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Deliberate Discussion upon Contempt of Court in India

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ABSTRACT

The definition of contempt in its simplest form is the state of being despised or dishonoured; disgrace. Contempt of court is defined as any behaviour that shows disrespect for or disregard for the rule of law and its administration. In recent years, the law of contempt has slowly changed. In order to address the problems, they were having, judges changed and amended the contempt jurisdiction. Most research on the law of contempt is based on the premise that we must adjust to the contempt jurisdiction as it exists now and that it is not essential to do a historical analysis of how the contempt jurisdiction developed. However, there is a lot to be learned from the historical growth.

The author has attempted to examine and analyse the history of the idea of contempt of court in this paper. This paper will discuss every aspect related to this idea, including legal rulings and constitutional clauses. This article also sheds light on several important rulings addressing the matter of judicial contempt. This research paper will further analyse the idea of court contempt in detail while maintaining the utmost respect for the courts. The protection of the administration of justice in both criminal and civil matters is the major concern behind this idea.

Keywords: *Contempt of Court, Defenses, Constitutional Validity, Civil Contempt, Criminal Contempt.*

I. INTRODUCTION

The generic meaning of contempt is lack of respect for someone or something. This is also what is observed by Lord Diplock in his judgement *A.G vs. Times Newspaper Limited* 1973 where the term contempt of court was put in synchrony as, “referring to conduct in the proceeding of a court of law (whether particular) which tends to undermine that system or to prohibit its citizen from availing themselves the end result of the settlement of any of their dispute”². This leads us to a more important aspect as Judiciary is considered to be the fourth pillar of democracy and the principle of equity and natural justice admits that it is *sine qua non* to have an independent and impartial judicial system to a healthy society and for the wellbeing of its

¹ Author is a student at Amity University, Patna, India.

² *Attorney General V Times Newspapers Ltd* (no date) vLex. Available at: <https://vlex.co.uk/vid/attorney-general-v-times-793129341> (Accessed: 30 May 2023).

citizen.

The principal concept of judicator is also based on 3 maxim Interest republicae ut sit finis litium –which means that there should be an end of litigation and Res-judicata pro veritate occipitur – the decision of the courts shall final and binding on all. To adhere to these principles and gain confidence in public in the administration of Justice law of contempt is recognised with the purpose to up hold the Majesty and dignity of the courts.

II. HISTORICAL BACKGROUND

The root of contempt of the judicial authorities can be traced back to KAUTILYA where evidences have been found that punishment shall be given to those who disobey or disrespect the king or any judge but later in English medieval age with the rule of Monarch judicial power of king was delegated to a separate administration for judiciary which later on became an important tool in legitimising the kings functioning.

Many jurists like Halsbury, Oswald, and Black Odgers have also given the definition of Contempt of Court and in brother prospect had talked about its misuse and wrong interpretation also.

In India after independence the “SANYAL COMMITTEE” was responsible for introducing law of contempt with the several amendment process. The committee was set up in 1961, under the chairmanship of H.N. Sanyal which gives its report on 1963 which later on lead to the formation of contempt of court 1971 with several changes to the previous act of 1926 and 1952. Later on the Law Commission in its 274th report had clarified that the power to punish for contempt has been derived from the constitution of India.

(A) Constitutional validity of contempt of court

The contempt of court act 1971 recognises any act or omission which shows wilful disobedience or disrespect to any authority of court that may lead to conflict with the functioning of courts or hamper the integrity, authority or superiority of the court.

“The act itself defines and limits the power to only certain quotes for the procedure, limitation, punishment and appeal and also remedies available to the contemnor.”³

The law commission in its report has clarified that contempt of court act, 1971 was not only the power to punish for its contempt but also was a procedural statute. The constitution grants the actual source of power of contempt under *Article 129* and *Article 142* (2) to Supreme Court and

³ The Contempt of Courts Act, 1971, No. 70, Acts of Parliament, 1971 (India).

under **Article 215** to High Courts.

*“Elucidating article 129 and 215 of constitution states that the supreme court and high courts shall be a court of record in shall have the power to punish for its contempt respectively.”*⁴ Here being court of Record means certain act and proceedings are to be recorded and retained and the truth and authenticity of such records shall not be questioned under any ground when produced before any other court.

