

Analysis of Judicial Trends on Contempt of Court

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Contempt is an intense feeling or attitude regarding someone or something as inferior, or worthless. In law, it is a well known expression and it is disrespect to the court or the person connected with the courts or legislative body. Thus, law of contempt is intended to safeguard the interests of administration of justice, which must necessarily be fearless, impartial and upright.[1] One of the basic principles of any civilized system of justice is that a person is entitled to fair free trial from prejudice.

After independence, the judiciary in the country is under a constant threat. The need of the time is of restoring confidence amongst the people for the independence of judiciary. Its impartiality and the glory of law has to be maintained, protected and strengthened. The confidence in the Courts of Justice, which the people possess, cannot, in any way, be allowed to tarnished, diminished or wiped out by contumacious behaviour of any person.

The only weapon of protecting itself from on the onslaught to the institution is the long hand of contempt of court left in the armoury of judicial repository which, when needed, can reach any neck howsoever high or far away it may be.[2] In a democratic society, the three organs of the Government namely the Executive, the Legislature and the Judiciary are expected to perform their functions within their limitations for the benefit of the public. No organ is expected to interfere with the functioning of the other.

Through contempt proceedings, the judiciary performs its function of proper administration of justice and safeguards the Rule of Law. But the contempt jurisdiction which is extraordinary in its character should not be used for the personal protection of judges. This jurisdiction is applied against any authority or person whenever there is any kind of interference in the administration of justice. The judiciary uses the weapon of contempt jurisdiction to maintain the supremacy of law when interference is caused by the executive or the individual or the press.[3]

CONSTITUTIONAL PERSPECTIVE OF CONTEMPT IN INDIA

The Constitutional provisions in relation to law of contempt are found in the following Articles:-

- i. Freedom of Speech with Restrictions and Contempt: Article 19 (2) read with Article 19 (1) (a)
- ii. Supreme Court as a Court of Record: Article 129
- iii. High Court as a Court of Record: Article 215
- iv. Superintendence of High Courts: Article 227
- v. Articles 142 and 129 of the Constitution of India

Freedom of Speech vis-à-vis Law of Contempt, Freedom of speech and expression includes the right of every citizen to criticize the judiciary as an institution and its functioning. The court to maintain their independence use the power of contempt to punish one who lowers the dignity of the court or interferes with administration of justice. This precisely is the conflict between freedom of speech and expression and contempt of court. Both freedom of speech and power of contempt are vital for a democratic setup. Freedom of speech ensures judicial accountability whereas power of contempt ensures fair administration of justice.[4]

***Re Arundhati Roy*[5]**

This case concerns a suo-moto contempt petition (that is, a petition initiated by the Court on its own motion) against the Respondent, Arundhati Roy, a Booker-prize winning author.

During the course of a writ petition by grassroots-movement Narmada Bachao Andolan, the Court addressed issues of environmental damage and displacement of marginalized communities due to the development of a reservoir dam on the river Narmada. Following a Supreme Court order that allowed for the height of the dam to be increased, the Respondent wrote an article criticizing this decision. Subsequently, protests were staged in front of the gates of the Supreme Court by Narmada Bachao Andolan and the Respondent. statements alleging the judiciary's willingness to issue notice on "an absurd, despicable, entirely unsubstantiated petition" whilst exhibiting a lack of willingness to entertain a case concerning "national security and corruption in the highest places" This led to contempt proceedings based on a complaint lodged with the police.

The Hon'ble Court extended the term judicial criticism must not be based on a gross misstatement and must not be directed at lowering the reputation of the judiciary. In order to be considered fair criticism, the Court said that the statement "must be made in good faith and in the public interest, which is to be gauged by the surrounding circumstances including the person responsible for the comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved."

Accordingly, the Court found her in guilty of criminal contempt, sentenced her to "symbolic" imprisonment of one day, and imposed a fine of Rs. 2000 with the proviso that if she failed to pay the fine she would be imprisoned for three months.

Supreme Court as a Court of Record: Article 129

Chinappa Redy J, speaking for the Bench in *Asharam M. Jain v. A. T. Gupta*,[6] rightly said: "The strains and mortification of litigation cannot be allowed to lead litigants to tarnish, terrorize and destroy the system of administration of justice by vilification of judges. It is not that judges need be protected; judges may well take care of themselves. It is the right and interest of the public in the due administration of justice that has to be protected."

