

# MISUSE OF CONTEMPT OF COURT BY JUDICIARY

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## ABSTRACT

This paper gives a brief outline about how the judiciary which is the third most important organ of the government misuses the power given to it by the constitution, under article 124 and 215. As India is the largest democracy of the world, where Article 19 gives fundamental right of freedom of speech which is with malicious intent is being violated by the independent judiciary and as they are the only who dispenses justice to everyone and on the other hand for the sake of protecting their own personal dignity and reputation they misuses the power of contempt of court in their favour. But the judiciary should keep in mind that they are not the one who are sovereign, it is the constitution which provides power to such authority that makes it supreme. If the court continues to act in such a way and keeps getting offended then it's the end of democracy. This paper will discuss how and in what ways the judiciary misuses this power of contempt of court in making a shield of protection over their personal dignity. Judges deserve respect but not at the cost of misusing the power, violating the fundamental rights or suppressing the critics. No right can be endangered to protect a judge's pride and self-dignity.

## INTRODUCTION

### INTRODUCTION TO CONTEMPT OF COURT

The concept of contempt of court was derived in the late 16th century. At that time it was framed in favour of the king, that everyone is obliged to respect the king and if not done so, were punished. In **James Williamson case, 1634**, the punishment for disrespecting the king was death. As such the term Contempt of Court is not defined in any statute, but under **Section 2(a)** of Contempt of Court Act, 1971 classifies it as “civil contempt” and “criminal contempt”. Further it defines ‘civil contempt’ under **Section 2(b)** as wilful disobedience

towards any judgement, decree, order, direction, writ or a wilful breach of an undertaking given to a court.

**In U.P. Resi. Emp. Co-op., House B. Society Vs. New Okhla Industrial Development**

**Authority,1990<sup>1</sup>** - In this case, the Supreme Court has directed the Noida Authorities to verify and state on the affidavit details given by persons for allotment to mislead the court.

The Registry directed a show-cause notice against him to say that an act of contempt should not be taken against him for misleading the Supreme Court.

And according to **Section 2(c)** Criminal contempt is defined as any 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. In simple language, we can say that it means that anyone who scandalises, prejudices or interferes with any judicial order, decision or direction has tended to commit criminal contempt.

**In Jaswant Singh vs. Virendra Singh and ors,1994<sup>2</sup>**- In this case an advocate of caste derogatory and scandalous attack on the judge of the high court. An application was filed by an election petitioner in the high court, who was an advocate. He wants to seek a stay for further argument in an election petition and also the transfer of election petitions. These things caused an attack on the judicial proceeding of the high court and had the tendency to scandalize the court. It was held in this case that it was an attempt to intimidate the judge in the high court and cause interference in the conduct of a fair trial.

Whereas while interpreting the dictionary meaning of contempt of court it is “any offence of being disobedient or disrespectful of a court of law and its officers”.

If we talk about India, Contempt of Court Act,1926 was passed during British period and then after independence under **Article 129** it was declared that the Supreme Court will be the “Court of Record” and it will have power to punish for contempt of themselves.

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<sup>1</sup> 1990 AIR 1325, 1990 SCR (3) 64

<sup>2</sup> Appeal (civil) 5332 of 1993

Furthermore, **Article 142(2)**, it gives power to the Supreme Court of investigation and punishment for its own contempt.

Similarly, **Article 215** proclaims the High Court as “Court of Record” and that such court shall have all the powers including the powers to punish for contempt for themselves.

#### PUNISHMENT FOR CONTEMPT OF COURT

The constitution of India gives power to the Supreme and High court to penalise any person who has committed contempt of court under Article 129 and 215. Accordingly, **Section 12 of Contempt of Courts Act, 1971** provides for punishment for contempt of court. It states that any person who has committed contempt of court shall be punished with simple imprisonment of 6 months or a fine of Rs. 2000 or both. Furthermore, this section clears that punishment for contempt of court shall not exceed further it shall be considered as maximum punishment which can be given by court for contempt.

