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CONTEMPT OF COURT

(Context: The judicial stand on contempt of court proceedings have never been strict, they change as per circumstances and people involved. Examine in the light of recent events.)

All animals are equal but some animals are more equal than others

- George Orwell (Animal Farm)

THE AUTHOR

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One look at recent headlines and you get a feeling that indeed there is truth in what George Orwell had said more than 70 years ago. Even more so when, you start reading about ways in which different High Courts and the Supreme Court handle contempt cases.

It is a settled law that the powers exercised by High Courts or Supreme Court under Contempt jurisdiction are as a result of them being “Courts of Record”. The ability to punish for contempt of its own or of court subordinate to it, is a feature of English Common Law system which is a base on which Indian judicial system is largely based on. Articles 129 and 215 of Constitution of India confer the power to punish for contempt to S.C. and H.C. respectively. The often raised objection that contempt proceedings are in violation of article 19(1)(a) which talks about freedom of speech and expression has also been settled judicially. Article 19(1)9a) is subject to 19(2) which clearly talks about limit to this freedom when it causes contempt of court. Another contentious issue of Contempt proceedings is the summary nature of it. The constitutional validity of it has also been challenged several times and Apex court had held on several occasions that contempt jurisdiction being inherent power of a court of record, the court has all the powers to decide the procedure to prosecute the contemnor as quickly as it can. This is to ensure that people’s faith and confidence in judiciary is restored and majesty of law is upheld. The proceedings are neither fully according to Criminal Procedure Code nor Civil Procedure Code., as courts are free to formulate their own rules to deal with such matters.

After constitution came into effect, soon the need arose to clarify the various powers available to Courts and the manner in which they needed to be exercised amongst other things. Subsequently, the parliament appointed a committee under Mr.Sanyal as Chairman to advise on various aspects involved. The report of the committee is largely the basis on which Contempt of Courts Act, 1971 was passed. The object of the act was to define and limit powers of courts in contempt and regulation of procedures. The act prescribes maximum sentence of 6 months imprisonment and a fine up to Rupees 2000 as a punishment.

Today practically, S.C. and H.C. can either take suo motu cognizance or on a complaint/reference by subordinate court or authorized persons and punish the contemnor. The appeals from H.C. lie to S.C. and if S.C. has punished contemnor then he has almost no options left except perhaps under Article 136(Special Leave Petition). It is interesting to note that the country i.e. United Kingdom from where we have imported this concept has almost done away

with this jurisdiction and restricted the powers of courts to punish for contempt only in cases where a trial is in progress. In India, however the scope of contempt law is so wide than practically anything said or done during or after the trial, about judge or the judgment, inside or outside of the courtroom can be considered as contempt of court.

One can then get an impression that with such wide ranging powers, there wouldn't be any person in their right senses who would dare to challenge the authority of courts and everyone respects judges and abide by their decisions. In fact you would be far from reality when you see that there are members from certain sections of the society who can and do get away even after seriously damaging character of a judge or his wisdom or judiciary as a whole.

Let's look at some recent examples:

Case-1: **Anurag Thakur B.C.C.I. President's contempt and perjury case (Mar. 2017)**

Mr. Thakur was charged with contempt for obstructing the administration of justice and perjury for filing false affidavit. Sensing the trouble he had got himself into, initially combative looking Mr. Thakur simply tendered 'unconditional apology' and the contempt case was closed. Now this raises a question whether mere apology can purge the act of a man who tried his best to scuttle directions given by S.C. in a written order? He had used his influence on world cricket governing body i.e. I.C.C. (International Cricket Council) to mount pressure on judiciary by showing perceived threat of de-recognition of B.C.C.I for not complying with its orders. Filing false affidavit and obstructing administration of justice are serious enough charges and S.C. should have at least set an example by showing that howsoever high you may be, the law is above you. Unfortunately the opportunity was lost.

Case-2: **Justice Katju for his comments in Soumya rape & murder case (Jan 2017)**

In this case a former S.C. judge Justice Katju was charged with contempt of court when he made certain statements in review petition in Kerala's Soumya rape and murder case. He charged Supreme Court bench with lack of understanding of section 300 of I.P.C., for reducing death sentence. During court proceedings he had a heated exchange with the judge whom he refused to call as 'Justice' and instead addressed him as "Mister" reminding him that he was his junior when he was a judge.