*“Whereas Article 142 provides discretionary power to the Supreme Court by confirming that the Supreme Court may in the exercise of its jurisdiction pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. Fathers sub clause 2 of article 142 states that on any law made by the parliament Supreme Court shall have 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.”*⁵

III. CONTEMPT OF LOWER COURTS

Although there is no specific provision given where the Lower court has the authority to take action against contempt by itself. However, The Contempt of court act under **Section 10, 11, 12, and 15** Lays down provisions under which High Court and Supreme Court can take cognizance and may punish for contempt to its subordinate courts.

*“Section 10 gives power to High Court to punish for contempt of subordinate Courts. It states that Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of courts subordinate to it as it has and exercises in respect of contempt of itself - Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of courts subordinate to it as it has and exercises in respect of contempt of itself. Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.”*⁶

“Section 11 simply states that A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged

⁴ What is Article 129 of the Constitution? (2022) Unacademy. Available at: <https://unacademy.com/content/question-answer/gk/what-is-article-129-of-the-constitution/> (Accessed: 30 May 2023).

⁵ INDIA CONST. art. 142.

⁶ The Contempt of Courts Act, 1971, No. 70, Acts of Parliament, 1971 (India) §10.

to be guilty of contempt is within or outside such limits.”⁷

“Section 12 specifically talks about Punishment for contempt of court – it’s simply saying that a contempt of Court may be punished in simple imprisonment for a period of 6 month or with fine which may extend to 2000 rupees or with both. However, Section 12(2) says that notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

Section 12(3) If fine is not sufficient to meet the end of justice then the shall be imprisoned for maximum period of 6 month in a civil prison.”⁸

Section 15: Cognizance of criminal contempt in other cases.

In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Period of Limitation for initiation of Contempt Proceedings:

The limitation period for the action of contempt is a period of one year from the date on which the contempt is alleged to have been committed, mentioned under section 20 of the act.

(A) Essential ingredients

There are certain necessary ingredients which needs to be fulfilled in order to make someone accused of contempt of court: -

- In case of a Civil contempt - Any type of wilful disobedience in the proceedings of court or its orders or judgement or degree etc.
- In criminal contempt ‘Publication’ is the most essential ingredient it can be either spoken, or written, or by words, or by Signs, gesture, or visible representation.
- There should be a valid order of court and this order should be in the knowledge of the contemnor.
- The action of contemnor should be deliberate and should be clearly this regard to that

⁷ The Contempt of Courts Act, 1971, No. 70, Acts of Parliament, 1971 (India) §11.

⁸ *Section 12 punishment for contempt of court - contempt of courts act 1971* (no date) *Section 12 of Contempt of Courts Act 1971 |Punishment for contempt of court.* Available at: <https://www.aaptaxlaw.com/contempt-of-courts-act/section-12-contempt-of-courts-act-punishment-for-contempt-of-court-section-12-contempt-of-courts-act-1971.html> (Accessed: 30 May 2023).

of the court's order.

(B) Type of contempt

Depending on the nature of the case in India, Contempt of Court is of two types.

- a) **Civil Contempt** – Section 2(a) of the Contempt of Court Act, 1971 states Civil Contempt as wilful disobedience to the order, decree, direction, any judgment, or writ of the Court by any person or wilfully breach of undertakings by a person given to a Court. Since Civil Contempt deprives a party of the benefit for which the order was made so these are the offences essential of private nature. In other words, a person who is entitled to get the benefit of the court order, this wrong is generally done to this person.

