CREDIBILITY OF INDIAN JUDICIARY VS. CONTEMPT PROVISIONS

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Abstract

The effective functioning of judiciary on democratic principles and in accordance with the Constitutional imperatives is the fundamental requirement for the growth of egalitarian society and a progressive state. However, if the same Judiciary, by utilizing the draconian contempt law attempts to annihilate the liberal traditions and ethos of the country by stifling the voice of dissent, then the democracy would be a farce, and freedom, a mirage. The purpose of the rule of contempt of court, in general, is to protect the wide-ranging interest when the court's jurisdiction is questioned and public trust in the administration of justice is undermined. However, India's Supreme Court has begun to employ the contempt law as a weapon of coercion, suppressing the most fundamental human freedoms of speech and expression, including the right to public criticism. The outburst of the apex Court in contempt cases is a testimony of this fact that the Court itself is lowering down its credibility in the eyes of general masses. In this research article, I seek to review the legality of the existing Contempt law of India, in the context of changing socio-economic and political scenario with a view to raise the moot question of democratizing the Indian Judiciary which neither gives the impression of being the repository of public trust because of its intolerance to public criticism, nor seems to be public-oriented for the reason of the undemocratic and outmoded clauses like contempt law in a civilized nation like India, which seriously need to be remedied without delay.

Keywords: Constitutional imperatives, Contempt provisions, Democracy, Indian Judiciary, Public Criticism.

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1. Introduction

In modern period, the importance of an honest judiciary enjoying public confidence is beyond justification. In all the states, functioning on democratic principles, the role of judiciary becomes even more important as it has to shoulder the responsibility of not only, maintaining but strengthening the rule of law, the highest democratic principle. In fact, as the third pillar of democracy, the Indian judiciary needs to imbibe the principles,it is constitutionally mandated to protect which primarily include the upholding and guarding the fundamental freedoms of citizens. However, the Indian judiciary, especially the higher judiciary, has recently shown a clear elitist prejudice and has remained mostly dysfunctional towards the poor and downtrodden. Above all, the judiciary has cast a sacrosanct spell around it so much so that the judges consider themselves as demigods who could do no wrong and no one can question their wisdom and prowess. Even if, some public spirited person dare to do so in the larger public interest, he would have to face the demoralizing contempt proceedings against him where he is penalized for condemning the unjustified personal behaviour of the judges, and not the Judiciary as an institution. It is common knowledge that the whole justice structure is built on the popularity of the people's expectations and confidence. As said by Lord Denning: "Justice must be founded on trust, and trust is shattered as right- thinking people leave believing the judge is biased." However, public faith over the judiciary in India is underquestion which may be a moment of crisis of public confidence for the entire justice delivery system. The tendency of the judiciary in the past few years to consistently and arrogantly exercise its contempt jurisdiction has generated a burning debate on the justifiability of such the court's authority. Contempt of court provisions, which have been appropriately defined as the proteus of the legal universe, need impartial study since they are such an important and significant field of law. This contempt power of the Court has acted as a shield for the judges to mask themselves behind this and thereby evading their accountability and resisting transparency in its functioning.

