

CONTEMPT OF COURT.

Administration of justice is one of the most important functions of a State. One crucial factor in assessing the development of a nation is by looking into the quality and independence of justice - delivering bodies. Earlier King discharged the responsibility of deciding disputes arising between subjects, personally disposing the disputes. Later, disputes increased in number and it turned out to be an impossible task for the King. This developed the introduction of courts and judges as representatives of the King to administer justice. Still the King retained his right to hear any dispute by himself. In this way, the decisions given by the courts were decisions of the King in law. If the King's authority could not be questioned, then the authority of the courts could not be questioned, too. If the King could not be abused or scandalized, so also the court could not be abused or scandalized. Just as the proceedings before the King could not be prejudiced, or obstructed, the proceedings before the court also could not be prejudiced or obstructed. Any violation of the above principle would lead to punishment. This is the basis of contempt of court. However, in modern days, it may not be possible to appreciate contempt laws in terms of unquestionable authority of the King. Instead, modern contempt of court laws are based on the concept of ensuring due administration of justice. To ensure due administration of justice, the faith of the people in the administration of justice mechanism is highly necessary. To retain faith of people in due administration of justice, it is necessary to prevent, unwanted interference with functioning of judiciary, those who are associated with its functioning and those who approach the judiciary for redressal of their disputes. Modern form of contempt of court is based on these principles.

In India, under the concept of Raja Dharma, administration of justice was considered the most important function of the King. However the origin of the present form of contempt of court law was brought to India by the British as part of the administration of justice that too by establishing courts of record. Thus the present contempt of court law is an offshoot of the British administration of justice in India. The British approach is based on the concept of unquestionable authority of the King as the representative of God. On the other hand, the American approach is, based on the authority of courts. Such an authority is derived from the society through social contract theory. It seems that both the theories are not as such applicable to Indian situation. In spite of all these, the contempt law in India is based on the British model. Subsequently laws

were enacted in India improving contempt laws, bringing characteristic changes. However, the common law roots of contempt law remained unchanged. The research looks into how far contempt law developed in common law, is suitable to a country like India where there is no King. The Thesis has seven chapters excluding Introduction and Conclusion

In the Introduction, the significance and importance of preventing interference with administration of justice and the general approach of the judiciary to contempt of court laws is considered. Here, various definitions of the term, 'Contempt of Court' are also considered in detail. It is found that due to the protozoan nature of contempt of court, a definition covering all the aspects is difficult to reach.

In the First Chapter, the rationale behind contempt power is analysed. The contempt power of courts was under severe criticism from the very recognition of the power. The criticism against contempt power was not based on the question of necessity of the power, but based on the chances of its misuse. It was often argued that in exercising contempt jurisdiction, the judiciary is assuming the roles of complainant, prosecutor and hangman. This assimilation of responsibilities is argued to be against modern legal values which demand dissimulation of these roles. To justify the massive power retained by the judiciary under the head of contempt jurisdiction, heavy justification seems to be necessary. The study shows that theoretical justification for contempt power under English and U S jurisdictions are different. The English law follows unquestionable authority of the King as justification for contempt power. Whereas the justification for contempt power under U S law is based on social contract theory. Being a democratic and republic country, in India, the authority of the King is not a justification for contempt power. Similarly no attempt has been made to extend social contract theory as justification for contempt of court. Thus in India, it seems that, the justification for contempt of court is based on the concept of due administration of justice.

In the Second Chapter, the origin and history of contempt power is looked into. The study shows that contempt power of courts was developed with common law as early as twelfth century. The study further shows that originally this was a power exercised by the courts in an arbitrary manner against interference with administration of justice committed in the presence of the court. Initially contempt of court was treated just like any other criminal offence punishable summarily if committed in the face of the court. The offence of *non ex facie* contempts, classification of contempts under different categories, summary procedure etc. were developed only at later stages.

