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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

BALANCING ACT: CONTEMPT OF COURT AND THE BOUNDARIES OF JUDICIAL INDEPENDENCE

AUTHORED BY - SUNU RIJAL¹

Abstract:

Judicial independence refers to the ability of courts and individual judges to exercise their constitutional powers free from intervention or control by the executive and legislative branches. An independent judiciary is considered essential to upholding the rule of law and safeguarding rights. Judicial independence encompasses both institutional independence of the court system as well as the individual independence of judges to adjudicate cases fairly and impartially based on the facts and law, without fear of reprisal. The judicial contempt power has an intricate relationship with judicial independence ideals in constitutional democracies. While contempt authority helps buttress judicial independence by allowing courts to control proceedings and enforce rulings, its exercise also raises concerns about potential judicial overreach and fairness of processes. This article analyzes the complex conceptual interplay between judicial contempt powers and judicial independence. It provides an in-depth overview of contempt of court principles and the philosophy behind judicial independence. The analysis then critically examines how contempt jurisdiction has been justified historically as a safeguard for judicial independence, while also assessing countervailing rule of law considerations. Tensions and uncertainties in reconciling contempt processes with ideals of judicial impartiality and accountability are explored, including review of salient jurisprudence. Comparative analysis considers different regulatory approaches to contempt in other legal systems across jurisdictions. Overall, the article advocates for nuanced reform to maintain judicial institutional integrity, without unduly compromising justice values. A calibrated contempt power proportionately scoped to necessity can remain valid, but application of contempt requires caution and prudent restraint.'

Key Words: *judicial independence, contempt of court, comparative law, constitutional law, judicial reform.*

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1. Introduction:

Judicial independence and the courts' contempt powers have a complex interrelationship in legal systems founded on constitutional democracy, the rule of law, and an independent judiciary. The ability of courts to exercise contempt authority to control proceedings, compel compliance, and punish contemnors for obstructing the administration of justice has frequently been characterized as an important mechanism for preserving judicial independence and upholding the judiciary's constitutional role. However, the exercise of contempt powers also raises concerns about potential overreach and risks to due process rights, accountability, and public confidence in the courts. This delicate balance underlies ongoing debates regarding the appropriate scope, exercise, and regulation of judicial contempt powers.

Judicial independence refers to the ability of courts and judges to adjudicate cases and interpret laws free from undue influence, interference, or control by the legislative and executive branches of government. An independent judiciary is considered a cornerstone of constitutional democracy and the rule of law. The courts' role in reviewing the constitutional validity of legislative and executive action necessarily requires insulation from political pressures. Judicial independence is prized both at an institutional level, in terms of the court system's structural autonomy, as well as at an individual level, allowing judges to decide cases impartially based on facts and legal merits without fear of reprisal. Judicial independence is encrypted in principles of separation of powers and checked by accountability mechanisms. While the other branches of government should not be able to dominate or improperly influence the judiciary, checks such as appeal processes, judicial review, and oversight procedures help ensure accountability. The contempt power lies at the intersection between assertions of judicial authority and countervailing considerations of restraint. Courts have justified contempt as a means to protect their constitutional role, prevent obstruction of proceedings, enforce orders, and deter attacks on the administration of justice. However, contempt also concentrates significant authority in the judiciary over ancillary matters beyond the typical adjudicative function. The ability of judges to unilaterally fine, imprison, or sanction individuals for contempt without the full due process afforded in criminal trials raises important questions about potential overreach and accountability deficits. Contempt of court refers to acts that obstruct or undermine judicial proceedings or disobey court orders. Examples include refusing to comply with a subpoena, disrupting a trial, failing to adhere to an injunction, or showing disrespect toward a judge. Most legal systems distinguish between civil contempt, involving non-compliance with court mandates, and criminal contempt for willful acts threatening the administration of justice. Procedures and punishments for contempt vary by jurisdiction. Many courts have asserted inherent authority to

punish contempt summarily under common law traditions. However, some systems require due process protections like advance notice and a formal trial on contempt charges. Tensions exist between contempt powers and rule of law precepts concerning proportionality, fairness, and transparency. Critics argue routine reliance on contempt sanctions chills free speech and impedes access to justice. Others counter that contempt is necessary to give force to judicial commands and maintain integrity of processes. These competing perspectives underline complex uncertainties in reconciling contempt jurisdiction with judicial independence and accountability. As one commentator notes, “The contempt power lies in a legal territory between the courts on one side and a free people on the other, between judicial independence and public accountability.”

2. Defining Contempt of Court, Judicial Independence and Rule of law:

Before analyzing the interrelationship between contempt powers and judicial independence, it is helpful to define these foundational concepts and outline their conceptual parameters.

