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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.

Publisher Details -

Bishikh Mohanty

E33, AWHO Colony Chandrasekharapur, Sailashree Vihar,

Khorda, Odisha, Pin - 751021

Telephone: +91 8106743973

Email: editor@ijcons.com

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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.

JUDICIAL REVIEW on “CONTEMPT OF COURT”

THE AUTHOR

S. Khaja Basha, student, Damodaram Sanjivayya National Law University, Visakhapatnam

CONTENTS

I. INTRODUCTION

Judicial Review refers to the power of the judiciary to explicate and protect the constitution and to declare any such order or law of the executive and legislature invalid, when it finds them in conflict the Indian Constitution. The Constitution of India is supreme; In a Democratic form of Government People is Supreme.

Judicial Review power is the power of Supreme Court and governed by the principle; ‘**Procedure Established by Law**’. It has the power to void any law or any part of law which is found to be unconstitutional. It can review the laws and rules of the legislature and executive in cases that specifically challenged before bench or during the course of hearing a case the validity of any law is challenged before it. Judicial Review is not automatic. State High Courts also possesses this power but their judgments can be modified or upheld by the Supreme Court. All Central and State laws, the orders and ordinances of the executives and constitutional amendments can be reviewed by Supreme Court except the laws incorporated in the 9th Schedule of the Constitution¹

Supreme Court can valid or void any law or any part of law or some part of law, in which the law enforced into operation from the date of judgment. If void part of law is so valid that other part cannot be operated without it then whole law will be rejected, or modified.

- ❖ Sec 2a of the Contempt of the court act 1971 defines civil contempt or criminal contempt
- ❖ Sec 2b of the contempt of the court act 1971 defines **CIVIL CONTEMPT**, which means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given by a court.
- ❖ Sec 2c of the contempt of the court act 1971 defines **CRIMINAL CONTEMPT**, which means the publication 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.²

II. TYPES OF CONTEMPT

DIRECT CONTEMPT:

It is contempt in the existence of the judge (or) presiding court officer of the court.

¹ <http://www.supremecourtfindia.nic.in/jurisdiction.htm> (8.00 am 10-04-2017)

² The Contempt Of Courts Act, 1971 (8.30am 10-04-2017)

Direct contempt is dealt with immediately. A judge finding a party in contempt will normally give the party a brief chance to defend itself before rendering judgment. Direct contempt of court usually results in a fine or a brief incarceration in the court's lockup. The idea is that a monetary penalty or some time to cool one's heels behind bars will properly motivate the guilty party to curb their troublesome behavior.³

INDIRECT CONTEMPT:

It is a contempt which occurs outside the immediate presence of judge or court's presence but is still a flaunting of the court's authority. Though it indirectly defames the officers it is simple a contempt, because contempt means contempt whether it is directly or indirectly it doesn't depend on.⁴

III. EVOLUTION OF CONCEPT OF 'CONTEMPT'

Contempt law is a British law which is borrowed to our Indian legal system from British law, in England it was changed but still in India it is still following the old law.

In the feudal Society the Kings were supreme and the people were Subjects where as people cannot criticizes the master and the kings. If he/she does so he would be punished, and judges were delegates of the king because the judicial Function is the sovereign function, and many times kings themselves decide cases.

For example Mughal Emperor used to decide themselves many cases but later on kings responsibility increases to see Political, Financial, Military and so on so he doesn't have any time to decide the cases, so he orders to look after this case functions to the people who were known as Judges. They were treated as delegates of the king. The Judges who were the delegates of the king will have dignity.

In a feudal society the people are subjects and kings and his delegates were supreme. But in a democracy on the other hand this relationship is reversed. Earlier Kings were supreme and people were Subjects whereas here in democratic society the people were Supreme, all the State authorities were the servants of the people whether he/she is a President of India, Prime Minister of India, Chief Justice of India, Ministers, Judges, Police Officers, IAS Officers, IPS Officers, they are Nothing but the Servants of the people because people were the supreme in the Democracy. (For the people, To the people, By the people)

Therefore since the people are the masters Judges are servants, Can master doesn't ask his servants why you are not doing your work properly. Earlier people cannot criticize judges because people were servants and the judges were delegates of the king. Now, since this relation is reversed people has the Right to criticizes the judges and take them to task because people are the masters. So it logically follows the people has the right to criticize judges.