Though contempt of court was recognized as a criminal offence, it was treated as a distinct offence. There were conflicting views regarding relevance of *mens rea*, classification of contempts under various heads and the right to jury trial. Through a series of judicial decisions, the judiciary contributed considerably to the development of law in this regard. The legislature also contributed to the development of contempt law. The study establishes that the Contempt of Courts Act 1981 was a unique legislation dealing with intentional publications which amount to contempt of court. However, interferences with administration of justice falling outside the Act are even now governed by common law.

In India, when the Indian Penal Code was enacted in 1860, provisions were included in the Code to deal with interference with administration of justice. Different punishments ranging from one month's simple imprisonment and fine of rupees one thousand to capital punishment were contained in the Code for different interferences with administration of justice depending upon the gravity of such interferences. Provisions were included in the Criminal Procedure Code and Indian Evidence Act to deal with such offences. Similarly provisions were included in the Civil Procedure Code to ensure compliance with court orders or undertakings given to the courts. However the provisions were found not adequate to deal with all types of contempt of courts. This thinking led to the enactment of Contempt of Courts Act, 1926. The statute specifically provided that proceeding under the Act was maintainable only if the same would not amount to an offence of contempt of court under the Indian Penal Code. Subsequently, repealing the 1926 Act, Contempt of Court Act, 1952 was enacted with a specific objective of giving the High Courts with extra territorial jurisdiction to deal with contempt committed out of the territorial jurisdiction.

Even the 1952 Act was simply a continuation of the English law regarding contempt of court. It was argued to be unsuitable to a democratic and republic country like India. This thinking led to the appointment of a Committee by name Sanyal Committee to study contempt law and to recommend necessary changes to make the law suitable to Indian situations. The recommendations of Sanyal Committee led to the enactment of the present Contempt of Courts Act, 1971. The 1971 Act made characteristic changes in the law relating to contempt of court in India. Primarily the Act defined contempt of court and classified contempts under various heads. The Act also incorporated procedures to be followed when contempt is in the face of the High Courts or Supreme Court and procedures to be followed when contempt is *non ex facie*. The Act also empowered Supreme Court and High Courts to frame appropriate rules regarding

procedures to be followed not inconsistent with the provisions of the Act. Still it was opined that justification by truth is not a valid defence in contempt proceeding. To overcome this defect, the Contempt of Court Act was amended in 2006 and justification by truth as a defence was incorporated.

In this Chapter, the judicial approach to interrelation between the offences of interference with administration of justice under Indian Penal Code and contempt of court under the Contempt of Courts Act is also looked into. The study shows that originally Contempt of Courts Act was enacted to deal with cases of interference with administration of justice which could not be dealt under Indian Penal Code. However it seems that judiciary has failed to properly appreciate the interlink between Indian Penal Code and Contempt of Courts Act, and reached the conclusion that the offences of interference with administration of justice under Indian Penal Code and contempt of court under the Contempt of Courts Act are different offences. The study shows that the interpretation followed by the Court in this regard is against legislative intention and needs reconsideration.

Chapter Three deals with constitutionality of contempt laws. The Contempt of Courts Act is imposing restriction on various fundamental rights including freedom of speech and expression. It is argued that the restrictions contained in the Contempt of Courts Act are unreasonable on various fundamental rights guaranteed under Part 111 of the Constitution of India. Here, constitutional validity of Contempt of Courts Acts, various cases in which constitutional validity has been challenged and judicial response to the contentions were looked into. In all the cases constitutional validity of Contempt of Courts Acts have been upheld by the courts. The study shows that, though the restrictions imposed under Contempt of Courts Act could only be treated as reasonable, the constitutional validity of contempt proceedings initiated by the Supreme Court and High Courts under Articles 129 and 215 poses threats to various constitutional rights. The study establishes that the matter has not been considered seriously.

