CONTEMPT OF COURT viz-a-viz **RESTRICTION ON FREEDOM OF SPEECH AND EXPRESSION- A CRITICAL ANALYSIS.**

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"We do not fear criticism, nor do we resent it. For there is something far more important at stake"- Lord Denning

INTRODUCTION:

Speech is a gift of God to mankind and therefore is should be protected at all times and the freedom of speech should be guaranteed by the sovereign.The Freedom of speech and expression is recognized to be one of the most fundamental to the development of human being as a whole. The sharing of ideas and expressions without the concern of the medium through which it is shared is the fundamental to life. Freedom of speech and expression is has 2 facets, mainly freedom of speech, and freedom of expression. Freedom of speech can be defined as a right of individual or a community to express his or its opinion or ideas without any fear of retaliations by the opposite ideology group, censorship by any authority, or legal sanction by the then sovereign. Freedom of expression which is mainly used as a synonym to freedom of speech, but includes imparting, seeking and developing information, ideas and opinions. Freedom of speech is the very building block of a developing society i.e. a society cannot develop unless there is an open forum for publication of ideas, opinions and information which help in broaden the perspective of the society as a whole.

The very origin of the Freedom of speech and expression can be seen in the Athenian democratic principle of free speech may have emerged in the late 6th or early 5th century BC[1].England's Bill of Rights 1689 legally established the constitutional right of freedom of speech in Parliament which is still in effect[2]. During the French Revolution in 1789, the Declaration of the Rights of Man and of the Citizen was adopted and it also stated that the freedom of speech and expression as an inalienable right of a human being.[3]The French Declaration provides for freedom of expression in Article 11, which states that:

[1]Raaflaub, Kurt; Ober, Josiah; Wallace, Robert (2007). Origins of democracy in ancient Greece. University of California Press. P. 65

[2] Bill of Rights, UK Parliaent

[3]Smith, David (5 February 2006). "Timeline: a history of free speech". The Guardian. London.

"*The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law."*[4]

Today, many international and various national documents of the nation recognize freedom of speech and expression as in inalienble and inherent right of human being. Some of them are Universal Declaration of Human Rights (HDHR), adopted in 1948 by the United Nations (UN) also talks about freedom of speech and Expression in Article 19 of the document as:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."[5]

The International Covenant on Civil and Political Rights also enshrines this right under Article 19 as under:

"Article 19

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. "[6]

[4] Article 11 of the Declaration of the Rights of Man and of the Citizen
[5] Article 19 of UDHR, https://www.un.org
[6] Article 19 of International Covenant on Civil and Political Rights, https://www.ohchr.org

There are various other international covenants which have given freedom of speech and expression as recognized right. They are Article 9 of the African Charter on Human and Peoples' Rights, Article 10 of the European Convention on Human Rights, and Article 13 of the American Convention on Human Rights.

According to the Indian context, the right of Freedom of Speech and Expression is enshrined in Article 19 (1) (a)[7] of the Constitution of India, 1950. The Preamble to the Constitution of India echoes the very sentiment of this fundamental freedom as "liberty of thought, expression, belief, faith and worship which has been inserted as a human right or specifically a fundamental right under article 19 (1) (a) of the Constitution of India. India is a democracy and the very basis of democracy is everyone's participation in the governance of the nation, direct or indirect. Therefore to promote the democracy, this right is important to be safeguarded as a constitutional right and remedy for such breach is also necessary for due enforcement of the right. These rights are to be interpreted liberally by the courts so as to expand their horizon and give citizens complete freedom to speech and express their opinion, view or stand without any fear of legal sanction, etc. However these rights are not absolute and there has to be put reasonable restrictions by the state.[8]

Whether a restriction on a fundamental right is reasonable is the decision of the courts of law to make, but certain restrictions can be imposed. The restrictions on freedom of speech and expression under Constitution of India is given under Article 19 (2) which is as follows:

"Article 19 (2)

Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence"[9]

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[7] Article 19: Protection of certain rights regarding freedom of speech, etc.
(1) All citizens shall have the right
(a) to freedom of speech and expression;

[8] Romesh Thappar vs The State Of Madras(1950) S.C.R. 594

[9] Article 19 (2) restrictions of freedom of speech and expression, Constitution of India, 1950.

Here it can be seen that contempt of court is also said to be a reasonable restriction on the freedom of speech and expression. This paper aims to deal with the this specific restriction of the freedom of speech and expression and also its legal provisions, the current stand of the Indian judiciary over the topic and the view of various scholars, academicians, etc. on the restriction. The present study also gives a comparative analysis of the situation or contempt powers of the courts in other developed countries like United States of America (USA) and United Kingdom (UK) so as to have a better understanding of the present legal provisions and also to give suggestions to remedy the problem faced by the current Indian judiciary.