After offering unconditional apology through Fali Nariman the case was closed.

Case -3: **Justice Karnan contempt case (Ongoing since Feb 2017)**

Justice Karnan of Calcutta H.C. made allegations against several past and sitting judges of Madras H.C. and S.C. of corrupt practices. In response S.C. constituted a 7 judge bench and issued suo-motu contempt notice to Justice Karnan. This is an ongoing case where the respondent has already been transferred out from Madras H.C. to Calcutta H.C. He has also been stripped of his judicial and administrative assignments. This is despite the fact that H.C. is administratively not subordinate to S.C. A sitting judge of a H.C. cannot be impeached except

through parliament. Even when this fact is amply clear and the fact that he has been punished to the maximum already, one wonders what could be the objective of Contempt proceedings by S.C. except making an example out of Justice Karnan. The problem in this singling out is; it reinforces the beliefs of some of the people that representatives of marginalized communities such as Dalits do not get treated at parity with their counterparts. In the instant case Justice Karnan is being proceeded vigorously when Justice Katju was let off with an apology. What perplexes more is that S.C. has yet not said whether it is going to probe allegations made by Justice Karnan or not? In absence of this balancing act, the S.C. is giving a signal that it does not believe what one of their colleagues from H.C. is saying. He is not a commoner in street, he being a judge of H.C. is surely more responsible about his statements but instead of taking note of his allegations to inquire into the matter and then punish him for defaming judiciary decisively, we have Justice Karnan saddled with contempt proceedings, barely a month remaining into his retirement.

At this juncture one also remembers the case of former Chief Justice Venkataramiah who had made similar allegations but without taking names in an interview to a magazine on the day of his retirement. When those statements were taken up for contempt proceedings, it was held that allegations did not amount to contempt and it was made in good faith for betterment of judiciary. One wonders how then Justice Karnan is going to benefit from making allegations against other judges if not seeing a better judiciary sans corrupt judges. Justice Venkataramiah was not asked to substantiate his claims but in the current case it is expected from Justice Karnan to substantiate his claims for taking up the matter administratively. If this had been the general approach of judiciary towards allegations of corruptions in fields outside judiciary then how many scams would actually have come out in open? Not many. The whole point of whistle blowing concept is somebody in the know of things, blows the whistle and it is for the appropriate authorities to take necessary action after inquiring into allegations.

Case-4: **Madras Chief Justice Sanjay Kaul ‘s Contempt case by Justice Karnan (Apr 2015)**

This case is previous episode to ongoing case against Justice Karnan, when Justice Kaul was CJ of Chennai H.C., he had refused to take cognizance of Justice Karnan’s order to investigate some of the judges of Madras H.C. for corrupt practices. In response Justice Karnan filed a suo-motu contempt case against CJ Kaul. The order had to be ultimately stayed by S.C. CJ Kaul has since joined S.C. as a judge. Justice Karnan transferred to Calcutta H.C.

This episode highlights another aspect of Contempt proceedings where judges are using it as weapons against each other to satisfy their egos.

Case-5: **Dr. G.N.Saibaba Vs. Maharashtra’s Contempt against Arundhati Roy (Dec 2015)**

This is probably example of what happens when S.C. decides to deal with certain contemnors with kid gloves. The contemnor in this case is Ms. Arundhati Roy, a woman known as a writer in certain section of society with couple of awards to her fame. She has been charged with contempt cases at least three times so far, twice in the Narmada Bachao Aandolan and once in

Prof. G.N.Saibaba case in Bombay H.C.. First case dates back to 1998[1], second in 2001[2] and the latest one in 2016. Over the span of almost 2 decades she has been attacking judiciary in what can be called as "scurrilous attack" and yet nothing much has been done by S.C. about it. First occasion she was let off being a woman, second time she was imprisoned for a token 1 day again for being a woman. The special treatment has emboldened her desire to push the limit to such an extent that this time she accused magistrate who refused bail to Prof. Saibaba, as "somebody from a village" and state of Maharashtra as a "thief and criminal". Calling names and such abuse comes under "scandalizing the court" and it is a serious charge as the judge is attacked not for his judgment but for the background from which he came into judiciary. This is the time when S.C. is expected to take suo motu cognizance and give exemplary punishments to serial/repeat offenders but sadly that does not seem to be happening as the contempt case is pending in Bombay H.C. and S.C. has assured the contemnor that she will not be victimized which again gives indication as to which direction this case may be going in appeal even if Bombay H.C. eventually finds her guilty.

