

“Contempt of Court: A comprehensive writing on what does the Law in India says about Contempt in parlance with the Natural Justice”

*Ms. Safura Ahmed
Advocate
High Court at Calcutta*

The literal meaning of the word ‘contempt’ can be understood as ‘disrespect’. But ‘contempt’ in legal conception means disrespect to that which is entitled to legal regard. In common law, the contempt of court is defined as an act done to interfere with the due administration of justice.

The phrase Contempt of Court (Contemptuous Curiae) was used in English Law for 8th Centuries – which precisely stated the Law to enforce discipline and to punish them who are acting in contrary to the Law. Since, then the whole concept kept on evolving in accordance with the development in the Society. Though it is very difficult to point the main source of the whole idea of “Contempt” but still a thin string could be attached between the Common Laws and the Contempt of Court. The reason behind such is in Common Law one of the ideal Principle is ‘Independence and Supremacy of the Judiciary’, so does the Principle of Contempt of Court exactly mentions – any person acting in contrary to the Law shall be held liable and be punished for creating disturbance in the administration of Justice.

The Contempt of Court Act, 1971

Way back in sixteenth century in England when contempt was committed by a person the offence was punishable only after a trial. Further when a contempt was done with a view to deceive the court then such Contemptor was liable for imprisonment but upon acceptance he was given a chance for compounding of the offence i.e. payment of the sum of money fixed by the Court.

The roots of the Contempt Laws can be tracked back to the time when first charter was issued in the year 1726 i.e. the pre – nationalization period. The first stepping stone towards the introduction of English Laws in India. The Mayor Courts in Presidency Towns were started to be recognised as the Court of Records and were given the power to call upon the act of its subordinate courts. Subsequently, in 1800’s rule was laid by Peacock C.J in *Re: Abdool and Mahtab* where it was quoted;

“There can be no doubt that every court of record has the power of summarily punishing for contempt.”

The first act enactment in relation to Contempt of Court was made in the year 1952 prior to this no act was there. The act extended to whole India even Bangladesh except Jammu & Kashmir. There was lot of ambiguity in the act for instance no proper definition of the word “Contempt” which led to the formation of - The first Committee in pursuance to the concept of ‘Contempt of Court’ was set up in the year 1961, under the leadership of Late H.N. Sanyal, which after making a deep research came to a conclusion that a person exercising his

Freedom of Speech shall use in such a way that it is not curtailing the interest and administration of the Justice. Any act or statement contrary to it shall be punishable. This was widely accepted by the Union territories and the States which would be evident from the leading case of *C.K. Dapthary vs O.P. Gupta*¹ where the Respondent published a booklet alleging one of the Justice to be dishonest while acting in his Judicial Capacity. The Supreme Court further laid basic principle by differentiating the publications which are mere defamatory attack on the Judge and the publications will cause interferences in the proper delivery of Justice.

In India, the legal system has nexus with the Common Laws where supremacy and independency of Judiciary is a prima facie concern. Thus, making the path for the concept of Contempt Laws being widely accepted and an act being passed as “The Contempt of Court Act, 1971”. Nevertheless, Article 129 and 215 of the Constitution of India, 1949 empowers the Supreme Court and the High Courts respectively to punish the people and the Courts subordinate to it and to itself in case of any Contempt. Under Article 235 High Courts are given the supervisory control over the subordinate courts, in this way, High Court is the guardian of the courts subordinate to it. If we read Contempt Laws in the light of Article 19(1)(a) of the Constitution – which guarantees freedom of speech and expression to a citizens of India. However, the right is not absolute, there is a reasonable restrictions to it. For instance a citizen is barred from speech which is demeaning or which is in contrary to the interest of the public. Though the rights have been given to the Citizen of India but the way is being led by Judiciary for the proper administration of Justice without any room for arbitrariness. In one of the instant case i.e. *State of Bombay v. P*² it has been clearly stated that the Right to freedom of speech does not embrace the freedom to commit contempt. Whereas, in one of the leading case *Ashwini Kumar Ghose & Anr v. Arabinda Bose & Anr* the Supreme Court held that a fair and reasonable comment of criticism on Judiciary does not tantamount to Contempt but on the other hand same has been done with an erroneous motive shall fall under the purview of being Contempt of Law³. Further it has been held by the Supreme Court that:

“There is another kind of case where a Judge acts in accordance with his conscience on the basis of the facts and the law as he bona fide understands them, and yet because of surrounding circumstances it may appear that justice, has not been done even though in fact it may have been done. Where there is a danger that justice will not appear to be done, and the prevailing environment is linked with the person of the Judge, notwithstanding that he may have done nothing to promote it, the injury to the administration of justice can be as serious as a case where the Judge has consciously deviated from the standards of impartial judgment⁴.”

