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CONTEMPT OF COURT ACT, 1971: A STUDY

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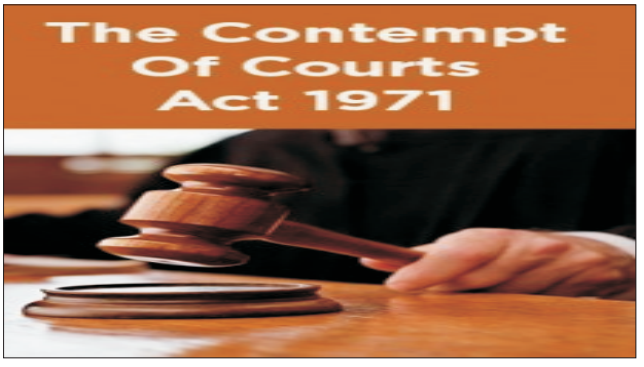
ABSTRACT

Judiciary is the guardian of the rule of law. If the judiciary is to perform its duties and functions effectively, the dignity and authority of the courts have to be respected and protected at all costs. 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 the contempt jurisdiction is to uphold the majesty and dignity of the court of law.[1]

KEYWORDS:*contempt jurisdiction , administration of justice , scandalizing.*

1.INTRODUCTION:

The object of the discipline enforced by the court in the case of contempt of court is not indicating the dignity of the person of the judge



but to prevent undue interference with the administration of justice. The confidence in court of justice which the public possess must in no way be tarnished, diminished or wiped out by contumacious behavior of any person. The essence of the power to punish for contempt is no doubt in the larger public interest of preventing any unlawful interference with the administration of justice and to uphold the dignity and the grandeur of the law and not so much for the protection of individual judges as such.[2] It is for this purpose that the courts 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 scandalizing them and obstructing them from discharging their duties without fear and favour. Hence the summary power of punishing for contempt has been given to courts to keep a blaze of glory around them and to deter people from attempting to render them contemptible in the eyes of the public. Thus the provision of contempt of court was first put forward and given a firm footing by the English Judges. The law of contempt is well developed under the English precedent system. Later the process of contempt of court was introduced into India by the British following the establishment of the courts of record in the 19th century. This was put on a firm basis in India by contempt of courts Act, 1926. The attempt at a comprehen sive legislation relating to contempt of courts in India was the contempt of courts Act, 1926. This act did not contain any provision with regard to contempt of courts subordinate to courts other than High Courts, that is, the courts subordinate to Chief Courts and judicial commissions. The Act also did not deal with the extra territorial jurisdiction of High Courts in matters of contempt. The provisions for punishment contained in the contempt of courts Act, 1926 and the Act of 1952 though valid and constitutional fell short of the expectations of the people and interfered with their

fundamental rights of freedom of speech and expression. It was felt that the Act of 1952 did not contain sufficient safeguards for the freedom of press particularly. Thus a committee was set up under the then Additional Solicitor General of India, Shri H.N. Sanyal. The Sanyal Committee submitted a very detailed and comprehensive report suggesting drastic changes in the contempt law. The draft bill was referred to as elect committee and the Bill was finally introduced in the Rajya Sabha on 19th February 1968 and the contempt of courts Act, 1952 was replaced by the contempt of courts Act, 1971.

2. MEANING AND DEFINITION OF THE CONTEMPT.

The law relating to contempt of court has developed over the centuries as a means whereby the courts may act to prevent or punish conduct which tends to obstruct, prejudice or abuse the administration of justice either in relation to a particular case or generally. Law of contempt is of fundamental importance in every legal system. The power, which the courts have of vindicating their own authority, is coveal with their first foundation and institution. It is necessary incident to every court of justice to fine and imprison for contempt of the court committed on the face of it. The sole purpose of proceedings for contempt is to give our courts the power effectively to protect the right of the public by ensuring that the administration of justice shall not be obstructed or prevented. The existing law relating to contempt of courts in India is essentially of English origin. The contempt jurisdiction appears to be based on the principle that the courts has the duty of protecting the interest of community in the due administration of justice and so, it is entrusted with the power to omit for contempt of court, not to protect the dignity of the court against insult and injury, by to protect and indicate the right of public so that the administration of justice is not prevented, prejudiced, obstructed or interfered with.[3] The words "contempt of court are archaic and are borrowed from English law contempt jurisdiction is intended no so much to protect the dignity of the individual Judges, but for the protection of administration of justice and the preservation of public confidence in its honesty and impartiality, and to uphold the supremacy of law. This power is considered necessary, because, unlike the Executive and the Legislature, the Judiciary has no forum from which to define itself. Contempt can be classified into: Civil Contempt and Criminal Contempt. Civil Contempt of Court provides for punishment of a person who refused to comply with the orders of a court. Consequently sanction will be committed to prison or fine. Disobedience to orders or judgment directing a person to do any act (other than the payment of money) or to abstain from doing anything can be enforced by attachment or committal. Criminal contempt is considered as misdemeanor on indictment. The penalty is fine on imprisonment on by order to give security for good behavior. It includes any kind of interruption on interference in the administration of Justice in or out of court. It is important to point out here that the art of printing and publishing brought into prominence another form of criminal contempt know as indirect criminal contempt or constructive contempt. The issue is again aggravated with the invention of Television, Telephone, Computer, Internet and other electronic gadgets.