Draconian Contempt Law and Accountability of Judges in India

The issue of superior judiciary transparency has long been a matter of concern among all strata of society. Although the higher judiciary's influence has grown significantly over time as a result of the public's negative view of the political elite, which the judiciary has used to expand the reach of its acts, its oversight has been increasingly diminished. The V. Ramaswami case demonstrated that impeachment as a solution for judicial wrongdoing is impractical. Since then, there has been a lot of talk about forming an autonomous National Judicial Commission to enforce judicial transparency, but little has come of it so far, including the judiciary's staunch resistance to any independent regulatory agency.. In the intervening time, the SC by judicial decree has held back even the registration of any FIR against a sitting judge, without the approval of the Chief justice. Above all, dreaded Contempt law has been used to silence any public criticism and media probe of judicial misconduct and other grave weaknesses of the judicial system, particularly within the existing Collegium system. As a result, thematter of judicial graft is exacerbated by the higher judiciary's general lack of transparency. The lack of any effective disciplinary mechanism afforded to judges, the self-acquired immunity from even being investigated for criminal offences, the exemption from public scrutiny provided by another judicially created insulation from the Right to Information Act, and finally, the virtual immunity from public criticism due to the draconian law ofcontempt. We are familiar with the fact that modern law, has evolved as a result of a long journey from divine law to natural law and further positive law, and astoundingly it has retained some of the elementary principles and beliefs enshrined in early legal thought. Although modern law is held to be rational and free from myth, which is founded on scientific premises, we witness that it still adheres to the outdated and primitive notions of the court, which is not appropriate and correct for the democratic institution like the Judiciary in the contemporary world. The ruleof contempt is a great illustration of the conflict between logic and mythology that surrounds the judiciary. Former CJI, His Lordship J.S. Verma has once said that, " a judge while maintaining a dignified aloofness must permit public scrutiny to retain credibility" However, the outburst of the Apex Court against those senior lawyers or activists, who raise question about the judicial conduct, has surely belied the expectation of Justice J.S. Verma. The frequent conduct of contempt proceeding has undoubtedly diminished the prestige and authorityof the higher judiciary in the eyes of the public. It has demonstrated the reckless and arrogant attitude of the court toward, the constructive criticism, which fortifies the public perception that the Judiciary tries to use its powers of contempt to hide the rot within the judiciary. It has been alleged that "contempt power is being used as a sledgehammer", in the background of the contempt case involving eminent public personalities like Shanti Bhushan, Prashant Bhushan, Arundhati Roy etc.

Indian Position toward Contempt Law

The Constitution empowers the SC and HCs under Articles129 and 215 respectively to punish people

for their respective contempt. The Supreme Court is described as a court of record by Article 129 of the Constitution, which also gives it the power to prosecute for contempt. A Court of Record is one whose documents are admissible in court and may be presented to some other court. The Supreme Court's Article 129 power is separate from the 1971 Contempt of Court Act. Article 215 protects the High Court's inherent powers, including the ability to sanction itself for contempt. This clause also gives the High Courts the authority to discipline lower courts for contempt. To constitute a successful abridgement of freedom of expression, all articles must pass the reasonableness examination set out in Article 19(2). In other terms, under Articles 129 and 215 of the Indian Constitution, both the Supreme Court and the High Courts have the authority to discipline both themselves and lower courts for contempt. Thus, the upper courts have been empowered by providing the effective immunity from public censure due to the law of contempt of court, which has the notorious effect of curbing free speech in a democratic and constitutional set-up like India. There are three methods in which contempt proceedings can be initiated. A Suo Motu suit may be initiated by the Supreme Court or other High Court of its own, or by a private party filing an application with it. If we dig further, we'll discover that the Court's suo motu authority to launch contempt proceedings against citizens only help to further confuse the situation. Furthermore, Articles 129 and 215 merely maintain the right to prosecute. They don't describe contempt or really specify the types of contempt, defenses that may be used, the mechanism for penalty, the severity of punishment, or the ability to appeal. Thus, the Contempt Act of 1971 contains the fundamental and administrative rule of contempt. Article 19(1) (a) should not apply to contempt that does not require freedom of expression, such as violation to a judicial order or obstructing the administration of justice. However, if the potential offence is scandalising the court or undermining the court's power by words spoken or published, the law's reasonableness may be checked. In order to measure reasonableness, the breadth or reach of "scandalising" in today's world and in a broad democracy like ours will have to be read broadly to guarantee that the crime is sufficiently limited so as not to unduly restrict freedom of expression. The Contempt of Courts Act of 1971, which determines and restricts the court's powers in punishing for contempt of court and governs the process, was implemented with the overall goal of punishing all those who, in some manner, obstruct the efficient administration of justice or bring the judiciary's reputation into disrepute. Under Section 2(c) of the Contempt of Courts Act, 1971, the current concept of criminal contempt in India includes phrases such as "scandalizes or threatens to scandalize or lowers or tends to lower the jurisdiction of any court" and "interferes or tends to interfere with the administration of justice." Noticeably, these expressions are 'incurably vague' and leave a lot of scope for the 'evident arbitrariness', dependent on the opinions, likings and the emotions, evoked in the individual judge and can lead to unreasonable restrictions on the freedom of speech, as guaranteed by the Constitution itself.[10] Thus, the definition of criminal contempt under the Act is extremely wide, and can be easily invoked and thereby harm the public interest However, the glimmer of the hope is that, a 2006 amendment to the Contempt of Courts Act, allowed truth and good faith as a valid defense to a Contempt Action. Similarly, the court will only convict for contempt if the speech "is or appears to be significantly conflicting with the proper course of justice," according to the provision." However, the courts have interpreted the clause to render "scandalising or tending to scandalize" the court's jurisdiction a criminal offence regardless of whether it obstructs justice. It is quite self-evident that the Judiciary in India enjoys enormous power without any sort of accountability. Therefore, the various protections, sanctioned with a view to promote the judicial propensity of avoiding accountability toward the people, should be taken off now. Likewise, preventing the citizens from demanding accountability and transparency, and advocating the same by generating healthy public opinion, can'tbe said to be a 'reasonable restriction' under Article19 (2) of the Constitution. So, it may be added that imposing these Articles 129 and 215 by Courts to stifle bonafide criticism, would have eventually disturbing implications for the advancement of the cause of justice. In the same way, the sword of criminal contempt under the clause, relating to scandalizing the judiciary, in the Contempt of Courts Act, completely annihilates judicial democracy, ultimately rendering the court less and less accountable. With a note of caution, it may be suggested that this provision calls for deletion or amendment in the statute book.