STATEMENT OF PROBLEM:

As freedom of speech and expression is an integral part of human life, hence it is constitutionally protected under article 19 (1) (a) of the Constitution of India. As these rights are not absolute, reasonable restrictions can be imposed by the state by making laws. Whether the laws made the state are reasonable or not is a matter to be dealt by courts of law and their interpretation. One of the restriction of freedom of speech and expression is contempt of court which the study aims to deal with. The contempt proceedings are very unique in nature as the very basic principle of natural justice i.e. Nemo judex in causa sua, a dictum that translates to "no one should be a judge in his/her own cause" is compromised. In many contempt cases there is a suo moto action taken by the court which gives the judge a position of a prosecutor as well as a judge. Therefore, the judgement is very likely to be bias. As there is no settled stand of the Indian Judiciary over what is a fair criticism, fare comment and what is contempt of court. It is mainly on the whim and fancies of the judge. Contempt power is an inherent powers of the high court and Supreme Court for them being the court of record under Article 129[10] and 215[11] of the constitution of India. Therefore a legislative action cannot limit the scope of the Courts to punish for its contempt. The Indian Judiciary has always criticized absolute powers of the legislative wing and the executive wing but when it comes on the limitation of the power of judiciary, it always has been reluctant to do so. The present paper defines this as its problem to be dealt with and will also give suggestions for the same.

[10] **129. Supreme Court to be a court of record**: The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself

[11] **215. High Courts to be courts of record**: Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself

RATIONALE BEHIND THE STUDY

Contempt powers are an inherent powers of the courts giving them absolute discretion as to define what amounts to contempt and what amounts to criticism and fair comment. Therefore there is a need to analyze the important decisions of the courts, the current stand of the judiciary, the legislative intent for the enactment and its development. This study is also important to have a clear stand in the minds of the lawyers, academicians and citizens for their better protection. The contempt of court is divided into 2 things. They are civil contempt and criminal contempt. Civil contempt is mainly for disobedience of any order, but criminal contempt is initiated for lowering the authority of the court, scandalizing the court or hampering the administration of law and justice. In criminal contempt, the courts are not mainly concerned with the intention of the contemnor but the effect of the actions, which even if tends to lower the authority of the court, scandalize the court or causes hindrance in the administration of law and justice, the contemnor is guilty of criminal contempt.

RESEARCH METHODOLOGY

The present research work is a work based completely on the doctrinal pattern of research. The topic of the research is a field which is a relating to contempt of court as a restriction on freedom of speech and expression and also deals with the stand of Indian judiciary and the legislature and will also give a comparative study with the countries like USA and UK. So the research is guided by the information obtained on the basis of various secondary sources like the documentaries, research articles, books etc. though the data consists of most of the information from the secondary sources, the use of various primary sources like the legislative enactment called the Contempt of Courts Act, 1971 and various past and recent judgements of the Supreme Court and High Courts are also referred for assistance. The researcher has also made utilization of the credential databases for collection of credible information so as to satisfy the demands of the research.

In the proposed research an analysis will be done on the basis of the statistical data provided by Contempt of Courts Act, 1971 and also various judgements, views and opinions of scholars and academicians so as to understand the loopholes in the existing mechanism.

RESEARCH OBJECTIVES

The research would be conducted so as to give suggestions for amendment inthe contempt of Courts Act, 1971 and a critical analysis of the overzealous actions of the Indian Judiciary to punish citizens for criminal contempt. The Research objectives are as follows:

- To study and understand the developments of Contempt jurisdiction of the higher judiciary,
- To study the role of legislature and the Indian Judiciary,
- To discuss in detail, what criminal contempt includes in its ambit and that the criminal contempt jurisdiction should be use very cautiously.

RESEARCH QUESTION

In the light of the of the above research objectives, the following are the broad research questions framed by the researcher. They are as follows:

1. Whether the contempt of court is a reasonable restriction on the fundamental right of freedom of speech and expression?
2. Whether the judges have been using the criminal contempt power for their personal defamations?
3. What is current stand of the Indian Judiciary on the contempt jurisdiction?

HYPOTHESIS

The provision pertaining to Contempt of Courts Act and various present judgements of the Supreme courts pose a threat on the freedom of speech and expression which is enshrined in the Constitution of India as a Fundamental Right under Article 19 (1) (a) and is inconsistent with the upcoming times.

CHAPTERIZATIONS

The present research paper is divided into various chapters by the researcher as he deemed fit for a better understanding of the paper. They are as follows:

The origin and developments of Contempt jurisdiction of the Courts

The contempt of court is aimed to be instituted against people who lowers the authority of the court, scandalize the court or obstructs the administration of justice or willful disobedience is cause by a person of the order of these courts. It is difficult to trace the origin of the contempt law but it can be said to have been originated from the common law principles. In earlier times when the courts represented the kings and any insult made to the courts were considered an insult to the king. Therefore the powers to punish such people was given by the king. As “king can do no wrong” maxim was prevalent at the times, the courts which represented him and its officers are elected by the kings, they can also do no wrong to the people, and any types of insult, slander, or and derogatory sentence said to these officers were aimed at the kings. Hence these courts were also called the Kings Court. The power to punish for its contempt were subsumed by these courts even when the king was overthrown.

