

Ill-Informed Criticism Should Be Killed by the Bar, Not Dueled by Using Power of Contempt

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ABSTRACT

Contempt of court, also referred to simply as "contempt," is the act of being rebellious or illred toward a court of law and its officers by engaging in conduct that opposes or rejects the court's position, equity, and nobility. Contempt of Parliament or contempt of Congress refers to a negative attitude toward an authority entity.

Contemn (as in "to disdain a court request") is the action term meaning "to commit contempt," and a contemnor is a person who is guilty of it.

When a court decides that an action constitutes contempt of court, it can issue an order that in the context of a court trial or hearing declares a person or organization to have disobeyed or been disrespectful of the court's authority, called "found" or "held" in contempt. That is the judge's strongest power to impose sanctions for acts that disrupt the court's normal process. This term can likewise be comprehended as far as the opportunity of cut off points of the legal continuing. As we realize that all appointed authorities in courts can give legal procedures which have a specific breaking point in which it has the opportunity to make any legal continuing and anything which reduces or stops it in making any legal continuing which is of need can add up to scorn of court.

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“We have always accepted that the decisions of the courts can be criticized, including in language which may be impolite. Can we criticize the decision-making process? Why not? Can’t we ask why certain cases were heard in a certain way? Of course, we can. Because justice is administered under public gaze, that makes the decision-making process subject to scrutiny.”

INTRODUCTION

In this research it was observed “The term ‘Contempt of Court’ is a nonexclusive term illustrative of lead corresponding to specific procedures in an official courtroom which will in general undermine that framework or to restrain residents from benefiting themselves of it for the settlement of their questions.” This term Contempt of Court can be effectively comprehended as when we are ill bred or defiance towards the official courtroom which implies that we willfully neglect to comply with the court request or lack of regard the lawful specialists. At that point the appointed authority has the privilege to force endorses, for example, fines or can send the contemnor to imprison for a specific timeframe in the event that he is seen as blameworthy of Contempt of Court.¹

RESEARCH METHODOLOGY

The paper is a doctrinal examination of the 1971 Contempt of Court Act. This project is based on a variety of readings, observations from diverse authors, journal and research publications, and a thorough examination of statutory provisions. The Hypothesis will be derived using the Library-based Research technique. The search will be based on original sources such as statutes, as well as secondary sources such as books, publicly available internet publications, and legal databases. The research for this paper is entirely theoretical.

ORIGIN OF CONTEMPT OF COURT

The legal system that we see today is the culmination of the long outing which has started from the magnificent standard that was in pronouncement to the trademark law and even more further to the positive law that we see today. Contempt of Court is an issue which regards that value should be overseen sensibly and it moreover rebukes any person who means to hurt the balance or authority of the lawful committees. This law has its root from the middle age events when the majestic powers of the ruler were moved to the court and as of now the ruler was acknowledged to be designated by God and everyone was dependable to him. This power of liability evidently depicts comparative obligation the Supreme Court has these days under Article 129² and 142³ of the Indian constitution against its scorn.

Essentials of contempt of court

1. Scandalizing the court itself.
2. Abusing parties who are concerned in the cause, in the presence of court.
3. Prejudicing the public before the cause is heard.

However, in India, contempt is classified under two major categories:

1. Civil contempt

¹ <https://alc.edu.in/blog/contempt-of-court-an-academic-perspective/>

² The Constitution of India

³ ibid

2. Criminal contempt

According to section 2(b) of the Contempt of Courts Act, 1971 civil contempt means willful disobedience to any judgement, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court.⁴

Thus from the abovementioned definition it can be ascertained that there are two important essentials to constitute civil contempt:

1. Disobedience of any judgement, decree, direction, order, writ or other process of a court or an undertaking given to the court.
2. The Disobedience or breach must be willful, deliberate and intentional.

Mere disobedience or breach of the court's order by the person is not sufficient to constitute civil contempt. Such a disobedience or breach must be willful, deliberate and intentional. In order to exercise its power to punish the contemnor the court has to be satisfied beyond reasonable doubt that the contemnor has willfully, deliberately and intentionally violated the court's order.

According to section 2(c) of The Contempt of Courts Act, 1971, criminal contempt means the publication (whether by word, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-

1. Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court, or
2. Prejudices or interferes or tends to interfere with the due course of any judicial proceeding, or
3. Interferes or tends to interfere with, or obstruct or tends to obstruct, the administration of justice in any other manner.⁵

Thus from the abovementioned definition it can be ascertained that there are four important essentials to constitute criminal contempt:

1. Publication of any matter.
2. Scandalizing or lowering the authority of the court.
3. Prejudice or interference with the due course of any judicial proceeding.
4. Interference/Obstruction with the administration of justice in any other manner.

PUNISHMENT FOR CONTEMPT OF COURT

The penalties for contempt of court is outlined in Section 12 of the Contempt of Court Act of 1971. The power to sentence someone for contempt of court has been entrusted to the High Court and the Supreme Court. According to Section 12(1) of this Act, a person accused of Contempt of court can be punished with either simple imprisonment, which can last up to six months, or a fine of up to two thousand rupees, or a combination of both. However, an accused may be discharged or the punishment imposed on him may be reduced if he makes an apology that is acceptable to the court. Only then can he be exempted from the punishment of Contempt. The court can not impose a sentence for Contempt of Court in excess of what is prescribed under the given section of this Act eighter in respect of itself or of a court subordinate to it.