There are two such Articles 129 and 215 enshrined in the Constitution of India, wherein it has been specifically declared that the Apex Court and the High Courts have inherent power to punish any person who interferes in the administration of justice. Article 129 says that the Supreme Court shall be a Court of Record and shall have all the power of such a court including the power to punish for contempt of itself.

Article 215 posits that every High Court is a Court of Record with all powers attendant thereto including the power to punish contempt of itself. *Lakhan Singh v. Balbir Singh*[7] the Court observed that the phrase, the power to punish for contempt or itself' in Article 215 of the Constitution of India does by no means limit such powers of the High Court which powers include those of a Court of Record and any further powers invested in it by law. Apart from the power conferred by the Contempt of Courts Act, 1952, the High Court can as a Court of Record exercise its inherent powers to punish contempt's of subordinate Court. This inherent power was recognised in Section 3 of the Contempt of Courts Act, 1952. The said statute also yielded the power to the High Court to punish contempt's of subordinate courts also in the same degree as it had to punish contempt of itself.

The Contempt of Courts Act, 1971[8]

The people of India have a lot of faith in the judiciary, which is primarily entrusted with the duty of administering justice. The primary purpose of giving courts contempt jurisdiction is then to uphold the majesty and dignity of the courts and their image in the minds of the public. If such confidence and faith were allowed to be shaken then this would have serious repercussions on the justice delivery system of our country. The law relating to contempt of court as existed prior to the Act of 1971 was somewhat uncertain and unsatisfactory. Moreover, the jurisdiction to punish for contempt touches two important fundamental rights including the right to freedom of speech and expression and right to personal liberty. It was, therefore, considered necessary to have the entire law on the subject scrutinised by a Special Committee. Hence, a Committee was set up in 1961 under the chairmanship of late H.N. Sanyal

Baradakant v. Registrar, Orissa H.C. [9] It has held that the defamatory criticism of a Judge functioning as a judge even in purely administrative or non-adjudicatory matters amounted to criminal contempt. The imputations contained in the letters have grossly vilified the High Court and has substantially interfered with the administration of justice and therefore, the appellant was rightly convicted of the offence of the criminal contempt.

CONTEMPT OF COURT BY MEDIA

Trial by Media is Contempt of Court and needs to be punished. The Contempt of Court Act defines contempt by identifying it as civil and criminal. Criminal contempt has further been divided into three types: 1. Scandalizing, 2. Prejudicing trial, and 3. Hindering the administration of justice. The verdict of media on any legal case before the court verdict is the contempt of the court, because verdict of media before court verdict is not correct.

Today it is often seen that the trial by media becomes fake. Now media do their work under political power. Media can do anything whatever their political leaders say. Media does it because of their self benefits. Corrupt face of media came in 2012 when two zee news editors' Sudhir Chaudhary and Sameer were arrested by crime branch of Delhi, acting on a complaint by congress M.P Naveen Jindal who had accused the two of trying to extort RS.100 crore worth of advertisements from his company in return for dropping stories linking the Jindal group Coalgate[10]. In the resent past history media's trials were criticism because there trials were not true but based on media's personal thought ,for example infamous cases like 'Arushi case'[11], Jessica Lal case[12] in both these cases media's trials are false and based on their personal views

Media's trial is not always wrong but many times their trials appreciated, for example the media trial on 2002 'Gujrat Danga'[13] was really appreciated. The trial of media helped the police to catch the real accused persons like 'Bajrangi' who was the one of the accused person, in this case media trial also consider by the supreme court during its verdict.[14]

The Law Commission in its 200th report, **Trial by Media: Free Speech versus Fair Trial Under Criminal Procedure (Amendments to the Contempt of Courts Act, 1971)**, has recommended a law to debar the media from reporting anything prejudicial to the rights of the accused in criminal cases, from the time of arrest to investigation and trial.

Judicial Attitude towards Law of Contempt

Contempt by Lawyers

Contempt by lawyers is the most pertinent problem before the Courts these days. There are several instances of misconduct, which have been taken as contempt of Court. For example, using insulting language against the judge, making scandalous allegations against a judge, suppressing the facts to obtain favorable order, allegation of partiality and unfairness against the judge, etc. An advocate who advises his clients to disobey the Court is held liable for contempt Courts.