From that time onwards till date the Word Contempt of the Court is followed in India so that the judges should have some dignity like the Kings used to enjoy the privilege. But today, the situation is totally different because the foundation law is changed and the basic law is changed because in democratic India people are supreme.

³ <http://www.duhaime.org/LegalDictionary/D/DirectContempt.aspx> (9.00am 10-04-2017)

⁴ https://www.law.cornell.edu/wex/contempt_of_court_indirect (9.45am 10-0-2017)

According to my Opinion the “Contempt law only is that if someone doesn’t allow the judge to function to do his work properly then he can invoke the defense of Contempt.”

For example:

If a person who enters the court room and creates unwanted disturbances in order to avoid the court to run smoothly then it is contempt.

IV. ARTICLE 19, 129, AND 215 OF THE CONSTITUTION

There are two provisions in the constitution:

Article 19 (1) (a) which takes about the right to express ones convictions and opinions and the other which restricted the right that is article 19 (2). There are two provisions in the constitution of India i.e, Article 129 for the Supreme Court and 215 for High court giving those powers of the contempt of the court.

Now the question is how these two provisions were recon sized

- ❖ One talks about the Right to express ones convictions by mouth and
- ❖ Other Blocks the freedom of that Right under article 19(2).

Now in my opinion we can recon sized the two provisions which talks about the freedom of express by words of mouth and other blocks that right. Recognizing Article 19 1(a) as the principle law because that it is the right of the citizen and citizen is the supreme of the democracy. The only way to recon sized it is the making article 19 as the primary and Article 129 and 215 as secondary importance because the citizen was sovereign and this is the only way we can recon sized because we can’t treat the judges equal to the people because people are supreme.

And also we should see that judges should take Contempt action in rare cases and that also when someone when not allowing judge to function properly and also who shows disobedience towards his decree.

In **Romesh Thappar v Union of India**, JUSTICE PATANJALI HELD

That 19(1) (a) is a basic and fundamental right of the constitution. Practical restrictions, however, be major, should be such that others’ rights should not face any difficulties or blown up by the acts of one man.

In the case of **Menaka Gandhi v Union of India**. The judiciary has upheld the restrictions that can be compulsory and the author describes them under a number of subheadings, but the courts have also held that the government’s difficulty in this right has to also be kept in check.

V. CASES ON CONTEMPT OF COURT

KARNATAKA HC ISSUES WARRANT AGAINST MALLYA IN CONTEMPT CASE

Mallya takes \$40 million from *British firm Diageo Plc* and transferred the money to his children in deliberate violation of various judicial commands, including those passed by the Debt Recovery Tribunal and the Karnataka High Court. The banks wanted that apex court directs him

to bring back \$40 million, which Mallya had purportedly transferred to his children. The Karnataka HC issued a bailable warrant to Vijay Mallya after he failed to appear before the court with connection to the contempt of court case, for supposedly breaching an undertaking given to the Debt Recovery Tribunal (DRT) in 2013 during the proceedings on banks' plea for recovering dues from Kingfisher Airlines Ltd. A Division Bench, consisting of Justice Jayant M. Patel and Justice Aravind Kumar, passed the order during the hearing of the contempt of court petition filed in 2014 by the banks accusing Mr. Mallya of pledging huge number of shares in violation of an oral undertaking before the DRT for not to transmit, alienate or otherwise to deal with his assets. The Bench issued warrant, returnable and bailable on executing a bond for \$1 lakh, as Mr. Mallya failed to personally appear before the court despite his counsel communicating the court's two orders in this regard. When the counsel representing banks pointed out that Mr. Mallya was not in India and wanted to place before the court the procedures required to be followed to secure an accused who had left the country, the Bench said it would go step by step while pointing out Mr. Mallya's address was in Bengaluru as per the court records and there were no material to show that he was not in India though it was reported in the media that he had left India. A PTI report from New Delhi said Mr. Mallya claimed 'innocence' in the supposed funds distraction linked to Kingfisher Airlines, saying no orders passed had come out finally against him from a court. "Till this minute, there is no final judicial determination on what KFA owes to banks and what I may owe in my personal capacity after trial," Mr. Mallya tweeted that "In a series of tweets, he raised concerns over the media coverage of the modern developments and said his "innocence prevails" unless and until till he is proven guilty by any court."⁵