2.1 Contempt of Court:

Contempt of court refers to acts that obstruct the administration of justice, show disrespect for the court's authority, or defy court orders. It covers a range of conduct impeding or interfering with judicial proceedings and mandates. Contempt of court refers to a legal transgression wherein an individual defies a judge's authority or disrupts the normal legal proceedings within the courtroom². Contempt is distinguished from ordinary crimes and civil wrongs by its focus on protecting court functions. As the Supreme Court explained, contempt powers help ensure judicial proceedings "are conducted in an atmosphere of respect, decorum, and fairness" beyond what criminal or civil sanctions can achieve. Nepal does not have a specific Contempt of Court Act like those found in other countries, notably India and the UK, which are often cited in this region. There was, however, an unsuccessful attempt to introduce a contempt of court law by the last transitional parliament. Despite the absence of a dedicated act, the principles and essence of such laws, as seen in the Contempt of Court Act 1981 of England and the Indian Contempt of Court Act 1971, are reflected in Nepal's Constitution and laws. Over time, Nepalese court jurisprudence has seen the development of a body of 'contempt' related case laws, comparable to Western civil

² Adam Hayes, “*Contempt Of Court: Definition, 3 Essential Elements, And Example* “, Investopedia, <https://www.investopedia.com/terms/c/contempt-court.asp> (Accessed 15th September 2023)

and criminal contempt jurisprudence. This development is essential to empower the court system in preventing obstruction of justice and unwarranted attacks on the judiciary, ensuring the court's dignity, public respect, effectiveness, independence, and upholding the rule of law. Consequently, the existing constitutional provisions and subsequent laws in Nepal are considered sufficient to address the often controversial issue of contempt of court. Nepal's Supreme Court holds significant constitutional authority, being the final interpreter of the Constitution and laws. It compels all individuals and institutions in Nepal to comply with its orders and decisions. Furthermore, it serves as the ultimate court of record with the power to initiate and impose penalties in contempt of court cases, as well as wield judicial review to enforce fundamental human rights and declare any laws incompatible with the Constitution (Articles 46, 126, 127, 128, 133, and 137). The Constitution mandates that everyone must abide by the Supreme Court's interpretation of the Constitution or a law and any legal principles it establishes during legal proceedings. If anyone obstructs the dispensation of justice or disregards orders or judgments from the Supreme Court or its subordinate courts, the Supreme Court can initiate proceedings and impose punishment for contempt, as outlined by law³. This provision, when read alongside Section 17 (1) of the Judicial Administration Act 2016 and Clause 59 of the Supreme Court Rules 2017, constitutes Nepal's contempt of court laws. Nevertheless, the Supreme Court has interpreted these laws extensively and broadly, aligning them with international standards, in several leading cases encompassing all facets of contempt. While earlier Constitutions in Nepal used general language, the present text is more specific, but it does not limit the comprehensive nature of contempt issues as elucidated in earlier landmark decisions. Contempt can manifest as disobedience of court orders or the scandalization of courts, whether through direct or indirect means. The tension between 'freedom of speech and expression' (including press and publication freedom) and 'contempt of court' is a sensitive and crucial issue, and the Supreme Court of Nepal has consistently maintained its position, often resorting to lenient penalties or requests for apologies to avoid harsh judgments. For instance, in the case of Supreme Court Justice Biswanath Upadhyaya vs. Lok Bahadur Bistha (2028 BS, SC Full Bench), Justice Upadhyaya disagreed with the court's liberal approach, despite a clear attempt at an apology provided in writing. Disrespect toward the court in this case was recorded when the party asked the Supreme Court to constitute a bench with a particular Justice.

Recent cases in India have also put Supreme Court Justices in controversial situations, including press conferences by sitting justices against the Chief Justice's administrative role in allocating

³ Article 128 (4) Of Constitution Of Nepal 2072

cases unevenly when forming benches for hearings. The punishment of Calcutta High Court Judge Mr. Karman for contempt was similarly controversial, as it led to the judge implicating a Supreme Court Justice in a CBI investigation. In November 2017, a three-judge bench of the Supreme Court dismissed a writ petition filed by Kamini Jaiswal, which sought an investigation into allegations of judicial corruption⁴. Ultimately, all these cases were resolved through a balance between apology and punishment in contempt cases, prioritizing the dignity and respect of the court to ensure justice was not undermined. In Nepal, as recently experienced by the Supreme Court, there have been public speeches, serious allegations, and public protests against the Chief Justice, making the contempt issue controversial in democratic justice systems. Despite being uncharted territory in Nepal, the Nepalese Supreme Court and the legal community have shown considerable tolerance towards extreme verbal attacks and critical news reports, even in the face of a medical doctor's crusade against judicial corruption. In cases pending before the court, it is expected that the court will demonstrate wisdom, tolerance, and courage in its judgments, as it is not appropriate for any reasonable person to make remarks that could influence a sub judice case. Nevertheless, 'contempt of court' remains a powerful and extraordinary tool in the hands of an independent and democratic judiciary, as it allows courts to initiate proceedings suo motu or penalize offenders on the spot without being bound by normal due process (natural justice) principles. However, this does not imply that courts and judges are immune from constructive criticism. Before delving into the Contempt of Court issue, which arises in all democratic societies, it is advisable for human rights advocates to revisit a historic case of contempt that still resonates in the minds of rule of law proponents in the USA and the democratic world. The case of *United States v. Shipp* (1906) symbolizes the triumph of the rule of law over a brutal society at the time. In this case, a black American named Ed Johnson, charged with rape, was sentenced to death by a court dominated by whites in violation of due process in criminal justice. Before his case was unusually stayed by the Supreme Court to prevent his execution, a mob forcibly raided the jail and lynched him in the presence of the Sheriff and Jail Officers. In this case, nine defendants faced charges of contempt of court—specifically, contempt of the Supreme Court. The U.S. attorney general directly filed these charges with the court, granting it original jurisdiction. The petition alleged that the defendants, along with other individuals, engaged in actions to show contempt and disregard for the orders of the court and to prevent Ed Johnson from exercising rights protected by the U.S. Constitution and laws. The case resulted in a full-blown trial, featuring special prosecutors,