History of Contempt of Court and its development in England: The phrase contempt of court (Contemptus curiae) have used for over eight centuries. The idea of contempt of the King is referred as an offence in the laws set forth in the first half of the Twelfth Century.Contempt of the King's Writ was mentioned in the laws of King Henry-I. In the same laws there was mention or primary pecuniary for Contempt or disregard of orders. Thus in England before the end of the Twelfth Century Contempt of Court was a recognized expression and applied to the defaults and wrongful acts of suitors.It seems, therefore, that the Common Law Courts had the power to deal summarily with Contempt committed in their presence. In the Seventeenth Century, an important development in the law of contempt took place in the Court of Chancery. The Writ of Attachment began to be used not merely in the case of those flagrant abuses or obstruction of the administration of Justice with which the Common Law Courts were not only to deal, but also to compel performance of contracts as between parties in a particular Suit.The Writ of Attachment and Summary Process, thus became part of the ordinary procedure of the Court. This

development eventually led to the distinction between Civil contempt and Criminal Contempt. The early examples of contempt in England was seen when a prisoner in 1631, when a prisoner threw a brickbat at a judge which he nearly missed, and order was passed to cut his arm and hang it the gallows. In 1938, when a litigant threw tomatoes at the Court of Appeal, consisting of Clawson and Goddard JJ., he was immediately arrested but was later released as he missed the tomatoes.

History of Contempt of Court and its development in India:

The power of courts to punish for contempt can be seen in India in pre-independence era as many court were established by the charter from the king of England. Therefore it was necessary to understand the development of power of courts to punish for contempt in England as these powers were inherited by the courts after independence. After the East India Company acquired many lands in India, it required the charter of 1726 to establish a corporation in each presidency town (Bombay, Calcutta, and Madras). This charter is considered to be a landmark in Indian Legal System as it also made provisions from establishing mayor courts in each presidency and were made courts of record, and to deal with civil cases in its jurisdiction and subordinate jurisdiction[12].In 1774, the Mayor's Court at Calcutta was replaced by the Supreme Court of Judicature at Fort William, Calcutta.[13].The Supreme Court at Madras came into existence in the year 1801[14], and the Supreme Court at Bombay came into existence in 1824[15].The Supreme Courts were in turn succeeded by the High Courts. The three High Courts of Calcutta, Bombay & Madras had the inherent power to punish for Contempt[16]. The High Court of Allahabad was established in 1866 in pursuance of the Indian High Courts Act, 1861. In 1867, C.J Peacock held in the case of In Re: Abdool and Mahtab[17] that,

"There can be no doubt that every Court of Record has the power of summarily punishing for Contempt."

[12] Charter of 1726
[13] The Regulating Act, 1773
[14] Charter of 1800
[15] Charter of 1823
[16] The Indian High Courts Act, 1861
[17](8 W.R. Cr. 32)

The Calcutta High Court in Legal Remembrance v. Matilal Ghose & Ors[18] held that,

"the power to punish for Contempt was arbitrary, unlimited and uncontrolled, and therefore, should be exercised with the greatest caution: that this power merits this description will be realized when it is understood that there is no limit to the imprisonment that may be inflicted or the fine that may be imposed save the Court's unfettered discretion, and that the subject is protected by no right of general appeal."

The Contempt of Courts Act 1926 was enacted to resolve a conflict of opinions between High Courts in India on whether they had the power to penalize offences of contempt committed against other, subordinate courts that fell under their jurisdiction.Prior to the coming into force of the Contempt of Courts Act, 1926 there was a conflict of opinion among the different High Courts as to their power to punish for Contempt of Subordinate Courts. The 1926 Act specifically affirmed this power, and allowed the High Courts to penalize contempt against subordinate courts as well as against their own judgments and proceedings.

In 1950, the Constitution of India was enacted which made Supreme Court of India and high Courts, the court of record under articles 129 and 215 respectively.

The Supreme Court inSukhdev Singh Sodhi Vs. The Chief Justice S. Teja Singh & Judges of The Pepsu High Court[19] discussed that,

"Apart from the Chartered High Courts, practically every other High Court in India has exercised the jurisdiction and where its authority has been challenged each has held that it is a jurisdiction inherent in a Court of Record from the very nature of the court itself. This is important when we come to construe the later legislation because by this time it was judicially accepted throughout India that the jurisdiction was a special one inherent in the very nature of the Court."

