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- - Note - -

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

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CONTEMPT OF COURT: ITS APPLICATION AND RECONSIDERATION OF THE LAW

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Is it right that “The only cure for contempt is counter-contempt?”

“Our government... teaches the whole people by its example. If the government becomes the lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself.”

I. INTRODUCTION

Contempt means curtailment or impairment of the limits of the trial proceedings which results in hampering of administration or environment of law and there is interference in the due course of justice which constitutes the contempt of court. When a person in court or persons out of the court which can influence the court proceedings go beyond their limits and take it as a right and don't pay heed to the responsibility as a citizen that is the proof of contempt. When they choose one right from the Constitution and forget to respect the other provisions and to cast respect to those who were makers and interpreters of such a giant book. Contempt of court refers to actions which either challenges a court's authority, spread disrespect in a court, or obstruct the ability of the court to perform its function. Many judges will show an eye to misbehaving person that, if he keeps misbehaving, he will be held in contempt of court. The warning gives a signal to correct his conduct without facing legal sanctions. However, it's on the discretion of the judge and not mandatory. For instance, a person who is required by a subpoena to appear in court but does not may be held in contempt without ever speaking to the judge first. Contempt can be of civil nature or criminal nature. Civil contempt often occurs when someone fails to follow an order from the court, which results in injury to a private party's rights.

In India, under the concept of Raja Dharma, administration of justice was considered the most important function of the King. However the origin of the present form of contempt of court law was brought to India by the British as part of the administration of justice that too by establishing courts of record. Thus the present contempt of court law is an offshoot of the British administration of justice in India. The British approach is based on the concept of unquestionable authority of the King as the representative of God. On the other hand, the American approach is, based on the authority of courts. Such an authority is derived from the society through social contract theory. It seems that both the theories are not as such applicable to Indian situation.

The rationale behind this is that it cast doubt upon the integrity and authority of the judiciary and

thus crystallizes public confidence, thereby upsetting the administration of justice. The law of contempt is intended to preserve the authority of the judicial process, judiciary and the Courts reputation. The direction to place the petition before the Chief Justice and not on the judicial side is applicable only to contempt actions intended to be taken by the court sou-motu. The problem clearly arises when either the judiciary is criticized or individual judges are publicly questioned on their integrity.

For example, in 1970, when E.M.S. Namboodiripad, then chief minister of Kerala, made a comment on how Marx and Engels considered the judiciary to be an instrument of oppression, the Supreme Court punished him for contempt on the grounds that he lowered the prestige of judges and courts in the eyes of the people. Namboodripad was let off with a fine of Rs.50.

And in 1988, when another politician, P. Shiv Shankar made similar comments about how Supreme Court judges displayed class bias in cases on land reform, the contempt petition filed against him was dismissed by the apex court. Contempt of Court lacks objectivity and everything is too subjective to understand what comes in the ambit and what not.

People should ensure they don't incite disrespect against judges. Usually editors, journalists, academics and lawyers are so unclear on the boundaries of contempt law (or testing those boundaries) that they prefer to keep silent when it comes to criticising the judiciary, even if such criticism might be fair.

In a criminal contempt laws in India are as vague as section 66A of the Information Technology Act, which could criminalize something as vague as an annoying Facebook post criticising the late Bal Thackeray and just as a draconian section 66A has a chilling effect on free speech over the Internet, criminal contempt laws have a chilling effect on any possible criticism of the judiciary. We can get closer through a process of elimination.

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 duties and functions effectively and remain true to the spirit with which it is sacredly entrusted, the dignity and authority of the Courts have to be respected and protected at all costs. The primary function of the Contempt of Court Act is to protect the integrity of active court proceedings. A strict liability rule is introduced by the Act. This rule applies only to publications i.e. any form of communication addressed to any section of the public or the public at large. Constructive' or indirect contempt, e.g. the publication of a newspaper article prejudicing a forthcoming trial is also a new form which enters the door of contempt.

Its object is not to protect the dignity of the Courts but to protect the administration of justice, so that people don't take these formal arrangements into an informal arrangements and treat it with impertinence. The law of contempt of court can be made certain once it is accepted that the purpose of the contempt power is not to vindicate or uphold the majesty and dignity of the court but only to enable the court to function. The contempt power should only be used in rare and exceptional situations where, without using it, it becomes impossible or extremely difficult for

the court to function. In such situations, the contempt power should not be used if a mere threat to use it suffices.

