

INDIAN JOURNAL OF CONSTITUTIONAL STUDIES

Issue - May, 2017

Volume I Issue IV

Copyright © 2016-17. All rights reserved with the Editors of Indian Journal of Constitutional Studies.

ISSN 2456 - 5008

Published bimonthly

- - Disclaimer - -

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of the Indian Journal of Constitutional Studies. The Indian Journal of Constitutional Studies (hereinafter IJCS) and its affiliates holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Board or Board of Advisors for the Indian Journal of Constitutional Studies. Though all efforts are made to ensure the accuracy and correctness of the information published, the Editorial Board or the Board of Advisors for IJCS are not responsible for any errors caused due to oversight or otherwise.

- - Note - -

This compilation has continuous footnoting. Kindly read the references to previous footnotes in all the Articles in isolation upon the particular Article only.

Publisher Details -

Bishikh Mohanty

E33, AWHO Colony Chandrasekharapur, Sailashree Vihar,

Khorda, Odisha, Pin - 751021

Telephone: +91 8106743973

Email: editor@ijcons.com

The Board of Advisors

Dr. Bisnu Charan Patro

Assistant - Editor, National Institute of Health and Family Welfare

Ms. Sudha Kaveri

Asst. Professor, Damodaram Sanjivayya National Law University

Panel of Experts

Ms. Prathyusha Samvedam

LL.M., National Law University, Jodhpur

Adv. Siddharth Sharma

M.P. High Court

The Board of Editors

Mr. Bishikh Mohanty

Managing Editor

Ms. Ammu Sasidharan

Senior Editor

Ms. Vanya Srikant

Compiling Editor

Associate Editors

Ms. Sudipta Lenka

Mr. Himanshu Gupta

Ms. Yashasvi Gupta

Ms. Ojaswini Tripathi

- Acknowledgement -

Efforts from many quarters have gone into the successful publication of this Inaugural Issue of the Indian Journal of Constitutional Studies. We would like to express a deep sense of gratitude towards our blind peers who thoroughly validated all articles sent to them for reviews. We would also like to thank our contributors for contributing extraordinary submissions to the issue which stood at par on the rigorous scrutiny.

CONTEMPT OF COURT

THE AUTHOR

Nishita Agrawal, Aman Tiwari, Students of National Law University, Odisha

CONTENTS

- I. Introduction
 - II. Contempt of Court and Power of Judicial Review
 - III. Analysis of Case Laws on Contempt of Court
 - IV. Analysis
 - V. Conclusion
-

I. INTRODUCTION

Law is a human conduct that emanates from a source recognized as competent by the legal order and which prescribes the imposition of a sanction in the event of disobedience. In India, the violation of law is a major problem. But of all the laws that are violated, contempt of court poses great difficulty for the judges, litigants, and the public at large. Contempt, according to the dictionary means something which is baseless or worthless or inferior. In law, it is disrespect to the court or the judge or to some legislative body as well. The contempt of court is a serious issue because courts safeguard justice and if we don't safeguard courts then it will be difficult for the courts to uphold fearless, impartial and upright approach towards justice. The judiciary in India is expected to be vigilant at all times, because we have various fundamental rights and one of them is of freedom of speech and expression. This freedom shouldn't be misused, as it is detrimental to courts dignity. This kind of abuse needs to be checked by the judiciary. The difficulty caused to various stake holders is the product of many factors which include inter alia the history and nature of the offence of contempt and the procedure that governs an action for contempt in the court. Presently, we see innumerable cases on this aspect in the courts. The approach of the Indian Judiciary differs a lot in every judgment taken by it. In *Delhi Judicial Service Association v State of Gujarat*¹, where the Chief Judicial Magistrate was arrested and was ill-treated the judiciary upheld that it was contempt of the court, whereas there have been cases when Supreme court has upheld no contempt. The essay basically deals with the meaning, nature and scope of the law of contempt in India. Also the attitude of the courts towards these kinds of cases will be analyzed.² Also comments and recommendations will be included.