According to Section 2(a) of the Contempt of Courts Act, 1971 defines "Contempt of Court" means Civil Contempt and Criminal Contempt; Section 2(b) of Contempt of Courts Act, 1971 defines "Civil Contempt" means willful disobedience to any Judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;

Section 2(c) of the act defines "Criminal Contempt" means the publication (whether by words spoken or written, or by signs, or by visible representation, or otherwise, of any matter or the doing of any other act whatsoever which:

(i) Scandalizes or tends to scandalize, 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.

3. HISTORICAL BACKGROUND OF THE LAW RELATED TO CONTEMPT.

The Contempt of Court is a matter concerning the fair administration of Justice, and aims to punish any act hurting the dignity and authority of judicial tribunals. Although it is difficult to accurately assess the origins of

contempt law, there is little doubt that it stems from the common law ideal of supremacy and independence of the Judiciary.[4] The law of contempt has gradually changed over the years. The Judges have use and transformed the contempt jurisdiction to deal with the problem that they have faced. Most studies of the law of contempt work on the assumption that we must take the contempt jurisdiction as we find it and that a historical analysis of how the contempt jurisdiction was evolved is unnecessary.[5] contempt of court is of absorbing interest to jurists as well as commentators who have critically examined the subject in its various aspects and implications. English authors trace the origin of law to Kingship and sovereignty, inasmuch all judges administering justice derive authority from the King and sit in courts to administer, impartially, real and unalloyed justice in King's name and as his representative. The idea of contempt of the King is referred as an offence in the laws set forth in the first half of the twelfth century in England. There was certain harsh laws in England as those persons who disobey the order of the King shall be rigorously punished. There was an instance a prisoner threw a brickbat at the judge and narrowly missed him, the prisoners' right hand was ordered to be cut off, and hung on the gallows. But due to the changing circumstances of the society, the development of contempt law in England did contribute great principles to the law of contempt, which are presently followed by several common law jurisdictions. The law relating to contempt of court in the United States from the beginning of the Republic had a chequred and controversial career. But with the multi millenary growth of the organized societies, the governing systems, interrelationship between sovereign and men, some power force within a rule of law became necessary to replace the enforcing obedience and respect. As the American power of judicial contempt is the product of the transplantation of English common law. Americans courts and American legal historians have often referred to the history of English and parliament in support of their theories about contemporary congressional contempt powers. According to the Ancient Hindu Judicature the King's duty was to protect his subjects as well as punish the wrongdoer. The King formulated certain guidelines which were termed laws. The Vedas and Samriti enjoy on the king the duty of enquiring into all wrongs himself with the assistance of his councillors. The law to be administered was the Dharma Shashtra which is not inconsistent with the Shashtras.The Dharma Shashtras are regarded even by a modern Juris consults Indian and foreign as the foundation or matrix from which all later law flowed forth. In times immemorial, when Dharma Shashtra held the legal field, the king was the supreme authority. The subjects had implicit confidence that the king would admonish shashtric laws, in God's name, justly, conscientiously and equitably. There could thus, hardly arise a question of contempt of court. King's word was law. He could not be disobeyed. If a person disobeyed the order of the King, he could lose his property, liberty, limbs or even his life. As the society expanded, it was not possible for the king personally to settle all the disputes. He, therefore, appointed persons to perform his duties. This is how 'Courts' came into existence. There was not an occasion, nor there any provision, for adoption of the proceedings for contempt of the kind now introduced. During the Mughal period, the ruler wielded radical powers and, either also, there was no scope for contempt of court, though an aggrieved party could chafe at and fret on, the inequity or impropriety of a tyrannous order or crude decision. Again, if a person revolted against the authority of the ruling head or chief, the rebels could be punished summarily and adequately; and the question of contempt of authority in the sense are witness now could neither arise nor there is any authentic record left of those ancient days to suggest that there was any such contempt law in this country. During British rule the process of liberalization of rigid laws commenced and the number of laws and statutes steadily swelled. Various categories of courts were created and gradually established on a permanent basis. Thus, forced by new circumstances, British systems of contempt proceedings, was, by and by, made applicable to this country. After achievement of Independence, the growing needs of an advancing Indian society and the increasing industrialization schemes have rendered it imperatively necessary, not only to maintain the British introduced contempt of court law, but to remold it afresh or to curtail or enlarge its scope as changing circumstances warrant or necessitate to cope with challenges to authority. The act of 1926 was the first Indian statute amended later on by Act of 1952, and now by Act of 1971. The present, Act of 1971 is entirely a new departure in the law of contempt.