Legal Provisions pertaining to the Contempt of Court and the stand of Indian Judiciary

[18](1914) I.L.R. 41 Cal. 173
[19]1954 AIR 186, 1954 SCR 454

In a democratic country Judiciary plays very important role. In such situation it becomes essential to respect such institution and its order. Thus, restriction on the freedom of speech and expression can be imposed if it exceeds the reasonable and fair limit and amounts to contempt of court.[20] The initial contempt law was governed by the common law principles but later in 1926 first Contempt of Court Act, 1926 (Herein referred to as the 1926 Act) was enacted. This Act was later replaced by the Contempt of Courts Act, 1952(herein referred to as the 1952 Act).The Act of 1952 made some notable changes, the Act empowered the court of Judicial commissioner to punish the Contempt of court subordinate to it. It was given to Jurisdiction to inquire into or try a Contempt of itself or any Court subordinate to it. However the 1952 Act was not satisfactory as there were many lacunae in the law like no definition of contempt of court, nor states the defenses available to the contemnor.There was no provision as to defenses of innocent Publication, fair and accurate report of judicial proceedings, fair criticism of judicial decisions etc. Besides these defects, even the Act did not contain any provision as to Contempt liability of the Judges and other persons acting judicially. The Act did not contain any provision to the procedure to be followed in the Contempt proceeding and as to appeal in contempt cases. The above defects in the Act compelled the Government to examine the existing Contempt law and to remove out the defects therein. Finally there was a need felt to change the present law, therefore a bill was introduced in Lok Sabha by ***Shri Bibhuti Bhushan Dasgupta***who aimed to amend the law relating to the courts contempt jurisdiction.After considering the Bill, the Government realized need to Reform the law relating to Contempt of Court, and Committee was set up by the Government under the Chairmanship of ***Shri H.N. Sanyal***, Additional Solicitor General of India in July 1961. The Sanyal Committee recommended that contempt proceedings should be initiated not by the courts themselves, but on the recommendation of a law officer of the government. The Sanyal Committee was of the opinion that the law of contempt of court must harmonize with the constitutional guarantee of freedom of expression and personal liberty. The main issue with which the committee was dealing which was, whether the legislature is competent enough to make a law? The committee came to the conclusion after having a clear reading of Entry no. 77[21] in Union List and Entry no. 14[22] of the Concurrent list of the Seventh Schedule that legislature is competent to make laws for contempt of court. The entire law on the

[20] https://www.indialawjournal.org

[21]

[22]

Contempt of Court was scrutinized by the Committee and then the Committee submitted its report on 28 February 1963 to Lok Sabha. The Bill was then referred to the joint select committee of the parliament. The Committee submitted its report on 20 February 1970. The Bill was substantially altered in the light of the said effect and thereafter, it enacted as the Contempt of Courts Act, 1971[23](herein referred to as Act 1971). This act came into force on 24 December 1971 and repealed replaced the earlier Contempt of Court Act, 1952.

The Act 1971 defines and divided the Contempt of Court into 2 categorical heads

- **civil contempt**[24] means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;
- **criminal contempt**[25] means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court;

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

The 1971 Act also specifically gave exceptions to the contempt of court and suggested guidelines for reporting and commenting on judicial proceedings that would not attract the provisions of the Act. Section 4 *Fair and accurate report of judicial proceeding not contempt*[26] and section 5 *Fair criticism of judicial act not contempt*[27] are exceptions

[23](70 of 1971)
[24] Section 2 (b) of Contempt of courts Act, 1971.
[25] Section 2 (c) of Contempt of courts Act, 1971.
[26]**Sec 4. Fair and accurate report of judicial proceeding not contempt**.—Subject to the provisions contained in section 7, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof.
[27]**Sec 5.Fair criticism of judicial act not contempt**.—A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided.

newly added in the 1971 Act.The 1971 Act also states under sec 13[28] that court should not punish unless the action of Contemnor obstructs the administration of Justice. The 1971 Act also states the procedure[29] and limitation[30] of the contempt proceeding.

Now the researcher aims to discuss important landmark judgements of the various courts in India which has helped the Contempt law to settle the way it is. *(The researcher has taken note of the cases after the enactment of the 1971 Act.)*

The first case dealing with the freedom of speech and expression and contempt of court was Shri *Baradakanta Mishra v. Registrar of Orissa and anr*[31]. Wherein J. Krishna Iyer gave very important insights which are as follow

"*the dilemma of the law of contempt arises because of the constitutional need to balance two great but occasionally conflicting principles — freedom of expression and fair and fearless*

[28]**Sec 13. Contempt not punishable in certain cases**.—Notwithstanding anything contained in any law for the time being in force,—
(a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;
(b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defense if it is satisfied that it is in public interest and the request for invoking the said defense is bona fide.

[29]**Sec 17.Procedure after cognizance.—(**1) Notice of every proceeding under section l5 shall be served personally on the person charged, unless the Court for reasons to be recorded directs otherwise.
(2) The notice shall be accompanied,—
(a) in the case of proceedings commenced on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded; and
(b) in case of proceedings commenced on a reference by a subordinate court, by a copy of the reference.
(3) The Court may, if it is satisfied that a person charged under section 15 is likely to abscond or keep out of the way to avoid service of the notice, order the attachment of his property of such value or amount as it may deem reasonable.
(4) Every attachment under sub-section (3) shall be effected in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the attachment of property in execution of a decree for payment of money, and if, after such attachment, the person charged appears and shows to the satisfaction of the Court that he did not abscond or keep out of the way to avoid service of the notice, the Court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit.
(5) Any person charged with contempt under section 15 may file an affidavit in support of his defence, and the Court may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary, and pass such order as the justice of the case requires.