II. CONTEMPT OF COURT AND POWER OF JUDICIAL REVIEW

What is contempt? Does contempt actually means what we see in bollywood movies like Rustom and Jolly LLB or is it something more to it. Contempt is a very wide and interpretative term, it should not be used in the manner as it is shown in the bollywood movies. The term Contempt of

¹ AIR 1991 SC 2176.

² Harshita Tomar and Nayan Jain, 'CONTEMPT OF COURT: A CHALLENGE TO RULE OF LAW – A CRITICAL ANALYSIS' 2014

Court is derived from the Latin term *Contemptus Curaie*. This basically developed over ages with the view that Contempt is an offence which impairs the dignity, freedom of courts and fair administration of justice. The justice itself is flouted by contempt and not just the individual court or judge, who attempts to administer it. The contempt of court deals with the conduct of the individual in relation to court proceedings, who tend to undermine the system for the settlement of their dispute.³ The Supreme Court and the High court have power under Articles 129 and 215 to punish the offenders for contempt as they are the Courts of Records. The power under these articles is also supplemented with Articles 144 and 141, 142 and 261. All these Articles basically deal with the power of the Supreme Court and how other courts supplement and aid the Supreme Court. Like other laws in India, the law of contempt also originates from Common Law. The law of contempt was first recognized in an undelivered judgment of J Wilmot in 1765 where the judge pointed out that in order to maintain the dignity of the courts as well as the judges, contempt law is important. The first contempt of Court Act came in 1926, which was replaced by 1952 act and finally by the Contempt of Court Act 1971 (CCA) on the recommendations of the committee headed by H.N. Sanyal.⁴ Section 3 to section 9 lays down various situations under which contempt can place and where it cannot. Innocent publication, fair and accurate judicial proceeding, fair criticism, good faith, publication of in camera proceedings etc do not lead to contempt.⁵

In India the types of contempt which we have are-

1. Civil Contempt - According to Section 2(b) of CCA 1971 – ‘...Is willful disobedience to any judgment, decree, order, direction or any other process of court or willful breach of an undertaking given to the court’. In simple terms any wrong inflicted on the stake holder of the court room is contempt. Civil contempt is committed to gain some benefit from the act. There must also be willful disobedience of the order.

2. Criminal Contempt- The contempt which is criminal in nature that is it inflicts injury or harm to body or property is criminal contempt. Hand cuffing, arrest, assault of any Judicial Officer even by the police amounts to contempt. This contempt is committed to lower the value of the individual in the eyes of the general public at large.⁶

There is a limitation period for bringing an action against the period which is one year from the date on which contempt is alleged to have been committed. The case of contempt cannot be decided by a bench of less than 2 judges.⁷ An appeal can be filed from the lower court to the high court within 30 days and from high court to Supreme Court within 60 days.

³ Attorney General v. Times News Paper Ltd. (1973) 3 All. E.R. 54, 71.

⁴ In 1962 a Committee headed by H.N. Sanyal, the then Solicitor General of India, was appointed by the Government of India to review and suggest modifications in the law of contempt of court. The Committee in its report stated the summary jurisdiction to punish for contempt of court

⁵ Contempt of Court Act 1971, ss 3, 9.

⁶ Contempt of Court Act 1971, s 2(c).

⁷ Contempt of Court Act 1971, s 18.

In *Vijay Pratap Singh v Ajit Prasad*⁸ case difference between the civil and criminal contempt has been mentioned. It is sometimes thin and in cases they overlap each other as well (SUI GENERIS).

The punishment for contempt is imprisonment, maximum up to 6 months or fine upto Rs. 2000 or both. An apology needs to be made by an individual, and court can't reject it on the grounds of it being qualified or conditional.