⁴ ACT NO. 70 OF 1971

⁵ ACT NO. 70 OF 1971

REMEDIES AGAINST AN ORDER OF PUNISHMENT

Section 13 has been added in the Contempt of Court Act, 1971 after amendment in 2006. The new Act may be called The Contempt of Court (Amendment) Act, 2006. This Section tells that contempt of court cannot be punished under certain circumstances or certain cases.

Clause (a) of Section 13 of the Contempt of Court (Amendment) Act, 2006⁶ states that no Court under this Act shall be punished for Contempt of Court unless it is satisfied that the Contempt is of such a nature that it substantially interferes or tends to substantially interfere with the due course of Justice.

Clause (b) of Section 13 of this Act states that the court may give the defence on the justification of truth if it finds that the act done in the public interest and the request for invoking that defence is bona fide.⁷

LANDMARK CONTEMPT OF COURT JUDGMENTS (CASES)

Supreme Court Bar Association vs Union Of India & Anr⁸

In this case, the Judge held that procedural aspect for Contempt of Court may still be prescribed by the Parliament so that it could be applicable in the Supreme Court and the High Court. This means that Section 12(1) of the Contempt of Court Act, 1971 which prescribed a maximum fine of Rs. 5000 and imprisonment for a term of six months shall be applicable in this case.

Zahira Habibullah Sheikh & Anr vs State Of Gujarat & Ors⁹

It was held in this case that the punishment that is given for contempt in the Contempt of Court Act, 1971 shall only be applicable to the High Court but for Supreme Court, it acts as a guide. The judgment that was given was not accompanied by rationality, this was worrisome because the Supreme Court has been given great powers that the drafters of the Indian Constitution has also not given.

Sudhakar Prasad vs. Govt. of A.P. and Ors.¹⁰

This case is also similar to the Supreme Court Bar Association Case. In this case also once again the Supreme Court declared that the powers to punish for contempt are inherent in nature and the provision of the Constitution only recognised the said pre-existing situation.

In Re: Arundhati Roy¹¹

In this case, the Supreme Court observed that the fair criticism on the conduct of a Judge or the institution of Judiciary and its function may not amount to contempt if it is made in good faith and in the public interest.

COMPARING IT WITH FOREIGN JURISDICTIONS (INTERNATIONAL PERSPECTIVE)

United States of America - This country has considered the offence of contempt by scandalizing to be too extreme. Every criticism that we do to the judiciary undermines the authority of the Court. Right to freely comment or criticise the action of a public institution is of primary importance to the public and also for the American idea of Democracy. For abolishing the offence of contempt by scandalizing, the UK consultation paper relied on the landmark decision of the US Supreme Court decision in case Bridges v. California¹². This offence has been considered unconstitutional in the United States of America.

⁶ Ibid

⁷ ACT NO. 70 OF 1971

⁸ [1998] SCC 225

⁹ [2004] 4 SCC 158.

¹⁰ [2000] Insc 654 (13 December 2000

¹¹ AIR 2002 SC 1375

UNITED KINGDOM - There was no conviction for the offence of Scandalizing the Court from the common law in England since 1993. The origin of contempt by scandalizing the court can be traced back to 1765. The case of King v. Almon¹², in which the Almon faced judicial trial against him for libel against a judge. Justice Wilmot, in this case, gives special punishment to Almon for libel and from here the scandalizing a court became a form of Contempt of Court.

CANADA - In Canada, contempt of court is an exception to the general principle that all criminal offences are set out in the federal Criminal Code. Contempt of court and contempt of Parliament are the only remaining common law offences in Canada.

ENGLAND AND WALES - In England and Wales (a common law jurisdiction), the law on contempt is partly set out in case law (common law), and partly codified by the Contempt of Court Act 1981. Contempt may be classified as criminal or civil. The maximum penalty for criminal contempt under the 1981 Act is committal to prison for two years.¹³

CONCLUSION

The scenario has emerged as more complicated by way of the inconsistent interpretations followed through the Supreme Court and High Court regarding diverse provisions under the Indian Penal Code¹⁴ dealing with interference with the administration of justice and exclusion clause contained in the Contempt of Courts Act. Not only the higher court should be given the power to deal with contempt but also the lower court should be given this power. Contempt of Court if seen from the perspective of the judges, higher judicial officials seems good but if it comes to the perspective of common people it turns towards its bad effect.

REFERENCES

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5. King v. Almon, 243 K.B. 1765
6. Bridges v. California, 314 US 252 (1941)¹⁵

¹² 1908) 24 L.Q.Rev. 184, 266

¹³ Contempt of Court Act 1981 (CCA 1981)

¹⁵ <https://www.google.com/amp/s/blog.ipleaders.in/contempt-of-court-2/amp/>