*“In Utpal Kumar Das v. Court of the Munsiff, Kamrup, this is the case of non-rendering of assistance, although the court has ordered to render assistance. Decree executed by the court to deliver immovable property but because of certain obstruction, the defendant failed to do so. Hence, he was held liable for constituting disobedience to the orders of the competent Civil Court.”*⁹

- b) **Criminal Contempt** – According to Section 2(c) of the Contempt of Court Act, 1971, Criminal Contempt is Defined as (i) the publication of any matter by words, spoken or written, or by gesture, or by signs, or by visible representation or (ii) doing of any act which includes:

- a) *Scandalize or tends to scandalise, or lowers or tends to lower the authority of any court, or*
- b) *Biasness, interferes or tends to interfere with the due course of any type of Judicial proceedings, or*
- c) *obstructs or tends to obstruct, interfere or tend to interfere with the administration of justice in any manner.*

“In Jaswant Singh v. Virender Singh case an advocate caste derogatory and scandalous attack on the judge of the High Court. An application was filed an election petitioner in the High Court, who was an advocate. He wanted to seek to stay for further arguments in an election petition and also the transfer of election petitions. These things cause an attack on the judicial proceeding of the High Court and had the tendency to scandalize the Court. It was held in this case that it

⁹ *Utpal Kumar Das v court of the Munsiff, Kamrup, Guwahati on 30 August 2007 - judgement* (no date) *LawyerServices*. Available at: <https://www.lawyerservices.in/Utpal-Kumar-Das-Versus-Court-of-the-Munsiff-Kamrup-Guwahati-2007-08-30> (Accessed: 30 May 2023).

was an attempt to intimidate the judge of the High Court and cause an interface in the conduct of a fair trial.”¹⁰

IV. DEFENCE IN CIVIL CONTEMPT

A person who is accused of Civil Contempt of case can take the following defences:

1. **Lack of Knowledge of the order:** The basic rule is that a person cannot be charged with contempt for disobeying an order that they assert they are uninformed of. “A successful party is required by law to provide the certified copy of the order to the opposing party either in person or via registered mail. notwithstanding the fact that the order was made with both parties present or with their attorneys. The fact that the certified copy of the order was not properly served on the accused contemnor can therefore be successfully argued in defence.”¹¹
2. **The disobedience or the breach done should not be:** - “It can be pleaded that although disobedience or breach of the order has taken place but it was due to accidental, administrative, or other reasons beyond the control of the party concerned. This plea can be successful only when the order has been complied with and a reasonable explanation has been given for noncompliance thereof. The Court may assess the intention of the party from the act done in the same way as a reasonable prudent man would assess in the given circumstances.”¹²
3. **The order that has disobeyed should be vague or ambiguous:** - If the court's order is ambiguous, unclear, or not detailed or full, it would be a defence in the contempt case, or the alleged contemnor could make the argument that it is impossible to comply with the order, which would negate the claim of contempt. “In the case of *R.N. Ramaul v. State of Himanchal Pradesh*, the Supreme Court issued an order requiring the respondent corporation to reinstate the petitioner's advancement in service as of a specific date. The respondent corporation complied with this directive by treating him as promoted as of the specific date specified in the order. However, the respondent corporation did not provide financial benefits for that time period, and as a result, a motion for contempt was filed.”¹³

¹⁰ *Jaswant Singh v Virender Singh and others on 09 November 1994 - Judgement* (no date) *LawyerServices*. Available at: <https://www.lawyerservices.in/Jaswant-Singh-Versus-Virender-Singh-and-Others-1994-11-09> (Accessed: 30 May 2023).

¹¹ *Mariyappa vs. V.R. Ramkrishna Rao* 1999 Cri. L.J. 1378 (Karn-DB)

¹² *Law Corner* (2021) *What are the defences allowed in contempt proceedings?*, *Law Corner*. Available at: <https://lawcorner.in/what-are-the-defences-allowed-in-contempt-proceedings/> (Accessed: 30 May 2023).

¹³ AIR 1991 SC 1171

4. **Orders involve more than one reasonable interpretation:** If there are several reasonable and sensible interpretations of the order for which contempt is claimed, and the respondent chooses one and acts in line with it, he cannot be held in contempt of court. This defence is only possible, though, when a legitimate issue with interpretation occurs. The fact that the command has been followed by using one of these interpretations indicates that the interpretation is bona fide. “In the case of *T.M.A. Pai Foundation v. State of Karnataka*, it was decided that this defence would not be accepted if a skewed perception of uncertainty about the order existed when none existed at all.”¹⁴
5. **Command of the order is impossible:** The inability to comply with the order would constitute a legitimate defence in civil contempt proceedings. But it is important to distinguish between cases of pure difficulty and cases of impossible. “The court awarded specific pensioner benefits to numerous retired employees with effect from a specific back date in the case of *Amar Singh v. K.P. Geetakrishnan*. The order's implementation would place a significant financial strain on the exchequer; hence the impossibility defence was raised. The court, however, rejected the argument that following the order was impossible, saying that even while it was challenging, it was still possible to do so. As a result, the order should be followed.”¹⁵