Now we know that judiciary in India has a very demanding and efficient role. People still have the tendency to lower the image of judiciary, as they feel that the judiciary is completely self-centered and biased. But we need to maintain the independence of Judiciary and respect its decisions, and it has been conferred with various jurisdictions as well.

Also, the courts have been given the contempt jurisdiction similar to any civil or criminal proceeding and jurisdiction. This jurisdiction is there to uphold the dignity of the judiciary and court proceedings and also to compel people to have faith in justice. This is an essential weapon with the courts to have a check and balance among the people who violate and undermine the rule of law.

The Contempt of Court Act 1971 was created so that the people respect the court and they should fear to disrespect it because of the legal consequences it may invite. This law sometimes takes negative pace by interpreting that protection of courts and lawyers and judges is above law. But this is to protect public; if this would have been the case then judiciary would have misused its power in every aspect. Judiciary is both the prosecutor and adjudicator; it often leads this legislation to be obscured as a veil of protection for the courts from external criticism. In *Baradankanta Mishra v Registrar Orissa High Court*⁹ the court held that contempt of court is not for the protection of the judges or to place them in a position of impunity from criticism. It is the law for the freedom of individuals. If there is an attack on the integrity of the judges by imputing motive dishonesty or incompetence or arbitrariness, it would be exceeding the rights of an individual. Similarly in *Mohammed Yamin v. Om Prakash Bansal*¹⁰ this was held. All these powers of the judiciary have made it the basic pillar and founding stone of the Indian Democracy. Also there are certain defenses in relation to contempt. Also, in *Vinay Chandra Mishra*¹¹ case it was said that judiciary is the integral part of our democratic system. If the sanctity of the judiciary and the court is not preserved and protected then the entire democratic system and the principle of 'rule of law' will be doomed.

One of them is after amendment to the Act under Section 13 (b)¹² that truth is the defence for contempt. If you are speaking the truth you will be acquitted, but that is also difficult to decipher in most of the cases. This is similar to *Arundhati Roy's*¹³ case. In this case it was held that judiciary is based on the trust of the people, to punish for contempt is the inbuilt mechanism of

⁸ AIR 1966 All 305

⁹ AIR 1974 SC 710,732

¹⁰ 1982, Cr. L.J. 322 (Raj).

¹¹ (1995) 2 SCC 584

¹² Act 6 of Contempt of Court Amendment Act, 2006.

¹³ (2003) 3 SCC 349

the judiciary, though it may be seen as arbitrary in nature, because the role of prosecutor and adjudicator appears to under one person or group, it is necessary to protect the law.

But, this power of contempt gets abused at times by the judiciary; there is lot of fallacy in it. Judiciary because of large number of offences is committed and Public Interest Litigation being files encroaches upon the role of the legislature as well as the executive. However, this is named as judicial activism and not judicial despotism. Courts misuse the contempt power in a very intellectual manner, through that they exercise nepotism, also discrimination in the disguise of equality and contempt by camouflaging the truth with false notions. The case related to nepotism is *P.N.Duda v V.P. Shiv Shankar*¹⁴ they suppress the weak by not letting them raise their voices, also when they face criticism; they think it is contempt of court. But no criticism can be contempt of court because criticism falls under freedom of speech.¹⁵ This was said in the case of *R v. Commissioner of Police of the Metropolis*¹⁶, that criticism is freedom of speech with underlying reasonable restrictions. Similarly in another case, where the editor mentioned very ill comments about the judges and their conduct, that person was imprisoned.¹⁷ There are various examples as stated above. So, from this we can confer that there is no uniform law or pattern in which these judgments are given; it entirely depends upon the nature, view and attitude of the judges.

III. ANALYSIS OF CASE LAWS ON CONTEMPT OF COURT

We see innumerable amount of cases based on the contempt of the court. In some of these courts convict them and in varied cases they acquit the. Now through the various case laws, we will try to figure out what is the common or general stand of the judiciary in the cases of contempt.