⁴ Professor Dr. Surya Dhugel, “*Contempt Of Court In Nepal*”, Spotlight Nepal, <https://www.spotlightnepal.com/2018/02/18/Contempt-Court-Nepal/> (Accessed 15th September 2023)

numerous witnesses, and a special master assigned to collect evidence. The trial record exceeded 2,200 pages, and each side was granted a full day of oral argument before the justices. Chief Justice Melville W. Fuller, who typically encouraged his colleagues to write the court's opinions, decided to take on the responsibility himself due to the case's significance. Before reading the opinion accompanying their verdict, Fuller noted to a packed courtroom that the Supreme Court was entering new territory without precedent. A century later, *United States v. Shipp* may have receded into legal precedent and history, but legal historians acknowledge its enduring impact. *Shipp* is regarded as the genesis of federal habeas corpus actions in state criminal cases. This contempt of court case, stemming from disobedience of a Supreme Court order, represented a pivotal moment in asserting the rule of law's importance and the necessity of an independent judiciary. Despite its legal significance, *Shipp* also marked the climax of an extraordinary story featuring a cast of unforgettable characters. Notably, two unknown African-American lawyers, due to their determination and courage, reshaped the U.S. justice system. However, as a result of their efforts, these lawyers witnessed their client's murder, the destruction of their practices, threats to their families, and the burning of their homes. Fearing for their lives, they never returned to their hometown.⁵ Most legal systems recognize two main types of contempt – civil contempt and criminal contempt. Civil contempt involves failing to comply with a lawful court order or decree. The contemnor may be held until complying or face fines or imprisonment for non-compliance. Civil contempt is not designed to punish but rather compel adherence and preserve the efficacy of court mandates. Criminal contempt covers more willful disobedience or acts obstructing justice itself. It carries fixed punitive sanctions to uphold judicial authority and deter attacks on the administration of justice. Courts wield significant discretion over contempt findings, procedures, and punishments. Contempt often allows swifter action than typical legal processes. Many systems permit summary contempt for offenses like courtroom misbehavior, not requiring a full trial. While contempt derives from common law authority, statutes in some countries regulate its exercise. Contempt laws seek to balance judicial powers against civil liberties and due process rights. But the boundaries of contempt remain deeply contested.

Debates over contempt typically weigh four key considerations:

- i. Protecting court functions and authority.
- ii. Preserving access to justice and fair proceedings.
- iii. Upholding rule of law values like proportionality and consistency.

⁵ Dhugel, *Supra* Note 4

iv. Maintaining accountability for abuse of powers.

The first factor underlies justifications for contempt authority. Courts cite the need to control proceedings, compel compliance, and deter obstruction. Critics argue contempt powers often go beyond necessity and can chill legitimate speech. Procedural fairness issues include contempt adjudicated summarily without ordinary trial rights. Lack of consistency and proportionality in contempt penalties also raises concerns. The judiciary acting as accuser, adjudicator and enforcer in contempt cases concentrates power warranting accountability. These factors inform analyses of whether contempt authority has exceeded legitimate need in particular cases. However, reasonable minds can differ on where to draw the line between upholding court effectiveness and respecting countervailing interests. The problems defining contempt's boundaries persist partly because formal laws cannot anticipate every scenario. The multifaceted nature of contempt means it tends to involve case-by-case discretion. But this flexibility can also enable abuse. Understanding contempt's conceptual scope and purposes provides context for assessing tensions with judicial independence.

