CONTEMPT OF COURT AS DEFINED IN “CONTEMPT OF COURTS ACT 1971”

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Abstract: -

Contempt of Courts means any act that interferes and obstructs in the process of administration of Justice or undermines or lowers the authority & dignity of the courts and bring them into disrespect and disrepute. It is therefore, necessary that courts are vested with the power to punish for committing the offence of contempt of court. In India the first statute to deal with the offence of contempt of court was contempt of court Act 1926. After independence the Contempt of Court Act 1952 was enacted. However one common lacunae was conspicuous in both the earlier Act. Both the Contempt Act 1926 & 1952 did not define the offence of Contempt. On the basis of Sanyal Committee report & Joint selected Committee known as Bharghab Committee the Contempt of Court Act 1971 was brought in incorporating the definition of Contempt in clear and definite terms.

Keywords: - *Contempt, courts, judiciary, legislations*

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INTRODUCTION

During the British Regime in India Contempt of Courts Act was passed in 1926 in order to punish the persons who hinders or impairs the judicial proceedings or interferes in the administration of Justice. Thus the Contempt of Court Act 1926 may be called the first statute as the law of Contempt. After Independence Contempt of Court Act 1926 was replaced by Contempt of Court Act 1952. The Said Act was brought in order to consolidate the provisions relating to Law of Contempt so that it can be made applicable to the High Courts. It is observed that there was no significant changes in the Contempt Power of "Contempt Act 1956" from the Contempt powers as made in the earlier Act "Contempt of Court Act 1926". From a comparative study of both the Contempt Act 1926 and Contempt Court Act 1952 we will find that the latter Act was an improvement over the former in two respects. In the definition part of Act 1952 it clearly says that High Court means the High Court for part A State or part B State. In addition to this it also says that the High Court is also inclusive of a Judicial Commissioner Court in part C State. Section 2 of the Contempt of Courts of Act 1952 says, "High Court" means the High Court for a Part A State or a Part B State, and includes the Court of the Judicial Commissioner in a part C State."¹

In the previous Act 1926 the definition of High Court was qualified as to include specially those High Courts that were established by Letters Patent. Secondly the latter Act i.e. the Act 1952 was more definite and explicit so far the power & Jurisdiction of the High Courts are concerned. Section 5 of the Contempt of the Court Act 1952 says "A High Court shall have jurisdiction to inquire into or try a contempt of itself or any court subordinate to it, whether the contempt is alleged to have been committed with or outside the local limits of its jurisdiction and whether the person alleged to be guilty of the contempt, is within or outside such limits."²

Thus no matter whether the contempt was committed or alleged to have been committed within or outside of the local limits of its jurisdiction and no matter whether the person alleged to be guilty of the contempt was within or outside such limits, the High Court including the Court of Judicial Commissioner shall have the power and Jurisdiction to inquire into and try the said act of Contempt committed against or against any court subordinate to it.

So far the above mentioned two Acts regarding Contempt of Court are concerned it is said that none of these is a fool proof measure to deal with the offence of Contempt. The 1952 Act like the Act of 1926 suffered from many shortcomings. First and foremost there was no definite definition attached the word contempt. This was the greatest weakness of the Act 1952. The legislature had brought an Act creating an offence but without defining the same or providing the ingredients which shall or likely to constitute the offence contempt.

Thus the previous Contempt Act i.e. Contempt of Court Act 1926 and Contempt of Court Act 1952 have not defined very exhaustively what constitutes Contempt. Secondly both of them have not even contained any specific provision so far as the procedural aspect of Contempt of Law is concerned. Speaking otherwise the Law relating to Contempt of Court as existed prior to the Act 1971 was somewhat uncertain, undefined and unsatisfactory. Juxtaposed to individual liberty & freedom of speech and expression contempt Law was supposed not to be antithetical to the above mentioned constitutional values. Hence a Committee was setup under the Chairmanship

H.N. Sanyal the then additional solicitor general to examine in great details the law and the related problem that are likely to arise in the context of Contempt of Court.