1. *Midnapore Peoples' Co-operative Bank Ltd & Ors v Chunilal Nanda*.¹⁸

In this case contempt proceedings were initiated against an enquiry officer for not bounding by the court orders to finish the inquiry within the stipulated time period. It was held in this case that-

- An appeal under Section 19 of CC Act is only maintainable against a High Court order or decision of imposing punishment of contempt, when such is passed in exercise of its jurisdiction.

-Also, no order to initiate or drop the proceedings or exonerating or acquitting the contemnor is appealable under section 19. Special challenge under Article 136.

-High Court has the power to decide what contempt has taken place, what should the punishment be and it should not be biased on the cause of dispute between the parties. It would fall outside the jurisdiction of contempt of High Court and un appealable under Section 19. But there can be some exceptions of incidental and inextricable situations.

¹⁴ AIR 1988 SC 1208

¹⁵ Constitution of India Article 19(1).

¹⁶ (1968) 2 Q B 150

¹⁷ *Surya Prakash v. Madhu Trehan* (2001) DLT 665 (FB).

¹⁸ 2006 (5) SCC 399.

-Also for these cases if justice is felt to be denied then parties can appeal under Article 136. So, related to the facts of the case, in this case there is no contempt, as there was no breach on part of the inquiry officer.

2. *Bihar Finance Service H.C. Coop. Soc. Ltd v. Gautam Goswami*¹⁹

-This was a case related to land acquisition. In this case it was seen that earlier the decision of High Court didn't satisfy the parties and appeal went to Supreme Court. Supreme Court said that lands should be disposed following the principles of natural justice, again this was not complied with, again the appeal went to the Supreme Court release certain land in favor of the society, but this was not complied by the higher authorities, leading to contempt.

-In these kinds of applications of contempt it is important for the court to see whether the earlier decision which has received its finality had been complied with or not. Court can't take a different view that what has been taken in the earlier decision. Also, when the claim of the parties adjudicated upon and attained finality, it is not open for any party thereof to go beyond the orders and seek to take away the effect thereof. Therefore in this case the Municipal Corporation is directed to take appropriate action with regard to sanction of construction plans of building on the land in question according to the directions issued.

3. *Bhushan power & Steel Ltd v Rajesh Verma*²⁰

-In this case also the question of contempt arose from respondents not aiding by the decision of the court. The respondents took the plea that it was incapable of enforcement, but this came under the category of civil contempt. But the court held them for contempt by them not complying with the orders of the court; however they gave them a chance to purge the contempt against them by transmitting required recommendations to the central government. By doing so they will be discharged from contempt proceedings.

-But they fail to abide by these orders as well. However the petition stands closed because according to the facts and circumstances of the case, we can see that it is possible that had the state government had sent the recommendations, the central government might have accorded its approval. In so far as the central government is concerned, no direction was ever given by third court. It was observed that it is for the central government to consider the recommendations of the state government on its own merits and in accordance with law. If that has not been done by the Central government, it cannot be the subject matter of present contempt petition.

4. *Tecon Projects P. Ltd v. Sanjay Mehta and Ors.* 2014²¹

-In this case contempt petition has been filed under section 11 and 12 of CC Act 1971 complaining of willful breach, disobedience and violation by the respondents. One of the important principle seen in this case was that, there cannot be the stay on the contempt proceedings itself, as it is for the appellant to persuade the learned Single Judge that no case of

¹⁹ AIR 2008 SC 1975

²⁰ (2014) 5 SCC 551

²¹ 2013 (23) DRJ 133

contempt is made out and it is naturally open to the appellant to urge whatever pleas are permissible in this behalf before the learned single judge.

-The question whether the party is in contempt of courts order is between the court and contemnor. The court needs to be satisfied that the disobedience, if at all, by the party of the court's order was willful and intended to obstruct the administration of justice. In exercising the power of contempt the court has to ensure that the order originally passed by the court the breach of which is complained is not interpreted in the manner inconsistent with what the order actually states.

