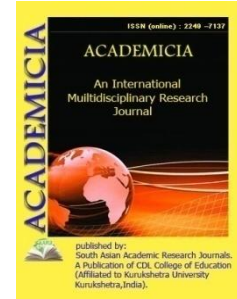




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CONTEMPT OF COURT OR FAIR CRITICISM?

Shubham Dilip Mungle*; Aryan Kriplani**

*Ils Law College,
INDIA

Email id: shubhammungle11@gmail.com,

**Nlu Aurangabad,
INDIA

Email id: aryankriplani13@gmail.com

ABSTRACT

Not only common man but whole legal system is expected to pay respect to the court's and judiciary. The society has faith and respect towards the court. A lawyer should pay respect towards the court but he should not remain silent when he is representing his client. It mainly is an offence against the administration which refrains common public from speaking against the judiciary system. There is a separate law for contempt of court i.e. Contempt of Court Act, 1972.

KEYWORDS: *Contempt of Courts- Criminal Contempt- Civil Contempt- Punishment- The Contempt of Court Act- Freedom of Speech and Expression*

INTRODUCTION:

Contempt of court is an act provided by the Constitution of India which limits the general public from criticizing and disobeying the court. It protects the judicial powers and safeguards the dignity of the court. This act defends the judiciary from getting defamed and restores the faith of the common public in the judicial system. It also ensures that no one interferes with the judicial proceeding. The Article 129 of Constitution of India states that the Supreme Court of India 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. It procures citizen's respect and faith in the judicial process and authorizes any act which could presumably ravage such respect and confidence in the judiciary. The impact of this act was on subordinate courts where this act allows high court for contempt of subordinate courts.

The origin of contempt of court can be drawn from the English Law. It came into being in India during the pre-independence period when the Britishers were ruling India. It was also observed that some courts of princely states of India had similar laws. In earlier times, kings were the highest authority of power and the common public was forbidden from questioning the authority of the king. This act is a genesis of the same dictate and is still practiced in a democratic republic.

General Provisions:

- S-3 says that innocent publication and distribution of matter is not contempt.
- S-4 says that fair and accurate report of judicial proceeding is not contempt.
- S- 5 says that fair criticism of judicial act is not contempt.
- S-6 says that complaint against presiding officer of subordinate court is not contempt.

Contempt of court is broadly classified in two categories:

- a. Criminal Contempt
- b. Civil Contempt

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

- Disobedience of court

In the case of *Shamsher Singh Bedi v. High Court of Punjab and Haryana*¹ the Supreme Court held that any discreditable comments or statements made against judges can distort civil procedure of courts and will be considered as interference with the administration of courts.

- In the case **Ashok Paper Kamgar Union and Ors. vs Dharam Godha And Ors**² the Supreme Court reviewed the section 2(b) of the contempt of Court Act, 1971 that defines the term civil contempt. It denotes voluntary action done with a bad motive to defame the judiciary process or system.
- The breach of court must be intended and must be done willfully and to convict a person under contempt of court there should be beyond reasonable doubt that a person has done it intentionally.
- In case of *Dr.D.C.Saxena Vs. Chief Justice of India*³, when a P.I.L. against Prime Minister of India was rejected by the Chief Justice of India, the petitioner filed another application against the Chief Justice of India stating that the Chief Justice of India himself was involved with the Prime Minister of India and so he must be punished. It was held that making such types of allegations against the judiciary was itself a Contempt of Court.

Criminal Contempt means issuing or declaring by words or in return which lower the authority of the court and interferes the judicial proceeding means criminal contempt of court.

- In the recent case of *J. R Parashar v. Prashant Bhushan* the Supreme Court fined advocate Prashant Bhushan Re 1 in the case of contempt of court and sentenced him for 3 months of jail and barred him from practicing for 3 years. Prashant Bhushan, a senior lawyer known

as PIL lawyer vilified the Chief Justice of India in his tweets. He was told apologize to the court and then decision would have been in court's hand but he did not apologize to the court for the statements he made.

- In the case of Prem Surana Vs. Additional Munsif and Judicial Magistrate a lawyer slapped a magistrate officer in open court. It was considered to be criminal contempt and in fact considered to be demeaning to the whole judiciary system.

Punishments under contempt of court act:

S-12 of this act deals with contempt of court. In this act a person is punished with simple imprisonment for a term which may extend to six months or fine which may extend to 2000 Rs or both. In the case of Sudhakar Prasad v. Govt. of A.P. and Ors.⁴ Supreme Court held that the contempt of court Act is intrinsic in nature and cannot curtail the implementation of jurisdiction by the Article 129 and 215.

Period of limitation:

The time limit should not exceed 1 year from the date from which contempt is alleged to have been committed. The proceeding must be initiated within 1 year from the date of the contempt.

Contempt of Court v. Article 19

The act curtails article 19 i.e. freedom of speech and expression as it shields judicial institutions from unwarranted denunciation. The reason why contempt of court is being criticized is because it violates the fundamental right of freedom of speech and expression which is guaranteed under Article 19 of the Constitution of India. Article 19 states that freedom of speech and expression includes criticizing courts and its functioning but on the other hand court uses the power of contempt to punish the one who disrespects the court and interferes in the administration of justice. It is very necessary to maintain balance amongst all the organs created by the constitution. John Milton said "for a liberal society it is compulsory to give the right to people to freely express their views and opinions about the members of society". Freedom of speech and expression also includes the right criticize any institution but that is violate by the contempt of court act. Press has a very vital role to present the opinions of general mass but due to this act the press cannot express freely. In a democratic country, people should be considered supreme and should have right to speak and criticize against institution freely but this act ceases the common public from expressing their views and opinions about the judiciary. In section 5 of this act it is written that fair and reasonable criticism is not considered as contempt of court but it is in the power of judiciary itself to decide that if the criticism is fair or not. And it is against the principle that "no one can be judge in its own case." In the case Batheena Ramkrishna Reddy V. State of Madras⁵ the appellant alleged the High Court judge to be indulged in bribery but the appellant was charged under contempt of court. After the investigation it was found that the allegations against the judge were true.

CONCLUSION:

Contempt of Court is provision made to safeguard the integrity and dignity of the court. On the other hand, it violates the Article 19 i.e. freedom of speech and expression. Even lawyers aren't immune to this Act, they too have to obey the rules and regulations of court of law while

representing their clients. Media and press is also not exempted from this Act and they cannot disrespect the judicial system while writing or printing about them. Judges have the circumspection to determine what a person should be held for and under which type of contempt.

In this Act it is also concluded that the contempt of court is not for judges personally but for the judicial system altogether. It also states that criminal contempt of court is mostly regarding the freedom of press. Anything published orally or in written that demeans the dignity of court comes under criminal contempt. This topic also deals with concept of apology under the contempt of court Act. It also states that in case of apology the decision lies in the hands of court to accept it or not. Civil contempt refers to disobedience of court whereas criminal contempt refers to publication of some derogatory statement or remark which interferes with the administration.

REFERENCES:

- <https://thelawblog.in/2020/03/23/contempt-of-court-v-freedom-of-speech-expression/>
- <http://www.legalserviceindia.com/legal/article-472-contempt-of-court-analysis.html>
- <https://criminal.findlaw.com/criminal-charges/criminal-contempt-of-court.html>
- <https://www.scconline.com/blog/post/2014/06/09/unconditional-apology-in-a-criminal-contempt-matter-should-not-be-a-calculated-strategy-to-avoid-punishment/>
- https://shodhganga.inflibnet.ac.in/bitstream/10603/237655/10/10_chapter%202.pdf