2.2 Judicial Independence:

The judiciary must be independent in order to be fair⁶. Judicial independence refers to the ability of courts and judges to perform their duties free from undue pressures and interference⁷. It is recognized as vital to impartial adjudication and upholding constitutional values. Judicial independence has both individual and institutional dimensions. The individual aspect entails each judge deciding cases objectively based on facts and law, without fear of reprisal. Institutionally, the judiciary must be protected from domination by other branches of government or private actors. This requires financial autonomy, security of tenure, and structural safeguards. Advocate and the Assistant Professor Dr. Newal Chaudhary, in his book “The Art of Cyber Law & Cyber Crimes”, identified the judiciary as “last line of defense” for cyber law and cybercrimes. This is a fitting description, given the judiciary's unique role in protecting the rights of individuals and organizations in the digital age. Cyber criminals are constantly evolving their tactics, and law enforcement agencies are often struggling to keep up. This is where the judiciary comes in. The courts have the power to interpret and apply cyber law, and to hold cyber criminals accountable for their actions. The independence of the judiciary is essential to its ability to fulfill this role.

⁶ “Basic Principles On The Independence Of The Judiciary”, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>, (Accessed: Sept 20 2023)

⁷ Dibya Das Tharu, “Judicial Independence: Myth Or Reality In Nepal?”, Ratopati, <https://english.ratopati.com/story/30709/myth-or-reality-> (Accessed: Sept 21 2023)

When the judiciary is free from interference from other branches of government or from private interests, it can make impartial decisions that are based on the law alone. This is important because it ensures that everyone, regardless of their wealth or status, is treated equally under the law. Imagine a world where cyber criminals can operate with impunity, where the victims of cybercrime have no recourse, and where the rule of law does not apply in the digital world. This is a world without an independent judiciary⁸. Independence of Judiciary is one of the most important thinking in modern constitutional law⁹. The conceptual basis for judicial independence lies in separation of powers. Preventing improper interference preserves the judiciary's role to check the political branches under constitutional systems. Judicial independence is not absolute, however. Accountability mechanisms like appeal processes, judicial review, and oversight procedures help guard against abuses. Requirements of transparency and justification for decisions also promote accountability. Some threats to judicial independence are clear, like removal of judges for political reasons or state control over judicial appointments. But concerns also arise from subtle pressures. For example, manipulation of court budgets could erode independence if used to intimidate judges. Commentary threatening reprisals for unpopular decisions creates perceptions of extra-legal influence. Independence means judges can render decisions free from having to consider personal repercussions, as long as they act lawfully. The Judiciary is the part of the government system which encompasses-the structure and jurisdiction of the courts and the officers of the court; the judges and their tenure, and the judicial processes¹⁰.

Structural safeguards aim to insulate courts. Key measures include:

- i. Secure judicial tenure and fixed compensation
- ii. Objective, merit-based selection of judges
- iii. Self-governance over court procedures and administration
- iv. Financial autonomy over the judicial budget

However, excessive autonomy also carries risks. Judicial independence must be harmonized with democratic checks to prevent overreach. The contempt power's unique nature makes it susceptible to abuse without adequate constraints. Understanding judicial independence doctrine provides foundation for assessing contempt's impacts.

⁸ Dr.Newal Chaudhary," *The Art Of Cyber Law & Cyber Crime*", (Publisher: Mission Legal Service Pvt.Ltd. 2023)

⁹ Dr.Bipin Adhikari, "*Independence Of Judiciary Under The Draft Constitution*", 22 Nepal Law Review 286 (2010).

¹⁰ Munendra Prasad Awasthi, "*The Basic Principle Of Independent Judiciary: Limitations And Challenges For Nepal*", 22 Nepal Law Review 249 (2020).

2.3 The Rule of Law:

The rule of law is a fundamental principle of governance in which all persons, institutions, and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights norms and standards. It is an essential principle for any society that seeks to achieve peace, justice, and prosperity. The rule of law is essential for a number of reasons. First, it protects individual rights and freedoms. When everyone is subject to the law, no one is above the law. This helps to prevent the abuse of power and ensures that everyone is treated fairly and with respect. Second, the rule of law promotes economic development and prosperity. Businesses and investors are more likely to invest in countries where the rule of law is strong. This is because they know that their investments will be protected and that they will be treated fairly in the courts. Third, the rule of law is essential for peace and security. When everyone is subject to the law, it is less likely that people will resort to violence or other forms of conflict resolution. The rule of law also helps to build trust between the government and its citizens, which is essential for a stable and peaceful society. The rule of law is not a given. It must be actively protected and nurtured. This requires strong and independent institutions, such as the judiciary, the police, and the media. It also requires a commitment from all citizens to uphold the law and to respect the rights of others. Analyzing contempt and judicial independence also implicates broader rule of law considerations. The rule of law refers to principles of governance upholding equality before the law, fairness, predictability, and restraints on state powers.

