CHAPTER-1
INTRODUCTION
CHAPTER 1
INTRODUCTION

1.1 Statement of the Problem

Judiciary is the guardian of the rule of law. If the judiciary is to perform its
duties and functions effectively, the dignity and authority of the courts have to be
respected and protected at all costs. The foundation of the judiciary is the trust and
the confidence of the people in its ability to deliver fearless and impartial justice and
as such no action can be permitted which may shake the very foundation itself. The
purpose of the contempt jurisdiction is to uphold the majesty and dignity of the court
of law. The object of the discipline enforced by the court in the case of contempt of
court is not indicating the dignity of the person of the judge but to prevent undue
interference with the administration of justice. The confidence in court of justice
which the public possess must in no way be tarnished, diminished or wiped out by
contumacious behaviour of any person. The essence of the power to punish for
contempt is no doubt in the larger public interest of preventing any unlawful
interference with the administration of justice and to uphold the dignity and the
grandeur of the law and not so much for the protection of individual judges as such.
It is for this purpose that the courts entrusted with the extraordinary power of
punishing those who indulge in acts, whether inside or outside the courts, which tend
to undermine their authority and bring them in disrepute by scandalizing them and
obstructing them from discharging their duties without fear and favour. Hence the
summary power of punishing for contempt has been given to courts to keep a blaze of
glory around them and to deter people from attempting to render them contemptible in
the eyes of the public.

In early period man was free to act in any manner he liked and his will to do
an act depended upon the strength of his limbs, strengthened by the use of arms,
which he developed day by day. That instinct to prevail over another survives even to
this day, both in social life and international spheres. Even today, there is a race to
control the world not only by use of weapons, but also by the control of economic conditions. The society was formed by our first ancestors to bring peace, without which no development is possible. If a man is in constant fear of losing his limb, life or livelihood, the creative spirit in him remains dormant. Therefore it was agreed that individual liberties be curtailed to some extent and disputes between the warring groups be settled by an independent agency. This agency came to be called as ‘King’. It was for the King to decide disputes arising between men, who chose him to be King. The King formulated guidelines which were termed laws. If there was disobedience to the laws, punishment was awarded for the same.

As the society expanded, disputes increased in number. It was not possible for the King personally to settle all the disputes. He, therefore, appointed persons to perform his duties. This is how ‘Courts’ came into existence. In this way, the decisions given by the courts were the decision of the King in law. If the king’s authority could not be questioned, then authority of the courts could not be questioned, too. If the King could not be abused or scandalized, so also the courts could not be abused or scandalized. If anyone interfered in the administration of justice, he was liable to be punished. Anyone, how so ever high he may be, could be, punished for disobedience. The punishment had no limits. The condemned man could lose his property, liberty, limbs or even his life. Since the King had the right to punish, he also had the right to pardon. A sincere apology for any lapse could save the man from the wrath of the King.

But as the art of governance grew, the King yields his powers to his three organs of Government, the Executive, the Parliament and the Judiciary. The judges were deemed to act in the name of the King. Any disrespect to the seat of justice was an affront to the dignity and majesty of law. It is apt to quote justice Wilmot stated, "And whenever men’s allegiance to the law is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice and in my opinion calls for rapid and immediate action than any other obstruction whatsoever not for the sake of the judges pervade individuals but as they are the channels by which King’s justice is conveyed..."

---

5 Ibid.
to the people”. This concept of ancient monarchies in the majesty of law has persisted in the later days of democratic Government.  

The idea of contempt of the King is referred to 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 of pecuniary penalty 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. After making a study of cases in the thirteenth century John Charles Fox concludes that there was no indication of trial of contempt out of court otherwise than in the ordinary course of the law and many cases of contempt in court were tried by indictment and not by a summary process.  

From fourteenth century onwards the jurisdiction of the King’s justices to punish contempt’s of a criminal nature summary was limited to offences not heinous, committed in courts in the actual view of the justices. The summary jurisdiction was held to extend to all contempt’s whether committed in or out of court. Later the law of contempt identified two types of contempt, Civil and Criminal.  

In England, contempt has inherited in the judicial power to run the courts and to prevent interference with justice ‘since time immemorial’. Contempt protects the dignity of the court, not the individual judge. Contempt can be civil or criminal. Criminal Contempt involves an international interference with the administration of justice, while Civil Contempt is disobedience to orders or judgments of a court, with only knowledge of the order or judgment, not intent to interfere, being needed. Civil Contempt requires only a preponderance of the evidence while Criminal Contempt requires proof beyond reasonable doubt.  

