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# **CONTEMPT PROCEEDINGS AND THE ROLE OF JUDICIARY: INDEPENDENCE AND ACCOUNTABILITY**

AUTHORED BY - PROTEEK MOTILAL

## **ABSTRACT**

This research paper explores the complex and often controversial topic of "*Contempt Proceedings and the Judicial Role: Balancing Independence and Accountability*." The main objective of this study is to thoroughly analyze the multifaceted role of the judiciary in both initiating and adjudicating contempt proceedings, with a specific focus on maintaining a delicate balance between judicial independence and accountability.

In a democracy, the people are considered to be the ultimate decision-makers, and all authorities - including judges, legislators, ministers, and bureaucrats - are public servants. It is important to recognize that the people of India hold sovereignty, and therefore all authorities, including the courts, serve the people. As the masters, the people have the right to evaluate their servants if they do not fulfill their duties properly.

**KEYWORDS-** Contempt, Civil, Criminal, Independence, Accountability

## **INTRODUCTION**

Contempt of court refers to any action or illegal activity that questions or challenges the authority, honesty, or superiority of the court. Such misconduct could involve disregarding appeals, exerting influence over witnesses, concealing evidence, disrupting the trial process, or disobeying an official court directive. These infringements can be committed by attorneys, judges, court staff, jurors, witnesses, protesters, or any other individual participating in court proceedings.

Criminal and civil contempt of court are the two basic categories. A civil or criminal case may experience criminal contempt. Refusal to abide by a court order in a civil lawsuit may constitute civil contempt. Instead of penalizing the perpetrator, the sentence imposed is meant to compel adherence to the particular court order.

Criminal contempt often refers to significant actions or disruptions that insult the court's authority or obstruct the court's regular course of business. The penalty is imposed in order to uphold the legitimacy of the court or the designated judge. So, while civil contempt has the goal of compliance, criminal contempt has the goal of punishment.

**“Contempt of court is defined as behavior that is disrespectful or disregarding of the integrity of any party while serving as an official or working in some capacity as a judicial server.”**

### **1. Civil Contempt**

Under Section 2(b) of the Contempt of Courts Act of 1971, it has been described as willful disobedience to any judgement, direction, order, sentence, or other process of a court or willful violation of an undertaking given to a court.

### **2. Criminal Contempt**

Criminal contempt is defined in Section 2(c) of the Contempt of Courts Act of 1971 as the publication of any matter or the doing of any other act whatsoever that:

- (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court, or
- (ii) prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or
- (iii) interferes or tends to interfere with or so obstructs.

### **Penalty for contempt of court**

In India, the High Court and Supreme Court have the authority to punish for contempt of court. Contempt of court can be punished with simple imprisonment for a term of up to six months, a fine of up to two thousand rupees, or both under Section 12 of the Contempt of Court Act, 1971. In civil cases, however, if the court believes that a fine is insufficient to ensure justice, the court can sentence civil prison for six months rather than simple imprisonment.

### **Contempt under India Constitution**

Articles 129 and 215 of the Indian Constitution empower courts to deal with contempt. While Article 129 empowers the Supreme Court, Article 215 empowers High Courts to punish people for their respective contempt if they are caught or are accused of interfering with their jobs. Although, according to Section 10 of the Contempt of Courts Act of 1971, High Courts have been given special powers to punish subordinate court contempt.

## **The Role of Contempt**

The judiciary possesses the power of contempt. It is a necessary power to protect the dignity and authority of the courts, as well as to ensure that the judicial process is fair and impartial.

There are two types of contempt of court: civil contempt and criminal contempt. When someone violates a court order, this is referred to as civil contempt. Criminal contempt occurs when someone acts in such a way as to undermine the authority of the court or interfere with the administration of justice. Anyone, including lawyers, journalists, and ordinary citizens, can be charged with contempt of court. If someone is found to be in contempt, the court has the authority to impose a variety of penalties, including fines and imprisonment.

**“Contempt proceedings help the judiciary maintain its independence and accountability. Contempt proceedings help to ensure that the judiciary can function fairly and impartially by punishing those who disrespect or interfere with the court process.”**

## **INDEPENDENCE**

The judiciary is distinct from the other two branches of government, the executive and legislative. This means that the courts are free to make decisions independent of the other branches. Contempt proceedings help to safeguard this independence by discouraging people from interfering with the court process.

