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LEGISLATION REVIEW – CONTEMPT OF COURT ACT, 1971 (ACT NO. 70 OF 1971)

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ABSTRACT

Contempt of Courts Act 1971 is an Act that sets out the law on contempt of court, which is the offence of being disobedient or disrespectful towards a judicial authority and its officers by obstructing or interfering with court proceedings or judgments. This act specifies the types of actions that could be considered as contempt, punishment for committing a contempt of court offence, and the process of trial for such cases. The act defines civil contempt and criminal contempt and aims to strike a balance between protecting the right to a fair trial and ensuring free speech and press freedom. The act also specifies the power of the court to punish a person for contempt and provides the immunity of the statements made under certain circumstances.

KEYWORDS: Contempt of Court, Contempt Proceeding, Supreme Court, Advocate, Scandalise Judicial Authority

I. INTRODUCTION

The Contempt of Court Act is a legal framework that aims to ensure that there is no interference in the administration of justice by individuals or organizations. It was enacted in 1971 and its purpose is to uphold the authority, dignity, and decorum of courts. The act provides for punishment for any act that interferes with the administration of justice or scandalise the authority of the court. The punishment for contempt can include a fine exceeding Rs 2000 or imprisonment up to 6 months. Another important aspect of the Contempt of Court Act is that it also provides protection to the person who is punished for contempt of court. The act ensures that the punishment imposed for

contempt of court cannot be executed until the person has had the opportunity to appeal against the decision.

II. ORIGIN

The law relating to contempt of court has developed over the centuries as the medium whereby the courts may punish the act of humiliating or lowering the court's dignity. In ancient times king was regarded as the fountain of justice and he used to hear the cases himself. His power was absolute and the subjects (common people) obey him with due respect. If anyone condemn or criticise him then he will be punished. With time, due to the increase in number of cases the burden on the king was shifted to a separate body created by the king and i.e., Judges.⁷⁷

This concept in India has its origin from British Administration in India. The Contempt of Court Act was first introduced in 1926 was put into place to regulate the conduct of people within a court of law – to maintain order, show respect to the process of justice, and uphold the integrity of the judicial system. In 1926, the Contempt of court Act was passed to bring transparency in the concept of contempt of court and to punish for the contempt of subordinate courts." This was replaced by act of 1952. But the Act of 1952 was again replaced by Contempt of Court Act, 1971 on the recommendations of the committee headed by H. N Sanyal. In 1962 a committee headed by H.N. Sanyal, the then Solicitor General of India, was appointed by the Government of India to review and suggest modifications in the law of contempt of court. Contempt of Court Act, 1971

⁷⁷Legal Desire, *Contempt Of Court: An Analysis*, Legal Desire, (Jan 9, 2018) <https://legaldesire.com/contempt-court-analysis> (last visited Apr 20, 2023)

was passed in a very pragmatic way and it actually beautified the idea of justice. This act mentioned all the provisions to punish whomsoever hinder the path of the judiciary⁷⁸

III. ANALYSIS OF PROVISIONS

The contempt of courts acts 1971 defines *contempt of court* for the first time. Before it there was no statutory definitions for the concept of contempt of court, even the definitions of the contempt of court given in the contempt of court act 1971 is not a definition but only classification or categories of contempt of courts. Actually, it was difficult to define a contempt of court. What would affect the dignity of the court and lowers the court prestige is a matter for the court to determine and it can't be confined with the four walls of the definitions.⁷⁹ The act divides contempt into civil and criminal contempt.

*Civil contempt*⁸⁰: It is wilful disobedience to any judgment, decree, direction, order, writ or other processes of a court or wilful breach of an undertaking given to the court.

*Criminal contempt*⁸¹: It is any publication which may result in:

- Scandalising the court by lowering its authority.
- Interference in the due course of a judicial proceeding.
- An obstruction in the administration of justice.⁸²

Definition given under the act for contempt of court not exhaustive. It is difficult to define the word as it has a wider scope. Contempt of court means any disrespect to the authority of the law or disobedience of the order of the court or disturbance to the proceeding of the court.

Contempt of court is punishable by the Supreme Court and High Courts with either simple imprisonment for up to six months or a fine of up to Rs. 2,000, or both under Section 12.

According to Section 10 of the Contempt of Courts Act of 1971, High Courts have been given unique powers to punish contempt of subordinate courts.⁸³

There are several defences available for contempt of court under the Contempt of Court Act, including:

1. *Innocent publication*⁸⁴: If the contemptuous matter was published unintentionally, without knowledge or intention to commit contempt, or if it was published in good faith and without malice.

2. *Fair and accurate reporting*⁸⁵: If the material published was a fair and accurate report of a court proceeding, then it may not amount to contempt of court.

3. *Fair criticism*⁸⁶: a proper and fair comment on the decision is not contempt of court. Criticism is permitted to the extent where it doesn't interfere with administration of justice

4. *Consent of the court*: If the court gives permission for the publication of the material, then it cannot be considered contempt of court.

It should be noted that these defences are subject to the interpretation of the courts and the specific circumstances of each case, and may not always be available or successful.