Judicial Stand toward Contempt Law in India

In several instances including suspected disrespect in India, the Supreme Court has been lenient. Contempt cannot be applied to any criticism of the court, judges, or decisions. The Supreme Court has widened the definition of freedom of expression through several decisions, and most civilized nations are increasingly prioritizing it over concepts like scorn, which have the purpose of restricting free speech. The Apex court has, over and over again, held that the law of contempt of court is not the law for the protection of judges and Courts, or to place them in a position of immunity from criticism, they are for the protection of the people. Thus, each and every citizen of the country

is entitled to fair and efficient administration of justice for the secure and peaceful conditions of life and the members of judiciary are not supposed to show their elitism. The Calcutta High Court has also reminded that the power to punish is arbitrary, unlimited and uncontrolled, so it should be exercised with great caution and care. Jurisdiction to punish for contempt is there to formulate ultimate sanction against the person who refuses to comply with the order of the court or disregards the order. Justice Hidyatullah on one of the landmark case observed that the Courts do not arbitrarily enjoy immunity from fair criticism. Although fair and rational critique is not punishable, any assault on the judiciary's reputation or unethical intentions will be considered contempt of court. In another instance, the Supreme Court ruled that any defamatory statement made against a judge, regardless of whether the matter is strictly administered or not, constitutes criminal contempt. The purpose of contempt law, though, is stated to uphold the public interests, but unfortunately, the Courts in India have, in recent times, availed it as a shield to defend themselves, rather than as a protective measure against "motivated attack" and "unwarranted criticism". If we recollect the controversial case of the well-known feminist writer and a booker prize winner, Arundhati Roy, who was held guilty of criminal contempt of the Court and sentenced her to one day's symbolic imprisonment and fine because of an article written by her called The Greater Common Good which also got published in a very famous magazine. The judges determined that the report was a misrepresentation of the justice system, and that the act fell into the category of Criminal Contempt. The Supreme Court ruled in the Arundhati Roy case that maintaining the integrity and respect of the courts is an important part of the rule of law concept. The Court reasoned that freedom of speech and expression is not absolute, but is subject to limitations imposed by statute, such as the Contempt of Courts Act, which seeks to preserve public confidence in and protect the judiciary's reputation. The Court further determined that Roy's comments were not rendered in good conscience or in the general interest, and therefore should not be deemed legitimate judicial critique. The rule of contempt was passed to ensure public respect and trust in the judicial process, according to Justice Sethi in this situation. If such confidence is shaken or destroyed, the common man's faith in the judiciary and political system is likely to be weakened, which, if not tested, would be catastrophic for the nation as a whole.[16] Now it is high time to analyze that whether these contempt laws which are very much anti-democratic in its essence, are enhancing public confidence in the entire judicial process or creating a crisis of public faith in the judicial system.