Under Articles 129 and 215, Supreme Court and High Courts are conferred with the status of courts of record *including the power to punish for contempt of itself*. With regard to the powers of Supreme Court and High Courts for contempt committed against itself, the constitutional provisions are clear and unambiguous. However, with respect to the powers of these courts under Articles 129 and 215 to initiate contempt proceedings for contempt committed against lower courts and tribunals has led to considerable controversy in India. The study shows that the literal interpretation of the constitutional provisions and discussions in the Constituent

Assembly do not confer such wide powers with Supreme Courts and High Courts to initiate contempt proceeding under Article 129 and 215 when contempt is committed against lower courts and tribunals. However, Supreme Court adopted a contrary interpretation and the word '*including*' found under Article 129 and 215 was interpreted to mean including lower courts and tribunals also. The study shows that such wide powers were not intended by the Constituent Assembly, and the literal interpretation of Articles 129 and 215 do not support such wide powers. Problems in this regard may be rectified only by a proper interpretation of the constitutional provisions. These aspects are discussed in Chapter Four.

Yet another area considered in Chapter Four is the application of Contempt of Courts Act in proceedings initiated under Article 129 and 215 of the Constitution. The general conclusion reached by the Supreme Court and different High Courts in this regard is that when contempt proceedings are initiated under Article 129 the same is not governed by Contempt of Courts Act, though a proceeding initiated under Article 215 is governed by the Act. The study shows that such an interpretation could lead to complex problems in India. Primarily there is no reason for differential treatment of High Courts and Supreme Court with respect to the application of Contempt of Courts Act because under Indian constitutional scheme both Supreme Court and High Courts are placed on the same position as courts of record. Secondly the position evolved in India has created a situation that punishment and procedure for contempt of court are at the discretion of the Supreme Court if contempt proceeding is initiated under Article 129. This has led to a situation that when contempt proceeding is initiated under Article 129, the basic constitutional principles of procedure established by law and the basic right of an accused under criminal law to know the gravity of punishment before the imposition of punishment are violated.

Originally contempts were dealt under a single head. However, subsequently, depending upon the nature of rights violated, procedure to be followed and manner of commission, contempts were dealt under different heads. Firstly the classification is under civil and criminal heads. The criminal contempts were sub divided into scandalizing the court, interference with sub judice matters and other miscellaneous contempts. Civil contempt is also subdivided into coercive civil contempt proceedings and compensatory civil contempt proceedings. On the manner of commission of contempt, it is again classified into *ex facie* and *non ex facie* or direct and indirect contempts. Originally under Indian law also there was no classification of contempts under various heads. However the 1971 Contempt of Courts Act brought substantial changes in

this regard and contempts were classified under different heads. Chapter Five of the study deals with classification of contempt under different heads, the rationale and need for such classification. The study shows that, though, apparently classification of contempts under different heads is based on some rationale, on a strict analysis, the different categories of contempt serve the single purpose of ensuring due administration of justice, and classification of contempt under various heads does not serve any effective purpose.

Contempt power is not an exclusive domain of courts. The Legislature is also wielding the same powers. Contempt power of the courts and contempt power of the Legislature resemble in many respects. However, there are a series of instances of conflict between contempt powers of courts and contempt powers of Legislature. Chapter Six of the study deals with conflicts between contempt power of courts and contempt power of Legislatures in India and looks into possible solution to the problem. The contempt power of Legislature in India is even now governed by transitory provisions contained in the Constitution which permit Parliament as well as State Legislatures to exercise all powers, privileges and immunities held by the House of Commons at the commencement of Indian Constitution until a law is enacted in this respect. As no law is enacted, even now the contempt powers of Parliament and State Legislatures are governed by vague powers, privileges and immunities wielded by the House of Commons at the time of the commencement of the Indian Constitution. The study shows that the powers, privileges and immunities wielded by the House of Commons were developed through the bitter struggle between the monarch and the Parliament. Further the contempt power of the House of Commons is developed from the concept of High Court of Parliament which had all the powers of court or record. It seems that none of these principles are applicable to Legislatures in India. Still they are wielding all the contempt powers retained by the House of Commons at the time of commencement of the Indian Constitution. The study shows that theoretically and historically, the powers, privileges and immunities of the British Legislature could not be compared with Indian Legislatures. The theoretical justification for wielding contempt powers by the British Parliament could not be claimed by Indian Legislatures. The study further leads to the inference that it is high time for Indian legislatures to enact appropriate laws fixing their powers privileges and immunities.

