprisonment has been imposed on him: 30

Provided that the court that imposes a sentence on a person found guilty of criminal contempt may suspend the same to enable such person to file an appeal if he so desires.

(7) The Supreme Court may appoint one or more advocates or senior advocates as prosecutors to conduct the trial of the person accused of criminal contempt of the Supreme Court. 35

(8) The Supreme Court may direct an examination or cross-examination of any judge of the Supreme Court on an application made by a person accused of criminal contempt. 40

(9) Nothing contained in clauses (4), (5), (6), (7) and (8) shall limit the powers of the Supreme Court to punish summarily for contempt when such contempt is in the face of such court.

(10) Subject to clauses (4), (5), (6), (7), (8) and (9), Supreme Court may make Rules of Procedure regulating the exercise of the power to punish for contempt of itself.”.

5           3. In article 142 of the Constitution, in clause (2), for the words, “subject to the provisions of any law made in this behalf by Parliament,” the words “Subject to the provisions of article 129 and law made in this behalf by Parliament,” shall be substituted. Amendment of article 142.

          4. For article 215 of the Constitution, the following article shall be substituted, namely:— Substitution of new article for article 215.

10           “215. (1) Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

(2) The power to punish for contempt referred to in clause (1) shall be subject to law made by Parliament in this behalf, including:—

- 15           (a) the definition of what constitutes contempt;
- (b) the different classes of contempt;
- (c) the nature and maximum extent of punishment that may be imposed on a person found guilty of contempt;
- (d) the period of limitation within which a proceeding for contempt may be initiated for contempt that is not in the nature of a continuing contempt; and
- 20           (e) the modes of purging contempt by a person found guilty of contempt.

(3) No proceeding for criminal contempt of the High Court shall be initiated for expression of any subjective opinion as to a judgment, judge or the Court.

25           (4) No proceeding for criminal contempt of the High Court shall be initiated without formal and specific articles of charge personally served upon the person accused.

(5) Any person accused of criminal contempt of the High Court shall be entitled to all rights conferred by or recognised in Part III of this Constitution and the rights recognised as basic due process guarantees of a criminal trial, including :—

- 30           (a) the right of presumption of innocence and the right not be punished except when proved beyond reasonable doubt to be guilty of such contempt;
- (b) the right to be represented by counsel of his choice;
- (c) the right against being compelled to testify against himself;
- (d) the right of such person, if found guilty, to file an Appeal to the Supreme Court.

35           (6) No person accused of contempt of the High Court shall be detained or taken into custody in connection with such accusation or proceeding unless he has been found guilty and a punishment of imprisonment has been imposed on him:

40           Provided that the court that imposes a sentence on a person found guilty of criminal contempt may suspend the same to enable such person to file an appeal if he so desires.

(7) The High Court may appoint one or more advocates or senior advocates as prosecutors to conduct the trial of the person accused of criminal contempt of such court.

(8) The High Court may direct an examination or cross-examination of any judge of that court on an application made by a person accused of criminal contempt.

(9) Nothing contained in clauses (4), (5), (6), (7) and (8) shall limit the powers of the High Court to punish summarily for contempt when such contempt is in the face of such court.”

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(10) Subject to clauses (4), (5), (6), (7), (8) and (9), each High Court may make Rules of Procedure to regulate the exercise of the power to punish for contempt of itself.”

## STATEMENT OF OBJECTS AND REASONS

Some of the judgments of the hon'ble Supreme Court in respect of the higher judiciary's powers to punish for criminal contempt appear to indicate that the said powers are untrammelled and are not in any way limited by the provisions of the Contempt of Courts Act, 1971. Such a reading appears to be based on the present, open-ended wording of articles 129 and 215 of the Constitution. The founding texts such as the Constituent Assembly Debates also do not appear to have dealt with the issue in detail.

An organ of the State having untrammelled, unlimited power in respect of any matter is an incongruity in a modern constitutional democracy that respects the fundamental and human rights of all persons. Public criticism of all institutions including the courts is crucial in a democracy constituted by "We the People". Allowing the courts to exercise unlimited power to punish for contempt, even assuming that the courts will only use such power sparingly, causes a chilling effect on free expression.

The power to punish for contempt of court is not only desirable but also necessary for administration of justice. However, the provisions of criminal contempt, particularly of the form that is not committed in the face of the court are a colonial vestige and several modern democracies have done away with "scandalising the court" as constituting criminal contempt – for it is no longer seen as a reasonable restriction on the right to free expression.

The Contempt of Courts Act, 1971 and the 2006 Amendment thereto attempted to make progress in moderating contempt powers and rationalizing it with citizens' right to free expression. Section 13 (a) that provides that no action that does not substantially interfere or tends to interfere with the due course of justice may be punishable for contempt. Section 13(b) recognises truth as a valid defence in contempt proceedings. However, the open-ended interpretation of Articles 129 and 215 that the judicial pronouncements have given necessitates a constitutional amendment to ensure that these legislatively recognised safeguards are effectively realised.

The Bill, therefore, seeks to amend the Constitution with a view to bring the powers of the Supreme Court and each High Court to punish for contempt of itself to be circumscribed by certain basic guarantees and further circumscribed by law made by Parliament such as the Contempt of Courts Act, 1971 and the amendments thereto.

Hence this Bill.

NEW DELHI;  
*February 8, 2021*

D. RAVIKUMAR

ANNEXURE

EXTRACT FROM THE CONSTITUTION OF INDIA

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Supreme Court to be a court of record.

**129.** The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

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Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.

**142. (1)**

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

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High Courts to be courts of record.

**215.** Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

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( *Dr. D. Ravikumar, M.P.* )