Key tenets include:

- i. Supremacy of law over arbitrary power
- ii. Laws apply equally to all, including government officials
- iii. Rights are protected by independent courts
- iv. Laws are clear, stable, principled and widely known
- v. Due process, procedural fairness and access to justice
- vi. Limits on discretion to prevent abuses
- vii. Checks and balances between state powers

These rule of law ideals bear on defining the legitimate bounds of contempt authority and judicial independence. Contempt processes viewed as excessive, opaque, inconsistent, or disproportional could undermine the rule of law. However, legislative or executive overreach infringing on

judicial independence also contradicts rule of law values by subordinating courts. The complex interplay between contempt powers, judicial independence and the rule of law thus raises challenging questions. How should these principles be harmonized in contested cases? Does contempt authority expand judicial independence or threaten the rule of law? Can contempt be regulated to prevent abuses without improperly curtailing courts? This conceptual foundation provides context for the following discussion tracing contempt's origins and evolution.

2.4. Historical Origins:

Contempt powers date back centuries in common law jurisdictions. Judicial independence ideals gained traction from the 17th century onwards. England's Act of Settlement in 1701 granted tenure protections for senior judges. This helped institutionalize decisional independence. However, structural independence remained constrained, with the Lord Chancellor overseeing courts as both a judicial and political official. The United States constitutional system went further in seeking to insulate federal courts through life tenure for judges and separation of powers. But concerns over partisan justice in early American history showed threats to judicial impartiality. Debates over contempt and judicial independence continued through the 19th century as democracy expanded. Both contempt and judicial power came under criticism at times as elitist and unaccountable. But supporters argued contempt powers were necessary for courts to carry out constitutional duties impartially, especially in curbing executive overreach. The UK Parliament began legislating greater regulation of contempt in the late 19th century. However, substantive expansion of contempt law did not occur in the UK until the 1960s. Other jurisdictions like India and Canada and Nepal also adopted statutes delineating contempt powers under common law. Nepal has a relatively short modern history as a constitutional democracy dating back only to 1990, when the constitutional monarchy was established after decades of rule by hereditary prime ministers. The development of an independent judiciary, contempt powers, and rule of law ideals in Nepal reflects this compressed political timeline.

For most of its history, Nepal did not have a fully independent judiciary. Under the Rana dynasty that ruled Nepal from the mid-19th century until the 1950s, the judiciary was subservient to the hereditary prime ministers who dominated the executive and legislature. After the end of the Rana regime, the interim constitution of 1951 first articulated a formally separate judiciary. However, courts remained weak and subject to political interference and corruption during the partyless Panchayat system that governed Nepal from the 1960s to the 1980s. It was not until the

Constitution of the Kingdom of Nepal 1990 that the judiciary was established as a fully independent branch of government. This constitution guaranteed judicial independence and tenure protections for judges. It also conferred on the Supreme Court broad powers of judicial review over legislative and executive actions. However, the judiciary initially lacked financial autonomy and enforcement capacity. Continuing political instability and corruption impaired development of rule of law institutions in the 1990s. The first statutory basis for contempt powers came with the Administration of Justice Act of 1991. This legislation prescribed procedures for contempt proceedings and limitations on contempt jurisdiction. However, the law retained vestiges of authoritarian power, criminalizing contempt broadly to include even “undermining the dignity of the court.” Enforcement of contempt was erratic in the initial years after democratization. Following the Nepalese Civil War and abolition of the monarchy, the Interim Constitution of 2007 again asserted judicial independence. This was reaffirmed in the current Constitution of Nepal 2015. The Supreme Court shed its historical weaknesses to emerge as a assertive defender of constitutional rights, though concerns remain over judicial overreach. The Muluki Ain (General Code) was amended to refine contempt laws by specifying categories and requiring Supreme Court authorization for contempt charges. Nepal continues to develop a jurisprudence balancing contempt powers, rights, and the rule of law. Early reforms established judicial independence in law, but ingrained habits of political non-interference remains a challenge. Commentators argue codified contempt processes represent progress, but criticize the retention of broad authority to penalize insults to the judiciary. Persisting corruption, lack of transparency, and uneven enforcement hamper Nepal's continued democratic evolution. But the country has made major constitutional strides in a relatively compressed period.

3. Interplay Between Contempt and Independence:

This section examines how contempt authority intersects with judicial independence in theory and practice. The case for contempt as a mechanism to uphold judicial independence relies on several key arguments:

- i. Contempt powers preserve court authority
- ii. Contempt deters conduct that could improperly sway proceedings
- iii. Independent courts require self-governance over courtroom processes
- iv. Contempt is necessary to enforce judicial orders
- v. Restricting contempt risks encroaching on judicial independence

These rationales posit contempt as essential to protecting courts’ institutional integrity and

efficacy. However, counter-arguments question whether contempt goes beyond the minimum necessary or comes at a disproportionate cost to other rule of law values. Reasonable minds can differ on where courts strike the balance in given cases. But examining both perspectives sheds light on this uneasy tension between independence and accountability.