For example, if a person publishes an article criticizing the character of a judge, the judge may find the person in contempt of court. This is due to the possibility that the article could be interpreted as an attempt to intimidate the judge or influence the outcome of a case. The court's punishment sends a message that it will not tolerate interference with its independence.

## **INDEPENDENT OF INDIAN JUDICIARY**

Following the lifting of the state of emergency in 1977, which was a blow to the judiciary's independence, and in the context of executive interference in judicial appointments, the Supreme Court was called upon to protect the judiciary's independence from undesirable appointments and arbitrary transfers by the executive. This it did in three cases: the First, Second, and Third Judges cases.

### **THE FIRST CASE-**

In *S.P. Gupta vs. UOI*, a Supreme Court bench of five judges considered the method of

appointment of Supreme Court and High Court judges in 1981. Both Articles 124(2) in relation to Supreme Court Judges and Art.217(1) in relation to High Court Judges require an appointment by the President (which means the Executive) after "consultation" with other functionaries mentioned in the Chief Justice of India's Articles. The term "consultation" does not mean "*concurrence*" in everyday language. According to the debates in the Constituent Assembly, when some members suggested that the expression should be concurrence rather than consultation, it was not agreed upon.<sup>1</sup>

### **THE SECOND CASE-**

Ten years later, in 1993, the Supreme Court constituted a larger bench of nine judges in the case of Supreme Court Advocates on Record Association v. Union of India to consider the correctness of the First Judge's case, which had held that the Chief Justice of India did not have primacy of his opinion. Overruling the First Judge's case, a majority decided that the CJI was best equipped to assess a judge's worth and that it was also necessary to eliminate political influence on the judiciary.<sup>2</sup>

### **THE THIRD CASE-**

The case of the Second Judge raised concerns about the Chief Justice and his senior colleagues' collective opinion. It was assumed that the CJ would consult with his senior colleagues and that his recommendation would be widely acceptable and uncontroversial.

However, during Chief Justice Punchhi's eight-month stint as Chief Justice of India, a number of recommendations for appointments were deemed contentious, and the Law Ministry was denied the right to inquire into the scope of the Chief Justice's consultations. It was even feared that a Supreme Court bench appointed by the Chief Justice would issue a mandamus ordering the Government to appoint a judge recommended by him. In these circumstances, the Central Government rushed to make a reference to the Supreme Court under Section 143(1) in July 1998, seeking the Supreme Court's opinion.<sup>18</sup>

According to the court, the CJ must make a recommendation to appoint the Supreme Court Judge in consultation with four seniors most puisne Judges of the Supreme Court, and for the appointment to the High Court, the recommendation must be in consultation with senior most puisne Judges of the Supreme Court.<sup>3</sup>

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<sup>1</sup> <https://www.drishtias.com/daily-news-analysis/collegium-system-for-the-appointment-of-judges>

<sup>2</sup> <https://www.drishtias.com/daily-news-analysis/collegium-system-for-the-appointment-of-judges>

<sup>3</sup> <https://www.drishtias.com/daily-news-analysis/collegium-system-for-the-appointment-of-judges>

## ACCOUNTABILITY

The judiciary must also answer the public. This means that the courts must account for their decisions to the public. Contempt proceedings can aid in ensuring accountability by holding people accountable in court for their actions.

A person who disrupts a court proceeding, for example, may be found in contempt of court by the judge. This is because the individual's actions could be interpreted as an attempt to obstruct the fair administration of justice. The court is holding the person accountable for their actions and sending a message that such behavior will not be tolerated by punishing them.

- ❖ Judicial accountability means that judges are accountable for the decisions they make. It also implies that Judges will be held accountable for their actions.
- ❖ The Judiciary is not held to the same standard of accountability as the Executive or Legislative branches of government.
- ❖ The reason for this is that the principles of Judicial Independence and Accountability are sometimes thought to be diametrically opposed.
- ❖ Judicial independence is regarded as a "critical pillar of liberty and the rule of law." As a result, making the judiciary accountable to the legislature or the executive will have an impact on its independence. As a result, special provisions have been put in place to ensure judicial accountability.

