

The Evolution of Law of Contempt

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“be you the contemnor ever so high, the law the People's expression of Justice is
above you”

Contempt power first originated in the U.K. and has largely been developed at common law. It is of due importance for the people to understand and to maintain the respect and dignity of the judiciary. The root of proper administration in judiciary is the trust and confidence on it by the people, regarding the just and fair judgments. The salient point for the amelioration of administration of law is that the people should have belief in the judiciary and that any judge will not do any wrong to any person. There will be no biasness by the judges. To maintain this dignity of the judiciary and also to make sure that there is no kind of interference in the work of the judiciary and to ensure the free and fair decision of the court, The Contempt Of Courts Act, 1971, was introduced. This law vindicates the public interest in the due administration of judiciary and justice. It is indispensable to the operation of a democratic society whose basic postulate is that the government shall be based on the consent of the governed.

Open justice permits fair and accurate reports of court proceedings to be published. The media has a right to know what is happening in courts and to disseminate the information to the public which enhances the public confidence in the transparency of court proceedings. Judges are under several visible constraints unlike the executive branch, they are to conduct proceedings in open court. This holds great value, since publicity of proceedings is, in the words of Lord Shaw:

"the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial..."²

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² Ref. Scott -vs- Scott 1913 AC 417

What is Contempt of Court?

It has been defined by English courts as a disorderly, contemptuous, or insolent behavior toward the judge or magistrates while holding the court, tending to interrupt the due course of a trial or other judicial proceeding, may be prosecuted as "direct" contempt. The term "direct" means that the court itself cites the person in contempt by describing the behaviour observed on the record.

Contempt of court is the offense of being disobedient to or disrespectful towards a court of law and its officers in the form of behavior that opposes or defies authority, justice, and dignity of the court. It manifests itself in willful disregard of or disrespect for the authority of a court of law. At times, if there is any kind of publication containing discreditable comments against a judge, which causes general public outrage and further destroys the trust of the public in the judiciary and causes embarrassment to the judge, is also considered as contempt of court.

English Concept of Contempt of Court

Protecting Justice is the English approach. Public confidence in the courts as the proper forum for settlement of disputes as part of the administration of justice, under the common law, was given greater weight than the goals served by unrestrained freedom of the press. As a consequence, the exercise of free speech respecting ongoing court proceedings stood limited³

One of the earliest and most revered judgments enunciating the law of contempt, was given way back in the 18th century by the King's Bench by Lord Justice Wilmot in *R v. Almon*.⁴

This pronouncement is reflective of the high pedestal the King of England enjoyed, as the ultimate sovereign and the sole repository of all rights of man. The King was the *fountain* of every species of justice dispensed with in the kingdom. Judges, were, his delegates having the custody of His Oath to distribute justice for the King.

³ Sahara India Real Estate Corp. Ltd. & Ors v Securities & Exchange Board Of India & Anr
AIR 2012 SC 3829

⁴ (1765) Wilm243

The arraignment of the justice of the Judges, is arraiging the King's justice; it is an impeachment of his wisdom and goodness in the choice of his Judges, and excites in the minds of the people a general dissatisfaction with all judicial determinations, and indisposes their minds to obey them; and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice, and, calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the Judges, as private individuals, but because they are the channels by which the King's justice is conveyed to the people. To be impartial, and to be universally thought so, are both absolutely necessary for the giving justice that free, open, and uninterrupted current, which it has, for many ages, found all over this kingdom, and which so eminently distinguishes and exalts it above all nations upon the earth.

The power of issuing contempt proceedings are best understood in the words of Livy *Authoritate magis quam imperio pollebat:*” it is not “imperium” the word authority here does not indicate a coercive power, but the authority that the courts derive in form of the respect and obedience that it garners from the public. This very authority acts as the great auxiliary of the power , and for that reason the constitution gives them this mode of proceeding against the contemnors who endeavour to impair and abate it and therefore every instance of an attachment for contumelious words, spoken of a rule of the Court (of which there are great many) is a case in point to warrant an attachment in the present case, where a rule of Court is the object of the defamation.

The power of issuing notice for the offence rested not in the hands of the judges, but the King himself. It was this notice that ignited the proceedings against the alleged contemnors “Contempt of the Court” involves two ideas: *contempt of their power, and contempt of their authority*. The word “authority” is frequently used to express both the right of declaring the law, which is properly called jurisdiction, and of enforcing obedience to it, in which sense it is equivalent to the word power: but by the word “authority,” I do not mean that coercive power of the Judges, but the deference and respect which is paid to them and their acts, from an opinion of their justice and integrity.

An action of “scandalum magnatum” is the action to remedy private injury: which is compensation, and not punishment.. But if authority of the court is to be trampled upon by media, and the people are to be told that the power, given to the Judges for protection of themselves, is prostituted to their destruction, the court will eventually lose its authority.