3.1 Upholding Judicial Authority:

Courts frequently justify contempt based on preserving authority and respect. Contempt punishes actions or words diminishing public confidence in the court. This includes insults, criticism, or willful disobedience of orders. Failure to respond could encourage further affronts. Contempt helps reaffirm judicial preeminence and the obligation to comply with legal directives. For example, the UK House of Lords upheld a contempt conviction for statements ridiculing the court, finding this could impair public willingness to accept rulings. The Ontario Court of Appeal similarly ruled criticism implying racial bias crossed the line by diminishing confidence in judicial integrity. Courts have argued such sanctions are necessary to protect institutional legitimacy. However, critics contend contempt often goes beyond necessity in proscribing commentary or protest. They argue sanctions should be reserved for direct obstructions, not perceptions. Others have noted punishing even false allegations may create an appearance of oversensitivity at odds with judicial independence ideals of impartiality. Proportionality between contempt offenses and sanctions is also frequently questioned. The contempt power's vagueness raises concerns about chilling effects on legitimate speech.

3.2 Preventing Undue Influence:

Another argument posits contempt helps prevent distorted outcomes by deterring improper influence. Courts require insulation from undue pressures to fulfill their role. Contempt can guard against prejudicial publicity, witness tampering, juror bribery and other interference. For example, courts have sanctioned the media for sensational coverage that could sway juries. Others justified contempt against protests near courthouses to prevent disruption and intimidation. Such reasoning sees contempt as protecting due process and impartiality. However, critics argue there are less intrusive means that are equally effective, like sequestered juries or gag orders on trial participants. They contend routine contempt enforcement risks infringing acceptable free expression and advocacy.

3.3 Courtroom Control:

Courts frequently invoke inherent authority over their own proceedings as justification for

contempt powers. The need for orderly hearings, respectful conduct, and compliance with court mandates requires control over the courtroom. Contempt sanctions enforce decorum and procedural norms. Disruptive or threatening individuals can be summarily excluded to maintain functioning courtrooms. However, detractors argue not all procedural violations warrant contempt. Minor instances may merit reprimands or warnings rather than imprisonment. Critics also contend procedural fairness is compromised when judges alone decide contempt issues arising in their own proceedings. Some jurisdictions require transfer to another judge when practicable. But immediate responses to disturbances may still be deemed necessary, blurring enforcement and adjudication.

3.4 Enforcing Court Judgments:

Perhaps the strongest argument for contempt is enforcing civil orders and judgments. Contempt provides leverage to compel compliance in ways ordinary sanctions cannot. Without contempt, some litigants may simply ignore unfavorable rulings. For example, courts have jailed business owners who violate injunctions by remaining open or threatened officials with contempt for refusing to testify. Such noncompliance undermines judicial independence by rendering court orders ineffectual. Contempt powers boost efficacy. As the saying goes “respect for the judiciary begins with obedience to its orders.” However, many argue contempt should still adhere to principles of proportionality, notice, opportunity to comply, and mitigating circumstances. Critics contend procedural shortcuts in civil contempt adjudication compared to criminal trials invite potential unfairness. But defenders respond that full due process requirements could excessively weaken enforcement. Checks like appellate review help safeguard against overreach.

3.5 Overregulation Risks:

Some commentators further argue restricting contempt encroaches on judicial independence. Constitutional theory posits courts as the ultimate arbiters of their own authority. Internal governance over contempt processes could be seen as protected by separation of powers. Legislatively micro-managing rules of courtroom conduct might improperly insert politics into court administration. However, proponents of regulation respond independence does not equal total immunity from democratic oversight. Other branches have responsibilities to protect rights and codify norms. Reasonable constraints that balance competing principles should not be viewed as interference. But drawing the line between valid structural regulation and intrusion remains contested. These perspectives underscore competing views on contempt’s exercise. Supporters see contempt as essential to preserve respect, order, impartiality and efficacy. Critics argue

contempt often comes at disproportionate cost to speech, fairness and accountability. Much depends on context and degree. But contempt inherently concentrates power in ways requiring caution. Understanding these dynamics frames examining specific cases and comparative approaches.

4. Challenges and Dilemmas:

While contempt powers have firm theoretical grounding, application in practice frequently raises difficult issues concerning proportionality, procedural fairness, consistency, and transparency. Disputes often turn on whether contempt meets a standard of necessity and proper restraint. Misuse risks undermining public confidence. However, undue restrictions could also weaken courts. This section examines recurrent tensions arising in contempt cases.

a. Proportionality:

Contempt punishments are sometimes seen as excessive compared to the underlying misconduct. Small fines can balloon with sustained noncompliance into essentially life-long imprisonment, as occurred in the Hilda Norgaard contempt saga. Critics contend such scenarios verge on debtors' prison. Even where fines are proportional, differences in ability to pay can mean sanctions fall harder on the poor and disadvantaged. Some countries have responded by capping contempt fines and imprisonment terms absent exceptional circumstances. But flexibility to compel compliance argues against firm limits. Others advocate focusing on intentionality and mitigation, not just the act itself. However, making such determinations raises consistency questions. The absence of fixed sentencing guidance invites subjectivity absent explicit benchmarks.

b. Procedural Fairness:

