

Contempt of the Court

Ms. Sahithi V

Introduction

The history of power of exercising contempt jurisdiction and punishing for contempt of court can be traced back to the 13th century. The ancient period considered king as a primal person to deliver justice and his powers were exhaustive and unquestionable. People during that period had no right to condemn any act of the king or lay out any criticism and if there were any, such an act was punishable. With change of time and pattern, work overburdened and was delegated by him to a functioning authority i.e., judges. The purpose of bringing contempt of court was to protect the integrity of the court and safeguard the functioning of judicial administration without disruption, whether this was directed at any judicial officers or public at large. The Supreme Court and the High Courts of India have been empowered with the power to penalize contemnor under Articles 129 and 215 of the Constitution of India. This power of the Courts to penalize the contemnor imposes restrictions with respect to ¹Article 19 (1) (a) dealing with freedom of speech and expression, where the court is empowered to treat as contempt any speech which disrespects the authority of the courts. The court has to use with utmost care a case involving contempt of court, for improving the justice system and not for individual betterment.

In 1961, a committee was set under the leadership of late H N Sanyal, which placed a report stating the study of law, identifying the problems and to protect the dignity of the court from degrading. The Contempt of Court Act, 1971 was passed in pursuance of the recommendation of the said committee.

LITERATURE REVIEW:

This report has presented a review of the contempt of Court act 1971 in the light of various constitutional provisions and a detailed analysis regarding the same. The report starts with explaining the history of the law regarding Contempt of Court in India by tracing its origins to the East India Company period in India before independence. The report has also explained and cited case-laws and decisions of various judges explaining the importance of the provision of Contempt of Court under the Indian Law.

The constitutional provisions relating to Contempt of Court were properly discussed in the above article by giving due emphasis on Article 19 and its clash with the provisions for Contempt which has already been discussed in the analysis drawn above. Further, various sections of the Contempt of Court Act 1971 have been explained very comprehensively in this report along with case-laws and justifications provided for the same.

The international scenario has also been talked about by explaining the Contempt provisions in various countries such as Pakistan, England, USA, etc. The report has also mentioned the number of contempt proceedings which have been initiated in the Apex Court as well the High Courts as of 2018.

¹ Article 19(1)(a), Contempt of Court 1971

Through this we get to know that still there are a lot of contempt cases which are still pending. In this report, a distinction between a mere technical contempt and the contempt of court has also been drawn out. In case it is just a technical contempt, the court would not be eligible to initiate proceedings. To constitute a contempt of Court, it is necessary that a substantial interference is there with the course of justice.

CONTEMPT OF THE COURT:

To understand the concept of contempt of court and legal provisions and aspects of the Act in the light of fair exercise of power of the judiciary while dealing with contemptuous act. To understand the parameters that are taken into consideration by the authorities while deciding a situation or an act to be contempt and be penalized. To know what is fair criticism and to what extent are the criticisms valued by the judiciary and how freedom of speech and expression brought under restriction to protect and maintain the integrity of the court.

Although criminal contempt of court may take a variety of forms they all share a common characteristic: they involve an interference with the due administration of justice, either in a particular case or more generally as a continuing process. It is justice itself that is flouted by contempt of court, not the individual court or judge who is attempting to administer it. Contempt of court because of its peculiar and contentious nature had led to contradictory opinions among scholars, jurists and various masses, hence no satisfactory definition of contempt of court can be had. The term contempt of court is a generic term descriptive of conduct in relation to particular proceedings in a court of law which tends to undermine that system or inhibit citizens from availing themselves of it for the settlement of their disputes.

CONTEMPT OF COURT CLASSIFIED

The Contempt of Courts Act of 1971 divides the expression 'contempt of court' into two categories of contempt, viz.,

(i) Civil contempt and (ii) Criminal contempt.

CIVIL CONTEMPT

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. Under ²Section 2(b) of The Contempt of Court Act, 1971 'civil contempt', is defined to mean willful disobedience to any judgment, decree, order, direction or any other process of court or willful breach of an undertaking given to the court. It can basically be held to be any wrong to the person who is entitled to the benefit of a court order. It is a wrong for which the law awards indemnification to the injured party; though formally it is contempt of court in fact it is a wrong of private nature. Civil contempt is a sanction to enforce deference with an order.