V. DEFENCE IN CRIMINAL CONTEMPT

- **Innocent publication and distribution of matter**

This defence is covered in S.3. The following actions may be taken by the person who is being accused of criminal contempt if they are the ones who published or distributed material that interferes with or biases the ongoing legal proceedings:

- a. He may claim under S. 3(1) that he had no cause to anticipate the proceeding was ongoing at the time of publication.
- b. He may assert under S.3(2) that no such proceeding was ongoing at the time of publication.
- c. He may argue, in accordance with S.3(3), that he had no cause to believe, at the time of publication's distribution, that the matter (published or distributed by him) contained or was likely to contain any information that interfered with or hindered an ongoing legal procedure or the administration of justice.

¹⁴ *Case analysis of TMA Pai Foundation v. state of Karnataka* (2021) *Jus Corpus*. Available at: <https://www.juscorpus.com/tma-pai-foundation-v-state-of-karnataka/> (Accessed: 30 May 2023).

¹⁵ <https://www.casemine.com/judgement/in/58117ee02713e179478c871e>

- **Fair and accurate report of judicial proceedings**

According to Section 4 of the Act, publishing a fair and truthful account of any judicial procedure, or any stage thereof, is not grounds for contempt of court. The exception to the general rule that justice should be carried out in public is set forth in Section 7 of the Act. According to S.7's subsections (1) and (2), publishing the text of an order or a fair and accurate summary of its entirety or of any particular portion does not constitute contempt of court unless the court has specifically forbidden the publication of the proceedings on the basis of:

- a) Public Policy
- b) Public Order
- c) Security of the State
- d) Information relating to a secret process, discovery, or invention, or, in exercise of the power vested in it.

- **Fair criticism of judicial act**

S.5 states that publishing an honest opinion on the merits of a case that has already been determined does not constitute criminal contempt. It is possible to raise the defence that the remark in question must pertain to a case that has already reached a final decision and not to ongoing procedures in order for criminal contempt to be established based on its publication. Furthermore, the declaration must come from a legal expert rather than a litigating party that has lost the case and should not be considered authoritative. Fair criticism is defined as criticism that does not infer ulterior motives from the judge while criticising his or her actions. In the matter of Arundhati Roy, the Supreme Court ruled that, in accordance with Article 19(1)(a) of the Indian Constitution, judicial criticism cannot be justified under the banner of freedom of speech and expression.

The Supreme Court further clarified that constructive criticism of the judiciary as a whole or of a Judge's conduct in particular may not constitute contempt if it is offered in good faith and in the public interest. The Courts must analyse all the relevant circumstances, including the person's awareness of the law, the aim behind the comment, and the goal attempted to be attained, in order to determine the "good faith" and "public interest." A regular person cannot be allowed to criticise the courts by using their right to free speech because if this right is not restrained, the judicial system would be destroyed.

Arundhati Roy's defence of a reasonable remark made in good faith and the public interest was rejected, and she was sentenced for criminal contempt in this instance because it was discovered

that she had no understanding of or education of how the Supreme Court or the country's judiciary functioned.

- **Bonafide complain against the presiding officer of a subordinate court**

S.6 provides that a person shall not be guilty of contempt of court in respect of any statement made by him by way of complaint in good faith concerning the presiding officer of any subordinate court to the High Court or to the Court to which he is sub-ordinate. The protection of this section will be available only when it is proved that the complaint was made in good faith.

In ascertaining the 'good faith' the intention and the purpose sought to be achieved by complaint will be taken into consideration and it would be ensured that the same was not made with ulterior motive.