The Committee was required³

- (i) to examine the law relating to contempt of courts generally, and in particular, the law relating to the procedure for the punishment thereof;
- (ii) to suggest amendments therein with a view to clarifying and reforming the law wherever necessary ; and
- (iii) to make recommendations for codification of the law in the light of the examination made.

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Even the vacillation of judicial decisions in the matters of Contempt is very much evident from the Report Sanyal Committee. To quote Sanyal Committee,

"WE realized as we proceeded without work that the task before us was by no means easy. We had to devise a set of rules which would steer clear of the Scylla of the contempt of judicial authority and the Charydis of undue restraints on the individual's freedom. In this task, we derived considerable assistance from the opinions received by us and we are indeed very grateful to all these who responded to our request. It is somewhat unfortunate that judicial decisions in this branch of the law have not that clarity and definiteness which judicial decisions relating to some of the other branches of law have. In case after case, there is invariably a board and assertion of an unlimited power in the courts to punish for contempt. At the same time, this assertion of what may perhaps be termed an omnipotent power is tempered by the statement that the power would be exercised sparingly and only in exceptional cases. Against this background, delimitation of this power becomes somewhat difficult, It may be that a person reading this Report may accuse us of having been somewhat over-cautions in our approach to this branch of the law, but neither the present state of the law nor the comprehensiveness of the examination involved perhaps we are the first Committee whose terms of reference have covered such a wide field would justify the adoption of any other line of approach ; (for we would undermine the confidence of the public the administration of justice- a confidence which is so essential for the preservation of our liberty)."⁴

After eliciting views and opinions of general public, State Govt. High Courts, Bar Councils, Union etc. the committee submitted its report on 28th February 1963 on the basis of the report the Contempt of Court Bill, 1963 was introduced in the Rajya Sabha in 29th February 1968.

The said Bill was referred to Joint select Committee on Contempt of Court (Bhargava Committee). The J.S.C. was very explicit regarding the absence of a suitable definition of Contempt in the Bill. The Committee in its report at Para 15 observed. "The Bill as- introduced in the House did not define 'Contempt of Court' in express terms. Clauses 3 to 7 of the

Bill only provided in negative terms what acts did not amount to contempt of court. The law of contempt of court touches upon citizens' fundamental rights to personal liberty and to freedom of expression and there it is essential that all should have a clear idea about it. The Committee were however aware that it would be difficult to define in precise terms the concept of contempt of court, nevertheless it was not beyond human ingenuity to frame or formulate a suitable definition thereof. The Committee have, therefore, after giving a very anxious and elaborate thought to this aspect of the Bill, evolved a definition of the expression 'contempt of court, in Clause 2 of the Bill. While doing so, the Committee have followed the well known and familiar classification of contempts' into 'civil contempts' and 'criminal contempts' and have given essential indications and ingredients of each class or category of contempt. The Committee hopes that the proposed definition will go a long way in enabling the public to know that contempt of court means so that they could avoid it; and the courts would find it easy to administer it. The proposed definition would also, the Committee trust, remove uncertainties arising out of an undefined law and help the development of the law of contempt on healthier lines." The Contempt of Court's Act 1971 provides a comprehensive definition of Contempt of Court.⁵

Before the Act 1971 very often the charges of Contempt as well as the validity of the Act 1952 were questioned on the ground that in the absence of a comprehensive and definite definition the Contempt of Court has become a vague concept and thus was constitutionally objectionable. The said lacuna has been removed in the present Act 1971.

Obviously it was not an easy task to provide a definite and comprehensive definition of Contempt of Court. As observed by Niyogi, J:n Telhara cotton Ginning company Ltd Vrs. Kashinath Gangadhra Namjohsi⁶. The offence of Contempt without a proper definition can be stretched too far. It is apt to quote Lord Harwicke in *Read V. Huggins*.⁷ "There are three different sorts of Contempt. One kind of contempt is scandalizing the Court itself. There may be likewise a contempt of this Court, in abusing parties who are concerned in causes here. There may be also a contempt of this Court, in prejudicing mankind against persons before the case is heard".