If it becomes mandatory for a judicial authority to protect the character and integrity then they can take recourse to these sections- Section 2(a) of the Contempt of Courts Act of 1971 defines contempt of court as civil contempt or criminal contempt. Article 129 and 215 of the constitutions also envisages the powers to Supreme court and High Court to punish people for their respective contempt. Section 10 of the Contempt of Courts Act of 1971 defines the power of High Court to punish contempt of its subordinate courts. Section 345 of the Code is clear that offences under Sections 175, 178, 179, 180 or 228 would constitute contempt only if they are committed in the view or presence of the Court. This would also show that offences under Sections 175, 178, 179, 180 or 228 per se do not amount to contempt. They are contempt only if they are committed “in the view of presence of the Court”; otherwise they remain offences under the Indian Penal Code simply.

II. THE OBJECT OF CONTEMPT OF COURT LAWS

In the language eminent jurist justice Bowen, the basic object was “In case of contempt of court is not to vindicate the dignity of the Court or the person of the Judge, but to prevent undue interference with the administration of justice¹.”

The object of such laws were to confer courts with the power to ensure that justice is imparted to all without any restriction and interference by anybody other than judiciary itself. The purpose of these laws is not to uphold and maintain the dignity of the court but to enable it to function properly. In the case of *Attorney general v. Times Newspapers Ltd.*², the hon’ble court rightly laid down threefold purpose of this law, which being:-

- (i) To allow the parties as well as the witness of the particular case to approach the judiciary without any interference
- (ii) To enable courts with the freedom to adjudge upon such matters without any restriction.
- (iii) To ensure that the basic purpose of judiciary that is maintaining and administration of justice is not defeated.

In Re: Vinay Chandra Mishra, the Hon’ble Supreme Court reiterated the position of law relating to the powers of contempt and opined that,

“The judiciary is not only the guardian of the rule of law and third pillar but in fact the central pillar of a democratic State. If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise the very corner-stone of our constitutional scheme will give way and with it will disappear with the rule of law and the civilized life in the society. It is for this purpose that the courts are entrusted with extraordinary

¹Hellmore v. Smith (2) (1886), L. R. 35 C. D. 455.

² 1974 AC 273.

powers of punishing those who indulge in acts, whether inside or outside the courts, which tend to undermine the authority of law and bring it in disrepute and disrespect by scandalizing it”³

The origin of the law relating to contempt of court is has developed from the English Law which provided that the contempt of the judges was the contempt of the King which must be incited with a strict and harsh punishment. The Court cannot act in a lawless or secretive way, its transparency as well as behavioural propriety is a necessary part of a fair trial. The authority and dignity of those who administer justice between man and by proper interpretation of the law of the land must be protected. In *State v. Rajeshwari Prasad*⁴, the Apex Court observed that the freedom to seek justice and the satisfaction of the litigants by that justice delivering the term with the liberty of the persons who have seen it or heard the contentions of the patties to give out their observations, information and knowledge without fear, are considered to be important factors for the well-being and existence of the society, it is necessary that the law of contempt must exist. Thus, the purpose of contempt proceedings is to safeguard the dignity of courts and the administration of justice. The object of the law of contempt of court is to maintain the continuity of the crystal clear flow of the stream of justice.

It can be observed that the main reason behind making of such laws was to give the judicial body power so it can punish the people who undermine the judicial body, as judiciary being the only body to whom the people look upon for justice and if someone demeans the judicial body itself then the people will stop believing in the law and the purpose of judiciary would be defeated. But there’s an ambiguity in following of such principles as can be seen in the case of, *State v. Rajeshwari Prasad*⁵, the Apex Court observed that although a person has a right to speech and expression and comment about the proceedings that has happened but still it is important to provide protection to the judges. The court stated,

“It may appear harsh, arbitrary, penal and evil but still it is necessary affording a protection to all judges, parties and witnesses and the public.

Thus, the purpose of contempt proceedings is to safeguard the dignity of courts and the administration of justice. Thus it cannot although be directly interpreted but can be observed that there is no strict rule to the application of such laws rather it changes person to person as can be seen through the observation of the above case, thus deviating from its basic object.