Due process concerns also arise regarding contempt adjudication. Many systems allow summary process for direct contempt like courtroom misconduct. But critics argue contempt still warrants key protections like notice, a hearing, and neutral adjudication. They note contempt's quasi-criminal nature given penalties imposed. Concerns are heightened in indirect contempt cases without urgency. Some courts have mandated additional safeguards where proceedings allow. But they justify flexibility to use summary powers where required by circumstances, such as violent outbursts. Critics counter that procedural shortcuts undermine perceived fairness and overdeter speech. Defenders argue truncated process reflects necessity, not unbridled power. But oversight mechanisms remain critical.

c. Consistency and Transparency

The highly discretionary nature of contempt decisions also creates uncertainties about consistency. Contempt judgments frequently appear situational, not guided by clear standards. Penalties often seem to reflect individual biases. The lack of transparency in rationales and governing principles enables subjectivity. Records and data on contempt usage is also limited in many systems. Commentators argue greater clarity in contempt law is needed, even if not rigid codification. Clearer criteria could make application more principled and consistent. Compilation of contempt statistics and examples in annual court reports could also foster transparency and monitoring. However, some defend flexibility as enabling case-specific discretion. But unchecked discretion risks credibility deficits absent oversight.

d. Chilling Effects:

Critics frequently argue contempt powers exert a chilling effect on legitimate speech and public participation regarding the courts. The threat of contempt deters commentary for fear of retribution. Media organizations avoid scrutiny that could prompt sanctions. Individuals mute court criticism. Lawyers shy from zealous advocacy that judges may rebuke. These impacts impoverish discourse and access to justice. They defeat purposes of public proceedings in constitutional democracies. Supporters counter that contempt targets obstruction, not lawful critiques. But the concept's vagueness can blur those boundaries in practice through unconscious bias. Critics advocate narrowing contempt definitions or requiring higher intent standards to prevent over deterrence. But clarity must be balanced against flexibility for unforeseen contexts.

e. Maintaining Public Confidence:

Ultimately, preserving institutional legitimacy remains paramount. However contempt powers are calibrated must resonate with shared notions of fair process. Transparency, proportionality and consistency take on heightened importance for public acceptance. As one Massachusetts decision noted, "The contempt power uniquely is liable to abuse. The limits of reason and fairness enjoin special caution." Both judicial independence and contempt doctrine must adapt to societal needs and sensibilities. Independence does not entail immunity from reevaluation and restraint. But counter-majoritarian duties require insulating courts from temporary outrage. This delicate equilibrium highlights the need for prudence. Understanding tensions contempt presents is critical when examining comparative regulatory approaches.

5. International Perspectives: s

Legal systems worldwide navigate the delicate balance between contempt powers and judicial independence differently. Comparing regulatory models provides useful perspective on how courts address recurring tensions. This section surveys variations across select countries to illustrate alternatives to the United States approach.

i. United Kingdom:

The UK historically recognized sweeping contempt powers deriving from common law. But a series of scandals prompted reforms to statutory regulation. The Contempt of Court Act 1981 now codifies categories of contempt while seeking to expand free expression. The law differentiates between conduct posing a "substantial risk" of prejudice versus that with only "inherent tendency" to interfere. This raised the causation bar for contempt. Penalties are also subject to statutory maximums. The 1981 Act requires proving intent for third-party contempt liability regarding publication. This aimed to protect press freedom absent culpable intent. Restrictions apply only for active court proceedings to guard open debate. However, the law retains summary powers for in-court contempt. Media groups argue the "substantial risk" test still chills reporting on matters of public interest. But UK courts view the legislation as achieving an appropriate balance.

ii. Canada:

Canada also codified its common law contempt, enacting the Criminal Code offence of public contempt in 1976. The provision is narrowly confined to defined acts like disobeying court orders or interfering with participants. Truth is an absolute defense for publishing contemptuous statements. The law seeks to avoid penalizing good faith criticism through mandatory intent requirements. The Canadian Charter of Rights and Freedoms further constitutionalized defenses for sincerely held opinion and public interest speech. Courts utilize balancing tests weighing expression rights against risks of prejudice. Canadian jurisprudence exhibits restraint in using contempt compared to the broader UK standards. But commentators still see shortcomings in procedural protections for accused contemnors. Some provinces have mandated enhanced safeguards through statutes.

iii. India:

India enacted contempt legislation in the 1970s delineating procedures and remedies. The

Contempt of Courts Act 1971 distinguishes civil and criminal contempt. It limits contempt for statements to those imputing improper motives or tending to influence pending decisions. Defenses include truth, good faith, and serving public interest. The law caps imprisonment to six months. But the statute retains broad contempt powers over publication and criticism of judges. Courts have expansively interpreted what constitutes "scandalizing the court." Critics argue this deters advocacy and prevents judicial accountability. The simple truth defense is also narrower than in other jurisdictions. Commentators argue India's contempt powers remain inconsistently applied and prone to abuse despite statutory regulation.