The Seventh Chapter deals with punishment and procedure for contempt of court. The study shows that originally punishment for contempt of court under common law was cruel, barbarous and solely at the discretion of the court. Subsequently punishment turned out to be

merciful. Now it is confined to imprisonment, fine, cost, apology and bond for good behavior. Under the English law till the enactment of Contempt of Court Act 1981, there was no statutory limit regarding the quantum of fine and term of imprisonment. However, the 1981 Act incorporated maximum term of committal to two years in the case of committal by superior courts and one month in the case of committal by inferior courts. Even after the enactment of 1981 Act, there is no statutory limit regarding fine which could be imposed by superior courts in contempt proceeding under English law. However under the 1981 Act, the maximum fine which could be imposed by inferior courts in contempt proceeding is limited to £ 2,500. In the United States, punishment for contempt of court is much complex. Generally speaking punishment for contempt of court under U S law is at the discretion of the courts and is governed primarily by applying the principle of abuse of discretion. Further it is linked with other constitutional principles like right of the accused to jury trial, right against cruel and unusual punishments etc.

In India, since the enactment of Contempt of Courts Act, 1926, punishment for contempt of court was statutorily limited to a maximum of six months imprisonment and a fine of rupees two thousand. Thus the question of unlimited fine or indefinite imprisonment does not arise in India as a punishment for contempt of court under the Contempt of Courts Act. But the position is different when contempt proceeding is initiated under Article 129 and Article 215. Whether contempt proceeding initiated by the High Courts under Article 215 is governed by Contempt of Courts Act is yet unsettled. However it is well settled that the contempt proceeding initiated under Article 129 is not governed by Contempt of Courts Act. In such situations, there are instances of imposition of strange punishments completely disregarding maximum punishment for contempt of court mentioned under the Act. The study further shows instances of punishment for contempt of court disregarding the maximum punishment mentioned under Contempt of Courts Act even for proceedings for contempt of court initiated under the Act. The study shows need of a complete revision regarding punishment for contempt of court by incorporating severe penalties especially regarding fine and the need to strictly stick on to the statute even in cases where contempt proceeding is initiated by the Supreme Court under Article 129 of the Indian Constitution.

Originally in common law, normal criminal procedures were followed in contempt cases also. Subsequently summary proceeding without jury trial was introduced for contempts which are *ex facie*. Later even for *non ex facie* contempts, summary trial was introduced in English law

without any sound justification. Subsequently the Contempt of Court Act 1981 also recognized summary trial in contempt cases and it became a rule in English law.

Following common law, summary trial for contempt cases was recognized under U S law also. But by the development of constitutional principles regarding protections to accused, jury trial was recognized in criminal contempt cases where the punishment for contempt of court is not petty. However the distinction between petty and serious punishments in contempt cases makes the contempt proceedings complex.

In India also summary proceeding for contempt cases is well established. Under the Indian law proceeding for contempt of court is not governed by Criminal Procedure Code or Indian Evidence Act. Further under Indian law the contemnor is not even treated as an accused to claim protections guaranteed to an accused under the Constitution of India. But the present Contempt of Courts Act contains some minimum procedures to be followed with regard to *ex facie* and *non ex facie* criminal contempts. The study further shows that even with regard to the minimum procedures contained in the Act, Supreme Court has shown reluctance to comply with it.

As the statute does not contain all procedural formalities regarding contempt proceedings, it also empowers Supreme Court and High Courts to frame appropriate rules in this regard. The rules framed by the High Courts and Supreme Court in this regard are highly vague, and there is no uniformity regarding rules framed by Supreme Court and various High courts. There arises a need of framing of uniform rules by a single agency to ensure uniform procedures for contempt proceedings in the Supreme Court and various High Courts.

Though unwanted interference with administration of justice is to be prevented and nobody shall be permitted to pollute the stream of justice, the present contempt law in India is not in tune with our constitutional objectives. The study indicates the need for serious changes in the contempt of court law in India. To effectuate necessary changes, the Contempt of Courts Act needs thorough revision and amendments. Suggestions regarding necessary amendments and revision to the present Act are proposed in the suggestion part of the thesis.

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