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The Concept Of Contempt Of Court In India (An Analytical Study)

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Abstract:

The rule of Law is the cornerstone of civilized life and free and fearless justice demands an independent court. The quintessence of contempt jurisprudence is obstruction of or interference with the administration of justice. The key to court's authority is people's confidence in that great institution and what shakes this faith is a blow to democracy. So, independent of royal beginnings, no democracy can be functional if justice is jejune and lacks the power to punish whoever challenges or chokes its authority. On fundamentals, contempt jurisdiction is basic to the rule of law. And be you ever so high the law is above you. The court being the principal instrumentality of law and justice, contempt power wisely understood and rightly used has a democratic basis. This hermeneutic perspective makes contempt power a people's tower all enough to command obedience when justice is at stake and authoritarian contumacy attacks judicial supremacy. In the general interest of the community it is imperative that the authority of the courts should not be imperiled and there should be no unjustifiable entrepreneur in the administration of justice.

KEYWORD:

Justice, Law, Democracy, Contumacy, Contempt Of Court

INTRODUCTION

The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice and as such no action can be permitted which may shake the very foundation itself. The purpose of contempt jurisdiction is to uphold the mystery and dignity of the courts of law. It is an unusual type of jurisdiction combining the jury, the judge and the hangman' and it is so because the court is not adjudicating upon any claim between the litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. Power to punish for contempt is for maintenance of an effective legal system. Contempt jurisdiction cannot, however, be invoked to break personal vengeance against the alleged contemnors.

The Law of Contempt is of fundamental contemporary importance through it is of ancient origin, 'contemptus curial' has been a recognised phrase in English law since the 12th century. Contempt power first originated in the U.K. and has largely been developed at common law. Superior court of record have inherent powers of punishing for contempt whether committed inside or outside the court. The rule of law is the cornerstone of civilised life, and free and fearless justice demands an independent court.

The rule of law is the foundation of a democratic society. The judiciary is the guardian of the rule of law. If the judiciary is to perform its duty and functions effectively and remain true to the spirit with which they are . Sacredly entrusted to, the dignity and authority of the courts have to be respected and protected at all costs. It is for this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts, whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute by scandalising them and obstructing them from discharging their duties without fear and favour. The rules embodied in the law of contempt of court are the means by which

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the law vindicates the public interest in the due administration of justice

DEFINITION AND OBJECT OF CONTEMPT LAW

There was no definition of the phrase "Contempt of Court" earlier for the first time, a statutory definition in this provision of the 1971 act. A long catena of judicial decisions laid down from time to time as to what is contempt. It was therefore, left to judge to determine what it is and when the offence is committed.

The definition of 'Contempt' is not exhaustive a fortiori what is contumacious is for the court to decide. Its discretion can not be confined within the four walls of a definition. This not mean that the court shall not be guided by the definitions given in the act but the categories of contempt may not be closed by the definition⁴

According to Sec. 2(a) of Contempt of Court Act 1971 'Contempt of Court' means interference with the due administration of justice. The question of contempt must be judged in a particular situation. The process of due course of administration must remain unimpaired. The effect of the judicial decision should not be pre-empted for circumvented by public agitation or publications. Writing of a letter by a lawyer to another lawyer to heightening the growing tendency to hurl abuses on judges and undue criticism of the court does not constitute contempt⁶

'Contempt' may be constituted by any conduct that brings authority of the court in to disrespect or disregard or undermines its dignity and prestige. Scandalising the court is a worst kind of contempt. Making imputations touching the impartiality and integrity of a judge or making sarcastic remarks about his judicial competence is also a contempt. Conduct or action causing obstruction or interfering with the course of justice is a contempt to prejudice the general public against a party to an action before it is heard is another form of contempt⁷.

The definition according to Section 2(a) of the Contempt of Court Act 1971 is classified into only two kinds of contempt i.e. Civil Contempt and Criminal Contempt. Civil Contempt in sub-clause (b) of Section 2 means "Willful disobedience to any judgment, decree, direction or other process of a court or willful breach of an undertaking given to a court."

In sub-clause (c) of section 2 criminal contempt is defined as the publication of any matter or the doing of any other which –

- (i) Scandalizes 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 process of any judicial proceedings; or
- (iii) Interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner.

Now coming to the object of the contempt of court law it is submitted that there can be no doubt that the purpose of contempt jurisdiction to be uphold the majesty and dignity of law courts and their image in the public and that this is in no way whittled down. If by contumacious words or writings the common man is led to loss his respect for the judge acting in the discharge of his judicial duties, then the confidence reposed in courts of justice is rudely shaken and the offender need be punished. In essence the law of contempt is protector of the seat of justice more than the person of the judge sitting in that seat. The law of contempt has been enacted to secure public respect and confidence in the judicial process. If such confidence is shaken or broken, the confidence of the common man in the institution of judiciary and democratic set-up is likely to be eroded which, if not checked, is sure to be disastrous for the society itself⁸. Contempt jurisdiction enables the court to ensure proper administration of justice and maintenance of the rule of law. It is meant to ensure that the courts are able to discharge their functions properly, unhampered and unsullied by wanton on the system of administration of justice or on officials who administer it, and to prevent willful defiance or orders of the court or undertakings given to the courts.