### **The Judicial Accountability Act:**

The Judicial Standards and Accountability Act will establish judicial standards and hold judges accountable for their failures. It will also require judges of the High Courts and the Supreme Court to declare their assets and liabilities, including those of their spouses and dependents. The Union Cabinet has approved the draught Judicial Standards and Accountability Bill, 2010, which establishes a five-member oversight committee to deal with complaints against members of the higher judiciary. According to official sources, judges will also be required to declare their assets and file an annual return of assets and liabilities. All of this information will be made available on the Supreme Court and high court websites. It will also prohibit judges from having close relationships with any member of the Bar, particularly those who practice in the same court. *"The enactment of the Bill will address the growing concerns regarding the need to ensure greater accountability of the higher judiciary by bringing in more transparency and will further strengthen the credibility and independence of the judiciary."*<sup>4</sup>

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<sup>4</sup> <https://articles.manupatra.com/article-details/judicial-accountability>

### **Provision for Judicial Accountability:**

- ❖ The Indian Constitution provides for the removal of judges from the Supreme Court of India (Article 124 of the Indian Constitution) and the High Courts (Article 124) for misbehavior and incapacity through impeachment.
- ❖ The High Court has 'control' over the subordinate judiciary, according to Article 235 of the Constitution.
- ❖ It provides a powerful mechanism for holding the lower judiciary accountable.
- ❖ The Supreme Court of India adopted the Restatement of Values of Judicial Life Charter in 1997.
- ❖ The conduct and behavior of members of the higher judiciary must reaffirm the public's faith in the judiciary's impartiality.

### **Enhancing Judicial Accountability:**

- ❖ Rapid Justice: Rapid justice is not only a fundamental right, but also a requirement for upholding the rule of law and providing good governance.
- ❖ Impartial Functioning: It will aid in ensuring impartial functioning, which will increase public trust in the judiciary.
- ❖ No Legal Obligation: Unlike the executive, the judiciary is not required by law to prepare annual reports or present them to Parliament or state legislatures.
- ❖ Guardian of the Constitution: Judicial accountability is more important because a breach of values in the judiciary is far more dangerous than in any other branch of government because the judiciary is the guardian of our constitution.
- ❖ RTI has a narrow scope: The information that courts are willing to share under RTI is not too broad.
- ❖ Public Trust: The judiciary, as an institution, must strive to maintain public trust in the established courts in order to preserve its independence.
- ❖ Not directly controlled by the Supreme Court: Under our constitutional scheme, the high courts are autonomous constitutional bodies that are not subject to administrative directives from the Supreme Court.

### **Improving Judicial Accountability:**

- ❖ The most significant challenge for regulating judicial accountability is that the judiciary is an independent organ, and judges' independence cannot be eliminated.

*Any attempt to hold the judiciary accountable to the legislature or the executive will expose it*

*to outside pressure. It is extremely difficult to strike a balance between judicial accountability and judicial independence.*

- ❖ There is no other way to remove a judge than through impeachment, and the process is lengthy and complicated.

*As a result, increasing judicial accountability is difficult. Again, if the process is weakened, judicial independence will be jeopardized.*

- ❖ Furthermore, the SC and HC have the power of contempt, which prevents anything from being imposed on the judiciary without their consent.

### **Disciplined Judges:**

Because the Constitution provided for the appointment of judges to the Supreme Court and High Courts by the executive, it was also in keeping with the method that such Judges would be removed from office by the executive after addressing each house.

To protect the judiciary's independence from unfounded prosecutions of criminal conduct, the Supreme Court has prohibited criminal authorities from registering a criminal case against a judge of a superior court unless the Chief Justice of India is consulted in the matter, and if the Chief Justice of India is of the opinion that it is not a fit case for proceeding under the Act, the case will not be registered.

In the absence of an effective remedy for the removal of a judge, the Bar of one High Court resorted to the unconventional method of disciplining four Judges by passing resolutions against them to resign and requesting that the Chief Justice of a High Court not assign work to them. The Supreme Court ruled that the Bar's methods were ultra vires because the only method of disciplining judges of a Superior Court was the Constitutional method of removal in Art. 124(4). In the same case, the Supreme Court established a procedure for investigating a judge's behavior if the Bar filed a complaint against him.

The Constitution allows for the removal of a judge for "*proven misbehavior.*" This is not specified. Many times, the conduct of a judge necessitates an investigation and discipline for deviant behavior that does not amount to misbehavior. There is no mechanism in place to punish those who participate in such deviant behavior.