[30]**Sec 20. Limitation for actions for contempt.—**No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

[31](1974) 1SCC 374

justice — remembering the brooding presence of Articles19 (1)(a), 19(2), 129 and 215 of the Constitution"[32]

"before stating the principles of lawbearing on the facets of contempt of court raised in this case wewould like to underscore the need to draw the lines clear enough to create confidence in the people that this ancient and inherent power, intended to preserve the faith of the public in public justice, will notbe so used as to provoke public hostility as overtook the Star Chamber. A vague and wandering jurisdiction with uncertain frontiers,a sensitive and suspect power to punish vested in the prosecutor, alaw which makes it a crime to publish regardless of truth and public good and permits a process of brevi manu conviction, may unwittinglytrench upon civil liberties and so the special jurisdiction andjurisprudence bearing on contempt power must be delineated withdeliberation and operated with serious circumspection by the higherjudicial echelons"[33]

The Supreme Court Re: S. Mulgaokar vs Unknown[34] the Justice Krishna Iyer in his separate though concurring judgement held that

"It may be better in many cases for the judiciary to adopt a magnanimously and charitable attitude even when utterly uncharitable and unfair criticism of its operations is made out of bona fide concern for improvement"

The Supreme court of India in S.K. Sarkar v. Vinay Chandra Mishra held that,

"Articles 129 and 215 preserve all the powers of the Supreme Court andthe High Court, respectively, as a Court of Record which include thepower to punish the contempt of itself. There are no curbs on thepower of the High Court to punish for contempt of itself except thosecontained in the Contempt of Courts Act. Articles 129 and 215 do notdefine as to what constitutes contempt of Court. Parliament has, byvirtue of the Entries 77 and 14 in List I and List III respectively of theSeventh Schedule, power to define and limit the powers of the Courtsin punishing contempt of Court and to regulate their procedure inrelation thereto. Indeed, this is what is stated in the preamble of theAct of 1971."

[32] Para 60 of (1974) 1SCC 374
[33] Para 65 of (1974) 1SCC 374
[34](1978) 3 SCC 339

The Supreme Court in P.N. Duda v. P.Shiv Shanker, Justice sabhyasachi Mukherjee held for the bench that,

"It has to be admitted frankly and fairly that there has been erosion of faith in the dignity of the court and in the majesty of law and that has been caused not so much by the scandalizing remarks made by politicians or ministers but the inability of the courts of law to deliver quick and substantial justice to the needy. Many today suffer from remediless evils which courts of justice are incompetent to deal with. Justice cries in silence for long, far too long. The procedural wrangle is eroding the faith in our justice system. It is a criticism which the judges and lawyers must make about themselves. We must turn the searchlight inward. At the same time we cannot be oblivious of the attempts made to decry or denigrate the judicial process, if it is seriously done".

The Supreme Court in Delhi Judicial Service Association vs State Of Gujarat[35] And Ors took a slightly different view stating that *"The High Courts and Supreme Court of India being the Court of Record under article 215 and 129 of the Constitution of India, 1950 these powers are inherent, unfettered and cannot be abridged or abrogated by any enactment of the Legislature"*. Upon reading the Entry no. 77 of Union List, the court came to the view that, *"The Parliament can give a procedure for the institution of proceeding and other provisions of the Contempt of court but cannot in any way abridge or abrogate its inherent power to try for contempt*.

The Controversy was finally settled in the case of Pallav Sheth v. Custodian[36] in which Supreme Court categorically held that,

"There can be no doubt that the Supreme Court and High Courts are Courts of Record and the Constitution has given them the powers to punish for contempt. This power cannot be abrogated or stultified. But if the power under Article 129 and Article 215 is absolute can there be any legislation indicating the manner and to the extent that the power can be exercised? If there is any provision of the law which stultifies or abrogates the power under Article 129 and/or Article 215 there can be little doubt that such law would not be regarded as having been validly enacted. However, a law providing for the quantum of punishment or what may or may not be regarded as acts of contempt or even providing for a period of limitation for initiating

[35]AIR 1991 SC 2176
[36]AIR 2001 SC2763

proceedings for contempt cannot be taken to be a provision which abrogates or stultifies the contempt jurisdiction under Article 129 or Article 215 of the Constitution. Courts have always frowned upon the grant or existence of absolute or unbridled power. Just as power or jurisdiction under Article 226 has to be exercised in accordance with law, if any, enacted, by the legislature it would stand to reason that the power under Article 129 and/or Article 215 should be exercised inconsonance with the provisions of a validly enacted law. In case of apparent or likelihood of conflict the provisions should be construed harmoniously. It, therefore, follows that if Section 20 is so interpreted that it does not stultify the powers under Article 129 or Article 215 then, like other provisions of the Contempt of Courts Act relating to the extent of punishment which can be imposed a reasonable period of limitation can also be provided."