4. JUDICIAL SYSTEM AND LAW OF CONTEMPT

The Indian Judiciary is one of the most powerful in the world. The judiciary in the country today has come

to enjoy enormous powers. It is not only the arbiter of disputes between citizens, between citizens and the state, between states and the union, it also in purported exercise of powers to enforce fundamental Rights, directs the Governments to close down industries, commercial establishments, demolish jhuggis, remove hawkers and rickshaw pullers from the streets, prohibit strikes and bandhs etc. In short, it has come to be the most powerful institution of the state. The stature of the judicature is so high and its powers so wide that any action designed to debunk, defile or denigrate the great dignity and impartial integrity of the institution is regarded as an invasion on the people's faith in the courts fearless, biasfree, favor-free functionalism and its solemn credibility as a constitutional instrumentality of justice. Indeed, a judge is an epitome of manners in men as the highest personage of law. To derivate from the most right honesty and impartiality is to betray the integrity of all law. A judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or the legislature.[6] The role of a legal practitioner whether called an Advocate or a Barrister or a pleader or a Mukhtar, is very important in democracy. Certain very healthy conventions are attached with this profession, for example an Advocate cannot advertise to get work. He cannot keep agents to bring clients to him. In the past in the gram of a Barrister there was a pocket on the back in which the clients could drop the fee whatever they could afford. This is a sort of public service. Law is complicated with numerous Acts, Rules and Notification; a citizen can be bewildered as he would in a dense forest. The language of the legislation is complicated and very often confusing. It is only with the help of an Advocate can be have his rights recognized and enforced. [7]

4.1 Bench and Bar

Judges are priests in the temple of justice whereas lawyers are worshipers of Goddess of justice in the temple. Worshippers through the medium of priests have to reach to the Goddess of Justice. For the same, both are necessary and in absence of the one, another is incomplete. Hence lawyers and judges have to co-ordinate, co-operate and collectively work towards the delivery of justice. Bench and Bar need to harmonize and balance their functioning to achieve the scared goal i.e. justice instead, situation might arise due to which both could be pitted against each other.

R.K. Garg v. State of Himachal Pradesh. [8]

The appellant contemnor, an advocate, hurled a shoe at the trial court judge and explained his conduct by saying that he acted under an irresistible impulse generated by the provocative language used by the judge. But the High Court held that the appellant had given an untrue version of the very genesis of the incident. However, in view of the fact that the appellant, tendered an unconditional apology to the Supreme Court and to the court where the offence was committed, a long sentence of imprisonment was not called for. The appellant was present in Supreme Court and it was visible that he had suffered enough in mind and reputation and no greater purpose was going to be served by subjecting him to long bodily suffering. Accordingly, sentence of six months was reduced to one month and fine of Rs. 2000 was enhanced to Rs. 1000.

In M.B. Sanghi v. High Court of Punjab and Haryana and Others[9]

The contemnor was a practicing lawyer. He had made an attack on the judge which was disparaging in character and derogatory to judge's dignity and would really shake the confidence of the public, thus, he was held guilty for contempt. Though the contemnor had tendered an unqualified apology but it was not accepted and the court held that the apology is not a weapon of defense to purge the guilt of their offence; nor it is intended to operate as a universal panacea but it is intended to be evidence of real contriteness.