¹ 1971 (1) SCC 626

² AIR 1959 Bom 182

³ AIR 1953 SC 75

⁴ AIR 1982 SC 149

Since inception of the Act there has been amended only twice once in the year 1976 and another in 2006, where such amendments led to the deletion of the word ‘Scandalising of Court’. In the 274th report by Ministry of Law and Justice titles as “Review of Contempt of Court Act 1971 (Limited to section 2 of the Act) where the commission had compressed and precisely concluded that the Article 129 and 215 of the Constitution vests the superior courts with the power to punish. Furthermore, Article 142(2) of the Constitution empowering the Supreme court to punish itself in case of contempt. Hence, enabling the High Courts and Supreme Court to investigate and punish in case of any Contempt. These provisions are enough to punish the Contemptor even if there is any absence of legislation outlining their procedural powers.

Freedom of Speech and Expression

To understand the gravity of this provision first let put a light on the international laws which are being accepted by all the Countries over the world either by Ratifying to it or becoming a signatory to it. For instance, The International Covenant and Civil and Political Rights treaty (Herein after referred to as ICCPR) where India being a signatory and Article 19 of this treaty states:

- 1 *Everyone shall have the right to hold opinions without interference.*
- 2 *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
- 3 *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
 - (a) *For respect of the rights or reputations of others;*
 - (b) *For the protection of national security or of public order (order public), or of public health or morals.”*

Contempt of law is a concept which has been apprehended by the law makers previously because it is a proved fact “absolute power corrupts absolutely” – thus such laws were brought into picture to uphold the dignity of the Court of Justice. From the preamble of the Act, 1971 it is evident that it is not an Individual Judge whose dignity the Act seeks to protect but the while administration of the Justice in the best possible way. However, the Contempt of Law goes against the Article 19(1)(a) of the Constitution where freedom of Speech and expression has been labelled as a Fundamental Right. This provision is an inherent freedom given to every citizen except under Article 19 (2) to (6) of the Article, such restrictions must be reasonable and not excessive in nature. The administration of Justice is open to criticism but any criticism hampering administration or erodes the faith of public in delivery of Justice shall be prevented.

The Contempt of Court Act, 1971

Under section 10 of the Act empowers the “High Court to exercise all its powers and authority in case of contempt by any of its subordinate courts and also to exercise in respect of Contempt by itself” – provided to a condition if the offence is punishable under the Indian Penal Code then the High Court is barred from taking such cognizance.

How the proceedings are being initiated?

Section 14 of the Act says when the cognizance can be taken if it is done in presence or hearing of Supreme Court or High Courts. Section 15 lays down the procedure which says the proceedings can be initiated suo – moto by the Supreme Court or High Court or if a petition being made by an Advocate or by making an application to the Advocate – General in case of general public. Further, a notice being issued on the contempter to appear before the Court and give reasonable justification (as a principle of Natural Justice – equal opportunity of being heard to be given to everyone).

Types of Contempt

As per section 2(a) of the Contempt of Court Act, 1971 defines “Contempt of Court means Civil and Criminal Contempt”.

Contempt of court is broadly classified into two groups, i.e. civil contempt and criminal contempt. A contempt is said to be civil when the punishment is wholly remedial (serves only the purpose of the complainant) and criminal when the offence is done against the public. In *Legal Remembrancer v Motilal Ghose*⁵ the judge gave a fair distinction between the two – “A criminal contempt is conduct that is directed against the dignity and authority of the court. A civil contempt is failure to do something ordered to be done by a court in a civil action for the benefit of the opposing party”.

It may not always be easy to distinguish between civil and criminal contempt. Sometimes the act may constitute both kinds of contempt. In the case *Dulal Chandra v Sukumar*⁶ it was quoted – “the line between civil and criminal can be broad as well as thin.” For instance, when there is a mere failure by the person to comply with an order passed by the court for the benefit of a private person, it is a civil contempt but if the same person boldly disobeys the order and does an act in contrary to such order which amounts to obstruction with the court of justice, it is said to be a mixture of both the characteristics, i.e. civil and criminal.

Civil Contempt

Section 2(b) of the Contempt of Courts Act, 1971, defines the term as wilful disobedience to any judgement, decree, direction, order, writ or other process of a court or wilful breach of an undertaking to a court.