The Pallav Singh's judgement was considered to be a landmark judgement in the contempt law as it conclusively settled the controversy. The Supreme Court drew a parallel view with the law making power of parliament under Article 226, if any should be followed and hence if sec 20 of the Contempt of Courts Act, 1972 gives a limitation period of the institution of proceedings, cannot be said to be abrogating for stultifying the inherent powers of the Supreme Court and High Courts. This Question or the controversy resurrected in the case of Zahira Habibullah Sheikh v. State of Gujarat[37] where the Supreme Court relying on its inherent powers granted under Article 129 held that,

"Parliament by virtue of Entry 77 List I is competent to enact law relating to the powers of the Supreme Court with regard to contempt of itself and such a law may prescribe the nature of punishment which may be imposed on a contemnor by virtue of the provisions of Article129 read with Article 142(2) of the Constitution. Since, no such law has been enacted by Parliament, the nature of punishment prescribed, the Contempt of court Act, 1971 may act as a guide for the Supreme Court but the extent of punishments prescribed under that Act can apply to the High Courts, because the 1971 Act ipso facto does not deal with the Contempt jurisdiction of the Supreme Court"

The Supreme Court in Rajeshwar Singh v. Subrata RoySahara[38] while relying on Re Delhi Judicial Service Association Case[39] stated that, *the inherent powers of the Supreme Court Stated*

[37](2006) 3 SCC 374
[38]AIR 2014 SC 476

in Article 129 of the Constitution of India being the court of record has absolute powers to punish for its contempt and cannot be abridged or abrogated by any enactment passed by Legislature.

The Supreme Court recently in the case of Re: Vijay Kurle & ors[40], by easily bypassing the judgment of Pallav seth, held that in para 30,

"This court in that case was only dealing with the question whethercontempt can be initiated after the limitation prescribed in theContempt of Courts Act has expired and the observation made therein have to be read in that context only. It, however, went on to holdthat providing the question of punishment or a period of limitationwould not mean that the powers of the court under Article 129 havebeen stultified or abrogated. We are not going into the correctness orotherwise of this judgment but it is clear that this judgment only dealtwith the issue whether parliament could fix a period of limitation toinitiate the proceedings under the Act. Without commenting one wayor the other on Pallav Sheth's case (Supra)it is clear that the same hasnot dealt with the power of this court to issue Suo-Motu notice ofContempt."

In the most recent case of **Prashant Bhushan**, the case which attracted the attention of the whole country, the Supreme Court initiated the Contempt proceeding on and Advocate on Record (AOR) Adv. Prashant Bhushan, for his two tweets and also an interview given to the Tehelka Magazine in 2009. As soon as the contempt proceedings were initiated, the contemnor retracted the tweets and also gave an apology for the same where he criticized the present CJI S.A. Bobde for driving a motorcycle and keeping the Supreme Court in Lockdown mode, and another tweet was on the last 4 CJI's accusing them to destroy democracy without any formal emergency. The Contemnor refused to apologize for his interview stating that the cause of action has expired under the Sec 20 of the 1971 Act. The Supreme Court rejected all the contentions of the contemnor and held his liable for criminal Contempt and also skipped passed the binding principle of the Pallav Seth judgement by stating that the present issue is dealt with convincingly in the case of Re. Vijay Kurle and they do not intent to state it again in Para 78.

Hence it can be seen from the above judgements of the Hon'ble Supreme Court that there is no clear stand of the judiciary of the contempt jurisdiction of high court and Supreme Court.

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[39] AIR 1991 SC 2176

[40] (2020)SCC Online 407.

The Indian Judiciary has always been criticized absolute powers of the legislature and executive, but when it comes to the limitation of the powers of the Supreme Court, they have been reluctant to do so and state that their powers under Article 129 and 215 cannot be abridged or abrogated by any legislative enactment. Though the Supreme Court is the guardian of fundamental rights enshrined under Part III of the Constitution of India, it has failed time and again to protect the freedom of speech and expression by restricting it by initiation of contempt proceeding, thereby discouraging criticism against the judiciary. The judiciary is also an important wing of the state like legislature and executive and hence it cannot be immune from criticism. Hence the Court should take a lenient view of the criticism even if they are very harsh so to not show easy irritability by mere criticism. The criminal contempt proceeding should not be initiated unless the statement made actually hinder or obstruct the administration of law and justice or lowers the authority of the court or most importantly, creates doubt in the minds of the citizens regarding the sanctity of the Judiciary.

One more issue with for which the Courts were criticized was that many judges misused the criminal contempt as to the lengthy procedure of the case of personal defamation. There were no procedural safeguards or substantial law safe guards to avoid misuse by the judges. When there is a statement made against a judge in his capacity of being a judge, it is made against the judiciary and there criminal contempt can be initiated by when there is statement made against a judge in his individual capacity, he cannot issue contempt proceedings against the contemnor but will have a civil remedy of defamation.