Mallya has been contemptuous of the Indian judicial system by "willful, contumacious conduct" and has disregarded the court proceedings, he left India and fled to London.

VINAY CHANDRA MISHRA (THE ALLEGED CONTEMNOR) [AIR 1995 SC 2348]

The Hon'ble SC reiterates the position of law connecting to the powers of contempt and opined that the judiciary is not only the armament of the rule of law and third pillar, in fact the focal point pillar of a democratic State. If the judiciary is to execute its functions and duties efficiently and true to the spirit with which they are sacredly entrusted to it.

The dignity, power and authority of the courts have to be valued and confined at all costs. Otherwise the very foundation of our constitutional system will give a way and with it will be invisible in the rule of law and the enlightened life in the society. It is for this purpose that the courts are entrusted with extraordinary powers of punishing those who involve 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.⁶

ALLAHABAD H C ORDER 4 MONTHS IMPRISONMENT TO A LAWYER

The Hon'ble Allahabad High Court held that the sentences made by Ram Kumar Singh were "contemptuous, wild and reckless". The Court also disqualified Singh from entering the both

⁵ <http://www.thehindu.com/news/cities/bangalore/Karnataka-HC-issues-warrant-against-Mallya-in-contempt-case/article17102173.ece> (11.08am, 15-04-2017).

⁶ <http://www.livelaw.in/indian-judiciarys-take-on-contempt-of-courts-revisiting-the-year-2015> (12.05pm, 15-04-2017)

district court as well as the Allahabad High Court, including Lucknow Bench for a period of 6 months.

He is a practicing advocate since 1983, had sent a letter to the Supreme Court as well as the Chief Justice of India, alleging that the current Chief Justice of the Allahabad High Court was “pro government” and “unfit to administer in his present capacity”.

CONTEMPT PROCEEDING AGAINST MADRAS HIGH COURT CHIEF JUSTICE, SANJAY KAUL

This case revolves around the biasness in selection of civil judges on religious grounds. The Supreme Court stayed a controversial provisional order passed by Madras High Court judge Justice C.S. Karnan, supposedly discouragement the power, authority of High Court Chief Justice Sanjay Kishan Kaul.

Staying Justice Karnan’s order of April 30, 2015, passed in suo motu proceedings concerning to the selection and appointment of officers of lower judiciary, a Bench headed by Chief Justice H.L. Dattu commanded that the judge be restrained from either hearing or issuing any further directions in the case.⁷

ALLAHABAD HC SENDS 11 LAWYERS TO JAIL FOR CRIMINAL CONTEMPT OF COURT

Holding eleven (11) advocates guilty of disobedient behavior inside the court and in the presence of Additional Chief Judicial Magistrate (ACJM) in Sonbhadra in 2013, the Allahabad High Court has passed a sentence that they were sent to a jail for 3 months. The HC also slapped a fine of Rs 2,000 on them, failure to pay which would attract another two months imprisonment. A division bench of Allahabad High Court of Justices Sudhir Agarwal and Dinesh Gupta passed the order in a criminal contempt application against advocates Mahendra Prasad Shukla, then Secretary (DBA, Sonbhadra) and others.⁸

HIMACHAL PRADESH HC ISSUES CONTEMPT NOTICE TO THE “THE TRIBUNE” NEWSPAPER

The Himachal Pradesh High Court has appeared downward largely on a newspaper, for indulging in frequent “misquoting and misreporting of the orders” passed by them. A Division bench of Justices Rajiv Sharma and Sureshwar Thakur held that “newspapers should report an order of the Court as it stands, instead of creating sensation”. The bench has also directed the registry to draw contempt proceedings against the local correspondent of the daily edition of The Tribune and to issue notice. The court observed that this misquoting is prone to spread misinformation among the general public that the Judges have carved out a special privilege for themselves.⁹