iv. European Court of Human Rights:

The regional European Court of Human Rights (ECHR) provides an international precedent on balancing contempt with rights. ECHR decisions recognize contempt as legitimate to ensure court functioning. However, penalties must be proportionate, lawful, necessary and non-arbitrary. The ECHR overturns convictions deemed unduly limiting expression or lacking adequate safeguards. In *Kyprianou v Cyprus*, the ECHR found a lawyer's criticism of judges did not warrant six months imprisonment. The decision pronounced courts should show restraint and tolerance towards speech absent clear obstruction. ECHR rulings against countries like Turkey demonstrate contempt powers can threaten rule of law if unchecked. But the Court acknowledges regulation must not overly curtail judicial effectiveness either.

v. International Standards:

Various global bodies have articulated standards on contempt powers and judicial independence. The International Commission of Jurists' Delhi Declaration recognizes that contempt is open to abuse as "a weapon against press freedom." It calls for narrow construction and fair procedures. The UN Special Rapporteur on the Independence of Judges and Lawyers similarly voiced concerns over arbitrary contempt and undue speech restrictions. International guidelines emphasize necessity, proportionality and robust defenses in contempt regulation. Global norms discourage punishment for generic criticism or panelizing third-parties like media without intent. Customary legitimacy rationales are disfavored absent actual demonstrated risk of prejudice. The standards advocate contempt as a last resort better addressed through rights-respecting alternatives.

6. Safeguarding Independence:

The comparative analysis highlights the imperative of balancing meaningful contempt powers with safeguards against excess. Reasonable minds may differ on where to draw lines in specific cases. However, certain best practices and reform considerations emerge for safeguarding judicial independence and public trust:

- i. Statutory guidelines on applicable contempt powers and procedures
- ii. Transparency through published contempt decisions and annual court reporting
- iii. Proportionality requirements linking contempt punishments to severity and intent
- iv. Robust defenses for truth, public interest, fair criticism and good faith error
- v. Mandatory intent standards for third-party liability
- vi. Limits on summary process to necessity like direct court disturbances
- vii. Notice requirements, opportunity to comply, and hearing rights
- viii. Transfer to an impartial judge when practicable
- ix. Codified maximum fines and imprisonment terms
- x. Independent appellate review processes
- xi. Judicial training and education on responsible contempt practices
- xii. Restraint in exercising contempt authority absent clear necessity
- xiii. Seeking least restrictive alternatives capable of protecting proceedings

Purposeful adoption of these standards into law, rules and judicial practice can help steer contempt powers away from misuse. Statutes and regulations should enshrine key principles of transparency, consistency, proportionality and fairness. But flexibility is still required in applying contempt where essential to preserve order, safety and efficacy. Judges must be cognizant of unconscious biases in contempt enforcement. Transferring matters to other jurists for adjudication can assist impartiality. However, summary process remains appropriate for immediately necessary actions like removing disruptive persons. Training and development programs for judges should incorporate instruction on exercising contempt judiciously. Appellate oversight provides critical accountability. But appeals can also sometimes perpetuate institutional biases. Truly independent review may benefit from panels with multidisciplinary experts beyond just judges. Broader contempt data collection and reporting would facilitate monitoring and research to guide reform. Legislatures have key roles in articulating standards. However, regulations must not improperly impinge on judicial self-governance over core functions. Checks should target actual abuse risks, not sweepingly preempt contempt powers courts require. The complex balancing act eschews absolutist solutions. But a commitment to rights and restraint remains imperative.

7. Conclusion:

The contempt power's intersection with judicial independence raises profound tensions between authority and accountability. Throughout history, contempt has empowered courts to safeguard proceedings and enforce judgments. However, unchecked contempt also concentrates power in ways that invite abuse and overreach. The paradox lies in calibrating contempt to necessity without unduly constraining courts' constitutional role. Contempt authority finds compelling justifications in preserving respect, order, efficacy and integrity. But countervailing rule of law principles also demand proportionality, fairness and transparency. Misuse of contempt can inflict disproportionate burdens on rights and undermine institutional legitimacy. Finding the right equilibrium continues to challenge legal systems worldwide. This article aimed to elucidate the complex conceptual relationship between contempt and judicial independence. The comparative analysis reveals different models for balancing. But recurring problems arise from contempt's vague boundaries and broad discretionary nature. Reform must address standards for proportionality, intent, defenses and safeguards without disabling courts. Transparency and accountability mechanisms are essential. Judges play a critical role in exercising prudence and restraint in applying contempt. However, legislative regulation also provides important guidance subject to constitutional bounds. Ongoing reevaluation of contempt powers and processes is needed to keep pace with social values. Contempt's justifications must resonate with modern sensibilities. Fundamentally, both contempt doctrine and judicial independence require public confidence. Each must be refined to serve the other in promoting responsive, trusted justice institutions. How constitutional democracies navigate this delicate boundary remains an evolving challenge at the heart of the rule of law.