⁵ ILR 41 Cal 173

⁶ AIR 1958 Cal 474

In the above context the word “wilful” clearly states deliberately with mala fide intentions of doing an act contrary to the terms of the order, mere disobedience may not amount to a civil contempt – the element of willingness needs to be there and the order of the court must be of such nature of being executed by a person in a normal circumstance. An undertaking which is violated with consciousness amounts to contempt of court. For instance, in the case *Noorali Babul Thanewala v KMM Shetty*⁷ where a tenant committed breach of undertaking given to him by the Supreme Court to deliver vacant possession of certain premises, the court held the tenant guilty of contempt. Undertaking has to be unconditional, unqualified and expressed. On the other hand if a breach of undertaking is made of a compromise decree⁴ then it would not amount to Contempt of Court.

Civil Defence

- (i) No knowledge of order
- (ii) Not done wilfully (absence of mens rea)
- (iii) Impossibility to comply with order
- (iv) Order passed without jurisdiction

Criminal Contempt

Section 2(c)⁸ defines the term “criminal contempt” means the publication (be it 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 results in any of the followings —

- (i) If such statement or remarks scandalises or tends to scandalise or tends to lower the dignity of the authority of, any court; or
- (ii) If such statement or remarks prejudices or tends to interfere with, the due course of any judicial proceeding resulting in improper delivery of Justice; or
- (iii) If such statement or remarks interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

A basic reading of the provision would indicate that mere essence of the act of scandalising, prejudicing or even interference with the administration of justice amounts to “contempt”. It is not necessary that the act must have been completed. Even the commencement of such an act, i.e., scandalising, prejudicing and interference, is enough. Thus, the act which constitutes criminal contempt is quite wide as compared to civil.

From the abovementioned, we can broadly divide into three basic elements –

1. Publication / scandalising / lowering the authority of the court: on reading it would be evident that the act of contempt must have been done in the face of the court. The

⁷ 1990 AIR 464

⁸ Section 2(2) of Code of Civil Procedure, 1908

word spoken or written or published which lowers any authority or is a prejudice to any judicial proceedings outside the court also tantamount to contempt.

The concept of “scandalising of court” has been discussed precisely in *Arundhati Roy*⁹ where Justice Palekar stated – “the scandalisation within the meaning of sub clause (i) must be in respect of the court or the Judge with reference to administration of justice”. Even a comment upon an advocate in reference to his conduct in a particular case might amount to contempt under the provision which was applicable with regard to critics of a Judge or the judgement. (*Ananta Lal Singh v Alfred Henry Watson*¹⁰)

2. Prejudice / interference with the due course of any judicial proceedings: In respect to section 2 (ii) – a wrongful or misleading statement made deliberately by suppression of facts and to fraudulently obtain a favourable order from the court amounts to contempt. (*Municipal Corporation of Greater Bombay v Annatte Raymond Uttanwala*¹¹). For instance preparation of false affidavits or taking of false oath before the Judge
3. Interference / obstruction with the administration of justice in any matter: In this context the Supreme Court held that holding a Dharna does not amount to Contempt of Court but holding Dharna which leads to non-access to the court and the officers of the Court and members are not allowed to free ingress and egress then such Dharna amounts to Contempt as the administration of Justice would be obstructed. For instance misinterpretation of the Court’s Judgement

Defence (as per the provision in Contempt of Courts Act)

- (i) Lack of information about the Order – A person cannot be held liable if he is unaware of the order passed by the Court moreover the duty is always on the successful party to serve the copy of the order. It can always be successfully said by the contempter that he was not aware or the order was not served on him, the onus always lies on the other side to prove.
- (ii) Lack of willingness (Mens rea) – here intention of a person is taken into account. The person needs to prove it as a mere accident or beyond his control or sight. On failing to do so person shall be held liable on Contempt.
- (iii) Publication of fair report of any judicial proceedings – can be taken as a defence when the person making such report has stated the truth and his mind is free from the guilt of accusing the person on a substantial grounds and there’s no room for a doubt.

⁹ ILR 41 Cal 173

¹⁰ AIR 1958 Cal 474

¹¹ 1990 AIR 464

- (iv) Command of the order is not possible i.e. the person against whom the order has been passed cannot be adhere to because of the impossibility of carrying forward to that order.
- (v) Reasonable criticism with no ulterior motive to derogate the judicial act.
- (vi) Comment made in good faith against the presiding officer of a subordinate court.