Pursuant to this line of classification the Act 1971 comes out with a comprehensive & definite definition of Contempt of Court.

From an analysis of the above definition it is understood that the offence of Contempt can be classified under the two heads---- Civil & Criminal.

Civil Contempt:[S.2(b)]

As pointed out in Section 2(b) of Contempt of Court Act 1971, civil contempt means-

- (i). willful disobedience to any judgment, decree, direction, order, writ or other process of a court;
- (ii). or willful breach of an undertaking given to a court

The essential ingredient is 'wilful' disobedience and not any and every disobedience due to various reasons such as delay due to unavoidable circumstances, or inadvertence. That it was 'wilful' has to be proved. 'Wilful' connotes 'purposefulness' and 'clear intention to flout'. Similarly breach of an undertaking should also be proved to be willful. If 'wilfulness' is not made out the court will refuse to exercise its contempt power to punish the alleged contemner.⁸

Earlier *Mens Rea* was not an essential ingredient of the offence of contempt. No particular mental element was required to constitute the offence of Contempt. Simple disobedience of order of the Court was sufficient to constitute the offence. However under the Act 1971 the incorporation of the word Wilful in clause (b) makes it clear that the element of *Mens Rea* is necessary to constitute the offence of Contempt. Civil contempt does not now attract strict liability or liability irrespective of *mens rea*. In view of this earlier case-law should be treated with caution. So far as civil contempt is concerned it can only illustrate the *actus reus* or wrongful act necessary for the offence, but it will be punishable under the Act only if *mens rea* is superadded to it.⁹ **'Wilful' meaning of:**

Civil contempt involves willful disobedience to the order of the Court. The meaning of 'wilful' is explained by Bramwell, L.J., in *Lewis V. The Great Western Railway Company*¹⁰, as follows:--

"Wilful misconduct" means misconduct to which the will is a party, something opposed to accident or negligence. The same idea was expressed by Lord Russell, L.J., in *R. V. Senior*¹¹ where he observes:

"Wilfully" means "done deliberately." Bowe, L.J., explains more elaborately in *In Re, Young and Harton's*

Contract¹² as follows:-

"The other word which it is sought to define is 'wilful'. That is a word of familiar use in every branch of law and although in some branches of the law, it may have a special meaning, it generally, as used in courts of law, implies nothing blamable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and intends to do what he is doing, and is free agent."

Term 'wilful' would ordinarily connote deliberate and conscious disregard of the order of court or the undertaking given to it but even where the alleged contemner is in the know of the order of the court or is conscious and aware of the consequences and implications of the order and ignores it or acts in violation thereof, it must be held to be wilful disobedience. It is no defence to plead that he was awaiting instructions from his superiors.¹³ Disobedience of orders of the court, in order to amount to "civil contempt" under Section 2(b) of the Contempt of Courts Act, 1971 must be "willful". Proof of mere disobedience is not sufficient. Where there is no deliberate flouting of court orders but a mere misinterpretation of executive instructions, it would not be a case of civil contempt.¹⁴

"Civil contempt" under Section 2(b) of the Contempt of Courts Act means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of undertaking given to a court. "Wilful" means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or

to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extraordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case.¹⁵

Civil contempt- Disobedience of Court's order constitutes contempt only when willful or deliberate

Where the Under Secretary to the Board of Revenue wrote to Magistrates to ignore decision of High Court even though it was against them, the Supreme Court held that it was a flagrant interference with the course of justice.¹⁶ *Dibakar Satpathy V. Hon'ble C.J. & Justices of Orissa High Court*, AIR 1961 SC 1315: (1962) 1 SCR 326: (1961) 2 Cri LJ 437. In *Maruti Udyod Led. V. M.C. Mehta*¹⁷ case it has observed that the alleged contemnors not only prevaricated their stand at different stages in different proceedings, they intended to prolong the litigation one way or the other. They had accepted their liability at least to the extent to Rs.7.63 crores. They must have invested the said amount. The parties hereto accepted that the disputes and differences pending between them should be referred to an arbitrator. It was agreed to by petitioner only on the representation made by the alleged contemnors that they would furnish a bank guarantee provide an order is passed in that behalf by the Arbitrator. (Para 26)