Similarly, **Section 228 of Indian Penal Code** states that any person who deliberately insults, or cause any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

#### AMBIT OF CONTEMPT OF COURT

The ambit of Contempt of Court is very wide. There are various defences available in the Contempt of Court Act, 1971. Section 3-9 describes the exceptions/defense for contempt of court. Like under Section 5 ‘fair criticism’ is given as an exception and truth was included as valid defence if done with bonafide interest by the amendment act of 2006. For the purpose of understanding, let's take the reference of some cases:

In **Delhi Judicial Services Association vs. State of Gujarat & others, 1991**<sup>3</sup> it was observed that the definition of criminal contempt is wide and covers every act that tends to interfere

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<sup>3</sup> 1991 AIR 2176, 1991 SCR (3) 936

with the administration of justice and harms the dignity of the court. The ambit is huge and empowers the judges to punish those who try to lower the reputation of the courts.

**Indirect Tax practitioners' Association v. R.K. Jain**<sup>4</sup>, 2007 the Supreme Court observed that the Court can now allow the truth as a defense if two things are satisfied, (i) it is in the public interest and (ii) a request to defend that it is in bona fide interest. (S.13, Contempt of Court Act, 1971). After this case some of the things said in the truth and public interest are included as a defense for contempt of court.

**C.K. Daphtary v. O.P. Gupta**, 1971<sup>5</sup> In this case a booklet was published criticising a judge. The court held him guilty of contempt of court regarding "scandalising the judge" and the attack must interfere with the administration of justice and mere personal attack does not come under the ambit of contempt of court.

In the case of Auto Shankar, Jeevan Reddy J applied the famous "Sullivan doctrine" that public persons should be open to harsh comments and accusations, as long as it is done with non-diligence, even if it is unfair.

#### INTERFERENCE WITH DUE COURSE OF JUSTICE

Although there are certain defences given for the charges of contempt of court. But one cannot seek immunity of court in a contempt case if the act has interfered with due course of administration of justice. In **Pritam Lal v. High Court of M.P**<sup>6</sup> case, the Supreme Court has said that to preserve court proceeding from wrongful interference it is the duty of court to punish the contemnor in respect to preserve dignity.

In another case, **Shamsher Singh Bedi v. The High Court of Punjab and Haryana**,<sup>7</sup> The Supreme Court held that if any comment against the judges are scandalous and interferes with the administration of justice that it can be considered as contempt of court.

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<sup>4</sup> 8 (2010) 8 SCC 281 (India).

<sup>5</sup> 1971 AIR 1132, 1971 SCR 76

<sup>6</sup> 1992 AIR 904, 1992 SCR (2) 864

<sup>7</sup> AIR 1995 SC 1974, 1995 CriLJ 3627, (1996) 7 SCC 99

## **MISUSE OF CONTEMPT OF COURT**

Judiciary is considered as the third most important organ of the government. And as in India we have an Independent Judiciary that has misused their power of contempt of court. India is the largest democracy in the world and here everyone has certain fundamental rights under which the right to freely speak is guaranteed to citizens which not only give the right to freely criticize the government or the Parliament but judiciary too.

Contempt of court is a power with the judiciary to protect certain judicial interests, but in recent times it has been used by the judiciary to curb the right and more specifically the voice of the people. Article 19 (1) (a) provides the right to freedom of speech and expression for all citizens, it is not an absolute right, a reasonable restriction under Article 19 (2) includes contempt of court. But this power of contempt of court has been recently being used maliciously by the judiciary. Judiciary is using this power more in protecting their own dignity than to protect the administration of justice which is not the basic purpose of this act.

## **2. BRIEF OUTLINE**

In this paper, I have discussed how the judiciary misuses the power of contempt of court in respect of some of the cases relating to it. Various judgments have passed which makes it clear that contempt laws were made to safeguard the respect of the administration of justice but the judges interpret it for their self benefits and stifle the right to freely speech and expression of the citizens which is enshrined under Article 19 of the Indian Constitution, that is how this power of contempt is misused.

Moreover, I have discussed what is contempt of court, where it is defined its types and its ambit so to figure out how this power is misused and till what extent it is misused.

And at the end, I have concluded this topic in respect of the case laws and suggesting what should have been changed in the present scenario, which would have helped in minimizing the misuse/ abuse of this power.