² Section 2(b) of The Contempt of Court Act, 1971

CRIMINAL CONTEMPT

It is very serious type of act. Handcuffing, arrest and assault of a Judicial Officer by Police Officers amount to criminal contempt. If any judicial officer is led into trap by unethical police officers and is allowed to be assaulted, handcuffed and roped, people will bound to lose faith in courts, which would be destructive of basic structure of any democratically organized society. If this is permitted rule of law shall be supplemented by police raj, viewed in this perspective any such incident shall not be a case of physical assault on an individual judicial officer instead it shall be an onslaught on the institution of the judiciary itself. Hence it can be clarified that Criminal contempt means “the publication whether by words, spoken or written, or by signs, or by visible representations or otherwise of any matter, or the doing of any other act whatsoever which

- Scandalizes or tends to scandalize, or lowers or tends to lower, the authority of any court; or
- Prejudices or interferes or tends to interfere with the due course of any Judicial proceeding; or
- Interferes or tends to interfere with, or obstructs or tends to obstruct the administration of Justice in any other manner.

ESSENCE OF POWER OF CONTEMPT

The people of India have a lot of faith in the judiciary which is primarily entrusted with the duty of administering justice. The main purpose for giving courts contempt jurisdiction is that 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 judicial system of our country. The law of contempt provides the necessary tool to the courts to check unwarranted attacks or efforts that tends to undermine the rule of law. The Contempt of Courts Act, 1971 has been enacted in order to remove doubts which have arisen as to the powers of a High Court. The law of contempt is the custodian of the seat of justice more than a person of the judge sitting in that seat. J. Hadi Hussain's views in *Nasir Uddin Haider*, gave this thought a strong base and stated that the object and purpose of contempt jurisdiction is to uphold the dignity of law courts and maintain their majesty in the minds of public. If, by recalcitrant words or writing, the common man is led to lose his esteem for the judge, acting in the discharge of its judicial duties, the confidence reposed in the course of justice is rudely shaken and the offender must be punished.

The title of the Act often misleads people to think that this piece of legislation tends to protect the court and the fraternity of lawyers and judges, thereby keeping them above law. It is given that the judiciary is both the prosecutor and the adjudicator, it often leads this legislation to be obscured as a veil of protection for the courts from external criticism. In fact, if it were so, then it would be nothing but an abuse of the powers of the judiciary and a neglect of the very idea of justice that it tends to protect. The punishment under the contempt law is inflicted not for the purpose of protecting either the court as whole or individual judges from a repetition of the attack but of protecting the public. Thus, contrary to the above mentioned common perception, this act in no way in the hands of superfluous power of the judiciary.

Moreover, it must be remembered that the power and jurisdiction of the courts under this act falls under extra-ordinary jurisdiction alone and this acts as a check on the judiciary. There can be no doubt that the purpose of contempt jurisdiction is to uphold the majesty and dignity of law courts and their image in the minds of the public. The law of contempt is intended for protecting the court as a whole from a repetition of the attack but of protecting the public and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the court from mischief that will incur if the authority of the tribunal is undermined or impaired. This was rightly held in ³Baradankanta Mishra v. Registrar Orissa High Court. The law of contempt of court is not the law for the protection of judges or to place them in a position of impunity from criticism. It is the law for the protection of the freedom of individuals. Everyone is entitled to the protection of a free and independent administration of justice.

The Supreme Court in Mohammed ⁴Yamin v. Om Prakash Bansal, 20has once held that the hall of justice is not a secluded virtue. In fact, for justice, to shine with its pristine luster, it must be bold, free and subject to public scrutiny. So, if someone criticizes certain open aspects of a judgment, e.g., in the realm of interpretation of law, severity of sentence, etc., it cannot be contempt. But if there is an attack on the integrity of judges by imputing motive dishonesty or incompetence, arbitrariness or want of independence to a judge, it would be exceeding the rights of an individual.

ANALYSIS AND SUGGESTIONS

The offence consists in interfering with the administration of law; in impeding and perverting the course of justice. It is not the dignity of the court which is offended, it is the fundamental supremacy of the law which is challenged” Lord Clyde. The main purpose behind contempt power given to a judiciary is to empower them to function efficiently, and not to defend individual judge’s dignity. The institution of judiciary is based on the credence and faith of the citizen in its capability to deliver undaunted and fair justice. When the foundation of the institution is affected by acts which creates disrespect for the judiciary and estranges its working, the structure of the judiciary gets corrode. Courts inculcate faith in the rule of law by chastising the guilty. Every offender should be penalized for rebellious acts under the apposite laws, but it is extremely indispensable to ensure that judiciary doesn’t misuse these power. The Contempt of Courts Act, 1971 is imperative with reference to the concept delivering of justice. It makes the course of allocation of justice quick and efficient and thus maintain the faith and trust the people have vested in the judiciary of the state. It restricts from any form of peremptory. Still there are several shortcomings in the sections of the Contempt of Courts Act, 1971.