## CONCLUSION

Because many improprieties go unnoticed behind the iron curtain of the Contempt of Court, the subject of judicial accountability requires careful and realistic handling given the variety of aberrations some judges are guilty of. Because it is of colonial origin, the law of contempt has been overdrawn. Judges, like other constitutional officers, must face the law if they deviate from or deceive it. Justice is not a secluded virtue.

The ultimate goal of any type of judicial discipline is to maintain public trust in the judiciary. The reasoning behind this concept is simple: *"A legal system can function only as long as the public accepts and abides by decisions rendered by the courts; the public will accept and abide by these decisions only if it is convinced that the judges are fair and impartial; anything that tends to weaken that conviction should be avoided."* In other words, justice must not only be done, but it must also appear to be done. As a result, judges are required to avoid not only actual impropriety but also the appearance of impropriety in all of their activities.

The goal is to build a structure that is both powerful and easily accessible to the general public. Let the Bench-Bar Accountability to Indian Humanity be high on the national, even constitutional, agenda. The judges themselves should take steps to create a code of conduct.

However, it is deeply concerning to see that the judiciary is maintained at a high level. The scenario of great judges carrying out their great responsibilities as judges implies a high regard on the part of the people for the judiciary, which is the repository of justice incarnate. If there are some delinquents, there must be mechanisms for testing correction lest the entropy situation pathologically spread or deteriorate into a popular desire for vengeance.

Because judges may not be scared of paper tigers, there must be monitoring machinery, and the code must both expose and, if ignored, hit. If a sentinel on the qui vie is to be effective, it must have statutory sanctions and powers. A collective ombudsman with absolute autonomy, mobility, fair procedure, and graduated punitive/corrective and recommendatory authority, with versatility conditioned by situations, is a public necessity. A purposeful, competently trained infrastructure with investigative skills, technological aids, and delegated powers must be planned, learning from the experience of other countries, and remembering the native diseases. A judicial super ombudsman comprised of the most respected, highly independent team of three judges, one a retired Supreme Court judge, preferably a former Chief Justice without blemish, and one from the

High Courts, preferably a former Chief Justice of unsullied record, and the third, a retired judge with vast experience in public life, involvement in public issues, and extra-judicial, even administrative career, may fill the bill. An Advisory body with high national standing may serve as an auxiliary.

Finally, the Supreme Court nicely stated the concept of judicial accountability, criticism, public scrutiny, and judicial independence in the Re D.C. Saxenas case:

*"... justice administration and judges are open to public criticism and scrutiny." Judges are accountable to society, and their accountability must be judged by their conscience and oath to their office, namely, to defend and uphold the Constitution and laws without fear or favor. As a result, the judges must do what is right in the circumstances that have been assigned to them. Any criticism of the judicial system or the Judges that impedes the administration of justice or undermines faith in the objective approach of the Judges and brings the administration of justice into disrepute must be avoided. The attempt results in contempt of court proceedings. Decisions can be criticized. It is not necessary to attribute motives to the judges. One of the pillars on which democratic institutions function and survive is trust in the administration of justice. Criticism of the judicial system or judges should be welcomed in a free marketplace of ideas, so long as it does not impair or hinder the administration of justice. This is how the courts should exercise their and the Judges' powers to punish a person for alleged contempt by taking notice of the contempt on their own initiative or at the request of the litigant or the lawyer... There is no doubt in the law that in a free democracy, everyone has the right to express his or her honest opinion about the correctness or legality of a judgement or sentence or a court order, but he must not go too far. While he has the right to express his criticism objectively and detachedly in a dignified and respectful tone with moderation, freedom of expression should not be interpreted as a license to violently attack a judge. Subject to that, honest criticism of the administration of justice is welcomed, because justice is not a cloistered virtue and deserves to be scrutinized with respect. Any citizen has the right to express his or her honest opinion about the correctness of a judgement, order, or sentence in dignified and moderate language, pointing out any error, defect, or illegality in the judgement, order, or sentence. That is after the event has occurred as a post-mortem."*

Finally, there is this issue before us. "All power tends to corrupt," said the great historian, Lord Acton. "Unconditional power corrupts absolutely." Who will have control over the exercise of power? "Someone must be trusted," Lord Denning famously said. Let it be up to the Judges."