***In Re Ajay Kumar Pandey*[15]**

The Supreme Court has held that an advocate using intemperate language and casting unwarranted aspersion (false report) on various judicial officers is equality of gross contempt of court for not getting expected results. Court awarded punishment of sentence to 4 months simple imprisonment and fine Rs.1000 /- . Supreme Court in this case warned that only because a lawyers appear as a party in Person, he does not get a license to submit content of court, by intimidating the judges or scandalizing the Court.

Contempt by Judges

Section 16 of the Contempt of Courts Act, 1971, deals with contempt by judge, magistrate or other person acting judicially. It is not only that an outsider or a third person is to be held liable for contempt of court. The Presiding Judge of the Court can also be held liable for contempt under the contempt law. To establish contempt it would depend upon the facts and circumstances of each case.

***Justice C.S. Karnan vs The Honourable Supreme Court Of India*[16]** In 2011, Justice Karnan wrote to the National Commission for Scheduled Castes (NCSC), alleging that he faced caste-based harassment from brother judges at Madras High Court. He also went on to allege that the court order amounted to an offence under the SC and ST (Prevention of) Atrocities Act and challenged the court to refer his case to Parliament. Justice Karnan refused to attend the contempt proceedings and instead asked for a compensatory amount of Rs 14 crore from the seven-judge bench for "disturbing his mind and normal life". Justice Karnan has now been found guilty of contempt and has been sentenced to serve 6-month imprisonment and media has been banned from publishing any of his statements.

***Surya Prakash Khatri v. Madhu Trehan (Wah India case)*[17]** The case arise out of the publication by the publishers of a magazine by the name of *Wah India* on their website, the results of a purported survey grading the judges of the Delhi High Court. Each of the Judges

(whose photograph were also published) were graded in a five column table rating them on criteria including their personal integrity, understanding of law and quality of judgments delivered. The publishers claimed that the grades were based on a survey where 50 senior members of the Delhi Bar, described as one tenth of the total strength of the Delhi Bar, were consulted. The Publication caused a scandal.

The Delhi High Court promptly passed an order, summarily directing the confiscation of all unsold copies of the issue of the news magazine, banned its circulation and ordered the media not to publish anything that would “lower the authority, dignity and prestige if the members of the judiciary”. News report on the contempt proceedings against *Wah India* was also banned. This provoked more publicity and resulted in an even greater outcry by the media against the courts. The next day, the court lifted ban on the reporting of the contempt proceedings and directed that the reporting must be fair and accurate.

Amicus Curiae v. Prashant Bhushan[18] The lawyer-activist Prashant Bhushan appeared in the Tehelka magazine, where he alleged that some former Chief Justice of India had been corrupt, the Supreme Court issued notice for contempt of court, Bhushan filed a long and detailed affidavit in response to the notice, seeking to justify his comments. Month later, Bhushan’s father, the venerated Shanti Bhushan, senior advocate and former Law Minister, filed an application in the same matter, seeking to be impleaded as a contemnor. The details of his allegations were submitted to the court in a sealed cover. He demanded that the matter be heard by a Full Bench of the Supreme Court and not by a few judges “hand picked” by the then Chief Justice. He dared the judges to convict him saying that he would be happy to spend time in jail for the cause of judicial integrity.

CONCLUSION

Concluding reflections in the last chapter dilate on the loopholes and lacunae in contempt law and trend for the reform in the Indian law. The foundation of judiciary is based on the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts, which tend to create disaffection and disrespect for the authority of the court by disrupting its working, the edifice of the judicial system gets eroded. Various conclusions have been drawn based on different aspects of the study. To make the law on the subject clearer, certain and effective some important submissions have been made under this chapter in the form of suggestions.

It is clear that taking in to consideration the seriousness of the matter of contempt several provisions of the Constitution of India patently or latently deals with the contempt of court etc. Under Article 19(2) of the Constitution of India, contempt of court is a restriction on freedom of speech and expression, which in different facets protect the Indian Judiciary from unjustified attack. Article 129 of the Constitution of India clearly indicates that Supreme Court as a Court of Record has power to punish for contempt of itself and also something else which could fall within the inherent jurisdiction of a Court of Record. Article 215 of the Constitution of India vests the High Court with all the powers of a Court of record including the power to punish for contempt of itself.

Under Article 142 of the Constitution, powers of the Supreme Court are inherent and are complementary to those powers, which are specifically conferred on the court by various statutes though, are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. It is submitted that to protect the dignity of the court etc., the above-mentioned provisions should be applied in proper perspective.

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