PARAS SAKLECHA V/S SHRI JUSTICE A.M KHANWILKAR, CHIEF JUSTICE, HC OF M.P

A contempt petition filed against Chief Justice of Madhya Pradesh High Court was dismissed by the High Court. A petitioner in Public Interest Litigation had filed the application alleging that certain utterances made by the Chief Justice A.M. Khanwilkar, while hearing the writ petition amounts to contempt. However the Division bench of Justices Rajendra Menon and K.K.

⁷ <http://timesofindia.indiatimes.com/india/Judge-threatens-Madras-HC-chief-justice-with-contempt/articleshow/47218636.cms> (12.25pm 15-04-2017)

⁸ <http://indianewsbreak.com/69478/india-news/hc-restrains-6-advocates-from-entering-district-court-premises-2> (12.35pm 15-04-2017)

⁹ <http://www.livelaw.in/newspaper-must-report-an-order-of-the-court-as-it-stands-instead-of-creating-sensation-hp-hc-issues-contempt-notice-to-the-tribune-reporter/> (12.54pm 15-04-2017)

Trivedi, who heard the application, said that the act of the Chief Justice as alleged in the contempt petition cannot be termed as contempt of Court.¹⁰

M.V JAYARAJAN VS. HIGH COURT OF KERALA & ANR.

In this case the apex court stated that “Judges expect, nay invite, an informed and genuine discussion or criticism of judgments, but to incite a relatively illiterate audience against the Judiciary is not to be ignored”. What had landed Mr. Jayarajan in trouble was his use of Malayalam words ‘shumbhanmar’ (fool, idiot, dunce) and ‘pulluvila’ (of little value) and other usages in his remarks against the judges of the High Court during a public speech here on June 26, 2010. The conviction of Kerala CPM leader MV Jayarajan was upheld by the Supreme Court, for calling state high court judges “idiots”, but reduced the sentence from six months to four weeks. An apex court bench held by, Justice Vikramajit Sen upheaded Jayarajan’s confidence holding that he has no regret for his utterances against high court judges.¹¹

KK MISHRA @ BALRAM

A Verdict which has drawn attention of almost everyone where Allahabad High Court, convicted a lawyer for committing criminal contempt of subordinate Court for that he punished with simple imprisonment of six months. Division bench of Justices Sudhir Agarwal and Shamsheer Bahadur Singh has also restrained the lawyer from entering the High Court and District court premises for a period of three years. In the said case the lawyer, had hurled abuses and made wild allegations of buying-off and corruption against Reference Officer (Civil Judge) and threatened him of dire consequences when he would come out of the court after the court hours.¹²

SAROJ MITTAL VS STATE

Delhi High Court initiated contempt proceedings against Superintendent AIIMS and Tihar Jail Superintendent due to non-following of the High Court directions. Hearing a plea of an ailing lady, the Court on June 8 had ordered that she “will be taken by a specially equipped ambulance to AIIMS and be kept under observation there till her condition stabilizes.” This order was not followed by the authorities; the Court on June 12, 2015 expressed its displeasure.

COURT ON ITS MOTION VS. SEEMA SAPRA

The sentence was imposed on Seema Sapra by a Division Bench of Delhi High Court comprising of Justice ‘Valmiki J Mehta and Justice PS Teji’ in contempt proceedings originally initiated against her by a Bench comprising Justice Ravindra Bhat and Justice Vibhu Bhakru after she had accused Justice Vibhu Bhakru of corruption in open court. The Court found her guilty of committing contempt of court and sentenced her to one month imprisonment with fine Rs.2000/-. The Court however stated that there can be no justification for baseless and reckless allegations made of corruption against the Judges as we know that the corruption is a very serious offence in nature and charge against the Judge and the institution of Court itself which scandalizes judiciary and interferes or tends to substantially interfere with the due course of justice if the allegation of corruption is uncorroborated, and in fact not even vaguely established.¹³