Contempt by Judges, Magistrates and other persons acting judicially

Section 16 of the Contempt of Courts Act, 1971 absolutely talks about Contempt by judge, magistrate or other person acting judicially – this section is further divided into two main ingredients:

Firstly, Every Judge, Magistrate or any other person can be held liable just like a normal person for the Contempt of Court provided they shall only be liable for Contempt in respect of the Court they are presiding over

Secondly, Any Observation or remarks made in regards to any Subordinate Court does not tantamount to Contempt by judge, magistrate or other person acting judicially, if such an appeal or revision is before the same judge, magistrate or other person acting judicially

Section 10 of the Contempt of Court Act, 1971 clearly confers the powers on the High Court to punish the Subordinate Courts in case of any miscarriage of Justice or not proper administration of the Laws. Besides, Article 215 of the Constitution of India, 1949, confers power on High Court to take cognizance of any Contempt by itself and the Courts subordinate to it. It can be clearly evident from one of the instant order given by Division bench comprising of Hon'ble Justice Sanjib Banerjee and Hon'ble Justice Suvra Ghosh of Calcutta High Court for punishing itself with a fine of Rs. One Lakh for wrongfully punishing a Magistrate.

Further, another one of the famous case of Supreme Court where Justice C.S. Karnan (was presiding Judge of Calcutta High Court) had faced Contempt action where the Attorney General deliberately stated “It is the time when apex court should stop tolerating the onslaught done by the Judges and also to convey it to the public that anyone humiliating the Judiciary even ‘a Judge’ shall be held punished. He further argued that the Supreme Court is empowered under Article 129 and 142(2) of the Constitution of India, 1949 to punish anyone, even High Courts and their Judges. The power of the Supreme Court is wide and not confined to only the Contempt of Court Act, 1971.

The judge can always be held for the contempt of his Court. Amongst other instances one of them is when a judge insults a lawyer, what happens then? No doubt under such scenario the judge shall be held liable. Lawyers being an officer of the court and insulting a lawyer inside the Court without any justification, such act of the Judge would be called contemptuous and shall be punished for such Act. In the leading case of *Shri Harish Chandra Mishra & Ors v. The Hon'ble Justice S. Ali Ahmed*¹² where a petition has been filed by three Advocates

¹² 1986 (34) BLJR 63

against the Hon'ble Justice S. Ali Ahmed alleging that he has committed the Contempt of Court by making uncharitable remarks against a lawyer while hearing to the criminal revision application filed in his court. Where the respondent alleged that the application is not maintainable. So, the two questions lingering before the court were first, contempt of court done by the Justice. Second, is it maintainable if no prior application is being filed with the Advocate General? The Learned Judge after scrutinizing the facts and the circumstances come to a conclusion that a Judge has the every right and duty to continue the proceedings before him in a dignified manner at the same time any harsh words being used by the Judge which lead to demeaning of the Counsel then it would sheer amount to Contempt of Court. While answering the later part the judge said that though an application made without the consent of the Advocate General shall not be accepted but subject to a condition if anytime the Court comes to know that such case need more consideration then court suo-moto can take the matter into consideration.

Contempt by other Persons

In *Delhi Judicial Service Association v. State of Gujarat & Others*¹³ the instant case precisely deals with the Case of Criminal Contempt i.e. Section 2(c) of the Act. As per the facts of the case a police officer assaulted, roped and arrested the Chief Judicial Magistrate to wreak vengeance and to show superiority, clearly leaving a room for malafide intention. The Supreme Court while delivering the order completely stuck to the preamble of the Contempt of Court Act, 1971 i.e. to protect the administration of Justice and not any individual judge because from the above case it is well settled that the act done by police officers has brought down the dignity of the Judiciary system. On the top, creating a sense of danger in the mind of other Judges that they might suffer the same while delivering the Justice in a fair manner thus, creating a barrier in the proper administration of Justice.

A Question arises whether the inherent power and jurisdiction of Supreme Court is restricted by the Contempt of Court Act 1971?

In the case *Ganga Bishan v. Jai Narain*¹⁴ where while giving the Judgment it has been intelligibly relied on by the Court that the inherent powers of the Superior Court of records shall remain unaffected even the Contempt Law has been codified there is no provision in the Act which is curtailing the Supreme Court's power to contempt of Subordinate Courts. Even section 15 of the Act prescribes the modes for taking cognizance of contempt by the High Court and Supreme Court. The basic reason for this section is to prevent the wastage of time by the High Courts and Supreme Court by frivolous Contempt of Court cases.