The idea of summary jurisdiction was to dispense the justice as quickly as possible to restore public confidence in judiciary and uphold the majesty of law. I wonder whether public confidence is reassured or dented when they see rich and famous people defended by top lawyers get away by literally abusing judges in most abusive words and at the same time people who are not so resourceful go to jail for contempt.

The main problem with contempt proceedings is that they are very subjective to the bench which hears the case. It may be overly sensitive and award punishment for seemingly innocuous comments, at the same time there may be other liberal minded judges who take no offence of such criticism. Even when such cases are decided by H.C. for punishing contemnors, there is no assurance that the S.C. will agree with H.C. findings. In short, ultimately, it is the S.C. bench which hears such appeals and their overall sensitivity to such statements which decides whether a person goes to jail for contempt of court or gets away by simply tendering an apology.

There is an instance where S.C. in Advocate V C Mishra[3]case had punished contemnor with a suspended sentence of imprisonment and suspension of his bar license. The S.C. had used Article 142(2) which talks about enforcement of decrees and orders of S.C. to be enforceable throughout country to do complete justice, to justify the suspension of this license. This was clearly a case of judicial overreach which was rightly challenged[4] by Supreme Court Advocates Association and S.C. in that case partly overruled the earlier S.C. judgment and set aside the suspension. In the case S.C. mentioned that the decision to suspend Advocates license under Advocates Act, 1961 has to be carried out following due process of disciplinary hearing by Bar Council of India and it cannot be combined with Contempt of Court proceedings.

[1] Narmada Bachao Andolan, Petitioner v. Union of India & Ors(AIR 1999 SC 3345)
[2] In Re. Arundhati Roy (2002) 3 SCC 343
[3] In Re. Vinay Chandra Mishra (AIR 1995 SC 2348)
[4] Supreme court bar association v. Union of India (AIR 1998 SC 1895)

Another problem is the issue of interpretation. In a small country like England with almost monolithic population speaking one language i.e. English albeit in different accents, can be measured on same scale as far as words or gestures used which may amount to contempt. In a vast country like India where we have diversity in population in many ways viz. cultural, religious, linguistic, even regional or local, hardly 2 or 3 percent of whom are native English speakers are then judged by their words translated into English for checking whether they amount to contempt of court or not. This is because although the language of contemnor may be any one of the hundreds of languages being spoken in India, the language of courts in H.C. and S.C. remains English. Each of Indian language has its own way of expressing satire using regional symbols which may be offensive to some people when they read it in English as they are unaware of the context in which comment is being made. Why do Indian courts consider a so-called author calling names to judges is less evil than an illiterate accused throwing a shoe at magistrate? Surely the author was expected to be more respectful towards judiciary and even if she was unhappy with verdict, she knew that there is always a higher court of appeal. This may not be the case with the accused who hurled abuses or threw shoe at magistrate, because for one thing he may not have resources to fight his case any further and secondly he himself might have come to conclusion that had the system worked honestly he would not have been convicted and in the moment of despair, his emotions may overtake his actions and he commits the contempt. Although he may be remorseful of his act, unless he is helped by a good advocate he is expected to serve some more time in prison.