DR. GN SAIBABA VS. STATE OF MAHARASHTRA

¹⁰ <https://indiankanoon.org/doc/167571437/> (4.00 pm 15-04-2017)

¹¹ <https://www.indianbarassociation.org/m-v-jayarajan-vs-high-court-of-kerala/> (5.00pm 15-04-2017)

¹² <https://indiankanoon.org/doc/69212950/> (6.00 pm 15-04-2017)

¹³ <http://www.livelaw.in/tag/court-on-its-motion-vs-seema-sapra/> (7.00pm 15-04-2017)

The Nagpur bench of Bombay High Court has rejected bail application Dr. Gokarakonda Naga Saibaba who was arrested for his alleged links with Maoists. Justice Arun B. Choudhari, while dismissing the bail application also directed registration of Criminal Contempt against the author Arundhati Roy for the article she had written in The Outlook criticising the nongranteeing of bail to the Professor.

For prejudice or moral anxieties Law is not a stranger. Judicial pronouncements can sometimes set aside constitutional values and defer to societal biases camouflaged as righteousness. The recurrence of “collective conscience” in terror cases, where the threat of terrorism looms so large that it can overshadow the lack of evidence, is only too well known. Even so, the December 23 order of the Nagpur bench of the Bombay High Court takes one’s breath away.

It rejected the regular bail plea moved by the lawyers of Delhi University professor, Saibaba, cancelled his interim bail which allowed him to receive treatment till December 31, and ordered him to surrender within 48 hours. Besides, the court issued a notice of criminal contempt to Arundhati Roy for her article, ‘Professor, in Prisoners of War (POW)’, published in Outlook magazine. The order will be remembered for its exposed display of contempt for civil rights, partisanship and repudiation of judicial independence.¹⁴

REFERENCE ORDER BY JUSTICE DAMA SESHADRI NAIDU HIGH OF KERALA

In a Single Bench, presided over by Justice Dama Seshadri Naidu has doubted the correctness of the judgment rendered by a Division Bench led by the then CHigh Court Chief Justice , Dr. Manjula Chellur in the case of Jyothilal K. R. v. Mathai M.J., reported in 2014 (1) KLT 147. The Division Bench had held that the contemnor need not appear until a notice is given by the Division Bench. It had further directed the Single Bench to refer matters pertaining to contempt to the Division Bench. The Judgment in Jyothilal was criticized by senior lawyers and former Judges alike.¹⁵

“The judiciary should not be totally vulnerable for all the attacks; neither should the judiciary be too sheltered from public criticism”. There should be appropriate balance needs to be struck between judicial protection and judicial accountability of which Indian Judiciary has successfully maintained up to now. Respect for the judiciary is the vital part of an affective rule of law, and respect can only be earned cannot be enforced

UK COURT TO CONSIDER EXTRADITION REQUEST OF VIJAY MALLYA

The government's effort to bring Vijay Mallya to justice in India for defaulting on bank loans over Rs 9,000 crores got a boost on Tuesday when the UK accepted its request to help extradite the absconding tycoon.

Acting on an extradition request sent by CBI over the IDBI Bank BSE SCAM and a service tax case, Scotland Yard arrested Mallya and produced him in a court which as is the routine in financial crimes, released him on conditional bail on a Rs 5.4-crore bond and stiff terms until May 17, when a senior district judge will start the extradition hearing. Declared a proclaimed offender by Indian courts, Mallya was arrested at the London police station he had gone to after learning about the about the extradition warrant issued against him.

¹⁴ <http://indiatoday.intoday.in/story/delhi-university-professor-saibaba-arrested-for-maoist-links-gets-bail/1/634645.html> (6.00am 16-04-2017)

¹⁵ <http://highcourtofkerala.nic.in/dsn.html> (8.00am 16-04-2017)

Vijay Mallya's arrest sets the stage for what is going to be a long drawn out legal battle between the absconding tycoon and Indian agencies, the CBI as well as the Enforcement Directorate, over the Centre's move to bring him home to face the law for not repaying public sector banks thousands of crores he had borrowed for his now defunct Kingfisher Airlines.¹⁶ There is an effort which is made by the Government of India in arresting Mallya in extradition but why should a bail was granted, and the very purpose of making arrest?