In *Arunachalam v. P.S.R. Sadhanantham*¹⁵ where the Court tried to comprehensively join the dots between the Constitution and the Act. Like the Articles 129, 215, 136 and 227 if read briefly then it will give an idea that How High Courts and Supreme Court are treated as a Court of Records and how they both have a judicial superintendence over all courts inferior

¹³ 1991 (4) SCC 406

¹⁴ 1986 (1) SCC 75

¹⁵ 1979 (2) SCC 297

to them. On the other hand Contempt of Court Act, 1971 does not curtail any power of these to Courts moreover Supreme Court can determine its own Jurisdiction and that will be final and binding.

Apart from that Article 129 of the Constitution of India, 1949 solely confers power on the Supreme Court to punish itself and all the Courts subordinate to it for any Contempt.

Contempt by Tribunals

As we all know Tribunals are the Quasi- Judicial Bodies, they have the power of the civil courts. Just like civil courts they are subordinate to the High Courts as well. Any act done by the presiding member of the Tribunal which leads to the improper delivery of the Justice or any remarks by the tribunal which will affect an image of a Lawyer or an image of the Judicial system then such act will amount to the Contempt of court and the person doing such contemptuous act shall be punished by keeping that person at par with the general public. The same principal applies to every Tribunal established in India be it National Company Tribunal or Debt Recovery Tribunal etc. then again subject to the condition that the High Courts do not have Jurisdiction to the appellate bodies. For instance, High Court at Calcutta does not exercise it's jurisdiction over the National Company Law Appellate Tribunal. These can only be done by the Apex court i.e. supreme Court of India.

Contempt by Lawyers

The legal profession is no doubt one of the noble calling and the persons belonging to this field are honourable members. Though, a mere qualification would lead to this path but maintaining of such status-quo is a matter of exemplary conduct by the person

The Judiciary is the guardian of the rule of law and the Hon'ble Supreme Court is the court of record acting as an anchor and enabling the Judiciary to protect and take cognizance in the event of Contempt of Court. As a Lawyer, one owes certain duties towards the Court which would be evident from the instant case *Re Ajay Kumar Pandey*¹⁶ in which the Supreme Court held that as an Advocate one should never use any unscrupulous language which derogate the status of the Court nor submit any false report before the Court and if he does so and try to obtain an Order with such submissions then it will amount to Contempt of Court. Further Supreme Court widely explaining the Article 129 and 215 said both Supreme Court and High Courts apart from having the power to punish itself for the Contempt, it also carries the power to protect the judicial system and to uphold majesty of Law. Any lawyer appearing before the Court and attacking the impartiality of the Judiciary or attempting to brow beat any of the Court shall be held liable on the ground of Criminal Contempt of Court. Even an adverse comment by a lawyer against the Judge on not getting the desired order, such acts are to be recognised as reckless, motivated and deliberate and thus amounting to contempt.

¹⁶ AIR 1998 SC 3299

In one the case namely *Re Vijay Chandra Mishra*¹⁷ where the court minutely emphasised on the act which tends to be a contempt by saying “An act like shouting at Judge or to threaten him with transfer or his impeachment or using any derogatory words all these without a second thought tantamount to Contempt”. As a lawyer one owes a duty towards the court, duty to enlighten the court about all the valid and fair submission any wilful concealment of the facts and circumstances, which leads to delivery of an improper order also amounts Contempt¹⁸.

The Supreme Court has an ultimate power to punish a Lawyer for Contempt of Court under Article 129 of the Constitution but this provision is quite wide, is yet limited as under this provision the Court cannot expand its Jurisdiction to determine whether a Lawyers is guilty of “Professional Misconduct” or not as it solely needs to be taken over by the Disciplinary Committee of the Bar Council of the State or Bar Council of India¹⁹. The above mentioned judgement was overruled by Supreme Court in the case *Mahipal Singh Rana v. State of U.P.*²⁰— where it was held that if the Bar fails to take an action against the Lawyer then Supreme Court can suo moto start the proceedings and cancel the license of such Lawyer. There are certain conduct in which a Lawyer should act because the tag of the word “Lawyer” itself differentiate themselves from the common public which can be clearly understood from one of the leading case where the court held that a strike being called by a lawyer amounts to Contempt because as a professional they not only a duty towards their client but duties toward the Court as well. It has also been mentioned in *Black Law Dictionary*²¹ the if a person is being convicted and such person undergoes a punishment or pays the fined amount for the compounding of the offences then it can be said – his purge has been completed.