- **No substantial interference with due course of justice**

The Contempt of Courts (Amendment) Act, 2006 replaced the previous Section 13 with the new Section 13. No court should sentence someone for contempt of court unless it is convinced that their behaviour seriously impedes or tends to impede the proper administration of justice, according to the new Section.

VI. “TRUTH” AS A DEFENSE

“I will reward the media if they come out with the truth” “I personally believe that truth should be a defence in a contempt case”

- Justice Khare.

Recently, after the amendment¹⁶ to the Contempt of Courts Act, 1971, truth is now included as a defense in contempt actions. Clause (b) of Section 13¹⁷ of Contempt of Court Act, 1971, allows the accused to use truth as a defense of such contempt, provided that it should be in public interest and there is bona fide intention in invoking such defense. However, there are times when this defense is misleading.

In the “Mid-day” case i.e. *Court on its Own Motion vs M.K. Tayal and Ors.*,¹⁸ a bench of the Delhi High Court imposed a severe sentence of four months on the journalists for criticizing former Chief Justice of India Y.K. Sabharwal, even without considering the defense of truth. Even Soli J. Sorabjee, once stated that, “The doctrine that truth is no defense clearly inhibits

¹⁶ Act 6 of Contempt of Court amendment act 2006

¹⁷ Section 13 (b): The court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide

¹⁸ Court on its Own Motion v. M.K. Tayal and Others, www.judis.nic.in, Contempt case (Criminal) No. 7 of 2007 decided on 11-9-2007 visited on 10-03-2016

press freedom and journalistic activity. The press would hesitate when it ought to make comments in the public interest. A freedom as cherished as the freedom of the press cannot be made dependent upon the over sensitivities of judges”.¹⁹It is an unessential and dispensable anxiety that if truth is allowed as a shield, it will demote the dignity of the judiciary, instead this will led the public to know the truth of the matter. If demoralized judiciary is shielded under the hood of contempt proceedings where truth of the matter is not allowed to be establish, with time, this will demote the institution itself

VII. CRITICAL ANALYSIS OF CONTEMPT

Criticism is a crucial component of modernistic societies around the world, especially in those that grant their inhabitants the freedom of speech and expression. Even the judicial system, which administers justice, should not be excluded from this area. According to Section 5 of the Act, legitimate criticism of judicial actions is not considered to be contempt, and publishing an opinion that is reasonable and on the merits of a matter that has already been heard and determined does not constitute such behaviour. The only thing someone should watch out for is that criticism that is published is fair and is not full of unfounded charges because doing so would be a misuse of the power of criticism, which is granted to citizens.

Criticizing the court, judicial actions, or judges is something that, if done in its genuine sense, will only lead to internal improvements and be essential for the public's investment of faith and belief in the legal system.

To uphold the supremacy of the rule of law, the Contempt of Court Act, 1971 must be clarified because it still has some legal ambiguities in several areas. A democratic system that is functionally aware must have the rule of law. Therefore, it is necessary to alter the characteristics of contempt of court once more in order to preserve the integrity of the judicial system. The final unsolved question is: to what extent have Indian courts been successful in striking a delicate balance between the opposing principles of defending the integrity and dignity of the court and safeguarding the freedom of speech and expression guaranteed by the constitution.

VIII. CONCLUSION

The courts and judicial processes are for the public good and work to offer fair and equitable justice to all, which portrays a bigger picture, which is the image of the well-being and soundness of our society. Being a roadblock in that process puts the perpetrator in danger and

¹⁹ Soli J. Sorabjee, “Truth and Law of Contempt” 1985, Supreme Court Weekly Reporter II (Jnl.) 17.

takes away someone else's chance to receive justice. However, constructive criticism that is made based on the fact and done so in good faith is necessary and should be encouraged. This is because it enables those who are not a part of the legal system to keep a check on how the court exercises its authority.

It is a virtue and a sign of maturity to be tolerant of criticism. The Indian judiciary, though initially reluctant and too sensitive, now seems to have matured to the point where it can accept criticism but never permits careless attempts to degrade its stature. This may be viewed as the positive side of the coin, but when the judiciary's power is viewed from the perspective of the rule of law, it raises new serious issues.