## **3. ISSUES AND CHALLENGES**

The main issue that has been discussed is that how the power which is conferred in independent judiciary is misused and the right of citizens of free speech and expression is curbed by its misuse of power. Judges in the superior courts (Supreme Court and High Courts) routinely abuse the power to punish for contempt of court, more to cover up their own misdeeds than to retain the glory of the law. And eventually it results in the breach of their freedom of speech and expression.

#### 4. ANALYSIS

It has been unfortunate that the powers to proceed against contempt which have been conferred under the Contempt of Courts Act, 1971 has been widely used in a very odd manner. Starting from the preamble to the sections of act of 1971, the basic objective of the act is the protection of administration of justice and judiciary. But in today's era this power is not used in respect of protection of administration of justice or judiciary but it is being misused by individual judges who are using it as protecting their own dignity.

According to **Sec 5 of the Contempt of Court Act** gives some exception against contempt of court. It says that "fair criticism of judicial act" is not contempt of court. But in reality, till what extent this fair criticism is a contempt of court or not, is decided by the judiciary itself. And at the end the judges are too personal, and they all have different perspectives, feelings and biases which are cleared from judicial decisions, which may vary from judge to judge. This power of contempt of contempt which is especially carved for them, may be misused by them. There are a number of cases in which just to avenge their personal dissatisfaction, a judge applies contempt of court.

In **P.N. Duda vs. V. P. Shiv Shankar & Others, 1988**<sup>8</sup> The Supreme Court has observed that the contempt of court should not be used in sake of personal dignity of the judges. India is a democratic country and such criticism against the judiciary shall be accepted until it does not hamper the administration of justice.

**E.M.S. Namboodiripad vs. T. Narayan, 1971**<sup>9</sup> In this case, the petitioner stated that the judge is biased against rich and poor and ultimately was held liable for contempt of court.

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<sup>8</sup> 1988 AIR 1208, 1988 SCR (3) 547

<sup>9</sup> 1970 AIR 2015, 1971 SCR (1) 697

Therefore, the laws related to contempt of court are incompatible and come with undefined limits.

In **Brahma Prakash Sharma vs. State of Uttar Pradesh**<sup>10</sup>, the District Bar Association passed a resolution against two judicial officers, who were incompetent in their opinion and indifferent to confidence in their work. The Supreme Court held that there was no contempt of court in this case as contempt proceedings would not take place in a statement if it was done against the judges in their personal capacity.

The court held that it is not necessary to prove that there has been a genuine interference with the administration of justice for an act to be contempt of court only if the fact that interference with administration of justice is proved is enough. The object of this law is not to protect the dignity of the individual judges.

#### CONTEMPT POWER: JUDICIAL AUTHORITY

- ★ The power of the Courts to punish contempt would appear to be empty rhetoric as far as the source of this power is concerned. It does not mean that there is no justification for such powers of the court which it claims to protect its dignity and authority. However, as seen earlier, the advocates of this power of the court determined the existence of the inherent powers of the court to punish contempt acts, and advanced many theories and justifications to support their views. The power of contempt has to be ensured by 'rule of law'. Upon this, courts are being relied upon to justify their act and punishment. There are two cases which are worth mentioning.

##### A. THE ARUNDHATI ROY CASE

India is an democratic country where everyone has right to freely express their thoughts about any judgment or other thing and the provision relating to contempt of court was framed in regard to maintain the public's respect and belief towards the Judges and their decisions. Contradictory, this case of **Re:Arundhati Roy vs. Unknown,2002**<sup>11</sup> puts a question mark on

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<sup>10</sup> 1954 AIR 10, 1954 SCR 1169

<sup>11</sup> AIR 2002 SC 1375 (India).