That fact that the Arbitrator issued such a direction is not in dispute. The Arbitrator even otherwise had the jurisdiction to pass interim order in terms of Section 9 of the Act. Corrections or otherwise of said order has not been questioned. Despite undertaking given before the Supreme Court, in the aforesaid matter, the alleged contemnors did not furnish any bank guarantee. Admittedly, their application for modification was also dismissed. Not only, they went back from the undertaking given before the Supreme Court, they also sold away the only property which was in their possession. The property situated at Secunderabad admittedly had been claimed by the State of Andhra Pradesh. The alleged contemnors even did not disclose that the said property was an encumbered one. The same was disclosed only at a later stage (Para 27)

If they were not in a position to furnish any bank guarantee or otherwise, they could have taken such an unequivocal stand before the courts. They not only suppressed material facts, but also made a wrong representation that in the event the property at Secunderabad is sold, the price whereof is about 11 crores and, thus, from the sale proceeds the dues of the debtors would be satisfied. Such a claim was evidently made as, would not appear, that an application for regularization was pending before the State. The alleged contemnors did not have any subsisting right, title and interest in or over the said property. They could not have made a proposal before the Supreme Court for sale of the property only on the basis of a title which they could only derive on happening of a contingency viz. regularization thereof by the State. A proposal for sale of the property could be made only if the respondents had any subsisting title thereto and not otherwise. (Para 28) The alleged contemnors have misled the Supreme Court and have committed gross contempt of the Supreme Court. It is eminently fit case where jurisdiction of the Supreme Court under Article 129 as also the provisions of the Contempt of Courts Act, 1971 should be invoked. Contemnor 1 who is the Managing, Director is sentenced to 6 months' imprisonment and Contemnor 2 to 3 months' imprisonment. (Paras 29 to 35).

Though the respondent had tendered unconditional apology before the Court, the apology appeared to be not genuine and bona fide for, in his earlier affidavit, he had also offered a similar unconditional apology but falsely reiterated that he had vacated the premises. The record however shows that following his arrest pursuant to the nonbailable warrant issued by the Court, the respondent was in custody for some days till he was released on bail under orders of the Court. Considering this aspect of the matter and the fact that he has now handed over vacant possession of the suit premises, it is not necessary to send him behind the bars again by imposing substantive sentence. At the same time he should be punished with fine not only for the wrong done by him but also to deter others from filing such false affidavits. He is, therefore, sentenced to pay a fine of Rs. 2000, in default of payment of which he will suffer simple imprisonment for one month. The fine, if realized, shall be paid to the petitioner as compensation. The rule is thus made absolute.¹⁸

Criminal Contempt :

Section 2 (c) defines criminal contempt to mean: Publication (a) by words spoken or written; (b) or written or by signs; (c) by visible representations or otherwise or any matter; (d) or any other act whatsoever which-

- (a) scandalizes or tends to scandalize
- (b) or lowers or tends to lower the authority of any court: or prejudices or interferes or tends to interfere with the due course of any judicial proceeding; or
- (c) interferes or tends to interfere with,
- (d) or obstructs or tends to obstruct the administration of justice in any other manner.

Thus, scandalizing or prejudicing a judge or interfering with the administration of justice is Contempt of Court. Even tending to scandalize or tending to prejudice or tending to interfere or obstruct is enough to invoke action in contempt. But, as pointed out by Supreme Court in *Naraindass V. Govt. of M.P.*, it is necessary to examine whether any of the impugned statement do interfere or have a tendency to interfere with the due course of the proceeding (here an appeal and a writ petition) "by creating prejudice against the appellant or the writ petition."

