

Right to Freedom of Speech & Expression in Contrast with Contempt of Court

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Abstract

The law of contempt of court is a highlighted topic. In the recent past, many cases of contempt of court have been dealt with by the Supreme Court. In a solitary example in the judicial history, a sitting judge of a High Court was tried and convicted by the Supreme Court for having committed contempt of court. In another similar example, a former judge of the Supreme Court was summoned by invoking contempt jurisdiction for writing a blog on a judgment rendered by the Supreme Court in a rape and murder case. Apart from the above instances, a practicing advocate was also tried and punished for having committed criminal contempt of court for writing two blogs. The summoning of a retired judge as well as conviction of a practicing lawyer for writing the blogs; though, took seriously by the Supreme Court; but, it also raised an issue with regard to the right to freedom of speech & expression guaranteed under Article 19(1)(a) of the Constitution of India. It was argued that these cases were in a way unnecessary interference by the Supreme Court upon the fundamental right of the freedom of expression & speech, an integral & inseparable part of the democracy. Certain sections of the society have raised a demand to scrap the contempt law, terming the same to be a draconian one.

After analysis of both the aspects of the right to freedom of speech & expression as well as the provisions of contempt of court, it can be concluded that there cannot be any fixed criteria or guidelines for invoking the powers of contempt by the courts; but, at the same time, due regard has to be given to the constitutional rights of freedom of speech & expression, which in a way is part of right to life.

Keywords: Contempt of Court, Freedom Of Speech & Expression, Reasonable Restriction, Constitutional Rights, Truth As A Valid Defence.

Introduction

The democracy in any country can be judged by looking at the set up of the courts existing therein. The object of complete democracy cannot be achieved if there are no strong, independent and impartial courts. The Courts of Justice discharge very delicate duty quite often, responsible yet disagreeable; hence, they must be given utmost protection.¹ There can be no doubt that the purpose of contempt jurisdiction is to uphold the majesty and dignity of law courts and their image in the minds of the public and that this is in no way whittled down. If by contumacious words or writings the common man is led to lose his respect for the Judge acting in the discharge of his judicial duties, then the confidence reposed in courts of justice is shaken and the offender must be punished. In essence the law of contempt is the protector of the seat of justice more than the person of the Judge sitting in that seat.

The fundamental rights in the Constitution of India are held to be the basic structure of the Constitution of India, which cannot be altered even by the Parliament by amending the Constitution.² The right to freedom is guaranteed under Article 19(1)(a) of the Constitution of India.³ The right to freedom and expression is, though subjected to certain reasonable restrictions but it does not mean that any fair and bonafide comments or criticism of any judgment of a court renders any citizen liable for committing contempt of court. Because the right to freedom of speech and

Expression is a fundamental right guaranteed under the Constitution, which is above the rights / liabilities given/ imposed by any other enactment.

The issues assume greater importance because of the recent development where the Supreme Court initiated contempt proceedings against a former judge of Supreme Court for writing a blog⁴ and another sitting judge of Calcutta High Court has been summoned, tried and punished for committing Contempt of Court.⁵ Apart from the above, a practicing lawyer, who wrote two tweets, one upon the picture of the present Chief Justice of India, wherein he was riding a motor cycle during COVID-19 pandemic and second regarding the role of the Supreme Court, was also convicted for criminal contempt.⁶

In the present scenario where on one hand there are rising instances of contempt of court and on the other hand, there are demands for scrapping the law of contempt, it is worthwhile to analyse the rival views.

Despite there being codified contempt law i.e. Contempt of Courts Act, 1971, there are various uncertainties on the subject and the courts are very slow in invoking the contempt jurisdiction. However, in many cases, the contempt jurisdiction had also been used in excess or misused by the litigants and at times by the courts.

Objectives of the Study

This article has the following objectives:

1. To understand the concept of Contempt of Court
2. To analyse as to whether the right to freedom of speech & expression as guaranteed under Article 19(1)(a) of the Constitution of India is subject to the Contempt of Courts Act, 1971
3. To examine whether fair and true critic of a particular judgment constitute Contempt of Court
4. Should there be some fixed guidelines / restrictions for the use and exercise of the statutory provisions of Contempt of Courts

Historical Background and Statutory Provisions

In ancient times, the King dispensed justice in person sitting in court. But as the art of governance grew, the King yielded his powers to his three organs of Government, the Executive, the Parliament and the Judiciary. The Judges were deemed to act in the name of the King. It is King's justice and as such demanded all respect and obedience. Any disrespect to the seat of justice was an affront to the dignity and majesty of Law.

After the Constitution of India came into being, certain fundamental rights were guaranteed to the citizens. Article 19(1)(a) of the Constitution of India assures right to freedom and expression. At times, the bonafide statements are termed to be contemptuous and contempt proceedings are initiated against the maker of the statement.

Statutory Provisions Relating To Contempt of Courts

Section 2 of Contempt of Courts Act, 1971 Defines two types of contempts (a) Civil Contempt and (b) Criminal Contempt.⁷

'Civil Contempt' means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court.

