

LAW RELATING TO CONTEMPT OF COURT IN INDIA

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1.1 Introduction

Contempt of court is considered as the fair administrator of Justice and its purpose is to punish any act hurting the dignity and authority of judicial tribunals. It is difficult to assess the origins of contempt law accurately and also its bit uncertain that it stems from the common law ideal of supremacy and independence of the judiciary.²

The essence of the law of contempt is that all persons at all times observe and display complete respect for the justice dispensation machinery, which includes the judges who are invested with the duty of carrying out that task and also to be treated with the dignity and the respect which they are entitled to. It is also a public morality that the judicial officers need to be within their right to perform their duties without being exposed to any frivolous attacks. Inevitably, in the decided cases the party which loses the case is bound to be unhappy with that decision but that party can never justify that decision by making personal, malicious allegations against the Judge. If such a course were ever to be sanctioned or permitted it would become impossible for the court to function. More particularly the judges cannot set up a counter in the public to any such accusation. Regard being the essence, the law requires that those persons who indulge in such attacks which would seriously impair the public confidence and dignity of the judiciary, requires to be punished. It is a fundamental duty of the democratic polity to protect judiciary from being victimised from the protesting of public. And it is obligatory to maintain stream of justice intact for the public in general.³

1.2 Contempt of Courts Act 1926

There was no statutory law of contempt in India till 1926. Before 1926, the law of contempt in India followed British corresponding law which regulated superior courts of record. The High Courts in India which were courts of record often adopted British legal Principles stated in regard to contempt law.⁴ The first legislation to deal with contempt of courts in India received statutory recognition in the form of the Contempt of Courts Act, 1926.⁵

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² Mriganka Shekhar Dutta & Amba Uttara Kak, "Contempt of Court: Finding the Limits", available at: www.nujslawreview.org (accessed on March 10, 2015).

³ Asohka A. Desai, *Law of Contempt* at 2-3 (2003).

⁴ A.P. Rajeesh, *Contempt of Court*, Ph.D. Thesis, 2012 Mahatma Gandhi University. available at: https://www.shodhganga.inflibnet.ac.in/bitstream/10603/129442/8/08_chapter%203.pdf (accessed on October 23, 2015).

⁵ The Contempt of Courts Act, 1926 (Act No. XII of 1926)

1.3 Contempt of Courts Act, 1952

The Act of 1926 did not have any provision with regards to contempt of courts subordinate to Chief Courts and Judicial Commissioners Court and also extra territorial Jurisdiction of High Courts in matters of Contempt. So the Contempt of Courts Act, 1952 was passed to remove these confusions and this Act replaced the 1926 Act. Two important changes were made by the Act of 1952. Firstly, by defining the expression 'High Court' to include Courts of Judicial Commissioners, hence making it understandable that those courts had power to punish contempt of subordinate courts also. Secondly, the Act also made it understandable that the High Court's (including the Court of Judicial Commissioners) would have jurisdiction to inquire into and try a contempt of itself or of any court subordinate to it, irrespective of whether the contempt was alleged to have been committed within or outside the local limits of its jurisdiction, and irrespective of whether the person alleged to be guilty of the contempt was within or outside such limits. But the term 'contempt' was not defined clearly by this Ac.⁶

1.4 Contempt of Courts Act, 1971

Having realized the shortcoming in the Contempt of Courts Acts, 1952, the Government of India brought necessary reforms and made the Act comprehensive, on 29.7.1961 by setting up a Committee known as Sanyal Committee with H.N. Sanyal as Chairman to study the matter and make recommendations for the proper functioning of the law of contempt, as the government felt that the law relating to Contempt of Court was uncertain, undefined and unsatisfactory. On the basis of the recommendations made by the Committee, Contempt of Courts Act, 1971, was passed which could be described as a comprehensive legislation.⁷ The Act of 1971 produced significant changes in procedure as well as in application of the enactment. 'Contempt of Court' was then been segregated into 'Civil' and 'Criminal' contempt with their respective definitions, which the old Act did not contained.⁸

The purpose of introducing the Contempt of Courts Acts, 1971 in the statute book is to secure a feeling of confidence of the people in general and for proper administration of justice in the country. Certainly without being cautious and unless thus otherwise satisfied beyond doubt, it would have neither been fair nor reasonable for the law courts to carry out jurisdiction under the statute.⁹

The Supreme Court in two leading judgments, *Rustom Cawasjee v. Union of India*,¹⁰ and *E.M.S. Namboodiripad v. T.N. Nambiar*,¹¹ in 1970, did provide an accurate and well founded account of the law in accordance to the criticism of the courts which was concerned in relation with the Article 19(1) (a) of the Constitution of India and the contempt of court. It was stated that the courts do not enjoy immunity like

⁶ Available at: www.lawteacher.Net (accessed on April 12, 2014).

