



REVIEW ARTICLE

CONTEMPT OF COURT VIS-A-VIS SUPREME COURT'S INHERENT POWER UNDER ARTICLE 129 OF INDIAN CONSTITUTION

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ABSTRACT

Both the Supreme Court & High Courts are courts of record. As courts of record they are endowed with the inherent power to punish for contempt of itself or other subordinate courts. The said power to punish contempt is a special jurisdiction which is inherent in a court of record & the same cannot be curtailed, controlled or restricted by any other statute.

Key words:

Contempt, Court, Indian Constitution,
Inherent power.

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INTRODUCTION

In legal parlance contempt of Court literally means disobedience to the court or bringing disgrace to the court. The word contempt of court has been defined as any act of disobedience, or disrespect of an order of court or interference in the administration of justice. It is essentially a common law doctrine. The contempt power is a special power that has been vested in the superior courts to punish any act of contempt committed against the courts. The Contempt of courts Act 1971 has been enacted with a purpose of giving a precise and definite definition to the offence of contempt. The said contempt of Court defines the contempt in to two Categories Civil & Criminal. Further Contempt of Court can again be classified in to Contempt in facie curiae (in front of the court) or contempt of ex facie curiae (Outside the Court). In a nutshell criminal contempt takes place where there is interference in the administration of justice due to unnecessary attack in the Judges or scandalisation of the court or judge or lowering the dignity and authority of the court and judge. Civil Contempt takes place when there is a disobedience to the order, decree or judgement of the court or noncompliance of an undertaking given to the court. The contempt power is a special power that requires to be exercised in order to save the dignity and majesty

of law. Very often it has been alleged that the contempt power that has been made available to the courts in order to secure and promote the independence and majesty of courts has been used to deter public criticism and to keep the judiciary above any criticism. The foundation of any structure or organisation of any constitutional state is popular trust and confidence so also the judiciary as one of the organisations of the state is founded on public trust and confidence. Hence the contempt power should be used sparingly with due care to save the institution of judiciary and should not be used to save the personal ego of any individual judge.

Purpose and Objective of Contempt Power

The purpose and objective of contempt Jurisdiction is to secure and promote the confidence of the people in the administration of justice. In *Morris V. The Crown office*¹, Lord Justice salmon said that contempt proceeding's sole purpose was to give the courts the power effectively so that the rights of the public can be protected ensuring that the administration of justice shall not be obstructed or prevented. Oswald had stated that in order to keep a blaze of glory around them and to deter the public from attempting to render them contemptible in the eyes of public, the summary power of contempt has been conferred on the courts. This power has great social relevance as it is necessary to keep the course of justice free. The present study is concerned with the inherent power of Supreme Court and High

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Courts to punish for the act contempt committed against Supreme Court, High Courts or any other subordinate Courts.

Constitutional provisions regarding contempt power of Supreme Court and High Courts. Article 129 & Article 215

Article 129 of Indian Constitution says Supreme Court to be a court 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." Article "215 says 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." The Indian Legal system is based on common law. The Indian Courts are always guided by the common law doctrine that superior courts are courts of record and have got the inherent power having the jurisdiction of supervising and correcting the acts of subordinate's courts. The kings Bench in England being a superior court of record having judicial power to correct order/action of subordinate courts enjoyed the inherent power of contempt to protect the subordinate courts. Under Article 129 and 215 of the Indian Constitution, the Supreme Courts and High Courts are conferred with the status of court of records. It is therefore, needless to say that the Supreme Court and High Courts are courts of record and as a natural corollary the power to punish far contempt necessarily comes from such a position. The said power is inherent and essential to protect the Rule of law, the foundation of any democratic society. There is a lot debate regarding the scope of contempt power of the Supreme Court and High Courts as stipulated under Article 129 & 215. Cl(2) of Sect 18 of Contempt of acts has given rise to much controversy as to whether Supreme Court can initiate the Contempt proceeding for contempt of Subordinate Courts. The issue involved is whether the Contempt of Court Act 1971 that has been enacted to define the offence of contempt and to prescribe the procedure and powers of courts in punishing contempt of courts and to regulate the procedure in relation there to will affect and subjugate the inherent power of Supreme Court and High Courts. Speaking otherwise the moot point is (a) whether the Supreme Court has the inherent power or jurisdiction to punish for contempt of Subordinate Courts under Article 129 of the constitution (b) whether the said inherent power of the Supreme Court is restricted by the contempt of courts Act 1971.