Comparative Analysis of the Contempt jurisdiction

UNITED KINGDOM

The Contempt law is partly codifies in the Contempt Act and partly in the common law. The Contempt of Courts Act, 1981 was enacted by the UK Parliament after the European Court of Human Rights (ECHR) held that United Kingdom's contempt law violated Article 10[41] of the European Convention on Human Rights to safeguards the interest of the courts in UK. The Contempt of Courts Act, 1981(Herein Referred to as CCA) divided the contempt into 2 parts

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civil and criminal contempt. The contempt can be initiated by direct contempt and by indirect contempt. Direct contempt is when the court cites the contemnor has unorderly behavior in front of a judge or a magistrate, obstruct or prejudice and proceeding of the court, etc. Direct contempt is distinctly different from indirect contempt, wherein another individual may file papers alleging contempt against a person who has willfully violated a lawful court order. The CCA introduced strict liability. There are both civil and criminal components to CCA 1981. The criminal offence of contempt of court carries a jail sentence of up to two year and an unlimited fine. Mens rea is not a necessary ingredient for initiation of contempt proceedings in CCA.

The main provisions of CCA 1981 are to:

- limit liability for contempt under the 'strict liability rule' **(ss 1- 7);**
- prohibit the use of recording devices in court without leave of the court and makes publication of a sound recording a contempt of court **(s 9);**
- provide limited protection against contempt for a person refusing to disclose the source of information contained in a publication for which he is responsible **(s 10);**
- allow magistrates' courts to deal with contempt in the face of the court by imposition of a fine of £2500 or committal to custody for a maximum of one month or both **(s 12);**
- restrict the period of committal to prison for contempt where there is no express limitation to two years for a superior court and one month for an inferior court **(s 14).**

Anonymity under CCA

- Under s 11 of CCA 1981, the court has the power to prevent the publication of material, including names of participants, arising out of the proceedings held in open court.
- An important principle of English common law is that justice is done in public. This is so that justice is not only done but also seen to be done. This provision constitutes an exception to this principle.

Lord Haldane LC explained that, "*While the broad principle is that the courts of this country must, as between parties, administer justice in public, this principle is subject to apparent exceptions… But the exceptions are themselves the outcome of yet a more fundamental principle that the chief object of the courts of justice must be to secure that justice is done… as the paramount object must always be to do justice, the general rule as to publicity, after all only the means to an end must accordingly yield. But the burden lies on those seeking to*

displace its application in the particular case to make out that the ordinary rule must as of necessity be superseded by this paramount consideration.[42] ”

In the famous Spycatcher case, which was a memoir of a former intelligence officer. The ban - imposed on theground that the book disclosed sensitive details was criticized on theground that the information was even otherwise available in the publicdomain. The criticism was made by most provocative newspaper response ever to a court order, 'The Daily Mirror', published on July 31, 1987a picture of three senior judges - **Lord Ackner, Lord Brandon and LordTempleman**- upside down in the front page. The highlight of the report was its not-so-subtle headline: "*YOUFOOLS*". Lord Templeman denied initiation of contempt proceedings and wittingly replied that he was indeed an old man but whether he was a fool was a matter of public perception, although he did not think so.

UNITED STATED OF AMERICA

The summary power of the courts of the United States to punish contempt of their authority had its origin in the law and practice of England where disobedience of court orders was regarded as contempt of the King himself and attachment was a prerogative process derived from presumed contempt of the sovereign.In United States jurisprudence, acts of contempt are generally divided into direct or indirect and civil or criminal.Contempt of court in a civil suit is generally not considered to be a criminal offense, with the party benefiting from the order also holding responsibility for the enforcement of the order. However, some cases of civil contempt have been perceived as intending to harm the reputation of the plaintiff, or to a lesser degree, the judge or the court.In the United States, the Judiciary Act of 1789[43] conferred power on all courts of the United States “to punish by fine or imprisonment, at the discretion of said courts, all contempt of authority in any cause or hearing before the same.”in 1827 James H. Peck, a judge on the U.S. Federal District Court of Missouri, found an individual in contempt for responding through the newspapers to a decision that Peck had published concerning land claims. The House of Representatives subsequently impeached Peck, but the Senate did not convict him. As it was seen how the criminal contempt power can conflict with the First Amendment freedoms of

[42] Scott v Scott [1913] AC 417
[43] 1 Stat. 83, § 17 (1789).

speech and press, as a result of this incident, however, Congress adopted a law in 1831 limiting the Court's power to punish contempt to behavior carried out in the direct presence of the courts "or so near thereto as to obstruct the administration of justice."