5.PRESS, FREE SPEECH AND CONTEMPT OF COURT IN INDIA

The success or failure of any democratic system depends largely on the extent to which civil liberties is enjoyed by the citizens. Maximum development of an individual is the aim of a democracy by guaranteeing significant rights and freedom to the maximum extent. In a popular democracy, people are supreme and all the three organs of the state, i.e. Legislature, Executive and Judiciary are to serve them. Consequently, service providers are accountable towards their masters and masters have the right to check and criticize if they do not act or behave properly. Master's right to check, criticize and control may be effectively exercised through the right to freedom of speech and expression guaranteed under Article 19(1) (a) of the Constitution of India. But excess to information is very foundation of this freedom of speech and expression. Unless, access to information

will be provided, it will not be practicable not to effective exercise of freedom of speech and expression; and in turn check, criticize and control of service providers.[10]

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 connote license without any restrictions whatsoever. It merely indicates that the press is allowed to function in the country under the minimum normal restriction 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 statement[11] on that 'Reasoned Heritage' is read. He says: "The people are the only censors of their Governors ... people should be given full information of their affairs through the channel of public papers and to contrive that these 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 that right; and where it left 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 ought to be without censors; and where the press is free, no one ever will."

In Express Newspapers (P) Ltd., v. Union of India[12] arose out of a challenge to the working Journalists and other newspapers Employees (Conditions of Service)and Miscellaneous Provisions Act, 1955, on the ground that its provisions violated Article 19(1)(a). In the facts of the case, the court held that the impact of the legislation on the freedom of speech was much too remote and no judicial interference was warranted. Moreover, the court did recognize an important principle which is as follows:

Laws which single out the press for laying upon it excessive and prohibitive, burdens which would restrict the circulation, impose a penalty on its rights to choose the instrument for its exercise or to seek an alternative media, prevent newspapers from being started and ultimately drive the press to seek Government aid in order to survive, would be struck down as unconstitutional.

Apart from constitutional restraints under various Articles, there are laws in India relating to the Press which seek to put statutory curbs on Freedom of the Press. Here, it must be noted that a distinction is necessary between Press laws which are special laws solely directed against a printing establishment or those who are concerned with the printing and publication of printed matter and laws on the press which are general laws applicable to all citizens including the press. The term 'General' signifies that the law must not be aimed at the ideas in or content of the expression and regulate matters that might be pertinent to freedom of the press but pertain as well to other rights and matters. [13]

it may be submitted that the law relating to contempt of courts. has been designed to protect the functional independence of the courts, so that they are able to maintain the rule of law, which is the very basis of the democratic system of government. However, this does not make the judges and their course absolute, arbitrary, or completely immune from criticism. Their doings and their decisions are admittedly open to public scrutiny through the powerful medium of press. The press is the watch dog to see that every trial is conducted fairly, openly and above board. But the watch dog may sometimes break loose and has to be punished for misbehavior.

6. CONCLUSION

The concept of contempt of courts is allied with the administration of the law by the state to enforce discipline and respect towards the decisions of the court. On the other side it leads to people having faith in the authority of the courts and also a depiction of the sovereignty of the state on its subjects. Thus it can be safely concluded that judicial power to punish non-compliance with court order under the doctrine of contempt of court is inherently and incontrovertibly necessary for the working of system of administration of justice. Thus the geneses of the concept of contempt of court in India can be found in the supreme authority of the King firstly and then in courts working under his supervision. Any disobedience howsoever high doing that could be punished for disobedience. The punishment had no limits. The condemned men could lose his property, liberty, limbs or even his life. The study emphatically makes the point clear that Indian judicial system is most powerful compared with other systems of the world. It has reacted cautiously and carefully in matters of contempt of court. Powered with

authority and discretion the Indian law makers have shown great faith in the intellect and the responsible behavior of the judges. By making the test to determine a particular act to be or not to be a contempt of court act, a objective one, the law makers have put extraordinary burden on the courts to justify the actions that they take, and the judgments that they pronounce in the matters related to contempt of courts. concept of contempt of court in its true sense as we know in modern times was not available in ancient times. The phrase contempt of court known as contemputs curiae in English law was coined in Eighth century. It conferred power to enforce discipline and punish those who failed to comply with the orders of the court. This seems to be at par with the modern concept of contempt of court.

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