CONTEMPT OF COURT IN INDIA.

Contempt is an offence sui generis. Hence, The Courts against whom such offence is taken, can punish for the same, themselves. The Constitution of India itself acts as the direct source of power for The Supreme Court and High Courts of punishing for Contempt with as under Articles 129 and 215.

The Contempt Of Courts Act,1971 enlists the contours within which contempt proceedings are to be worked out by the Courts. This Act was preceded by the Contempt of Courts Act, 1926.

The act divides the wrong of contempt into Civil and Criminal.

Civil Contempt is defined as a Wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court⁵, whereas Criminal Contempt is defined as The publication (whether by words, spoken or written, or by signs, or by visible representation, 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.⁶

A contumacious act may be punished with simple imprisonment which may extend to six months, or with fine which may extend to two thousand rupees, or both, with exception of discharge or the remission of the punishment is effectuated on apology being made by the contemnor to the satisfaction of the court.⁷

⁵ Section 2(b) of the Contempt of Courts Act of 1971:

⁶ Section 2(c) of the Contempt of Courts Act of 1971

⁷ Section 12 of the Contempt Of Courts Act,1971

The Need to make Contempt actionable per se ?

Contempt of court is not a disservice only against the judges or the court or the judiciary in general but it also creates a scenario of utter mistrust for the people, as they tend to think ill about the judiciary or the court. The Courts are the repositories of the rights that the forefathers of our country strived for. If the people themselves begin to doubt dispensation of unbiased or equitable justice by the court, it is a failure of the democracy. It is pertinent to note that when criticism is made against a judge, be it of any nature- positive, healthy or even utterly derogatory, the judge, ethically cannot and will not retort. He can neither clarify nor publically speak against what has been said. In the very nature of things, he cannot engage himself in an open war nor indulge in releasing contradictions.⁸

Halsbury's Laws of England enumerate certain innate qualities that a judge needs to follow to sustain the dignity and respect for that office is to deserve respect from the public at large by fearlessness and objectivity in approach to the matters that lie to them for adjudication. Quality of the judgment, restraint, dignity and decorum, a Judge observes in judicial conduct off and on the Bench and rectitude further supplant to⁹

Those who attack the judiciary must remember that they are attacking an institution which is not just indispensable for the survival of the rule of law but which has no means of defending itself. Therefore, literally put, the sword of justice is in the hands of the Goddess of Justice, not in the hands of mortal Judges. Therefore, Judges must receive the due protection of law from unfounded attacks on their character.

As held in *C. K. Daphtary*¹⁰ that under the existing law of contempt of court any publication which is calculated to interfere with the due course of justice or proper administration of law by this Court would amount to contempt of court. A scurrilous attack on a Judge, in respect of a judgment or past conduct has in our country the inevitable effect of undermining the confidence of the public in the Judiciary; and if confidence in Judiciary goes, administration of justice definitely suffers.

⁸ Canons of Ethics, Judicial Conference Resolution of 1999 that "(8)A Judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.

⁹ Halsbury's Law of England on the topic of 'Scandalising the Court

¹⁰ *C. K. Daphtary & Ors vs O. P. Gupta & Ors*, 1971 AIR 1132, 1971 SCR 76.

Personal Attacks on a Judge- Contempt of Court?

Fair comment against a judgment, or an act of the judges is anyhow expunged from the contours of contempt laws.

The rider that has to be considered in deciding a matter relating to adverse comments made against judges is whether the alleged imputation acts merely like libel or defamation against that particular judge; or it interferes with the due course of justice and proper administration of law. In the former, action will lie in torts law whereas the latter will lead to contempt proceedings. Adding more fortification to this is the positive encroachment into the sphere of defamation wherein a possible apprehension of any decrement of the trust and independence in the minds of the public repositied with the judiciary is shaken.¹¹

A publication by a person against any judge which contains or which is a personal attack on the judge which is concerned with any judgments or decisions of the judge or any personal information regarding a particular judge, which inevitably will affect the public and cause an apprehension in the mind of the public in relation to the judge and the court as well, is contempt of court.

Also in the case of *Brahma Prakash Sharma*¹² Mukherjee, J stated that contempt of court 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 complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in 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 an actual interference with the administration of justice by reason of such defamatory statement; it is enough if it is likely, or tends is, anyway, to interfere with the proper administration of law.

The recent Constitution Bench judgment *Dr. Subramanian Swamy v Arun Shourie*.¹³ has dealt with the similar issue of personal attack on a sitting judge of the Supreme Court. The Editor of The Indian Express, Arun Shourie published an article that made adverse comments on the role of Justice Kuldip Singh, in his capacity as the Commissioner of a Commission, while he held the position of a Judge of the Supreme Court of India. Contempt proceedings were initiated with the fiat of the Attorney General and eventually, in 2014 this matter came to be decided.