-The weapon of contempt is not to be misused or used in abundance. Also, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law. In this case the contempt petition was dismissed as there was no disobedience of the order by the Bank.

5. *The Managing Committee of The Vidya Bhawan Mahavidyalaya v Directorate Of Education & Anr.*²²

-The contempt proceedings were initiated alleging violation of the earlier order of the court. So, according to the case it is seen that the impugned directions issued by the learned Single Judge are beyond the justification exercisable in contempt proceedings and therefore on that ground itself the order under appeal is liable to be set aside. It was also seen that the first order no longer survives and is substituted by a fresh order.

-In this case the decision of was *Midnapore Peoples' Co-operative Bank Ltd & Ors v Chunilal Nanda* cited. The principles which were laid down in this case were applicable to the Managing Committee case as well. In this case it was seen that an order in contempt proceedings is maintainable only where the High Court decides an issue or makes any direction relating to the merits of disputes between the parties.

6. *Brij Kishore Pushp v Sh. Arun Goel & Ors*²³.

-In the present case we can see certain important principles being reiterated from previous judgments. It is seen that an informant does not have a right of filing an appeal under Section 19 the Act against the order refusing to initiate the contempt proceedings or disposing of the application or petition filed for initiating such proceedings. He cannot be called an aggrieved party.

-Also, it is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt that is an order imposing punishment for contempt. Since, in this case the learned Single Judge in the impugned order has not decided any issue or made any direction relating to the merits of the dispute, the said order is not open to challenge even in an intra-court appeal. For an intra-court appeal to be maintainable, the court must decide the

²² (2006) ILR 1 Del 403

²³ (2009) 109 DRJ 136

issue or like any direction relating to the merits of the dispute between the parties, in a contempt proceeding and in that case, the aggrieved party is not without remedy.

7. *Noor Saba v. Anoop Mishra & Anr on 2nd September, 2013*

In this case, Court had ordered the State government to revise the pension of the petitioner's family. The government didn't revise the pension as per the orders moreover certain forged documents were placed by the official respondents before the Court which further amounted to another Contempt Petition. The Court while reviewing the Contempt Petition, ordered the Accountant General of U.P. to look into the matter. Non-compliance with the new orders of the Court, another Contempt Petition was filed by the petitioner. The Court contended that earlier Contempt Petitions are now rendered unnecessary to adjudicate after the new petition has filed. The Respondent gave an affidavit responding to the allegations made in the petition and that all the directions of the court are duly followed by the respondent. It was held that in order to hold the respondents liable for contempt, it has to be proved that they have wilfully disobeyed the orders. It was also held that 'contempt jurisdiction' is a summary in nature and adjudication of liability is determined on the basis of admitted and undisputed facts. Hence, this contempt petition was dismissed as the facts were disputed shifted drastically.

8. *Bharat S. Shah And Ors. v. Rajkumar Jugalkishore Saraf*²⁴ on 27th August, 2007

In this case, the owner (appellant) filed a suit against the tenant (respondent) for his eviction. The owner agreed to provide flat to the tenant after he vacates the owner's property. The owner was not able to provide the flat and hence the tenant demanded monthly allowance till the construction of the property is not completed. The tenant meanwhile filed contempt proceeding against the owner. The respondent contended that the contempt petition is not maintainable as the matter is yet to be decided by the court. It was submitted that the Court can entertain such appeal as this is a case of gross misuse of Jurisdiction. It was held that in the case of *R.N. Dey and Ors. v. Bhagyabati Pramanik and Ors.* the Court either suo motu or on a motion decides to take action for contempt, it assumes jurisdiction to punish for such contempt and the exercise of jurisdiction to punish for contempt commences with the initiation of a proceedings, it would be an order in exercise of its jurisdiction to punish for contempt and against such order would be maintainable.