Those relevant questions were discussed in great details in *Delhi Judicial Service Association T is Hazari Court V. State of Gujarat and Ors.*², It was argued on behalf of the Contemnor that "This Court's Jurisdiction under Article 129 is confined to the contempt of itself only and it has no jurisdiction to indict a person for contempt of an inferior court subordinate to the High Court. The Parliament in exercise of its legislative power under Entry 77 of List 1 read with Entry 14 of List III has enacted Contempt of. Courts Act 1971 (hereinafter referred to as the 'Act') and that Act does not confer any jurisdiction on this Court for taking action for contempt of subordinate courts. Instead the original jurisdiction of High Courts in respect of contempt of subordinate courts is specifically preserved by Sections 11 and 15(2) of the Act. The Supreme Court has only appellate powers under Section 19 of the Act read with Articles 134(1)(c) and 136 of the Constitution. The Constitutional and statutory provisions confer exclusive power on the High Court for taking action with regard to contempt of inferior or subordinate court, and the Supreme Court has no jurisdiction in the matter. Shri Nariman further urged that in our country there

is no court of universal jurisdiction, and the jurisdiction of all courts including Supreme Court is limited and this Court cannot enlarge its jurisdiction. Refuting the above contentions of the contemnners, the court held that "The English and the Indian authorities are based on the basic foundation of inherent power of a Court of Record, having jurisdiction to correct the judicial orders of subordinate courts. The Kings Bench in England and High Courts in India being superior Court of Record and having judicial power to correct orders of subordinate courts enjoyed the inherent power of contempt to protect the subordinate courts. The Supreme Court being a Court of Record under Article 129 and having wide power of judicial supervision over all the courts in the country, must possess and exercise similar jurisdiction and power as the High Courts had prior to Contempt Legislation in 1926. Inherent 977 powers of a superior Court of Record have remained unaffected even after Codification of Contempt Law. The Contempt of Courts Act 1971 was enacted to define and limit the powers of courts in punishing contempts of courts and to regulate their procedure in relation thereto".

Recognising the fact that both Article 129 and 215 explicitly declared the Supreme Court and High Courts as courts of record and therefore, has the inherent power of contempt the Supreme Court *In Re: Vinaya Chandra Mishra*³ held that "Article 129 declares the Supreme Court a court of record and it further provides that the Supreme Court shall have all the powers of such a court including the power to punish for contempt of itself. The expression used in Article 129 is not restrictive instead it is extensive in nature. If the Framers of the Constitution intended that the Supreme Court shall have power to punish for contempt of itself only, there was no necessity of inserting the expression "including the power to punish for contempt of itself". The Article confers power on the Supreme Court to punish for contempt of itself and in addition, it confers some additional power relating to contempt as would appear from the expression "including". The expression "including" has been interpreted by courts, to extend and widen the scope of power. The plain language of Article 129 clearly indicates that this Court as a court of record has power to punish for contempt of itself and also something else also which could fall within the inherent jurisdiction of a court of record. In interpreting the constitution, it is not permissible to adopt a construction which would render any expression superfluous or redundant. The courts ought not to accept any such construction. While construing Article 129, it is not permissible to ignore the significance and impact of the inclusive power conferred on the Supreme Court. Since the Supreme Court is designed by the Constitution as a court of record and as the Founding Fathers were aware that a superior court of record has inherent power to indict a person for the contempt of itself as, well as of courts inferior to it, the expression "including" was deliberately inserted in the article. Article 129 recognised the existing inherent power of a court of record in its full plenitude including the power to punish for the contempt of inferior courts. If Article 129 is susceptible to two interpretations, we would prefer to accept the interpretation which would preserve the inherent jurisdiction of this Court being the superior court of record, to safeguard and protect the subordinate judiciary, which forms the very backbone of administration of justice. The subordinate courts administer justice at the grassroot level, their protection is necessary to preserve the confidence of people in the efficacy of courts and to ensure unsullied flow of justice at its base level."

Conclusion

Form the above analyses it can be concluded that both the Supreme Court and High Courts have inherent power to punish for contempt. Though section 15(2) of the contempt of court Act 1971 explicitly empowers the High Courts to initiate action for contempt of subordinate courts, the Supreme Court's power to punish for contempt has not been pre-empted thereby. The said contempt power of Supreme Court is an inherent power under article 129 of the Indian Constitution. The amplitude of the said

inherent power of the Supreme Court cannot be taken away abridged or controlled by any other statute.

REFERENCES

- "Delhi Judicial Service Association, T is Hazari Court V. State of Gujurat and Ors." AIR, 1991, 2176.
"In Re: Vinaya Chandra Mishra, AIR, 1995, SC 2348.
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