The American ideology is based upon recognition of rights and liabilities of the individual in dealing with legal problems, the Americans are faced with what are often the paradoxes and anomalies of the common law. The survey of the American law in this regard reveals that in the beginning the law of contempt in America was based on the common law postulates but a sharp departure could be discerned from

---

9 Id. at p. 21.
the beginning of the 19th century in favour of the protection of the constitutionally
guaranteed basic rights than reinforcing the punitive authority of the Americans court
in contempt cases. The law of contempt in the United States proceeded on a totally
different basis from the law in England. The press has always been quite powerful
and the courts have adjudged the law of contempt to meet the demands of the press
rather than use it as a modus operandi to free wheel a status for them.¹⁰

The first Americans Federal Legislation dealing with the contempt of court
power was the judiciary Act of 1789, which empowered the Federal Courts to punish
by fine or imprisonment, at the discretion of said courts impliedly; this included
whatever the extent of the power of contempt of court was at common law. The first
state legislation in America was passed in Pennsylvania and it condemned contempt
as official misconduct of court officers, disobedience to process, and misbehaviour in
the presence of the court. This excluded various kinds of constructive contempt to the
administration of justice which was approved by Justice Wilmot in the Almon case.¹¹

Under the U.S. Law of contempt, the courts have recognized both direct and
indirect contempt. Contempt is indirect when it occurs out of the presence of the
court, thereby requiring the court to rely on the testimony of third parties for proof of
the offence. It is direct when it occurs under the court’s own eye and within its own
hearing.

Thus the provision of contempt of court was first put forward and given a firm
footing by the English Judges. The law of contempt is well developed under the
English precedent system. Later the process of contempt of court was introduced into
India by the British following the establishment of the courts of record in the 19th
century. This was put on a firm basis in India by contempt of courts Act, 1926. The
attempt at a comprehensive legislation relating to contempt of courts in India was the
contempt of courts Act, 1926. This act did not contain any provision with regard to
contempt of courts subordinate to courts other than High Courts, that is, the courts
subordinate to Chief Courts and judicial commissions. The Act also did not deal with
the extra territorial jurisdiction of High Courts in matters of contempt. Section 3 of

¹¹ Ibid.
the Act lay down that a contemnor may be punished for simple imprisonment for a term which may extend to six months or fine which may extend to two thousand rupees or with both. The contempt of courts Act, 1926 was not found adequate and as such the contempt of courts Act, 1952 was enacted. From the statement of objects and reason which led to the enactments of the contempt of courts Act, 1952, it is obvious that this law was made as there was no specific provision of law which enabled a High Court to exercise this power in respect of contempt committed beyond its territorial jurisdiction.

The provisions for punishment contained in the contempt of courts Act, 1926 and the Act of 1952 though valid and constitutional fell short of the expectations of the people and interfered with their fundamental rights of freedom of speech and expression. It was felt that the Act of 1952 did not contain sufficient safeguards for the freedom of press particularly. Thus a committee was set up under the then Additional Solicitor General of India, Shri H.N. Sanyal. The Sanyal Committee submitted a very detailed and comprehensive report suggesting drastic changes in the contempt law. The draft bill was referred to an elect committee and the Bill was finally introduced in the Rajya Sabha on 19th February 1968 and the contempt of courts Act, 1952 was replaced by the contempt of courts Act, 1971.

Several jurists and judges have defined contempt of court but there is no one single standard definition of the phrase contempt of court. Prior to the contempt of courts Act, 1971, there was no statutory definition of the concept contempt of court. Even the definition of contempt of court given in the contempt of courts Act, 1971, is not a definition in the real sense, but only the classification of contempt of courts.

According to Section 2(a) of the Contempt of Courts Act, 1971, Contempt is Civil Contempt and Criminal Contempt. Civil Contempt has been defined in the Section 2(b) of the Contempt of Courts Act, 1971. The essential ingredient is ‘willful’ disobedience and not any and every disobedience due to various reasons such

---

12 The Contempt of Courts Act, 1926.
13 This amount of fine was imposed in 1926 and even today under the 1971 Act we have continuation of the same provision without taking into consideration of the time elapsed and the value of the money reduced.
15 Civil Contempt means – (i) willful disobedience to any judgment, decree, direction, order, writ or other process of a court; (ii) willful breach of an undertaking given to a court.
as delay due to unavoidable circumstances, or inadvertence. It has to be proved that the disobedience to a Court’s order affecting the rights of other parties to that order basically denying the rightful fruits of the suit to the other party. But mens rea has been made an essential ingredient in the 1971 Act, which is a departure from the pre-existing law with the introduction of the word ‘willful’.