In *Ex. Captain Harish Uppal v. Union of India & Another*²² the Supreme Court stated “Per Curiam which means law is already well – settled. It is the duty of a Lawyer who has accepted to attend a trial even day it goes on day to day at a prolonged basics. He cannot refuse to attend the Court it is very unprofessional of him to boycott the call of the Court. The Courts are under obligation to adjudicate on the matters brought before them they merely cannot adjourn the matter just because Lawyers are on strike. If any resolution is being passed by the Bar Association against any Judge, it would amount to scandalising the court and undermining its authority and thus it would amount to Contempt of Court by Lawyers. If the Lawyers boycotts or go on a strike, their action is ex- facie bad in view resulting in paralysing of the administration of justice.

¹⁷ AIR 1995 SC 2348

¹⁸ Narain Das vs State of MP (AIR 1974 SC 1252)

¹⁹ Supreme Court Bar Association v. Union of India (AIR 1998 SC 1985)

²⁰ AIR 216 SC 3302

²¹ Words and Phrases, Permanent Edition, Volume 35 – A, Page 307

²² (2003) 2 SCC 45

Article 14 of the Constitution of India, 1949

As an article it forms one of the pillar in the Golden Triangle (i.e. Article 14, 19 & 21) it has been always expressed in a wide term and is divided into two parts one that is equality before law, second equal protection of the law. If the first part of the article is being comprehensively understood then most of the laws are automatically falling under the purview of this i.e. everyone shall be held equally before law except of some reasonable grounds. The same has been further dealt with Contempt of Laws where the person be it a common man of prudence or a Lawyer all will be held equally liable for the offence of Contempt of Court – if such act of theirs is leading to an improper administration of Justice or may create a bad image before the public at large.

As we know the Bar Council of India is a statutory body constituted under the Advocates Act, 1961 and in the term of this Act the High Court at Kerala framed the set of rules. Where in Rule 11 it appeared that ‘No advocate shall be permitted to appear before any court on the event being found guilty of Contempt, unless he has got rid of such Contempt’. Where a question may arise that is it violating Article 14 of the Constitution? Is it having an adverse effect on the right of being treated equally? Or in the right to practise the profession freely? This question was directly answered by the Court in the case *Pravin C. Shah v. K.A. Mohd. Ali*²³ that the Rule 11 lays down the orderly court proceedings and High Courts are conferred with all the powers for formulating rules and regulations in relation to the proceedings inside the court, that also includes the conduct of a Lawyers which is f=different from having a control over a Lawyer’s right to practice (It is to be listed in the exclusive work of Bar Council).

In *Bar Council of India v. State of kerala*²⁴ in this case the Supreme Court tried to differentiate between the “Contempt of Court” and “Misconduct of Profession”. As it is known, to practise in any court is not a Fundamental Right, such right is conferred upon a person by the provisions under Advocate Act and the Court cannot punish a Lawyer in exercise of its jurisdiction under Article 129. It is one thing to say the Court can suo-moto directs the Bar Council to take an appropriate action and in case of failure by the Bar Council the Court can proceed further. The Constitution bench also said in the above case that it is possible for the Apex Court or the High Courts to abstain the contemner Lawyer from appearing before it till he gets rid of the Contempt but suspending the licence of a Lawyer is totally a different thing. In case of contemptuous or blame-worthy conduct the court possess the power to withdraw his privilege to practice as a Lawyer before such court but the withdrawal of the privilege does not amount to suspending his licence to practice as a Lawyer before other Courts or Tribunals.

²³ (2001) 8 SCC 650

²⁴ (2004) 6 SCC 311

Contempt by State, Corporate Bodies and other Authorities

State

It is well settled fact that no one is immune from being punished for Contempt not even State or any other bodies for instance in the case *Mohammed Aslam v. Union of India*¹ where the Chief Minister of Uttar Pradesh was held liable for committing breach of undertaking. There are many circumstances where a body corporate is being held liable too like for not adhering to the previous order given by the Court or Tribunal or for acting ultra-vires i.e. beyond its capacity. A Minister or any other Government officer in working capacity or because of personal relation contributing to contempt in his personal capacity, liable to contempt. There is no escape of any authority for any authority of Government Official, if a personal favour is shown in the act of disobedience of the order of the court from the consequence of order of the court.

Body Corporate

For the purpose of section 12 (4) and (5) of the Act 'Company' means 'means any corporate body including a firm or other association of individuals'.