The act confers power only to SC and HC to try for contempt of court and award suitable punishment. Contempt against the subordinate court is tried by the high court through petition filed by the court or advocate general.⁸⁷

⁷⁸ Harshit Sharma, *Contempt of Court: A Critical Appraisal*, Indian Legal Solution, (Mar3,2019) <https://indianlegalsolution.com/contempt-of-court-a-critical-appraisal> (last visited Apr 20, 2023)

⁷⁹ Ahmed Ali v. SD jail, Tezpur, 1987CrLJ 1845

⁸⁰ Section 2b of contempt of courts act, 1971(70 of 1971)

⁸¹ Section 2c of contempt of courts act, 1971(70 of 1971)

⁸² *Drishiti IAS, Contempt of Court, Drishiti IAS, (Nov16, 2019)* <https://www.drishitiias.com/daily-updates/daily-news-analysis/contempt-of-court> (last visited Apr 20, 2023)

⁸³ *Patil Amruta, Contempt of Court*, Prepp.In, (Apr 6, 2023)

<https://prepp.in/news/e-492-contempt-of-court-india> (last visited Apr 20, 2023)

⁸⁴ Section 3 of contempt of courts act, 1971(70 of 1971)

⁸⁵ Section 4 of contempt of courts act, 1971(70 of 1971)

⁸⁶ Section 5 of contempt of courts act, 1971 (70 of 1971)

⁸⁷ Section 10 of contempt of courts act, 1971 (70 of 1971)

Section 16 deals with contempt by judges, magistrate and other person acting judicially. According to this, these persons held liable for contempt of court of its own or other like ordinary man. If they are not held liable then the people loose their faith over judiciary.

IV. CONSTITUTIONALITY OF THE ACT

The act empowers the Supreme Court and High Court to punish contempt of court. The Supreme Court and High Courts being courts of record have the constitutional validity to punish for contempt of court under *Article 129 and Article 215*.

Parliament and the state legislature both have power to make laws with respect to any of the subject enumerated in list III of the schedule 7 of the constitution. The parliament has exclusive power to make laws with respect to any of the matters are subjects listed in union list while the state legislature has power to make laws under list II of the 7th schedule of the constitution.

The contempt of courts act is considered valid. It is not considered inconsistent within the law of contempt existing at the time of its enactment.⁸⁸

Not violative of Article 19: - In number of cases issues were raised that whether contempt of court act satisfies the twin test given in Article 14 of the Constitution i.e., the act is just fair and reasonable and not arbitrary, fanciful, or evasive and whether the classification satisfies this test and whether there is a relation (nexus) between the classification and the object to be achieved.⁸⁹

Not violative of Article 19: - As the existing law relating to Contempt of court imposes reasonable restrictions within the meaning of Article 19(2) and therefore, it is not violative of the fundamental right to freedom of speech and expression guarantee by Article 19(1) (2) of the Constitution.⁹⁰

Not violative of Article 21: - The contempt of court is violative of Article 21 which provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law as the existing procedure for contempt proceedings have statutory sanction.⁹¹

Hence, on the above grounds, it can be concluded that the Contempt of Court Act, 1971 is not violative of any provision of the Constitution and it is constitutionally valid.⁹²

V. AMENDMENTS

1. The Contempt of Courts (Amendment) Act, 1976 (45 of 1976)
 - o Section 15(1) (c) was incorporated- Cognizance of criminal contempt in other cases.
2. The Contempt of Courts (Amendment) Act, 2006 (6 of 2006)
 - o Section 13 was inserted- Contempts not punishable in certain cases.
3. The Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019)
 - o Provision omitted in Section 1- Short title and extent⁹³

VI. PROPOSED SUGGESTIONS

1. *Definition of contempt:* The definition of contempt needs to be revisited and revised to ensure that there is clarity and consistency in its interpretation. Currently, the Act defines contempt as civil or criminal contempt, but there are cases where it is not clear how to define the contempt

⁸⁸ Noordeen Mohammed v. A.K. Gopalan AIR 1968 Ker 301

⁸⁹ Sher Singh v. Raghupati AIR 1968 Punj 217

⁹⁰ CK Daphytary v OP Gupta AIR 1971 SC 1132

⁹¹ State of Bombay v. Mr. P AIR 1959Bom 182

⁹² Pinky Singh Assistant Professor, *Constitution Validity Of Contempt Law*, Studocu, (Sep 1, 2019) <https://www.studocu.com/in/document/chaudhary-charan-singh-university/llb/constitution-validity-of-contempt-law/11968689> (last visited April 20, 2023)

⁹³ Akarsh Tripathi, *Contempt of Court Act: A Detailed Study* – By Akarsh Tripathi, Legal Thirst, (May 1, 2020) <https://legalthirst.com/contempt-of-court-act-a-detailed-study-by-akarsh-tripathi> (last visited Apr 20, 2023)

2. *The scope of the Act:* The scope of the Act should be expanded to include the actions of the executive and the legislature. The Act only covers actions of individuals, and there have been instances where the executive and legislature have interfered with the administration of justice.