⁷ *Supra note 3* at 11.

⁸ *Supra note 6*.

⁹ *Supra note 3* at 14.

¹⁰ AIR 1970 SC 1318.

¹¹ AIR 1970 SC 1318.

other institutes from fair criticism. The courts cannot claim to be always right, although they do not spare any effort to be right, according to the best of the ability, knowledge and judgment of the judges. As the judges get their training and assistance from the counsels, they have to be conscious about their limitations and of all abilities. The judges are to be more capable to avoid making mistakes more than others. While fair and moderate criticism of the court including of the Supreme Court even if strong, would not be actionable, attributing improper motives and tending to bring the judges or the courts in hatred, would certainly come within the preview and will be considered as contempt of court.¹²

1.4.1 Kinds of Contempt

1.4.1.1 Civil Contempt

The Contempt of Courts Act 1971, defined 'civil contempt' under Section 2(b) to mean wilful disobedience to any judgment, decree, order, direction or any other process of court or wilful breach of an undertaking given to the court.¹³

1.4.1.2 Criminal Contempt

Section 2(c) of the Act defined Criminal Contempt which meant the publication by means of words, spoken or written, or by signs, or by visible representation, or otherwise of any matter or the doing of any other act at all which scandalise or tends to scandalise or lower or tends to lower the authority of any court or prejudice or interferes or tends to interfere with, the due course of any judicial proceeding's or interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner.¹⁴

The Calcutta High Court in the case of *Legal Remembrancer v. Motilal Ghose*,¹⁵ had explained the difference between civil contempt and criminal contempt. The difference between civil and criminal contempt is of fundamental character. While criminal contempt offended the public and consisted of conduct that offended the majesty of law and undermined the dignity of the court, but the civil contempt consisted in failure to obey the order, decree, direction, judgment, writ or process issued by courts for the benefit of the opposing party.

¹² *E.M.S. Namboodiripad v. T.N. Nambiar*, AIR 1970 SC 2015.

¹³ *Vidya Sagar v. Additional District Judge, Dehradun*, 1991 All C.J. 586.

¹⁴ Section 2 of the Contempt of Courts Act, 1971.

¹⁵ ILR 41 Cal. 173.

1.4.2 Exceptions

According to Section 3 of the Act,¹⁶ which dealt with certain exceptions, a person would not be guilty of contempt of court on the ground that he has published any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at the time of publication, and also if at the time, he had no reasonable grounds for believing that the proceeding was pending.¹⁷

The fair criticism of a judicial act is not contempt. The nature and circumstances under which allegations are made, the extent and the character of the publications and similar other considerations have to be taken into account in order to determine whether the act complained of amounts to contempt.¹⁸

In the case of *Re Guljari Lal*,¹⁹ it was stated that no action was called for, if the criticism was reasonable and was offered for the public good. The Privy Council in the case of *State of Maharashtra v. Chandrakant Tripathi*,²⁰ held that a fair comment on the judgment of a court could not constitute contempt.

Section 17 of the Act²¹ dealt with the situation where a person published a fair and accurate report of a judicial proceeding before any court sitting in chambers or in camera it would not be contempt of court except under the mentioned cases in the section.

1.4.3 Defences

Defences in case of contempt are left open and the present Act does not put any bar upon the defences which might have been taken before passing of this Act.²² Enactment of Contempt of Courts Act, 1971 has not changed its position that existed prior to 1971. This Act was aimed to define the powers of certain courts in punishing contempt of courts and to regulate their procedures in relation thereto. Hence, defences which were open to the alleged contemnor in the past remained open to the alleged contemnor. Most of the defences which used to be set up now have been incorporated in various sections of the new Act, but even then, it is made clear that there is no closed door policy in the Act. If the Act could be defended in the past on any plea, the same would be available even now.²³

¹⁶ Section 3 of the Contempt of Court Act, 1971.