'Criminal contempt' means the publication (whether by representations, or otherwise) of any matter or the doing of any other act whatsoever which –

1. scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or
2. prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
3. interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

Section 10 of the Contempt of Courts Act, 1971 prescribes the power of the High Court to punish for the contempt of the subordinate courts. Section 11 prescribes the powers of High Court to try offences committed or offenders found outside jurisdiction and Section 12 prescribes the punishment for Contempt of Courts. Section 13(2) recognises the truth as a valid defence in contempt proceedings. Section 16 prescribes the committing of contempt by judge, magistrate or other person acting judicially.

Articles 129 of the Constitution of India describes the Supreme Court to be a court of record and it also mentioned that the Supreme Court shall have all the powers of such a court including the power to punish for contempt of itself.

Article 215 of the Constitution of India on the similar lines prescribes that every High Court shall be a court of record and shall have all the power of such a court including the power to punish for contempt of itself.

There are other provisions in other laws which deal with the Contempt of Courts. Section 345 of the Code of Criminal Procedure, 1973,⁸ deals with the procedure in cases of contempt. Section 195 of the Code of Criminal Procedure 1973 prescribes the procedure for prosecution of the offences of contempt of lawful authority of public servants, for offences against the public justice and for offences relating to documents given in evidence.

Similarly, Chapter-X of the Indian Penal Code, 1860 prescribes the offences of contempt of the lawful authority of public servants which consists Section 172 to Section 190 (both inclusive).

The Order XXXIX Rule 2A of the Code of Civil Procedure, 1908⁹ also prescribes the punishment for the disobedience of injunction order passed by a court.

What is the Contempt of Courts in India

Prior to the Contempt of Courts Act, 1926, it was held that the High Court has inherent power to deal with its contempt summarily and to adopt its own procedure, provided that it is fair and gives a reasonable opportunity to the contemnor to defend himself.¹⁰ Being a Court of record the High Court has:

1. power to determine the question about its own jurisdiction
2. inherent power to punish for its contempt summarily.

The aforesaid twin ingredients of a Court of record are well established by a catena of decisions of the Supreme Court. A majority of the constitution Bench of nine learned Judges of the Supreme Court in the case of Naresh Shridhar Mirajkar Vs. State of Maharashtra,¹¹ speaking through Ganjendragadkar, C.J., has made the following pertinent observations:

“There is yet another aspect of this matter to which it is necessary to refer. The High Court is a superior Court of Record and under Article 215 shall have all powers of such a Court of record including the power to punish for contempt of itself.”

The Bombay High Court In Re: Horniman,¹² while discussing the scope of the inherent contempt jurisdiction of the High Court has held that as a court of record, a High Court can punish a person for contempt committed outside its territorial jurisdiction by a person if such person happens to be within its jurisdiction.

In Delhi Judicial Service Association Tis Hazari Vs. State of Gujarat,¹³ where a Chief Judicial Magistrate was arrested by the police in Gujarat, to settle their scores. He was tied in ropes like an animal and was photographed. A number of petitions were filed before the Supreme Court with prayers of taking strict action against the erring police officers. The Supreme Court while considering the scope of the inherent powers of the Supreme Court under contempt jurisdiction, the following questions fell for determination:

1. Whether the Supreme Court has inherent jurisdiction or power to punish for contempt of subordinate or inferior Courts under article 129 of the Constitution?
2. Whether the inherent jurisdiction and power of the Supreme Court is restricted by the Contempt of Courts Act, 1971?
3. Whether the incident interfered with the due administration of justice and constituted contempt of Court? and
4. What punishment should be awarded to the contemnors found guilty of contempt?

The Supreme Court answering to the above questions observed (paras 50 and 51 of AIR):

“Article 142 (1) of the Constitution provides that Supreme court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any ‘cause’ or ‘matter’ pending before it. The expression ‘cause’ or ‘matter’ would include any proceeding pending in Court and it would cover almost every kind of proceeding in Court including civil or criminal. The inherent power of this Court under Article 142 coupled with the plenary and residuary powers under Articles 32 and 136 embraces power to quash criminal proceedings pending before any Court to do complete justice in the matter before this Court”.

It can well be said that wilful disobedience of courts orders, judgments or decree will amount to contempt of court. Apart from this, wilful breach of an undertaking given by any person is also contempt. Any act or omission which is done with a view to obstruct due process of the court or in any way calculated to lower down the dignity of the court or tend to obstruct or interfere with free flow of justice is criminal contempt and will be liable to be punished accordingly.

Whether Right to Freedom of Speech and Expression as Guaranteed under Article 19(1)(a) of the Constitution of India is Subject to the Contempt of Courts Act, 1971

Though, the right to freedom of speech and expression under Article 19(1)(a) is subject to certain restrictions; but, that does not mean that the same is subject to the Contempt of Courts Act, 1971. The Article 19(1)(a) is a fundamental right recognized by the Constitution of India which cannot be curtailed by an ordinary enactment. In this way, it can be said that the right guaranteed under Article 19(1)(a) is not subject to the Contempt of Courts Act, 1971.