JUSTICE KARNAN SENTENCED FOR 6 MONTHS IMPRISONMENT

It is the first time that a high court judge is sentenced to jail by the Supreme Court on charges of contempt of court. The Supreme Court sentenced that Calcutta High Court judge Justice C S Karnan be instantaneously sent to jail for 6 months for contempt of court.

A Bench consisting of seven judges headed by Chief Justice J S Khehar said that, "We are of unanimous view that Justice C S Karnan committed contempt of court, contempt of judiciary and the process, as he violates"

Justice Khehar mentioned in the order that, "we are of the unanimous opinion that justice C.S. Karnan has committed the contempt of court, judiciary and judicial process of the gravest nature".

The Supreme Court Bench ordered Justice Karnan to be medically examined but he refused to undergo medical tests and told the team of doctors in a written response, that he is "absolutely normal and with a stable mind."

The Bench also consisting of Justices Dipak Misra, Chelameswar, Ranjan Gogoi, M B Lokur, P C Ghose and Kurian Joseph said that it is satisfied judgement that Justice Karnan be sentenced for 6 months in jail. "The sentence shall be executed and he be taken into custody forthwith," the Bench said.

The 7 judge Bench also banned the media for both print and electronic form of publishing for the content of further orders if passed by Justice Karnan, who issued an order sentencing eight Supreme Court judges to 5 years of "rigorous imprisonment" and imposed a fine of Rs. 1,00,000 each under the SC, ST (Prevention of Atrocities) Act of 1989 and the amended Act of 2015.

The lawyers representing Calcutta High Court judge C S Karnan claimed that a representation has been made to the president seeking suspension of the Supreme Court order sentencing him to six months imprisonment for contempt of court.

However, the president's office said, "It was not aware of any such representation." The lawyers said a memorandum under Article 72 of the Constitution was sent through e-mail on behalf of Justice Karnan seeking "suspension/stay of his sentence of six months imposed on him" by a seven-judge bench headed by Chief Justice J S Khehar.

¹⁶ <http://economictimes.indiatimes.com/topic/Vijay-Mallya> (12.04pm 19-04-2017)

CONCLUSION:

The judiciary on contempt of court proceedings have never been strict, they change as per circumstances and people involved, and the recent cases mentioned above along with Karnataka government in Cauvery water issue, Justice Karnan`s case, and Anurag Thakur`s (BCCI) case.

Judicial process in Katju`s case reflects the extent of ' intolerance' seeping into judicial system. The influence of executive control can be directly visualised in most of its verdicts. Whether Arundhati Roy punished for contempt of court or the ' constitutional patriotism' of National Anthem, the verdicts have been less than satisfactory. Similar problem is with the court's dealing in Katju's affair also. Judiciary is not strict. It is showing discrimination from person to person. "All Are Equal Before The Eyes Of Law". But the judiciary is not at all strict.

We have article 19 which tells about freedom of speech and expression but no one can take it as advantage and disturb court to function properly because it has some restrictions. In the same way we have another two provisions 129 for high court and 215 for Supreme Court giving those powers of contempt of court. We have freedom of speech and definitely anybody can express their opinion. Responsible judiciary oughtn't to waste its precious time upon trivial matters. If any person found contempt then the decision should be at spot and the judge has power to give such punishments.

Why judiciary is not involving in all types of cases and this is the main reason why the cases are not coming to the end stage (pending cases). If the judiciary is strict in all types of cases whether it is contempt or any other case, then everyone fears to judiciary. Judiciary has dignity and respect everyone must and should give respect to the judiciary. Persons or Organization who pretend to disobey the court Proceedings or Order a strict action should be initiated. Judiciary wants to involve in all Organization like Sports Federation, Non Governmental organization, Private Firms and Committees, Recruitment sections etc and almost every corner with Retired or Working Judges/ Qualified Lawyers.