Any act to scandalize the court or to lower the authority of the court or to interfere with or to obstruct or interfering the administration of Justice in any manner or to challenge the authority or majesty of justice, would be a criminal contempt. Any conduct of the contemner which has the tendency or produces a tendency to bring the judge or court into contempt or tends to lower the authority of the court would also be contempt of the court.¹⁹

Scandalizing Judge:

In *Narmada Bachao Andolon V. Union of India*²⁰, it was held

- (i) that scandalizing the court is not only an offence under the Act but is *sui generis*. While courts are not unduly sensitive to fair or even outspoken comments, in the larger interest of protecting the administration of Justice, no one can be permitted to distort orders of the court and deliberately give a slant to its proceedings and bring it to ridicule.
- (ii) Courts succumbing to pressure tactics of litigants would result in negation of rule of law. Threats of public protests, meetings and undertaking satyagrahas against orders of Supreme Court *prima facie* appear to be an attempt to prejudice or interfere with due course of judicial proceedings.
- (iii) Courts cannot be forced by pressure tactics of litigants to change their decisions, by organizing protests against court orders in pending judicial proceedings.
- (iv) Supreme Court's shoulders are broad enough to shrug off comments and no action in contempt is needed to be initiated.

The confidence of the public in the impartial administration of Justice will be undermined if persons are allowed to attack judicial conduct with impunity. Insulting a Judge engaged in Judicial work or imputing corrupt known as Scandalizing the Court. The test for determining whether this kind of contempt has been committed is to ascertain whether the act in question has a tendency to poison the fountain of justice and to destroy the confidence of the people in the administration of justice.²¹

The Supreme Court observed in *The Editor and Publishers of the Times of India, In Re*. "If an impression is created in the minds of the public that the Judges of the highest Court in the land act on extraneous considerations in deeding cases the confidence of the whole country in the administration of justice is bound to be undermined and no greater mischief than that can possibly be imagined. If the publication of the disparaging statement is calculated to interfere with the due process of justice or proper administration of law by such court, it can be punished summarily as contempt. One is a wrong done to the Judge personally while the other is a wrong done to the public. It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual and prospective litigants from placing a complete reliance upon the court's administration of justice or it is likely to cause embarrassment to the mind of the Judge himself in the discharge of his judicial duties. It is well established that it is not necessary to prove affirmatively that there has been interference with justice by reason of such defamatory statements; it is enough if it is likely or tends in any way to interfere with the proper administration of law.

What is material is the nature and extent of the publication and whether or not it was likely to have an injurious effect on the minds of the public or of the judiciary itself and thereby lead to interference with the administration of justice.

Criminal Contempt: Lowering the Authority of Courts:

Disobedience of a specific order of a court undermines the authority and dignity of the Court in the particular case. In the followed deliberately and *mala fide*, such conduct also undermines the constitutional authority of the High Court and respect for persons concerned in that case, whereas the later has a wider and therefore, more disastrous repercussion. It not only lowers authority of the High Court, but there will not be a rule of law but only uncertainty and confusion. Contempt of court is disobedience of a court and thus lowering its authority and dignity. The authority of the court and the administration of law are brought into disrepute, when the orders if the Superior Courts staying proceeding are disobeyed by the inferior court to whom the order is addressed. Such inferior court commits contempt of court. It not only disobeys but the disobedience is, calculated to undermined the respect of the public for the Superior Court and affects the preservation of law and order.

In *Baradakantha Mishra V. Bhimsen Dixit*²² the appellant was a member of the judicial service in the state of Orissa. When he was functioning as the Commissioner of Hindu Religious Endowments, a revision petition was filed before him and the petitioner in the revision petition cited a decision of the Orissa High Court in support of his case. The appellant refused to follow the decision on the ground that, that decision was under challenge before the Supreme Court of India. Thereupon, the petitioner in the revision petition filed an application before the High Court of Orissa for taking action for contempt against the appellant. The High Court found the appellant guilty of contempt, and the Supreme Court. In appeal, confirmed the finding and the punishment imposed. It was contended before the Supreme Court that there was no precedent for taking such action for contempt.

The Supreme Court observed that the absence of a precedent, while not precluding a Court from holding a particular act as contempt, would put the court on guard to see that the area of contempt is not being unduly expanded.