There should a proper criteria to rule whether an act is contempt of court or not. If it makes the functioning of the judiciary impossible and extremely difficult then, such act should be treated as contempt otherwise not, even if criticism is grievous. With authority comes responsibility. Hence, judicial officers must use the effective power of contempt with caution and serious deliberation to assure that civil liberties are not mishandled.

³ Baradankanta Mishra v. Registrar Orissa High Court

⁴ Yamin v. Om Prakash Bansal

Limitation:

The period of limitation for instituting contempt proceedings has been provided under ⁵Sec.20 of the Contempt of Court Act, 1971. It was also observed that the Court has no capacity to broaden the time of limitation as it would by some way or another thrash the arrangement of law. The regular culmination of this would be that after the period, as recommended by Section 20 of the Act, slips by, the jurisdiction would also evaporate under the Act.

The courts would not be able to exercise jurisdiction after a period of one year from the date of contempt lapses. There are basically three ways in which contempt proceedings can be initiated. A Suo Motu action can be taken by the Supreme Court or any High Court independently or through a presenting an application to it by a private person.

The attorney general can also take the action and request the Court to start contempt provisions against the contemnor. Applications filed by third persons could also be considered but prior permission from the attorney general is necessary in that case. All these three can only be done if the period of one year limitation has not ended.

CASE LAWS**⁶CASE 1: In Re: Arundhati Roy [AIR 2002 SC 1375:(2002)3SCC343]****Issue:**

Whether question of any motive of and prejudice from any judges arises, when a suo motu action is taken by the court for cognizance of a criminal contempt? Whether scandalizing the authorities of the court with malafide intentions amount to criminal contempt?

Analysis:

When suo motu action is taken by the court for cognizance of a criminal contempt under Section 15 of the Contempt of Courts Act, 1971, no question of any motive of and prejudice from any judges arises. Criminal Contempt of the Court by scandalizing its authorities with malafide intentions is punishable under Section 12 of the Contempt of Courts Act, 1971.

⁷ CASE 2: R.K.Anand v. Registrar, Delhi High Court (2009) 8 SCC 106**Issue:**

Whether the High Court to prohibit an advocate from appearing before the High Court and the courts sub-ordinate to it for a specified period as one of the punishments for criminal contempt of court?

⁵ Sec.20 of the Contempt of Court Act, 1971

⁶ Re: Arundhati Roy[AIR 2002 SC 1375 (2002)3 SCC 343]

⁷ R.K.Anand v. Registrar, Delhi High Court(2009)8SCC106

Analysis:

The High Court can prohibit an advocate from appearing before the High Court and the courts subordinate to it for a specified period as one of the punishments for criminal contempt of court in order to preserve the purity of judiciary.

⁸CASE 3: Radha Mohan Lal v. Rajasthan High Court AIR 2003 SC 1467**Issue:**

Whether punishment for contempt can be warded off, if the apology is tendered after being found guilty and infliction of imprisonment? Whether an advocate is bound by constitutional obligation to say and submit before the Court whatever he is instructed by his client?

Analysis:

The punishment for contempt can be warded off, even if the apology is tendered after being found guilty and infliction of imprisonment. Further, an advocate is not bound by constitutional obligation to say and submit before the Court whatever he is instructed by his client. If he signs applications or pleadings containing matter scandalizing the Court, he will be liable for contempt of court.

BIBLIOGRAPHY

1. <https://www.scconline.com/blog/post/2021/10/09/contempt-of-court-2/>
2. **Law of Contempt of Court in India**
By K. Balasankaran Nair
3. The Turn-of-the-Century Lynching That Launched a Hundred Years of Federalism

By Mark Curriden, Leroy Phillips

CONCLUSION:

The concept of contempt of Court, under the Indian law is to enable the courts to function effectively without any interference or obstruction from outside. It is also important that the dignity and respect of the Judge as well as the Court should be upheld otherwise the people will lose faith in the Judicial procedure. It is beyond doubt that the rule of law can exist only when firm and consistent support is accorded to the judiciary.

It is an intrinsic power vested in the Judiciary to punish any individual who meddles with the administration of justice. It has additionally been built up that the power given to the court isn't to vindicate the nobility of the court but to uphold the dignity of the court and proper administration of law.

⁸ Radha Mohan Lal v. Rajasthan High Court AIR 2003 SC 1467

Hence, we can say if it is justly and properly implemented in reasonable and rare cases, the Concept of Contempt of court is really important for the Indian Judiciary. This can only be said when the powers provided under this particular law is sparingly and properly exercised.

E-Resources and References:

