

moment that the motives or intentions of members of either House cannot be inquired into by criminal proceedings with respect to anything they may do or say in the House.”

In this case, Mr. Justice *Harlan* canvassed the history of the Freedom of Speech clause and concluded that it was the culmination of a long struggle for parliamentary supremacy. Behind these simple phrases lies a history of conflict between the Common and the Tudor and Stuart monarchs during which successive monarchs utilized the criminal and civil law to suppress and intimidate critical legislators. Since the Glorious Revolution in Britain and throughout United States history, the privilege has been recognized as an important protection of the independence and integrity of the Legislature.

The Supreme Court said, although the speech or debate clause has its historic roots in English Law, it must be interpreted in the light of the American experience, and in the context of the American Constitutional scheme of Government rather than the English Parliamentary system.

In *US v. Brewster*, (1972) 33 Lawyers Ed. 24 507, majority of the Judges led by *Burger*, C.J. held that the speech or debate clause contained in Article 1(6) of the US Constitution protects the Members of

Congress from Inquiring into legislative acts or into the motivation for the actual performance of legislative acts but that it does not protect them from other activities they undertakes that are political rather than legislative in nature and that taking a bribe for the purpose of having one's official conduct influenced is not part of any legislative process or function and further that the free speech or debate clause did not prevent indictment and prosecution of *Brewster* for accepting bribes. Three Judges, *Brennan*, *White* and *Dooglas*, JJ., however dissented and held that *Brewster* cannot be prosecuted in a criminal Court.

Chief Justice *Burger* who delivered the majority opinion said:

“The author of our Constitution was well aware of the history of both the need for the privilege and the abuses that could flow from the sweeping safeguards. In order to preserve other values, they wrote the privilege so that it tolerates and protects behaviour on the part of Members not tolerated and protected when done by other citizens, but the shield does not extend beyond what is necessary to preserve the integrity of the legislative process...Congress is ill-equipped to investigate, try and punish its Members for a wide range of behaviour that is loosely and incidentally related to the legislative process.”

## CONTEMPT POWER OF THE SUPREME COURT UNDER INDIAN CONSTITUTION

By

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The Constitution of India declares the Supreme Court and the High Courts to be Courts of Record. In English Law, the expression: ‘Court of record’ stands for a

superior Court whose acts and proceedings are enrolled for permanent record such a Court has power to punish for the contempt of its authority. The category of superior

Courts in English judicial system include not only the Superior Courts but the Country Courts and certain Courts established by or under a statute. When the Constitution declares the Supreme Court to be a Court of Record it definitely has the meaning that this Court would have the power to punish for its contempt. But this inherent feature of the Courts of Record in our country is made more explicit by providing that the Supreme Court and the High Courts will have the power to punish for their contempt. The provisions of the Constitution do not however specifically mention anything as to the men and matters that would be amenable to this jurisdiction and who would be exempt from its jurisdiction. In the controversies that have come before the Supreme Court the Court has laid down the principles as to the nature and extent of the contempt power of the Courts of Record.

In this article an attempt is made to discuss, with reference to decided cases, the nature and extent of the Contempt Power of the Supreme Court under Article 205 of the Constitution of India.

In *Delhi Judicial Service Association v. State of Gujarat*, (1991) 4 SCC 406, it was held that under Article 129 the Supreme Court has power to punish a person for the contempt of itself as well as of its subordinate Courts. The expression 'including' extends and widens the scope of power. The plain language of Article 129 clearly indicates that the Supreme Court as a Court of Record has power to punish for contempt of itself and also something else which would fall within the inherent jurisdiction of the Court of Record. This inherent power is necessary to safeguard and protect the subordinate judiciary which forms the very backbone of administration of justice. In the instant case the Court had sent five police officers to jail as they were found guilty of criminal contempt for harassing and handcuffing the Chief Judicial Magistrate in the State of Gujarat.

In *Mohammed Aslam v. Union of India*, (1994) 6 SCC 422, the Supreme Court held that the Chief Minister of Uttar Pradesh, Mr. *Kalyan Singh* was guilty of Contempt of Court for violating the order of the Court by which construction of permanent structure on the disputed land had been prohibited. The Chief Minister had given a solemn assurance to the National Integration Council and also to the Supreme Court that he would not allow any permanent construction on the land. In the contempt proceedings initiative against him the Chief Minister took the defence that the construction was done by a congregation of Sadhus and any attempt to prevent the work of the Sadhus would have created a violent situation endangering the structure itself. The Court however took the view that the assurance given by the Chief Minister before the National Integration Council was incorporated as his own undertaking to the Supreme Court. He did not prevent the construction work by Sadhus. The Court said that although the State of Uttar Pradesh was guilty of contempt, if a Minister or officer of Government is in his official capacity or if there is personal element contributing to contempt, in his personal capacity is liable to contempt. The Court awarded a token sentence of one day and a fine of Rs.2,000/- to be paid within two months.

In *re Vinaya Chandra Mishra*, (1995) 2 SCC 584, the Supreme Court examined the scope and extent of the power of contempt in detail and held that under Articles 129, 215 and 142 of the Constitution it has power *suo motu* to take cognizance of contempt proceedings against the contemnor. Article 129 vests the Supreme Court not only with the power to punish for contempt of itself but also of lower Courts and Tribunals in its capacity as the highest Court of Record and also charged both the appellate and superintending power over lower Courts and Tribunals as detailed in the Constitution.