¹¹ Perspective Publication v State of Maharashtra 1969 2 S.C.R 799.

¹² Brahma Prakash Sharma & Ors. v. The State of [1953] S.C.R. 215., [1953] S.C.R. 1.

¹³ 2014(8) SCALE 679

The focus of this judgment majorly lay on the fact whether or not a Commission constituted under the Commissions of Inquiry Act, 1952 came under being a court or not, which was answered in the negative. Also, the other focus of the judgment was on the merit of the justification so given, which was that of truth. But since the capacity in which the alleged contempt was aimed at was of the role of Justice Singh as the Commissioner and not the Sitting Judge, the answer to latter question of truth as a justification or not was merely an academic exercise.

The principle deducible from these cases is that punishment is inflicted for attacks of this character upon Judges, not with a view to protect either the Court as a whole or individual Judges of the Court from a repetition of the attack, but with a view to protect the public, and specially those who, either voluntarily or by compulsion, are subject to the jurisdiction of the Court, from the mischief they will incur, if the authority of Tribunal be undermined or impaired

Truth as a Defence

The Contempt of Courts Act 1971 was amended in the year 2005 to add within the ambit of justifications for contempt, another justification, viz. Truth. The amended section now reads

“13. *Contempts not punishable in certain cases.*—Notwithstanding anything contained in any law for the time being in force,—

- (a) *XXXXXXXXXXXXXXXX-XXXXXXXXXXXXXXXX-XXXXXXXXXXXXXXXX*
- (b) *the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide.*

Section 5 of the Act also reads as-

“5. *Fair criticism of judicial act not contempt -*

A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided”

Truth can be a defence in contempt proceedings but only in few cases. There are few principles of truth to be admitted as a defence in contempt or proceedings. The Court held in *R.K. Jain's*¹⁴ case that it may permit truth as a defence if two things are satisfied, viz., (i) it is in public interest and (ii) the request for invoking said defence is *bona fide*.¹⁵ Chief Justice Mohammed Hidayatullah, has in *RC Cooper*¹⁶ observed that undoubtedly that the Court like any other institution does not enjoy immunity from fair criticism. This Court does not claim to be always right although it does not spare any effort to be right according to the best of the ability, knowledge and judgment of the Judges. It is said that judges are highly informed and aware of the possible mistakes that could be made because firstly, their immense academic experience and also the day to day training that they get while hearing lawyers from two sides of a case.. Respect is expected not only from those to whom the judgment of the Court is acceptable but also from those to whom it is repugnant. Those who err in their criticism by indulging in vilification of the institution of courts, administration of justice and the instruments through which the administration acts, should take heed for they will act at their own peril. We think this will be enough caution to persons embarking on the path of criticism.

Fair Comment as a Defence

In the celebrated English case of in *The Queen v. Gray*¹⁷, Lord Russel of Killowen C.J., held that judges and courts were alike open to criticism and if reasonable argument or expostulation was offered against any judicial act as contrary to law or the public good no court could or would treat that as contempt of court but it was to be remembered that the liberty of the press was not greater and no less than the liberty of every subject. In that case it was held that there was personal scurrilous abuse of a judge and it constituted contempt.

¹⁴ *Indirect Tax practitioners' Association v. R.K. Jain*; [(2010) 8 SCC 281]

¹⁵ Section 13(1) (b), Contempt of Courts Act, 1971 (As amended in the year 2005)

¹⁶ *R. C. Cooper v. Union of India* 1970 AIR 564, 1970 SCR (3) 530

¹⁷ (1900) 2QB 36 at 40

It has been held time and again that fair criticism of a judgment is justifiable and that only transgressions of the standards of fairness will be retorted to by means of contempt proceedings. It is criminal contempt to voice opinion on a case pending in court as that would seem to influence the outcome of the matter and to prejudice the parties therein. However, fair reporting of court proceedings and fair comments on the legal issues do not amount to contempt.¹⁸

Neither the Judges, nor their judgments are too sensitive or touchy when it comes to criticism. Outspoken comments, though, made fairly without any malice or attempt to impair the administration of justice and made in good faith in proper language will not attract any punishment for contempt of court. However, when the criticism reeks of a deliberate, motivated and calculated attempt to bring down the image of the judiciary in the estimation of the public or to impair the administration of justice or tend to bring the administration of justice into disrepute the courts must bester themselves to uphold their dignity and the majesty of law.¹⁹



¹⁸ H.G. Rangangoud v M/S.State Trading Corporation Of India Limited & Ors AIR 2012 SC 490

¹⁹ In Re. Roshan Lal Ahuja 1993 Supp.(4) SCC 446