Does Fair and True Critic of a Particular Judgment Constitute Contempt of Court

In the free democratic society where the citizens are entitled to express their free views, particularly in the age of social media, they also have a right to criticize the judgment or the judicial acts. The right to freedom of a speech has been given utmost importance and it has been held that the defamatory statements about the conduct of a judge even in respect of his official duty, does not always constitute contempt of court.¹⁴ It is useful to remember the words of Lord Denning, who said “we do not hear criticism, nor do we resent it.”¹⁵ Long back, Lord Atkin stated:¹⁶

“Justice is not a cloistered virtue and it must be allowed to suffer the scrutiny and respectful comments of an ordinary man. The path of criticism is a public way. The wrong-headed are also permitted to err therein. Provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice they are immune”.

The Chief Justice of India Justice Gajendragadkar, while speaking for the seven judges bench In The Matter of: Under Article 143 of the Constitution of India Vs. Unknown,¹⁷ observed:

“Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct.”

Justice Madan B. Lokur, a retired judge of the Supreme Court, said in a webinar that “There should be no criminal contempt. Judges should not be hyper-sensitive about everything. If the criticism is well-founded, then it is fine. Even if it is not, forget about it! There are so many things in life!”¹⁸

Though every judgment of a court is to be respected; but, at the same time every fair, bonafide and true critic of a particular judgment will not amount to Contempt of Court. However, if the critic is not fair or is malafide or made with a view to malign the image of the court or a particular judge, then certainly it may amount to the contempt of court.

Are Judges Curtailing the Right to Freedom by using the Contempt Law

Because of the recent developments in relation to the contempt cases, a nationwide debate has been launched and some sections of the society have demanded that the term scandalising the court is very vague and the same is prone to be misused. A retired judge of the Supreme Court justice V. Gopala Gowda stated:¹⁹

“The definition of criminal contempt on the ground of scandalising the court is very vague. The word ‘scandalising’ must be clarified by giving a precise definition of what ‘scandalising the court’ means. That is essential because the provision entails serious criminal consequences.”

He further stated:

“Contempt of court law is intended to protect the institution and not individual judges and the law should not be used to stifle healthy criticism. Majesty of the court is built on its functioning and its judgments.”

He went on to say that:

“There are thousands of cases in which directions of Supreme Court and high courts are not being implemented. If courts decide to initiate civil contempt in all those cases, then the entire institution will have to function only for hearing contempt proceedings.”

Similarly, a retired Madras High Court Judge Justice Chandru stated that “Judges are using this as a weapon to silence critics. The word ‘scandalises’ is susceptible to dubious interpretation. Therefore, it has to go. It violates Article 14 and 21 of the Constitution.”

Conclusion

In the democratic set up, all public institutions are legitimately subject to criticism and the courts are no exception. The notion that the respect of the judiciary can be protected only by shielding the judges from the criticism cannot be termed to be in the interest of democracy. The enforced silence for

protecting the judiciary from criticism will lead to suspicion and more contempt than the respect.

One important aspect in any proceedings is that of truth. The truth always remains the truth. The purpose of all judicial proceedings is to find out the truth. Any trial including one for contempt should not be any exception to this proposition. If truth is stated or pleaded, then it should not amount to contempt. Keeping this in mind, the legislature in its wisdom amended the Contempt of Court Act in 2006, whereby section 13 was amended and the truth was recognised as a valid defence in contempt proceedings. However, that was restricted to two limitations (i) the same is bonafide and (ii) it is in public interest.²⁰ The question arises as on one hand the courts are keen to search the truth at all costs and on the other hand, the truth is not allowed as defence as a matter of right. In the submission of the researcher, the truth should be permitted as a valid defence as of right in all the contempt proceedings.

There cannot be a straight jacket formula for every situation as the situation of every incident and the statements made will be different. It is not always possible to visualize every situation and it is also correct that no formula can be fit for every situation. Hence, the discretion is always necessary to cover up all the eventualities. As submitted earlier, it is not in the interest of anyone of getting any fixed guidelines / restrictions for use and exercise of the statutory provision of contempt of court for every statement ignoring Article 19(1)(a) of the Constitution of India. The courts must pay due weightage to the fundamental rights of the citizens and a balanced approach had to be adopted. The courts should ignore the trivial issues and action should be taken only in serious cases of contempt.

No doubt the courts and their judgments are to be respected; but, at the same time, the right to speech & expression cannot be ignored or brushed aside lightly. The bonafide critic is a basic element which furthers the way of democracy. The constructive criticism enhances the respect and credibility of any institution in the democratic set up and undue insulation may not be always accepted. There needs to be a check and balance upon the mode and manner of exercise of powers by courts under Contempt of Court Act, as the provisions may not act as oppression towards the fair or true critics against the courts or an individual judge. The rights to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India are the heart and soul of day to day public life. Every critic or statement made regarding a particular judgment cannot and should not amount to contempt of court; but, the same should be bonafide and without any oblique motive. The same should not be with intention to lower down the dignity of the Court or a particular judge. Unless the alleged act of contempt is of high magnitude, the courts should adopt a liberal approach.

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