9. Contempt Proceedings Against Jayalalithaa - An advocate filed a petition before Advocate General (AG) for contempt of court done by the supporters of Jayalalithaa by burning an effigy of Justice John Michael. Instead of respecting the judgment of the court, the supporters of Jayalalithaa by their actions questioned the wisdom of the judiciary. The matter is yet to be decided by the AG.

10. *Gyani Chand v. State of A.P on 20th September, 2016*

In the Supreme Court of India (Civil Appellate Jurisdiction) Civil Appeal No. 5728 of 2005

²⁴ 2008 (1) MHLJ 465

Appeal has been filed by the appellant who was found guilty of Contempt of Court by the HC of Andhra Pradesh. The appellant was given some documents by his mother who was a litigant in the case. He signed an affidavit according to which he shall produce the documents before the court whenever he is asked to do so. But unfortunately he was not able to produce the documents. Hence, contempt proceedings were initiated against the appellant. It was held that there was no wilful breach of the undertaking given to the court by the appellant. As per the Section 2(b) of the Contempt of Courts Act, 1971 says: - ‘civil contempt’ means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.’

11. *C.V. Padmanabham v. Bevara Prakasa Rao And Two Ors.*²⁵

An application was filed by a company in the court in order to accord sanctions for grant of quarry lease and that the Forest Officers should not interfere with the quarrying operations. The Court held that the respondent should not interfere with the work of the petitioner. Soon, Contempt proceedings were initiated by the company under Section 10 and 12 of Contempt of Courts Act, 1971 for punishing the officers of Forest Department as they have wilfully flouted the aforementioned order. It was also alleged that machinery was seized by the Forest Department. The Court held that the Forest

Department is bound to release the machinery.

IV. ANALYSIS

From the above judgments, we can see that the approach of courts is getting uniform. They are abiding by the statute. They are framing precedents and are now tackling the cases having similar situation in the similar manner. They have clarified the meaning and interpretation of various provisions of the statutes by broad and progressive interpretation through various judgments. Also, we can see that judges have held in innumerable cases where there has been no contempt. The allegation of contempt has also to be proved beyond reasonable doubt or on the basis of the balance of probabilities. Courts have also clarified the stand in various issues like what will be the consequence of not abiding by the court order? By not abiding under which situation will you be convicted and under which you will be acquitted. Courts inculcate faith in the rule of law by chastising the guilty. Ever offender should be penalized for rebellious acts. The contempt of court act 1971 has made the course of allocation of justice quick and efficient and thus maintains the faith and trust the people have vested in the judiciary of the state. But there are certain short comings to it as well. There should be proper criteria to rule whether an act is contempt of court or not. 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.

V. CONCLUSION

Contempt law came into force to maintain the supremacy of the law and also to assert impartial administration of justice. The constitution gives power to the judiciary and all the public power is

²⁵ 2007 (3) ALD 377.

held as a trust. If judges breach this trust or frivolously bring the judicial institution to shame they are required to be condemned. But if the judiciary behaves as the best of the best and disaffirms the rights of the general masses, they have to face criticism. For a judge his character of integrity, virtue and learning matters the most. The judge with the above powers won't require contempt power. The purpose of contempt law is neither to boastfully condemn a true criticism nor to defend the authority and dignity of the judges.

The Contempt of Court Act, 1971 is still ambiguous at various aspects of law and there is a need to deliberate its jurisdiction to maintain the supremacy of rule of law. The aspects of contempt of court are again needed to be reformed to uphold the dignity of the judiciary. The most important thing to see is that how far the Indian courts have succeeded in the tedious task of balancing the conflicting values and upholding the integrity and dignity of the court. Tolerance to criticism is a merit and is a sign of maturity. The Indian Judiciary, though reluctant and over sensitive in the early periods, now appears to have reached a level of maturity which can tolerate criticism, but which never allows irresponsible attempts to lower its dignity.