The foundation of a democratic society is the rule of law and the Judiciary is the guardian of the rule of law. In a democracy, where, there is a written constitution, which is above all individuals and institutions, where a power of judicial review is conferred on the Supreme Court and the High Courts the judiciary has a special duty which is additional to the ordinary duty of adjudication of disputes. This special duty is to see that all other bodies do not exceed the limits of their authority. If the Judiciary is to perform the effectively the dignity and authority of the Courts must be respected and protected, whatever the consequences may be. Otherwise, the constitutional structure will crumble. Any conduct which may lead to such a situation would be treated as criminal contempt and punished accordingly.

In England, there would be strict liability for scandalizing of court only, if it takes the form of a publication addressed to the public and creates a sub stations risk that the course of Justice will be seriously impeded or prejudiced in relation to certain pending proceedings which are in active prosecution in a court. In other cases of scandalizing the court, there would be no strict liability and absence of *mens rea* would be a good defence.

Under the Indian Law the strict liability rule is applied even where the contempt consists of an Act other than that of publication and even where it affects not particular judicial proceeding but the administration of justice generally.

Scandalisation of the Court is a species of contempt and may take several forms. A common form is the vilification of the Judge. When proceedings in contempt are taken for such vilification the question which the Court has to ask is whether the vilification is of the Judge as a judge, or it is the vilification of the Judge as an individual. If the latter the Judge is left to his private remedies and the Court has no power to commit for contempt. If the former, the court will proceed to exercise the jurisdiction with scrupulous care and in cases which are clear and beyond reasonable doubt. Secondly, the Court will have also to consider the degree of harm caused as affecting administration of justice and, if it is slight and beneath notice, Courts will not punish for contempt. This salutary practice is adopted by S.13 of the Contempt of Court Act, 1971. The jurisdiction is not intended to uphold the personal dignity of the Judges. That must rest on surer foundations. Judges rely on their conduct itself by its own vindication.²³

Though the Act 1971 has classified the Contempt as Civil & Criminal however, it is not to be forgotten that very often it is not possible to distinguish between the two as the dividing line between the two kinds of Contempt is imperceptible.

In *Dulal Chandra V. Sukumar*²⁴ the following was observed.

“The line between civil and criminal contempt can be broad as well as thin. Where the contempt consists in mere failure to comply with or carry out an order of a court made for the benefit of a private party, it is plainly civil contempt and it has been said that when the party, in whose interest the order was made, moves the court for action to be taken in contempt against the contemnor with a view to an enforcement to his right, the proceeding is only a form of execution. In such a case, there is no criminality in the disobedience, and the contempt, such as it is, is not criminal. If, however, the contemnor adds defiance of the court to disobedience of the order and conducts himself in manner which amounts to obstruction or interference with the course of justice, the contempt committed by him is of a mixed character, partaking, as between him and his opponent, of the nature of a civil contempt, and as between him and the court or the State, of the nature of a criminal contempt. In cases of this type, no clear distinction between civil and criminal contempt can be drawn and the contempt committed cannot be broadly classed as either civil or criminal contempt. To put the matter in other words has been disobedience of an order made for the benefit of a particular party, but where it has consisted in setting the authority of the courts at naught and has had a tendency to invade the efficacy of the machinery maintained by the State for the administration of justice, it is a public wrong and consequently criminal in nature.”

Conclusion

Contrary to the earlier misconception that in absence of a proper and definite definition contempt Jurisdiction may be misused in the hands of Judiciary to protect the individual ego of the individual Judge, the Contempt Courts Act 1971 played a very significant role in providing a precise and definite definition to the offence of Contempt. By providing a definite and concrete definition the scope of Contempt power is limited and it cannot be used superficially or arbitrarily. Admittedly Contempt Power is an extraordinary power in the hands of Judiciary. The said power is to be used not to assert the Supremacy of individual Judge but to assert the Supremacy of Rule of law. Very often Rule of Law gets its manifestations in the rulings of Courts and tribunals. The Contempt Jurisdiction is therefore, an inherent power of the Court to uphold the Majesty and dignity of the Courts.

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