The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It the general interest of the community it is imperative that authority of courts should not be imperiled and there should be no unjustifiable interference in the administration of justice. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice¹⁰.

CONSTITUTIONAL PROVISIONS OF THE CONCEPT

The constitutional provisions in relation to contempt of court are found in Articles 19(1)(a), 19(2), 129, 142(2), 215 and 227. Article 19(1)(a) says that all citizens have the right to freedom of speech and

expression;

Article 19(2) says that nothing in sub-clause (a) of clause (1) shall effect the operation of any existing law or prevent the state from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency of morality or in relation to contempt of court, defamations or incitement to an offence."

Article "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."

Article "142(2) subject to the provisions of only law made in this behalf by parliament, the Supreme Court shall, as respects are 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."

Article "215 says that 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."

Article "227, every high court have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction."

The constitution of India which came into force in 1950 does not envisage in its provisions only new law of contempt. It recognise the existing law and gives constitutional sanctity to the same.

CONTEMPT BY DIFFERENT PERSONALS

(i) Contempt by Lawyer : The interests of an efficient judiciary calls for a strong and efficient Bar, independent in outlook and not afraid to respectfully and boldly present the controversy in question. The judge and counsel are complimentary to each other. Both these arms of justice should develop paripassu, respecting each other's independence and enabling each to learn from the other. To function in this manner, a certain latitude has to be extended to counsel in the performance in his duties.

A lawyer has to be circumspect in what he does. He should avoid scandalous allegations against a court in a petition signed by his client. For him he has a duty to scrutinize what has client states. Nevertheless it is to hold a lawyer responsible for his clients acts. If this goes on, then it will dampen his advocacy which demands fearlessness assured of the protection to his calling. In *Banarsilal V. Neelam*¹¹ a revision petition drafted by a lawyer contained matters which amounted to contempt of court. It was contended by the respondent the petitioner in revision cannot be even heard till he purges himself of the contempt.

In a Madras case¹² an injunction was issued to an advocate restraining him from functioning an managing director but he flouted the order taking umbrage under the new articles of Association and a fresh resolution of the Board under which he thought there was a new jural basis not within the mischief of the original injunction, on which he could function. It was held that if the Advocate had such a notion as to his new jural basis he ought to bring them all to the notice of the court praying for modification or cancellation of the injunction.

If a number of the Bar hurls an attack against a sitting judge of the High Court in respect of anything done or omitted to be done before he became a Judge, proceeds to file a complaint in a criminal court against him and makes allegations which tend to create an apprehension in the mind of the public "regarding the integrity, ability and fairness of a Judge" it is a very serious matter which should require attention for necessary action under the contempt of courts act and/or under the advocates Act

(ii) Contempt by Judges : Now the question arises if parties witnesses and even counsel can be proceeded against for contempt of court for interfering with the course of justice or for bringing in to disrespect the fountain of justice, cannot situation arises when a presiding judge himself commits such a contempt ? If so is he immune and protected by the Judicial Officers' Protection Act (XVIII of 1850) and Judges Protection Act 1985, but under the act protection is only against suits in any civil court for any act done in the discharge of his judicial duty and done in good faith and not action for contempt which is Quasi-criminal. Even in the former case where malice is proved and there is want of good faith the judge can be proceeded against¹⁴.

The concept of contempt proceedings is not meant to protect the Judge personally but is conceived for safeguarding the honour of the seat of justice which must never be allowed to be ridiculed or interfered with so as to make the common man feel that the halo of divinity and justice ordering the seat is always kept pure and unsullied and that he can always look to the person enthroned in that seat of justice as a divine, impartial, unruffled in that seat of justice.

The contempt of courts act sets out the powers of the High Courts over contempt's of the subordinate courts and it can punish them just like a contempt of itself. That a judge can be guilty of

contempt of his out courts has further support from the Allahabad case Bar Association and Library, Moradabad V. Kothari Sub-Divisional Magistrate¹⁵. In that case the Magistrate got agitated and ordered the defense counsel peremptorily to leave the court hall. In this case the High Court of Allahabad observed that "if the presiding officer acts in such outrageous and undignified manner he can verily be held guilty of contempt of own court for he is only one of the component parts which constitute the comprehensive and manifold concept of a court."¹⁶

LAW OF CONTEMPT AND FREEDOM OF PRESS

Abraham Lincoln stated that "Democracy is a Government of the people, by the people and for the people. Justice Hidayatullah would however add "Democracy is also a way of life and it must maintain human dignity, equality and the rule of law. It requires strong public opinion, independence and fearlessness in the press and educated man and women who are not complaint to authority wrongly exercised."¹⁷