3. *Protection of freedom of speech and expression:* There have been concerns that the Contempt of Court Act is being used to suppress freedom of speech and expression. Therefore, there have been calls to ensure that the Act does not violate the fundamental rights enshrined in the Constitution.

4. *Right to appeal:* Currently, there is no provision for a person accused of contempt to appeal. Therefore, there have been suggestions to provide the right to appeal to ensure that the accused gets a fair hearing.

5. *Fines and Imprisonment:* There have been calls to revisit the punishment prescribed by the Act. The current punishment of a maximum of six months imprisonment or a fine of Rs. 2,000, or both, may not be sufficient to deter individuals or entities from interfering with the administration of justice.

VII. CONCLUSION

Contempt of court is a serious offense in the legal system that can have severe legal consequences. If parties' failure to comply with a court order or interfering with court proceeding can result in fines, imprisonment, or other forms of punishment. Therefore, it is essential for individuals or entities involved in legal disputes to obey court orders and refrain from engaging in activities that interfere with the administration of justice.

Contempt of Court Act is a crucial law to safeguard the authority and integrity of the judiciary, there is a need to revisit and revise it to ensure that it is not misused and does not violate fundamental rights. This act is to protect the dignity and decorum of the court and to

uphold the majesty of the law. The object is not to protect the judge from criticism but to provide punishment for contempt of court to deliver fearless and impartial justice. Amendments need to be introduced to make the Act more effective and to address the challenges that have arisen with its implementation.

VIII. RELATED CASE LAWS

1. IN RE: ARUNDHATI ROY⁹⁴

In 2002, Indian author Arundhati Roy was held in contempt of court for publishing an article critical of the judiciary in a major newspaper. The Supreme Court sentenced her to one-day imprisonment and fined her INR 2000.

2. P.N. DUDA V. P. SHIV SHANKER⁹⁵

In 1988, the Supreme Court of India held that an act of scandalizing the court is contemptuous. It stated that criticism of the judiciary ought to be objective and not be used to indirectly undermine its authority.

3. DR. SUBRAMANIAN SWAMY V. UNION OF INDIA⁹⁶

The Supreme Court held that allegations made by a petitioner against a judge aimed at casting aspersions on their impartiality must be proved beyond reasonable doubt, or else they attract the charge of contempt.

4. D.C. SAXENA V. CHIEF JUSTICE OF INDIA⁹⁷

In 1996, the court held that letters written by the petitioner to the Chief Justice, containing allegations against several judges, amounted to contempt of court. It stated that such letters, which question the integrity of a judge or the judicial system, are unacceptable.

5. BARADAKANTA MISHRA V. REGISTRAR OF ORISSA HIGH COURT⁹⁸

In 1974, the Supreme Court held that publishing anything that interferes with or obstructs the functioning of the judiciary, or undermines public confidence in it, is a serious form of

⁹⁴ AIR 2002 SC

⁹⁵ AIR 1988 SC 106

⁹⁶ AIR 2016 SC

⁹⁷ 1996 SCC (7) 216

⁹⁸ AIR1974 SC 710

contempt. In this case, publishing the names of sitting judges in a manner that could be seen as their censure was held to be contemptuous.

6. IN RE VINAY CHANDRA MISHRA⁹⁹

The supreme court held that for contempt of court committed by an Advocate, he shall be suspended from practice for a fixed period or he shall be permanently restrained from practice. The Supreme Court Bar Association has filed a review petition against this order. In which the supreme court held that for contempt of court the court cannot cancel the Advocates right to practice. But he shall be suspended from practice for a fixed period.¹⁰⁰

7. IN RE: VIJAY KURLE AND OTHERS¹⁰¹

Vijay Kurle along with Rashid Khan Pathan and Nilesh Ojha sent two letters dated 20.03.2019 and 19.03.2019 to the Chief Justice of India Ranjan Gogoi. The above letters levelled scandalous allegations against Justice RF Nariman and Justice Vineet Saran. The Court observed that the said letters showcase highly scurrilous and scandalous allegations against the judges and such allegations cannot be made against judges and the courts. Further, the Court stated that not even an iota of remorse was shown or apology forwarded by the contemnors. This behaviour, therefore, should not be entertained and it should not be let off leniently. The Court also observed that to comment or criticize the court's judgment, people should also first have the knowledge to challenge the integrity and authority of a judge. Therefore, the Court held them guilty of contempt of court and sentenced all the three advocates to undergo simple imprisonment of three months along with a fine of Rs. 2000.¹⁰²

⁹⁹ AIR 1995 SC 2348

¹⁰⁰ Dr. Ganesh Dubey Professional Ethics, Accountancy for Lawyers and Bench Bar Relation, Jiwaji.Edu
<http://www.jiwaji.edu/pdf/ecourse/law/Bar%20&%20Bench%20Relation.pdf> (last visited Apr 20, 2023)

¹⁰¹ AIR 2020 SC 2

¹⁰² Ms. Somya Jain, *Important Supreme Court judgments on contempt of court from 2010 to 2020*, iPleaders, (Sep 1, 2021)

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