Global Position toward Contempt Law

Contempt legislation has virtually become redundant in major international democracies, with jurisdictions recognizing that it is an out-of-date law, built for a bygone age, and its usefulness and necessity has long since faded away. The contempt of court law has been scrapped or toned down in many countries i.e., America, Canada and England etc. The legal situation has arisen in England, where we have inherited the tragic tradition of contempt rule. The Law Commission of England proposed that the crime of "scandalising the session" be abolished in 2012, and the British Parliament agreed in 2013. The crime was defined as "self-serving" by the Commission and it was never meant to defend judges' "unique reputation," but rather the "integrity of the judicial system." On the contrary, the Law Commission of India in its 274th report has suggested that it is not necessary to make any amendment to the Contempt of Court Act and amending it, would amount to lessen the respect for judiciary. As a matter of fact, Courts, all over the globe, have tended to take a liberal, magnanimous view of contempt in recent times and has been restrained in using the law but the apex courts in India deplorably neither seems inclined nor at least, is prepared to show the same maturity and unruffled spirit as their peers elsewhere. It's no wonder that Justice V.R. Krishna Iyer famously defined contempt law as "having a vague and roaming authority, with unclear boundaries; contempt law, regardless of the public interest, can inadvertently trample civil liberties."It is up to us to decide how much trampling we are able to put up with.' On the surface, a criminal contempt statute seems to be entirely compatible with our legal culture, which recognises freedom of speech and expression as a human right. For that reason, the Supreme Court's judgment in Prashant Bhushan case is not going to restore the authority and respect of the court in the eyes of common public. It would undoubtedly weaken the court's strength, since a silent public cannot contribute to a powerful court. It is important to remember that the authority to sanction for contempt is not intended to shield particular judicial officers from being insulted or injured. The raison d'être of the power to punish for contempt is the crucial right of the common citizen to get effective justice. The power is to be used for the implementation of the court's judgments to ensure justice for the litigants. As, Lord Morris in Thalidomide case, remarked, "The right to sentence people to prison without trial for contempt is thought to be appropriate for the effective administration of justice. It is not to be seen for the personal vindication of a lawyer. He'll have to sue for libel or criminal information." In the same vein, Lord Denning said in 1968, "Let me state right away that we can never use this jurisdiction to defend our own integrity." That needs to be built on

more solid ground. We would not use it to silence those who disagree with us. We are not afraid of or resentful of scrutiny. And there's something much more critical on the line. It is on par with the right to free expression." In addition to this, we must candidly admit that like the other branches of the state, the judiciary is not exposed to the sunlight of public criticism, 'the best disinfectant', as termed by Justice Louis D. Brandeis. Consequently, any constructive or positive criticism of the court, judges or judgments should not be considered as contempt. Judiciary should not be permitted to use it as a device to frighten the common masses, or else, otherwise, we may be held guilty of tolerating an unaccountable judicial dictatorship to flourish within our democratic republic. In reality, the contempt law is to be "utilized to aid in administration of justice and not to shut out the voices that seek accountability from the Courts for the errors of omissions and commissions". As a result, judges' mistaken belief that silencing dissent would foster regard for the judiciary is regrettable and misguided. The public, including the media and civil society, must vigorously oppose this trend. We would be accused of encouraging an unaccountable judicial tyranny to thrive within our republic if we enable ourselves to be threatened by such techniques. No court will use its power of contempt in such cases if the media and civil society stand up together against it