Justice Field, while observing for the Court in Ex parte Robinson,[44] *"The power to punish for contempt is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power."*

In Toledo Newspaper Co. v. United States[45] as to uphold the action of a district court judge in punishing a newspaper for contempt for publishing spirited editorials and cartoons issues raised in an action challenging a street railway's rates. A majority of the Court held that the test to be applied in determining the obstruction of the administration of justice is not the actual obstruction resulting from an act, but *"the character of the act done and its direct tendency to prevent and obstruct the discharge of judicial duty."*

Justice Clark, speaking for the majority in Sheppard v. Maxwell,wrote, "*If publicity during the proceedings threatens the fairness of the trial, a new trial should be ordered. But we must remember that reversals are but palliatives; the cure lies in those remedial measures that will prevent the prejudice at its inception. . . . Neither prosecutors, counsel for defense, the accused, witness, court staff nor law enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures."*

The Court in Sacher v. United States[46], *"the trial judge, upon the occurrence in his presence of a contempt, immediately and summarily to punish it, if, in his opinion, delay will prejudice the trial. We hold, on the other hand, that if he believes the exigencies of the trial require that he*

[44]86 U.S. (19 Wall.) 505 (1874).
[45]247 U.S. 402 (1918).
[46]343 U.S. 1 (1952)

defer judgment until its completion he may do so without extinguishing his power.The trial judge may summarily and without notice or hearing punish contemptuous conduct committed in his presence and observed by him, if he does choose to wait until the conclusion of the proceeding, he must afford the alleged contemnor at least reasonable notice of the specific charge and opportunity to be heard in his own defense."

In Cheff v. Schnackenberg,[47] that a defendant is entitled to trial by jury when the punishment in a criminal contempt case in federal court is more than the sentence for a petty offense, traditionally six months.

In Offutt v. United States,[48] acting under its supervisory powers over the lower federal courts, the Court set aside a criminal contempt conviction imposed on a lawyer after a trial marked by highly personal recriminations between the trial judge and the lawyer. In a situation in which the record revealed that the contumacious conduct was the product of both lack of self-restraint on the part of the contemnor and a reaction to the excessive zeal and personal animosity of the trial judge, the majority felt that any contempt trial must be held before another judge so as to avoid personal bias of the judge.

CONCLUSIONS

The high courts initially in India has the inherent power to punish for contempt being the courts of record under the Indian High Courts Act. After the Constitution of India came into force, the Supreme Court and High Courts were made the courts of record under Articles129 and 215 respectively. Hence these courts being the courts of record has the power to punish for its contempt. Legislature enacted contempt of Court Act, 1926 which was on the lines of the British contempt law which did not define the term contempt nor its defined the limitations of contempt jurisdiction of the courts. Therefore legislature again amended the act and it came to be known as Contempt of Courts Act, 1952 which again had various shortcomings and it was seen by the legislature that the power of contempt was abused by the judiciary. Therefore parliament made H.N. Sanyal committee to review the 1952 Act. The committee came up with recommendations which were accepted in general by the parliament and Contempt of Courts Act, 1971.

[47] 384 U.S. 373 (1966)
[48] 348 U.S. 11 (1954).

After reviewing various judgement of the Supreme Court above, it can be concluded that the Supreme Court's stand on whether the legislature is competent to make laws relating to contempt of courts keeps on changing again and again. First the Supreme Court state that the legislature is empowered under Entry no. 77 of union list to make such laws but the court also state that these laws cannot abrogate or abridge the inherent powers of the courts to punish for as them being courts of record. It can be seen that the basic principle of natural justice i.e. no man should be a judge of his own cause is not followed. The judiciary has always criticized the absolute and unfettered powers of the legislature and executive, but then it comes to the powers of the judiciary itself, it is seen that they are reluctant to abridge their power. Contempt of court being a reasonable restriction under Article 19 (2) is been used by the judges according to their own whims and fancies and the institution process of the contempt proceedings is seemed to be selective according to the judicial officers.

SUGGESTIONS

Contempt proceeding being unique in its nature and its process of institution, here are some of the suggestion given by the researcher to overcome the hurdles. They are as follows:

- **Fair Trial:** According to this term, the researcher suggests that the judge instituting the contempt proceeding should recuse himself from hearing and adjudicating the matter as there is likeliness of bias which vitiates the proceedings. The principle of no man should be a judge of his own cause should be followed in this proceeding also as there is no exception to the principles of natural justice.
- **Lessen the contempt jurisdiction**: The term "Scandalizing the court" is very vague term and has seem to be misused the judges for initiating contempt proceedings for personal defamations. The law commission in 2018 was said to re analyze the definition of criminal contempt and the term scandalizing the court so as to ascertain whether it should be repealed.
- **Trifling Acts:** The judiciary should take a liberal view to the criticism made to it even when it is really harsh. The courts should take action when there is actual obstruction in administration of justice, or actual action constituting lowering the dignity of the court, etc.

- **Clear distinction between defamation and criminal contempt of court:**There should be made a clear distinction between what amounts to criminal contempt of court and what amounts to personal defamation of a judges. Though these parameters share a very similar stage and background, judges should not initiate contempt proceeding where the statement is a personal defamation of judge in his individual capacity.

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This Article/Paper has been written by Adv. Rahul Agarwal, Associate at Bansal Chorbele Law Chambers.