these laws. As in this case, the hon'ble Supreme Court of India held Arundhati Roy guilty of contempt of court. She was sentenced with 1 day of 'symbolic' imprisonment and had to pay Rs. 2000/-. As she responded to the court's earlier decision on developing the dam, Arundhati Roy criticized the court for muzzling dissent and subsequently staged a protest in front of the Court. In this conflict, contempt proceedings were initiated against her. The Court argued that freedom of speech and expression is not absolute, but it is subject to certain restrictions set by law, such as the Contempt of Court Act, which aims to maintain and espouse the integrity of the judiciary. Furthermore, the court found that Roy's statements were not made in good faith and in the public interest and therefore could not be considered to be unbiased and as fair judicial criticism. This misuse of power of contempt of court by the judiciary is a serious blow to democracy and this is not how these contempt laws should be interpreted for the sake of satisfying own interests and dignity. It is for maintaining the respect of the judiciary and it should be interpreted in this sense only. The shoulders of the court should be wide enough to get away from these trivial issues and focus on a larger perspective.ca

This was not the only case where misuse of power or contempt of court has come in light. Long back in **Narmada Bachao Andolan vs. Union of India, 1999**<sup>12</sup> The apex court held Arundhati Roy guilty of "vicious stultification, vulgar debunking and misinformation, bad taste, scandalising of courts and facts". And in a magazine named 'Outlook Magazine' an article was published by her 'The Great Common Good' in which she critically said that "most small farmers or tribal people have as much money which the Supreme Court judges has for a bag of fertilizers".

## B. THE PRASHANT BHUSHAN CASE

The most controversial topic relating to contempt of court was of **Re: Prashant Bhushan vs. Unknown; 2020**<sup>13</sup>. One of the tweets was dated back in 2009 in which he alleged the Judiciary with the charges of corruption. And the recent tweet was related to recent Chief Justice of India Shri Sharad A. Bobde who posted a photo with an expensive motorcycle during the covid pandemic without following any guidelines and during the time court's were shut because of lockdown and people are denied justice. He also questioned the functioning of the last 4 CJIs and claimed that democracy has been demolished by them. Consequently,

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<sup>12</sup> Writ Petition (civil) 319 of 1994

<sup>13</sup> AIR 2020,1502



the Supreme Court took suo moto cognizance and held him guilty of contempt of court and fined Prashant Bhushan with Re.1 fine. He refused to apologise and said that “sometimes this power of contempt of court is abused and misused by the judiciary in an attempt to stifle free speech or free discussion about the judiciary”.

## JUDICIAL INTERPRETATION IN SOME OTHER CASES

The concept of public appreciation is also one that needs to be examined, especially in the context of public response to media articles or television programs. In **Surya Prakash Vs. Madhu Trehan, 2001**<sup>14</sup> case the court deemed it necessary for the imprisonment of the editor and publisher of ‘Waah India’ magazine for publishing an article evaluating the judges under certain criteria. The court held her guilty for ‘scandalising the court’. Here in this the Judiciary has misused their power of contempt and their right to freely express their thought is stifled.

In **Re: M.K. Tayal vs. Unknown**,<sup>15</sup> case CJI Y.K. Sabarwal gave a biased decision inclined towards his son. Even after the proper evidence proven by the defendant that he was telling the truth, he was held guilty of contempt of court and said that this publication tarnished the image of the court and held that ‘truth’ as a defence cannot be taken by the defendant as it was not done in public interest or with a bona fide interest.

## 5. CONCLUSION AND SUGGESTION

To summarise, an Indian case highlighted that the contempt law is intended to maintain the glory and dignity of law courts and cannot be allowed to pervert the image of such glory in the public eye. But it is much obvious that these contempt laws are being reshaped in a manner as the judiciary wants it to be, and wants to maintain his 'dignity' in the eyes of the people in the eyes of people too. The judges need to get a broader perspective and understand the difference between contempt of court and libel.

Furthermore, there is no doubt that this power of contempt of court is requisite for the protection and maintaining the respect of the judiciary. But indeed it is abused/ misused in

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<sup>14</sup> 2001 CriLJ 3476, 2001 (59) DRJ 298

<sup>15</sup> AIR 2007

protecting the integrity of personal individual judges. The provisions should be clear enough with their basic purpose. And in my opinion there should be some restrictions on this power too, so that it is dispensed in a particular or faultless manner. And the judiciary should decide other cases with all the possible haste as they show in contempt law cases.

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