III. EVENTS THAT POINT OUT TOWARDS THIS AMBIGUITY

Way back in 1983 one Justice V.R. Krishna Iyer of the former Judge the Supreme Court made derogatory statements against the authority of the court and its functioning. Former justice directly targeting the judiciary in the public made such derogatory statements, but because he was well in touch with the judges of Kerala High court as in past he was a judge too of the same court he was not charged with the contempt charge, negating the charge of contempt and refusing to issue a show cause notice, the bench observed, “By pointing out the weak spots in the judicial

³AIR 1995 SC 2348.

⁴ AIR 1966 All. 588.

⁵ AIR 1996 All. 588

system and alerting the people to the need for a change lest the people as a whole reject the system, Justice Iyer was alerting his audience to bestow serious attention to the problem. The comments made by him are not of a person who is vituperative or who wants to bring into disrepute the judicial system of this country, but of one who was exhorting the people for revolutionary change in the outlook concerning problems of the judiciary. Judged in the perspective of what we have explained earlier we see no reason to consider his criticism, coming as it does from a person, whose bona fides in the cause of judiciary is not open to doubt, as mala fide or dishonest”.⁶ Thus this is a perfect example which shows that laws of contempt changes as per the persons. Also in a recent case of 2015 former telecom minister Kapil Sibal was also acquitted from the charges of contempt, The Supreme Court dismissed the contempt petition filed against Union Minister Kapil Sibal for allegedly making contemptuous remarks against the judiciary. A Bench comprising Justices J M Panchal and A K Patnaik said the article in the newspaper, which had quoted Sibal's message on judiciary and legal fraternity published in a magazine, did not impair administration of justice or bring it to disrepute. But people at mass were of opinion that the statements made by the former minister demeaned the stature of the court. The above two examples are a clear cut example of such ambiguity that exist.

Coming to the point of latest example of such is the case of Justice C.S. Karnan of Calcutta High Court, he not only made derogatory statements against the judiciary which also included the CJI but also sanctioned order against the judges, still after all the fuss he created he was allowed to let go with a simple piece of apology in front of the bench of judges and the CJI who he demeaned. Thus it can be seen that the laws of contempt of court change as per its application on different people, here the change no being of facts and circumstance but of the authority or the power the person holds. Now comes the big question is this law actually present for imparting justice to people without any biasness.

IV. CONCLUSION

The power of contempt which lies with the democracy is only to enable the court to function efficiently and effectively, and not to protect the self-esteem of each an every individual judge. The foundation of judiciary has been since time immemorial been based on the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation is shaken by such acts which tend to create disaffection and disrespect for the court by disrupting its working, the edifice of the judicial system gets eroded. Judiciary by punishing the guilty infuses faith in the supremacy of law and makes people believe in justice. Every offender is to be punished for his or her acts under the relevant contempt laws, but it is extremely important to make it sure by the judiciary that these provisions are not to be misused in a way which becomes injustice for the people of this democracy. It can be adequately inferred that the Contempt of Courts Act, 1971 is of great importance in the context of sustaining the concept of justice. It aides to make the process of administering justice expeditious as well as upholds the faith and dignity of the people in the judicial system of our country. In itself, it abstains from any

⁶ “Peculiar-case-contempt-justice-v-r-krishna-iyer-disposed-kerala-high-court-1983-acknowledging-bias”, <http://www.livelaw.in/> last visited on 12th April, 2017.

form of arbitrariness. It gives every organization or individual charged under the act reasonable grounds to defend it or himself, as the case may be. The restrictions, it imposes, is just and fair in them. Moreover, it recognizes the fact that all people should be treated equally by the judiciary and its officials within its ambit.⁷

After having the words of fire and going through the essay with bird's eye we have seen contempt of court comes within the ambit of "person centric law". Firstly, this concept fails to hit the bull's eye. 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 itself. Secondly, it's subjectivity creates a doubt in the eyes of people. There is a question on it's credibility. It is not consistent, as consistency and uniformity is a greatest tool to test the rational. There are variations according to the whims and fancies of the people who are known to judicial fraternity. It is a Bias law or a prejudiced law- and a law being biased adds a value of agnosticism. So a lot of changes need to be made. In the last would like to end by quoting if-

"Justice is not cheek and hubris, power is not bitter and prudence is cold feted, especially when the judges are themselves sourdough and mercy is mark of strength, not whine of weakness."

⁷ The Law Of Contempt-Contempt Of Courts And Legislatures, Samaraditya Pal, 2012.