Prashant Bhushan's Contempt Case

In the context of Prashant Bhushan's case, it may be plainly asserted for sure that being a seasoned lawyer and social activist, he has championed many social causes and acted as amicus curiae of the court. Hence, his comments, even if they were critical, could have been accepted with tolerance, since, judges are, in fact, known for reticence and refusal to respond to criticism. It is noticeable that the accusation of criminal contempt requires a higher degree of proof than ordinary and routine matters. As a consequence, before making an allegation, it was obligatory on the part of the court to bethoroughly satisfied itself regarding the effects of Mr. Prashant Bhushan's alleged act of disrespect (tweets of social media) on the glory of law and the nobility of the court. But, the Court didn't. The Court's judgment offered no analysis on why the harm caused by Bhushan's tweets is of a reasonably sound enough to warrant contempt proceedings. Similarly, it does not strive to hit a healthy balance between the necessity of just criticism and the positive image of higher court, One cannot but sense a bitter smack on the inclination while reading the Court's pronouncement that Bhushan's "tweet has the effect of destabilizing the very foundation of this important pillar of the Indian democracy". Is our democratic ethos so vulnerable to be destroyed as a consequence of mere two tweets? In his contempt case of 2020, activist-lawyer Mr. Prashant Bhushan defended his two alleged contemptuoustweets in the Supreme Court that they were not against the institution. Infact they were opposed to the judges, condemning their conduct and demeanor in personal capacity. They were not malicious and did not obstruct the administration of justice. He vociferously reasoned that the expression of opinion, however outspoken, disagreeable or unpalatable to some, cannot constitute contempt of court. Nevertheless, Mr. Bhushan was tried and convicted for the offence of contempt of court. On August 14 2020, the three judge's bench held him guilty of criminal contempt for his impertinent tweets against the judiciary, holding that they couldn't constitute a ground of fair criticism of the working of the judiciary, made in the public interest. The bench also found that they were founded on misrepresented facts and led to a scandalous and malevolent attack on the upper court and threatened the very foundation of the judiciary. Moreover, the Supreme Court in this historical case, on 31st August, 2020, imposed on Mr. Prashant Bhushan, a token fine of Rs 1. Nevertheless, it has been hailed as the sign of the moral victory of Prashant Bhushan. In this regard, it must be pointed out that in this crusade, Mr. Bhushan had been supported by several Justices (retired) like R.M. Lodha, Kurien Joseph and A.P. Shah, and other senior advocates, including RTI activists etc. Without a shadow of doubt, it may be admitted at all hands that Mr. Bhushan has made enormous contribution to the growth of Indian jurisprudence and as a minimum, there are fifty major rulings of the court for which he may be credited. By the same token, the court has acknowledged his role as a public interest lawyer in the landmark cases like 2G scam, coal block allocation, and in mining matters etc,. Although, the charges against the Supreme Court in the last few years have been serious, ranging from corruption, nepotism, trade off, lobbying, apathy, bias to external influence as well. Most of all, some CJIs have also been questioned for their unreasonable conduct and received media backlash for their behaviour, even from their peers at times. Now, the moot question is that are the ordinary Indians not allowed to have the same luxury? Is it not possible for common citizen to enjoy the same level of comfort? If we go back to the historic first-time held, Judges' Press Conference on January 2018, it may be observed that it was four Supreme Court judges who opened the floodgates of criticism of the judicial institution, when they attended an extra-ordinary press conference. Even, one judge cautioned that unless the Supreme Court "safeguards and maintains its equanimity, democracy will not survive in this country, or any country". Despitethe fact that the four judges were

publicly criticizing the conduct of Chief Justice Dipak Misra at the time, theywere not charged with contempt. But when a public spirited individual used to express their concern as regardsthe manner, the court is being perceived to be functioning, the Supreme Court wanted to punish him. Aren't these reasons, sufficient enough, to initiate, at the very least, a healthy debate about the Supreme Court'srole in the alleged degradation of Indian democracy? The preservation of the Court's majesty cannot go so far as to preclude discussion on whether the Court has shied away from its organizational obligations.

2. Conclusion

Considering the gravity of the matter, it is called for that in order to put the real accountability of judiciary in effect, to bringimprovement in judicial conduct, and to restore the credibility of public in the institution of Judiciary, with the object of democratizing the Indian Judiciary, the contempt of court provisions need to be more clearly and narrowly defined, too, if at all they should continue on the statute book. This consecutively, makes the need for amendment in contempt provisions, a crucial and fundamental, for the greater public good. From democratic point of view, it must be firmly asserted that public comments, even if they are critical, should be accepted with tolerance, because judges are, in fact, known for reticence and refusal to respond to criticism.[24] In general, therefore, the contempt law can't be allowed to be used as a tactic of extinguishing the dissent and silencing the demand for accountability. Instead, it must always, and as a last resort, be used to protect the integrity and impartiality of our judicial system. The whimsical and arbitrary use of contempt laws as demonstrated by the Supreme Court in several cases would tend to give rise to the unhealthy practices in the highest echelons of the judiciary, which is distressing. It is conceivably bound to lead to the grave moment of crisis of public confidence in the Indian judiciary. Hence, I would conclude with the words of Justice Marshal of the Supreme Court of the United States who says: "The power of the judiciary rests not in determining lawsuits, issuing penalties, or punishing itsdisobedience, but in the general public's trust, belief, and faith in it."

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