If an order is passed against the corporate body and it is found that there has been wilful disobedience thereof apart from the corporate body, the officer responsible for its implementation or under whom such action was done will also be liable for contempt. If known that the person in charge of the subject-matter to which the order alleged to have been disobeyed and had knowledge of the order²⁵. Thus, if the Court is satisfied that the officer was taken in confidence and it was his duty to carry out the order, he will be held liable for the disobedience and maybe punished for contempt. In case of any doubt as to the validity of the order, he should apply for clarification or modification before the Court which has passed the order. In the case of disobedience of the order the belief that the order was invalid, its correctness is not allowed, even if the belief is based on proper legal advice. If the officer is advised that the order is not binding, the officer should apply before the Court for clarification. No officer can appeal over an order given by any Court for judging its correctness for deciding whether it should be implemented or not. At times the action is taken at different levels and measures and it is very difficult to say who is actually liable for the disobedience. To face such situation it is better if the rules are made by the Government for determining the responsibility of carrying out the Court's order. However, in such condition the officer on whom the duty lies to carry out the order and has knowledge of the order is held liable for disobedience and punished for contempt.

An important issue to address is whether noting of the opinion in internal files against the order of the Court does amount to or not? Was clearly covered by the court in case *State of Bihar v. Kriplau Shankar*²⁶. Where the Court said that a Government works by taking decisions on the potency of views and suggestions expressed by the officers at different post

²⁵ Taraftullah v. S.N. Moitra, AIR 1952 Cal 919.

²⁶ 1987 Cr LJ 1860.

ultimately getting final nod at the hands of the Ministers concerned. Till then, different opinions and suggestions would have issued from various officers at the lower level. There should not be any restriction on the independent expressions of opinions by officers on matters coming before them through files, even when they consider the order of the Court. The Government officers are usually confronted with the orders of the Court and may find it difficult to submit such orders weekly. On such occasion they will have to note in the files, the reasons why the order cannot be complied with and also point out that the Courts would not have passed the order if full facts were known to them. The Court has made it clear that the expression of opinion by the officers in the internal files are for the use of department and not outside purpose. To find the officers guilty for sharing their independent opinion, against the orders of Courts in deserving cases, would cause obstacle in smooth working and functioning of the Government. These internal notings are privileged documents. Notings made by the officers cannot be made the of contempt action against each officers who makes the notings. If the action does not constitute contempt, the intermediary suggestions and opinions expressed in the noting may sometimes even amount *ex facie* disobedience of the Court's orders will not amount to contempt of Court. These notings are not meant for publication. They do not have the approval of law as an effective order.

The Court has made it clear that if an individual is involved in litigation, the Courts can order him to produce all the documents related to the issues in the case. Even if they are confidential, the Court can ask them to be produced when the party in possession does not produce for the other party to see or at any rate of Court to see. When the Court asks for the production of those documents, there is an implied undertaking that they will not be used for any other cause. The production of these documents in normal cases is imposed with a condition that the side for whose purpose documents are summoned by the Court cannot use them for any other purpose other than the case. They cannot be made basis for action in contempt.

Another important issue is whether the Government or any other authority can deny the implementation of the order of the Court on the basis that implementation would be violating any rule. Such an issue also arose in the *T.R. Dhanajaya v. Vasudevan*²⁷. In this case petitioner's claim for promotion as Chief Engineer was accepted by the High Court and such decision later on was affirmed by the Supreme Court. The fact that the petitioner was not eligible under relevant rules was not brought to the notice of the Court. Further when Government denied for promotion as he is barred under the relevant rules. The court said that such refusal by the Government amounted to Contempt. When the order is passed by the Court, the Government or authority or any person is bound to give effect to that order given by the Court.

²⁷ AIR 1966 SC 302

Lifting of the Corporate Veil

When a company is being incorporated it becomes a legal person having its own entity, perpetual succession, power to sue and be sued. Though being a legal entity it cannot be said as a natural person as it needs a person to be governed and it's the person who does any act wilfully against the order of the Court. When an action is being done wilfully against the order, the corporate veil which needs to be lifted to find out the person who is acting behind the curtain of the Company. Thus, such person shall be held liable for Contempt of Court.

Corporation

Rule 5 of Order XXXIX of the Code of Civil Procedure makes it crystal clear that an injunction directed to a Corporation is not only binding on it but also the members and officers whose personal action it seeks to restrain.

It is a well-settled fact that in case of Corporation, the officer or an agent knowingly disobeys the order of the Court then such officer or an agent acting on behalf of such department shall be held liable along with the Corporation. It is not necessary that the order shall be served on such person, mere knowledge of such order is enough to hold that person guilty of Contempt. In *Jyoti Limited v. Kanwaljit Kaur Bhasin* it was clearly stated in the case that when an order is made by the Court and the persons who are officially responsible for the conduct of the affairs and if they have knowledge of the order instead of that they choose not to comply with it they will be held liable for the Contempt of Court, even if they are not parties to the proceeding in which order was made.