¹⁷ Section 3(1) of the Contempt of Courts Act, 1971.

¹⁸ Section 4 of the Contempt of Courts Act, 1971.

¹⁹ 1968 MPLJ 725.

²⁰ AIR 1936 PC 141.

²¹ Section 17 of the Contempt of Courts Act, 1971.

²² Section 8 of the Contempt of Court's Act, 1971.

²³ Justice S.K.Mookerji, *Iyer's Law on Contempt of Courts with Law on Contempt of Parliament, State Assemblies & Public Servants*, 343(2007).

1.4.4 Punishment and Apology

Section- 12²⁴ of the Act deals with the provision for punishment in cases where contempt was proved. Punishment in the shape of imprisonment or fine could be decreased in cases an apology is tender for the act of contempt. Earlier, apology, if conditional was not accepted. But the law now has been amended by this provision and which states that an apology would not be rejected merely because it is conditional.

Generally, the punishment prescribed under the Act is simple imprisonment for a term which could extend to six months or with fine which could extend to two thousand rupees or with both. There is a proviso appended to Section 12 which provided that the accused could be discharged or the punishment awarded could be decreased on apology being made to the satisfaction of the court.²⁵ The apology could not be rejected merely on the ground that it is qualified or conditional if the accused made it bona fide.²⁶

1.4.5 Contempt's not Punishable in Certain Cases –

Despite of anything contained in any law for the time being in force, no court could impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice.²⁷

Every infringement or violation of courts order is not a contempt of court. The law of contempt that only wilful and deliberate disobedience of courts order or substantial interference in courts order is to be punished as confirmed by this section.²⁸

Section 14 of the Act²⁹ deals with procedure where contempt was in the face of the Supreme Court or a High Court. Where contempt - (1) was committed in the presence or hearing of the Supreme Court or the High Court, or (2) was not committed in the presence or hearing of the Supreme Court or the High Court, but a complaint was made immediately before the alleged contemnor leaving the area of that court, then the procedure set in this section had to be adopted.³⁰

²⁴ Section 12 of the Contempt of Court Act 1971.

²⁵ Section 12(1) of the Contempt of Courts Act, 1971.

²⁶ Explanation, *ibid.*

²⁷ Section 13 of the Contempt of Courts Act, 1971 has been amended and new provision have been discussed in the later part of this Chapter under the heading of the Contempt of Courts (Amendment) Act, 2006.

²⁸ *Supra note 23* at 473-474.

²⁹ Section 14 of the Contempt of Courts Act, 1971

³⁰ *Mansiha Mukherjee v. Aashoke Chatterjee*, 1985 Cr LJ 1224.

1.5 THE CONTEMPT OF COURTS (AMENDMENT) ACT, 2006

The Contempt of Courts (Amendment) Bill 2004 passed by Lok Sabha on 22 February 2006 seeks to amend the original 1971 Act to provide that the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking it is *bona fide*.³¹ Section 13 has been substituted by a new Section. This Act may be called the Contempt of Courts (Amendment) Act, 2006.³²

1.6 Advocates and Contempt of Court

Pleaders have a duty not only towards their clients but also towards the court of which they are pleaders, and it is part of their duty to co-operate with the court in the orderly and pure administration of justice. The lawyer seems to think that it is the duty of a legal practitioner blindly to follow every instruction his client gives him. That is an entire misapprehension of the duty of a legal practitioner. He is not only got a duty towards his client but he has got a duty towards the court and it is his duty to see that the case is fairly and honestly conducted. He must not trick or deceive the court or attempt to gain for his client an advantage by dishonest means. To attempt to obtain adjournments by misrepresentations and to put forward a purpose which the legal practitioner and to put forward a purpose which the legal practitioner knows, will never be carried out is to attempt to gain, and to gain an advantage by a trick and a very dishonest one too.³³

1.7 Contempt under Indian Penal Code

As a necessary part of the administration machinery of a country, the public servants possess certain exceptional rights and privileges in order to safeguard and protect the public from the abuse of power by public servants and vice-versa.³⁴ In Chapter 10, Sections 172 to 190 of the Indian Penal Code deals with the offences constituting “contempt’s of the lawful authority of public servants.” A Magistrate could be covered by the definition of a public servant given by Section 21 of the Indian Penal Code.³⁵ This chapter enforces obedience and respect for public servants during the exercising of their lawful authority.³⁶

1.8 Contempt under the Constitution of India

Article 129³⁷ of the Indian Constitution provides that 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.³⁸ Article

³¹ Available at: <http://www.Indianetzone.com> (accessed on 08 May 8, 2014).