In *Md. Ikram Hussain v. State of U.P.*,\(^{16}\) the court asked the appellant to produce his daughter in a matter for habeas corpus. He made false excuses and did not produce her. He was found guilty of contempt. In *Aligarh Municipality v. E.T. Mazdoor Union*,\(^{17}\) during the pendency of the suit the trial court passed an order prohibiting the appellant municipality from realizing any fees from the tongawallas for the use of stand, which they did not follow and it was held as ‘willful disobedience and amounted to contempt of court. In *Union of India v. Oswal Woolen Mills*,\(^{18}\) the court held that ‘When a result of an order of the High Court in a writ petition, an application for license was to be disposed of by the statutory authority, no contempt can be said to be committed merely because there is a failure to dispose of the petition’. Any order of the court should give sufficient time for compliance for contempt proceedings can be unit rated. Regarding violation of an undertaking given to a court it was held in *M. v. Home Office*,\(^{19}\) that if a party or his advocate acts so as to convey to the court the firm conviction that undertaking is being given the party would be bound and it will be no answer that he did not think that he was giving it or that he was misunderstood and he would be held for contempt. But an undertaking, which runs counter to the statutory provisions or law, is an unauthorized undertaking and cannot be the basis of contempt proceedings for its breach.\(^{20}\)

Criminal Contempt has been defined in section 2(c) of the Contempt of Courts Act, 1971.\(^{21}\) It is thus seen that scandalizing or prejudicing a judge or interfering with the administration of justice is contempt. Even tending to scandalize or tending to prejudice or tending to interfere or obstruct, is enough to invoke action in criminal

\(^{16}\) AIR 1964 SC 1625.

\(^{17}\) AIR 1970 SC 1767.

\(^{18}\) AIR 1985 SC 1264.

\(^{19}\) (1992) 4 All ER 97.


\(^{21}\) Criminal contempt means- The publication, (a) by words or written; or (b) by signs; or (c ) by visible representation or otherwise of any matter’ or (d) any other act whatsoever which (i) scandalize or tends to scandalize, or lower 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 proceedings, or (iii) interferes or tends to interfere with, the administration of justice in any manner.
contempt. In *Naraindas v. State of U.P.*, the Supreme Court held that, it is necessary to examine whether any of the impugned statements do interfere or have a tendency to interfere with due course of the proceedings by creating prejudice against appellant or the writ petition. In *N. Rajagopala v. Murtaze Mujtabbi*, the Andhra Pradesh High Court held that the publication of an article casting aspersions on the integrity of the High Court judges while selecting and recommending candidates for appointment of District judges was held to be criminal contempt. All acts which bring the court into disrespect or disrepute or which offends its dignity, or challenge its authority certainly amount to contempt. In *Delhi Judicial Service Association v. State of Gujarat*, the Supreme Court observed that “the definition of Criminal Contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of the Court. The Court has the duty of protecting the community in the due administration of justice and, so, it is entrusted with the power to commit for Contempt, of Court, not to protect the dignity of the Court against insult or injury, but, to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with.”

It is generally feel that the existing law relating to contempt of Courts is somewhat uncertain, undefined and unsatisfactory. The jurisdiction to punish for contempt touches upon two important fundamental Rights of citizen, namely, the right to personal liberty and the right to freedom of speech and expression.

Though the concept of freedom of press is not a new one, it is very hard to find a suitable definition. The concept was defined by William Blackstone in 1769 “The liberty of the press is indeed essential to the nature of a free state but this consist in laying no previous restraints upon publications and not in the freedom from censor for criminal matter when published. Every freeman has an undoubted right to lay what sentiment he pleases before the public to forbid this is to destroy the freedom of the press but if he publishes what is improper, mischievous, illegal he must take the consequence of his own territory.”

---

22 AIR 1974 SC 1252.
23 (1974) 1 ALT 170.
24 AIR 1991 SC 2176.
The Indian Constitution though has not recognized this right specifically under any of the freedoms speech and expression under Article 19(1) (a) of the constitution. In *Maneka Gandhi v. Union of India*, Supreme Court observed that “to be a fundamental Right it is not necessary that a right must be specifically mentioned in a particular article specifically, it may be fundamental right if it is an integral part of a named fundamental Rights or parties of the same basic nature and character as that fundamental right. Every activity, which facilitates the exercise of the named fundamental right, may be considered internal part of that right and hence be a fundamental right-freedom of press in Article 19.” But the freedom of press impliedly provided under Article 19(1) (a) is not absolute. It is liable to reasonable restriction as imposed by an existing law or a law to be made by a state on various grounds like (a) sovereignty and integrity of India (b) the security of the state (c) friendly relation with foreign states (d) public order (e) decency or morality (f) or in relation with contempt of court and (g) defamation or incitement to an offence.