The Court held that the power of the Court under Articles 129 and 142 cannot be limited or curtailed by any statute, *viz.*, the Contempt of Courts Act, 1971. The jurisdiction of the Supreme Court under Article 129 is independent of the statutory law. Neither the Contempt of Courts Act, 1971 nor the Advocates Act 1961 can restrict the said jurisdiction. The Court has power under Articles 129 and 142 to cancel or suspend the licence of an advocate for committing criminal contempt of the Court. The power cannot be restricted on the ground of Article 19(1)(a). The freedom of speech and expression cannot be used for committing Contempt of Court. This right is subject to the law of contempt as well as provisions of the Constitution.

In this case, a senior Advocate Sri *Vinay Chandra Mishra*, President of the Bar Council of India was found guilty of contempt of Court for misbehaving with Justice *Kishore* of Allahabad High Court and was sentenced to six months simple imprisonment and his licence for practising as an advocate was suspended for a period of three years. But the Court suspended the sentence of imprisonment for a period of 4 years and said that if he is found guilty of further contempt during these periods the sentence would be revived. The Court did not accept his unconditional apology because firstly it was free and frank of admission of misdemeanor, and secondly, there was no sincere regret for his act of disrespect shown to the concerned Judge.

In a landmark judgment in *Delhi Development Authority (DDA) v. Skipper Construction Company Ltd.*, (1990) 24 SCC 722, a builder was sentenced to jail for recommitting contempt of Court and defrauding others in deliberate disobedience of the Supreme Court's order. The Court held that under Articles 129 and 142 the Court had power to make appropriate orders to do complete justice.

*In re: Arundhati Roy* the facts of the case were that an organization, namely, Narmada Bachao Andolan filed a petition under Article 32 of the Constitution of India being Writ Petition No. 319 of 1994 in this Court, the petitioner was a movement or andolan, whose leaders and members were concerned about the alleged adverse environmental impact of the construction of the Sardar Sarovar Reservoir Dam in Gujarat and the far-reaching the tragic consequences of the displacement of hundreds of thousands of people from their ancestral homes that would result from the submerging of vast extent of land, to make up the reservoir. During the pendency of the writ petition this Court passed various orders. By one of the orders, the Court permitted to increase the height of the dam to RL 85 meters which was resented to and protested by the writ petitioners and other including the respondent herein. The respondent *Arundhati Roy*, who is not a party to the writ proceedings in Outlook Magazine and in some portion of a book written by her. Two Judges of this Court, forming the three-Judge Bench felt that the comments made by her were, *prima facie*, a misrepresentation of the proceedings of the Court. It was observed that judicial process and institution cannot be permitted to be scandalized or subjected to contumacious violation in such a blatant manner, it had been done by her. The action of the respondent has caused the Court much anguish and when the Court expressed its displeasure on the action of the respondent in making distorted writing or manner in which leader of the petitioner Ms. *Medha Patkar* and one *Dharmadikbari* despite giving assurance to the Court acted in breach of the injunction, the Court observed:

“We are unhappy at the way the leaders of NBA and Ms. *Arundhati Roy* have attempted to undermine the dignity of the Court. We expected better behaviour from them”.

Showing its magnanimity, the Court declared:

“After giving this matter our thoughtful consideration and keeping in view the importance of the issue of resettlement and rehabilitation of the PAFs, which we have been monitoring for the last five years, we are not inclined to initiate proceedings against the petitioner, its leaders or Ms. *Arundhati Roy*. We are of the opinion, in the larger interest of the issues pending before us, that we need not pursue the matter any further. We, however, hope that what we have said above would serve the purpose and the petitioner and its leaders would hereafter desist from acting in a manner which has the tendency to interfere with the due administration of justice of which violates the injunctions issued by this Court from time to time”.

The third learned Judge also recorded his disapproval of the statement made by the respondent herein and other and felt that as the Court's shoulders are broad enough to shrug off their comments and because the focus should not shift from the resettlement and rehabilitation of the oustees, no action in contempt be taken against them.

However, after the judgment was pronounced in IA No.14 of 1999 on

15th October, 1999 (reported at 1999 (8) SCC 308), an incident is stated to have taken place on 30th December, 2000 regarding which Contempt Petition No.2 of 2001 was filed by *J.R. Parashar*, Advocate and others.

In the contempt proceedings that were started against *Arundhati Roy* the defence offered by the contemner was rejected. The Supreme Court observed, we are not impressed with any of the arguments of the learned Counsel for the respondent which could persuade us to drop the proceedings. It was further observed, the Constitution of India has guaranteed freedom of speech and expression to every citizen as a fundamental right. While guaranteeing such freedom, it has also provided under Article 129 that 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. Similar power has been conferred on the High Court of the State under Article 215 under the Constitution, there is no separate guarantee of the freedom of the press and it is the same freedom of expression, which is conferred on all citizen under Article 19(1). Any expression of opinion would, therefore, be not immune from the liability for exceeding the limits, either under the law of defamation or contempt of Court or the other constitutional limitations under Article 19(2)

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### COLLECTIVE IMPLEMENTATION OF HUMAN RIGHTS OF PRISONER OF WAR

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All Human Rights derive from the dignity and worth inherent in the human person and that the human person is the central subject of Human Rights and Fundamental Freedoms.

In simple terms, whatever adds to the dignified and free existence of Human Beings should be regarded as Human Right. Evolution and crystallization of the concept