³² It is enacted by Parliament in the fifty-seventh Year of the Republic of India (17th March, 2006), Act no. 6 of 2006.

³³ *Supra note 23* at 1144-45.

³⁴ K.D.Gaur, *Indian Penal Code* at 313(2014).

³⁵ *Supra note 23* at 574.

³⁶ *Supra note 34*.

³⁷ Article 129 of the Indian Constitution:

215³⁹ deals with that every High Court shall be a court of record and shall have all the powers of such a court, including the powers to punish for contempt of itself.

In *Delhi Judicial Service Assn. v. State of Gujarat*,⁴⁰ it has held that under Article 129 the Supreme Court has power to punish a person for the contempt of itself as well as of its subordinate courts. The expression “including” extends and widens the scope of power. The plain language of Article 129 clearly indicated that the Supreme Court as a court of record has power to punish for contempt or itself and also something else which would fall within the inherent jurisdiction of the court of record. This inherent power is necessary to safeguard and protect the subordinate judiciary which forms the very back bone of administration of justice.⁴¹

1.9 Conclusion

The first legislation to deal with contempt of courts in India was the Contempt of Courts Act, 1926. There was need to protect the dignity of the courts and it was also necessary that courts could administer justice without any interference. To provide this protection to the judiciary the Contempt of Courts Act, 1926 was enacted. It was passed to define and limit the powers of certain courts in punishing contempt of courts first time. The object of contempt law is to maintain the dignity of the courts and to punish those who interfere with due process of justice or in the functioning and administration of justice. The power of punishment provided in Section 3 of the Contempt of Courts Act, 1926 was related only to contempt of subordinate courts and the Act of 1926 was amended in 1937 to make it clear that the limits are applied in all cases.

The Contempt of Courts Act, 1926 was not found adequate and as such the Contempt of Courts Act, 1952 was passed to define and limit the powers of certain courts in punishing contempt of court. This Act of 1952 was defined the expression High Court to include Courts of Judicial Commissioners, the Act made it clear that those courts have power to punish contempt of subordinate courts also and the Act also made it clear that the High Court would have jurisdiction to inquire into and try contempt of itself or of any court subordinate to it, irrespective of whether the person alleged to be guilty of the contempt was within or outside such limits.

Later on the Government have felt, that the law relating to contempt of courts is uncertain, undefined and unsatisfactory and it would be advisable to have the entire law on the subject scrutinized by a special committee known as Sanyal Committee set up for the purpose and on the basis of the recommendations made by the Sanyal Committee, the Contempt of Courts Act, 1971, was passed. The

Supreme Court to be a Court of record.

³⁸ J.N.Pandey, *The Constitutional Law of India at 509(2011)*

³⁹ Article 215 of the Indian Constitution, 1950

⁴⁰ (1991)4 SCC 406.

⁴¹ *Supra note 38 at 510.*

purpose of introducing the Contempt of Courts Acts, 1971 was to secure a feeling of confidence of the people in general and for proper administration of justice in the country.

The term 'contempt of court' first time has been used in this Act of 1971. Clause (a) of Section 2 does not define 'contempt of court' but merely classified contempt as civil contempt and criminal contempt. Civil contempt means wilful disobedience to any judgment, decree, order, direction or any other process of court or wilful breach of an undertaking given to the court. Criminal contempt includes the publication by means of words, spoken or written, or by signs, or by visible representation, or otherwise of any matter or the doing of any other act at all which scandalizes or tends to scandalize or lowers or tends to lower the authority of any court or prejudices or interferes or tends to interfere with, the due course of any judicial proceedings or interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner. This Act of 1971 defines the powers of courts for punishing contempt of courts and also provides provisions for judges to be tried for contempt of court. The Contempt of Courts Act, 1971 has enacted provisions intended to strike a just balance between the right of the individual and the interest of judicial administration. Now the present law in India to deal with contempt of court is the Contempt of Courts Act, 1971.