The law of contempt is an exception to the fundamental right of free speech and expression guaranteed under Article 19(1) (a) of the constitution, the law must then be justified on the ground that it is a “reasonable restriction” under Article 19(2). Otherwise it would be unconstitutional.

There can be no doubt that the purpose of contempt jurisdiction is to uphold the majesty and dignity of law courts and then image in the minds of the public and that this is in no way whittled down. If by contumacious words or writings the common man is led to lose his respect for the judge acting in the discharge of his judicial duties, then the confidence reposed in courts if justice is rudely shaken and the offender need be punished. In essence the law of contempt is the protector of the seat of justice more than the person of the judge sitting in that seat. The law of contempt has been enacted to secure public respect and confidence into judicial process. If such confidence is shaken or broken, the confidence of the common man in the institution of judiciary and democratic set-up is likely to be eroded which, if not

---

26 In *Romesh Thappar v. State of Madras*, AIR 1950 SC 124, the Court recognized the fact that freedom of speech and expression as given in Article 19(1)(a) impliedly gave rise to freedom of Press.
27 AIR 1978 SC 597.
checked, is sure to be disastrous for the society itself. But the law of contempt that part of which is so carefully described as “scandalizing the court” is intended as a wall of projection against the vicissitudes of judging.

The power of the Supreme Court of India in dealing with the day-to-day affairs of the citizens has increased many a fold during the past few decades. Looking at the pages of law reports prior to lifting of emergency will reveal the irrelevance of the courts to a large part of the Indian population. It is after the lifting of emergency from the 1980’s that the Supreme Court fully realized its potential. The failure of the legislature and the Bureaucracy to live up to the expectations in the eyes of the people put the judiciary in a higher pedestal. It was seen as the last resort for justice to the citizens of India.

But it was precisely this magnimous view taken by the Supreme Court to look into almost all the aspects of the other two wings that gave rise to criticisms. The criticisms were from the public, from the press and media. The views of the Supreme Court towards these criticisms were not always static. It kept on changing from the stating that the judiciary’s shoulders are broad and going to the other extreme by punishing an individual who had made a contempt of court. It is precisely that exercise of contempt powers of the Supreme Court and the Indian judiciary in general over the past few decades that will be discussed in the proceeding chapters. There is no better way to look at these exercise of power but to examine the judgment passed by the Supreme Court and the High Court’s regarding this matter. In light of these powers and principles laid down under our constitution, an attempt has been to analyze the law on Contempt of Court in India. The position of this principle seems to be arbitrary as far as the recent debates in media portrayed it to be. This is an important tool in the hands of the court and sometimes they need to be used as a sword and sometimes as a shield to protect itself.

1.2 Aims and Objective of the Study

The main object of the present research work is to evaluate the law of Contempt of Court by examining its evolution, from ancient period, constitutional

---

provisions in relation to the law of contempt of court, judicial attitude and various anomalies/deficiencies in Indian contempt law which trample upon the fundamental freedoms, viz., right to liberty and right to freedom of speech and expression of the citizens. In this context the present study will aim at the following:

1. Historically trace the origin and evolution of the law of contempt.
2. Examine the recognition of this law at international as well as national level.
3. Examine the meaning, nature and scope of contempt law.
4. To develop an informed critique of pre-eminent need for upholding the citizens most valued fundamental right to liberty and freedom of speech and expression.
5. To analyze critically the working of the contempt law in the light of judicial pronouncements.
6. To suggest amendments to the contempt law in the light of anomalies in the existing law to remove the lacuna and make it more effective and make suggestion for strengthening the efficacy of existing legal mechanism or in its working as evidenced by various judicial pronouncements.

1.3 **Research Hypothesis**

The study will be based on the following hypothesis:

1. Though the Indian courts have deliberated a number of times on contempt law, they have given different interpretations and still the law of contempt is ambiguous under the Indian system.
2. The contempt law acts as tool in the hand of judges to shield their arbitrary actions. It acts as wall of protection against the vicissitudes of judging.
3. Law of contempt violates the very vital fundamental right of speech and expression guaranteed under Article 19(1)(a).
4. The contempt of courts Act, 1971 needs overhauling and requires redefining as to what ought to be contempt of court.
5. The presumption of this study is whether the existing law of contempt of court is sufficient to tackle the problem of contempt of courts and the criteria set by the court or the discretion exercised by court in contempt cases is creating any controversy or problem in its implementation.
1.4 Research Methodology

