

# ***The Gavel and the Voice***

## ***Balancing Contempt Powers with Litigant Rights in the Indian judicial system***

### **Definition:**

The US department of justice defines contempt of court as an act of disobedience or disrespect towards the judicial branch of the government, or an interference with its orderly process. It is an offense against a court of justice or a person to whom the judicial functions of the sovereignty have been delegated.

In Halsbury laws of England, it is defined as follow "Any act done or writing published which is calculated to bring a court or judge into contempt or lower his authority or to interfere with the due course of justice or the lawful process of the court is contempt of court".

### **Contempt of court in India:**

In, India contempt of court is covered under the Contempt of courts act 1971. Although the act does not provide a statutory definition of contempt of court, it classifies it into civil and criminal contempt.

**Civil contempt** - Section 2(b) of the act says that "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;

**Criminal contempt** - Section 2(c) of the act says that "criminal contempt" means the publication (whether by words, spoken or written, or by signs,

or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

### **Constitutional view point:**

The constitution of India recognizes the supreme court and the high court as the court of record and also provides inherent power to punish for contempt of court

### **Article 129: Supreme Court to be a court of record**

The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

### **Article 215: High Courts to be courts of record**

Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

### **Conflicts:**

The Contempt powers of all Courts of Record are inherent being necessary and incidental to maintain the dignity of the Court and enforce its Order. However such laws always exist at an intersection of conflicts - conflict between the fundamental right of speech and expression and the protection of the courts dignity.

**Article 19** of the Indian constitution provides us with the freedom of speech and expression while Article 19(2) imposes reasonable restrictions on this freedom. The restrictions include -

(i) Sovereignty and integrity of India

- (ii) the security of the State,
- (iii) friendly relations with Foreign States,
- (iv) public order,
- (v) decency or morality or
- (vi) in relation to contempt of court, defamation or incitement to an offence.

**In Re: Prashant Bhushan., (2021) 3 SCC 160** the apex court held that Though a fair criticism of judgment is permissible in law, a person cannot exceed the right under Article 19(1)(a) of the Constitution to scandalise the institution.

However there is a thin line between fair criticism and contempt and the judiciary has often found it difficult to draw this line. Strong, harsh, or emotional criticism may still be genuine and in public interest, while some statements disguised as “criticism” may actually be intended to scandalise or obstruct justice. Mr. Soli Sorabjee said “Justified robust criticism of the judgements of Hon’ble court; however, severe and painful but necessary for the effective functioning of the judiciary under a democratic setup”

### **Defences to the contempt court:**

#### **Civil contempt proceedings -**

- (i) Lack of Willful Disobedience - If the contemnor can prove that there was no mens rea or intent present to disobey the court
- (ii) Order passed without jurisdiction - if the court lacked the requisite jurisdiction to pass the order
- (iii) vague and ambiguous orders
- (iv) Multiple reasonable interpretations - When an order can be reasonably construed in different ways, adopting one interpretation should not automatically render an individual contemptuous.

(v) impossibility of compliance -

### **Criminal contempt proceedings -**

(i) innocent publication and distribution - a publication done without reasonable grounds to believe that judicial proceedings were pending is immune from contempt charges.

(ii) Fair criticism - The landmark case involving Arundhati Roy reaffirmed that criticism of judicial conduct, when made in public interest, does not amount to contempt.

(iii) Defence of truth - truth may be accepted as a defence in criminal contempt proceedings if it is shown to be in the public interest and offered bona fide.

### **Analysis**

The contempt of court is a relic that has been inherited by India from the British colonial era but at that time when India was not independent and the British rulers were supreme and which is totally opposite to the scenario in today's time where democracy has already marked its existence. There is a dire need to integrate the contempt of courts act with article 19 of the Indian constitution. The court is an important part of our society that helps us resolve disputes. If the citizens of the country are not allowed to question the judiciary and are fearful of expressing their opinions, they begin to feel disconnected from the society. When people begin to lose trust in the ability of the court to act as an impartial system, the society begins to crumble.

**Principles of natural justice:** The contempt of court Act also goes against the principles of natural justice.

One of the most important aspects of natural justice is -

**Nemo Judex In Causa Sua** - no one should be made a judge in their cause.

This is especially questioned in the cases of criminal contempt because the entity that feels insulted and disrespected (the court) is the same entity that decides whether contempt has been committed and the same entity then decides on a punishment. Even if judges act with honesty and restraint, it appears to violate the rule that justice must not only be done but must also be *seen* to be done.

## **Conclusion**

In the future, the judiciary must focus on providing statutory definitions for words such as 'contempt' and clarify the acts that 'scandalise', 'interfere with or obstruct the administration of justice'. This can reduce the wide powers provided to the judiciary with respect to contempt and reduce the ambit of power of the courts.

In countries like England and the United States contempt jurisdiction is sparingly exercised giving much scope to the fair and constructive criticism which is considered as the pedestal of modern democracy. This must also be the way forward

While contempt of court Act is necessary to maintain the prestige of the judiciary, Contempt law needs to be reformed, not to weaken judicial authority, but to bring it in line with democratic ideals.

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