Punishment

Under section 12 of the Act a contempt may be punished with an imprisonment for a term extending up to six months or fine up to rupees two thousands or both. However, in civil cases the punishment is generally remedial but in the eye of court it can also lead to imprisonment if it is not meeting the end of Justice provided not for a period of more than six months. Sometimes an apology may also work by the contemtor subject to a condition that an apology must be offered at the earliest stage and in good grace, if the contemtor is apologising at a stage where he is of surety that the punishment may lead to an imprisonment then an apology at such stage would not be accepted by the Court²⁸. Apology should not be taken as a weapon of defence or to merely put a veil on the unlawful act done by them.

Conclusion

By analysing the whole concept it could be easily understood that the Natural Principle of Law always acts as a root to all the Laws as the principle completely deals with fairness, free from arbitrariness and reasonableness. The prima facie rule of Law is the foundation of a democratic society and Judiciary being the guardian of the rule of Law has to perform its duties and functions in such a manner that the dignity and authority of the courts are preserved and

²⁸ T.N. Godavarman Thirumulpad v. Ashok Khot & Anr, 2006(5) SCC 1

protected at all costs. Thus, entrusting them with an extraordinary power of punishing those for Contempt of Court, whether outside or inside the Court. In relation to the powers conferred on Supreme Court it has not only being conferred with the power to protect itself but also the right, jurisdiction and obligation to protect the dignity of the High Courts and all the Subordinate Courts to it.

If we try connecting the dots between this principle and the Contempt of Law it could be easily perceived that no matter what – proper administration of Justice (i.e. fairness) should always be the priority because nothing above law not even Lawyers who owes a way more duty as compare to a normal citizen. And everyone stands at an equal footing in the eyes of Law Though there is no hard and fast rule to reach into a conclusion that whether a Contempt has been done or not. It all depends upon the reasonability (Natural Law) and the cause which is leading to such punishment. In a layman's word, how it will be understood by a person if a Contempt has been done or no? For instance, if a person A needs to prove that person B has committed some Contempt, How will he prove? The following conditions needed to be taken into account for any Contempt are as follows:

- i) An Act offending the dignity of the Court.
- ii) An Act lowering the prestige of the Court.
- iii) An Act causing hindrances in administration of justice.

Provided the entire act must be done will-fully or say with and ill- motive to degrade the status of the Court. The Court can suo-moto initiate the proceedings in a case of Contempt. The power of the court to punish for Contempt should be free from arbitrariness and be exercised with great caution so that it does not leaves an open end to injustice. No one is immune from this provision subject to a conditions an act needs to be done which is contrary to the administration of justice provided no private person can file an application of Contempt without the consent of Advocate-General or Solicitor General which has been said in a leading case *Hari Kishan v. Narootham Das Shastri* where reason being held is to prevent bunch of cases getting piled up before the Courts even for a trivial reasons. Just like every other law this law is also being barred by Limitation as per section 20 of the Contempt of Court Act, 1971, the proceedings of Contempt should be initiated within one year from the date of the Contempt.

The act is not a source to punishment but a source for proper regulation and enforcements of Laws, prior to the commencement of any such act these inherent powers were exercised by the Superior Courts.

The basic motive behind the enactment of the law is to proper administration of Justice with the objective to confer the power on the Courts for effectively working of the Laws. The Act by defining the 'Criminal Contempt' and 'Civil Contempt' – has made the identification of the Contempt more easier, provided the cause leading to such offence needs to be taken into account.

From the above facts and circumstances it is well settled fact that High Courts and Supreme Court are the court of records having some inherent power that includes the Contempt of all the Courts subordinate to it, even if there is an expressed provision in Act is not being mentioned. Under such power given to the Courts no one will be aloof from the punishment if such contemptuous act has been done, everyone should be held liable equally for their act.

It can be understood that “Contempt of Court” acts as a limitation to the rights conferred on us, which helps in the proper balance of Law & Justice. No one is immune from doing any illegal act be it state, judiciary or any other bodies everyone is treated at par. The prima facie rule of Law is foundation of a democratic society and Judiciary being the guardian of rule of Law has to perform its duties and functions in such a manner that dignity and authority of the courts are preserved and protected at all costs. Thus, entrusting them with an extraordinary power of punishing those for Contempt of Court.