The researcher has followed doctrinal research method in the compilation, analysis, organization, interpretation and systematization of the Primary and Secondary source material. Primary Sources viz., The Constitution of India, 1950, The Contempt of Courts Act, 1971, The English Contempt of Courts Act, 1981, The Indian Penal Code, 1860, The Civil Procedure Code, 1908 and The Criminal procedure Code, 1973 etc., are the basis of study. Reports of various Committees, Commissions Panels on the contempt law have been taken. As a secondary tool for study, Books of eminent authors, verdicts and observations of courts in India and England as found in law Reports, Articles in Research Journals, Law Reviews, Constitutional Assembly Debates, Parliamentary Debates etc., have been taken. The relevant information necessary for the completion of the present study has also been gathered from sources available in Periodicals, Newspapers, and Magazines, proceedings of the Seminars, Conferences and Websites etc. Keeping in view the present research, various cases filed in the Supreme Court as well as in the High Court’s on the Contempt law and judgments therein have also been used as a source of information.

1.5 Universe of the Study

Since the proposed study is not based on empirical experience the researcher has selected India as whole for the present study. The main focus of the present research work would be on theoretical aspect which will be analyzed on the basis of material to be collected from different sources. The present research work is an attempt to reveal the various anomalies, deficiencies in the working of Indian contempt law.

1.6 Chapter Scheme of the Study

This study has been divided into six chapters and the chapter scheme of the study is given below:

Chapter 1 Introduction

The first chapter is an introductory part of the study. It gives a brief expose of the statement of problem of the study. It also describes the aims and objectives, Research Methodology, Hypothesis, Universe and chapter scheme of the study.
Chapter 2 The Historical Perspective of the Contempt of Courts in India and Abroad.

The second chapter of the study deals with historical aspect of contempt law in India and Abroad i.e. England and America. In this Chapter an attempt has been made to discuss in detail the concept of Contempt law in India from Ancient, Medieval, and British and up to Modern period. The ancient law relating to contempt can be known through the study of ancient literature. The King was deemed to be fountain of justice. The King formulated certain guidelines which were termed laws. Though it was an offence to scandalize or defame the King or King’s council or the other courts or assemblies but there was not any special procedure for the trial of these offences. In Medieval period there are references of setting up of the judicial system, qualification and conduct of the judges, offences against King and state, but it appears that there was no practice of scandalizing the judges or judiciary. When Britishers came to India and started administration of justice they introduced the English law of contempt of courts in the country. After attainment of Independence, with the growth of Indian Society, it become necessary to curtail, remold the British Introduced contempt of court law as per the changing circumstances of the society.

Chapter 3 The Concept, Meaning and Definition of Contempt of Court.

The third chapter of the study deals in detail with the meaning, concept and definition of contempt of courts in India. The definition as given in the contempt of courts Act, 1971 is quite vague and ambiguous giving too much discretion to the judges in determining as what amounts to contempt of court. There is no clear cut definition of contempt of court. It is only the classification of contempt of court i.e. civil contempt and criminal contempt. The world ‘willful’ in the definition of civil contempt and the world ‘tends to scandalize’ in criminal contempt gives sometimes arbitrary powers to the judges to settle their personal score. The vagueness of definition only brings uncertainty in law and gives arbitrary power to the judges to determine contempt.

Chapter 4 Press, Free speech and Contempt Court in India.

The fourth chapter of the study adverts in detail origin and role of the press in Indian democracy and whether freedom of press is a fundamental right included under
Article 19(1) of the Constitution of India. It also discusses the constitutional aspect relating to the contempt of courts in India. Article 19 of the constitution, conferred right to freedom of speech and expression to the citizens of India. This freedom is not absolute and can be restricted on the ground of contempt of court under Article 19(2) of the Constitution of India. It also included several judicial pronouncements of the Supreme Court or the High Courts in which court tried to crush the freedom of the press and the fundamental right of the citizens, i.e. right to freedom of speech and expression through the power of contempt.

Chapter 5 Indian judicial Approach and Laws of Contempt

The fifth chapter deals with the attitude of judiciary towards contempt by lawyers, by politicians, by Government Servants, Contempt by Judges, their officers and subordinates etc. To know the attitude of Indian Judiciary towards law of contempt all important judicial pronouncements by Supreme Court or High Courts have been examined in detail.

Chapter 6 Conclusion and Suggestions.

In the last Chapter study concludes with the reflections dilate on the loopholes and lacuna in contempt law and to make the law on the subject clearer, certain and effective submission has been made in the form of suggestions.