A free press is the sine qua non of any free country where dictatorship is absent, where there is no throttling of dissemination of news and views. A free press does not necessarily cannot licence without any restrictions whatsoever. It merely indicates that the press is allowed to function in the country under the minimum normal restrictions conceived in the interest of the health, prosperity and stability of the very society which the press wants to safeguard. The importance of the freedom extended to the press can be well understood when Thomas Jefferson's statement¹⁸ on that "Treasoned Heritage" is read. He says :

"The people are the only censors of their Governors pepole should be given full information of their affairs through the channel of public papers and to contrive that those papers should penetrate the whole mass of the people. The basis of our Government being the opinion of the people, the very first object should be to keep their right and were it let to me to decide whether we should have a Government without newspapers or newspapers without a Government, I should not hesitate a moment to prefer the latter ... No Government out to be without censors and where the press is free, no one never will."

The law of contempt of courts as applied to the press was said to be a necessity according to lord Denning¹⁹. He stated :

"The press plays a vital part in the administration of justice. It is the watchdog to see that every trial is conducted fairly, openly and above board. Any misconduct in a trial is sure to receive notice in the press and subsequent condemnation by public opinion. The press is itself liable to make mistakes. The watchdog may sometimes break loose and have to be punished for misbehaviour."

If newspaper publish scandalous news of man, matters and things, society would soon become corrupt and morbid and get subjected to "coloured glasses" tormented by what is termed "the yellow or the gutter" press.

In the sphere of court news they can descend to an attack on judges, impute, dishonesty, bribery, favoritism and partisanship to them in the discharge of their duties, question their competence, indulge in siding with one of the parties to the cause, deride one party, witness or counsel, misrepresent court proceedings by screaming headlines with a view to the detriment of the opposite party, publish only one side of the case is begun and without court permission, bring out article on matter pending in court and in diverse ways carry on what has been so aptly called a "a trial by newspapers" if such things are allowed to pollute the air of society, it may be said that the dignity and prestige of courts stand in great jeopardy.

"If freedom of the press is to achieve reality, the Government must sit limits upon its capacity to interfere with, regulate, control or suppress the voice of the press or to manipulate the data on which public judgment is formed²⁰.

The freedom of the press is not a static feature. It varies and adopts itself to the conditions of an never changing society.

The 1948 report of the press law enquiry committee revealed that the accusation by the A.I.N.E.C. that the law of contempt of court had been used in the country to unjustly punish newspapers was without foundation. Bonafide reports of court proceedings were adequately protected. The other plea that in contempt matters the trial should be by other judges was considered as adequately met by the provision in section 556 of the code of criminal procedure. No change in the law was found necessary.

6. CONCLUSION AND SUGGESTION

There can be no gainsaying that the contempt power arising under the act as enacted under the relevant legislative list I and III in Schedule VII of the constitution is rather elastic. Article 129 and 215 have interpreted by the Supreme Court as giving the plenary powers of punishment of the contemnors. The discretion left to the courts of record in this regard is rather wide with no guidelines or restrictions. Nor has

the Supreme Court, set for itself some salutary restrictive rules as it has vis-a-vis the special leave appeals under article 136 of the constitution.

So far as ex-facie contempt is concerned it has been dealt with adequately in the chapter V dealing with the provision in section 228 of the Indian Penal Code.

The essence of the power to punish for contempt is no doubt in the larger public interest of the preventing any unlawful interference with the administration of justice and to uphold the dignity and the graders of the law and not so much for the protection of individual judges as such.

Now some suggestion have made for the law of contempt of court like as no contempt action should be taken where there is no unfair criticism by the person or press vis-a-vis the judge or judgment.

The publication must create serious prejudice to the administration of justice. The emphasis is on serious prejudice as opposed to ordinary trivialities.

Justice Krishna Iyer's appeal to judges to protect free speech and civil liberties "even against judicial umbrage" and his clarion call for tolerance and detachment on the part of the judges even under some attack in the press" are worthy of acceptance.

Judges should refuse to look at the matter from the point of view of their own dignity in preference to the point of the liberty of free speech guaranteed under the constitution.

In respect of civil contempt the code of civil procedure affords relief under its provisions regarding those who disobey court injunctions or order or decrees. If the parties give an undertaking to court and this is embodied in the decree and then any disobedience of such a decree clearly calls for contempt action. There is yet another aspect of civil court proceedings. If in a pending case, there is a press comment, will it not trial by newspapers usurping the role of the courts which alone can try.

The saturation of the difficulties in relation to contempt of court act must lie in creating a machinery which will examine allegation of corruption without effecting the status, dignity and viability of the administration of justice as a whole. This can be done on the basis that all allegations of corruption, bias and gross incompetence against the judiciary should be made without any publicity whatsoever. Courts of justice should not be ranked with other public institutions.

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