What then can be concluded from all above discussion is a generic observation which is quite relevant to Indian social scenario. Any discretionary power vested in any authority is subject to malfeasance, misfeasance and nonfeasance. This is the very reason why Indian judiciary has increasingly resorted to ‘judicial activism’ and interpreted several discretionary powers given to Governors and President, not to be matter of personal discretion but is subject to scrutiny of law. How then one wonders, can the judiciary keep the power to summarily prosecute contemnor without giving him full chance to exonerate himself especially in cases where he has charged judiciary with corruption. Cases of lower court judges getting arrested for corruption are rampant and there have already been at least 3 judges of High Courts been attempted for impeachment in Parliament before they chose to resign voluntarily. Renowned legal luminary Shanti Bhushan has submitted a list to S.C. with names of 16 former Chief Justices whom he accuses of corrupt practices. Just a few days ago, widow of former Arunachal Pradesh Chief Minister Kaliko Pul who committed suicide, had her request to inquire into her husband’s suicide note in which he had charged several sitting judges of S.C. and some high ranking constitutional office bearers of corruption, was turned down. In the backdrop of such an atmosphere if the judiciary insists that contemnors such as Justice Karnan be punished for Contempt, then fairness demands for it to disclose the measures taken by it to inquire into his allegations before discarding them as baseless or without proof. Time has come to amend the contempt of courts act in such a way that those who charge judiciary or a judge with corruption be dealt with severely once the inquiry into allegations by appropriate authority finds no merit in claim. Until then no summary punishment should be meted out to person because courts would be doing more harm than good

by punishing a perceived whistle blower. The whole idea of contempt of court action is to ensure that people have respect and faith in judiciary and that faith has already started eroding when we get to hear stories of disproportionate assets of kin of former Chief Justices, favours in post-retirement appointments of S.C. judges, judges giving shocking verdicts just few days before their retirement (J.Jaylalitha D.A. Case, Karnataka H.C. & Salman Khan Hit and run case, Bombay H.C).

In the long run the respect to the judiciary can only be earned, not enforced by way of contempt proceedings. On the contrary it may fan the anger people currently having against their political leaders and administrative setup of the executive. Gone are the days when Police were respected, for theirs is one of the most corrupt of public services of a Government. Increasingly people have also started to have similar opinions about armed forces which were once immune to charges of corruption, but in recent years stories after stories have come out in open which highlight that the rot has deep roots in armed forces too. Yet in some way these situations are remediable as public have power to change the government through their elected representatives. Judiciary is completely different thing altogether, its independence is guaranteed in constitution and no conduct of a judge can be discussed in parliament except during the impeachment proceedings. The power to appoint judges to H.C. and S.C. vests solely in the Collegium of senior judges thus it is a case of "judges appointing judges'. In such a scenario is it inconceivable to have a judge who is far removed from the daily hardships that a citizen goes through in his miserable struggle to make two ends meet? If such judge then goes ahead and gives a judgment(either due to lack of knowledge of ground reality or extraneous considerations) which has far reaching consequence even those he had never contemplated, should he be given protection of Contempt laws? Current Finance Minister Mr. Arun Jaitley had famously coined the term "Tyranny of the unelected" when the constitution bench of S.C. had struck off N.J.A.C i.e. National Judicial Appointments Commission as unconstitutional. The bill which was passed by unanimity in parliament and ratified by more than half of Indian states was found to be unconstitutional by a 5 judge bench who did not agree to the demand that there has to be some transparency in the manner in which judges are getting appointed and the people other than judges need to have a say in the process.

Need of the hour today is for Apex courts to publicize the mechanism and channels available to members of the general population where they can go and lodge their grievances about the judgments given by Judges as they deserve the swift and summary disposal of their complaints, in the name of upholding the majesty and equity of law. If such mechanisms do not exist then time has come to institute such mechanisms where there is involvement of neutral person along the line of Lokpal i.e. Ombudsman to fix accountability of judges and their actions. Self-regulation option may not work best for judiciary as it is a close knit community where most of the judges have sat together on some bench in some point of time in their career.

As the famous saying goes, Justice not only is to be done but it also must seen to be done and only way to assuage skeptics of judiciary is by involving a neutral element during inquiry of corruption charges against a judge during contempt proceedings. Alternate to this, was the jury system where members of the general public were involved in the dispensation of justice and

they could have given verdict whether the words spoken by contemnor actually shook their confidence in judiciary as the judges perceive it or they found nothing wrong in the statement.

Unless something changes, we will keep reading headlines of some or other contempt proceedings as a matter of routine course.