



ORIGINAL RESEARCH PAPER

Law

THE CONCEPT OF CONTEMPT OF COURT IN INDIA

KEY WORDS: Contempt of Courts- Criminal Contempt- Civil Contempt- Punishment- The Contempt of Court Act- The Advocates Act- Law Commission of India Reports.

Prof. Kamlesh M. Pandya

LL.M. Assistant Professor. Sheth D.I. law College. Bhuj-kachchh (Gujarat) India.

ABSTRACT

Not only a layman, but the Bar, that is the entire legal fraternity is expected to pay respect to the respected Judiciary. The Society is having faith and respect to the Indian Judiciary. A lawyer is expected to have courtesy towards the Bench. Bar-Bench Relations are associated with respect to each other. However, we cannot ignore the voice of lawyers when a right of clients is connected in a case. But it is required to maintain courtesy towards the court. In India, there is a separate law related with the subject, named, The Contempt of Court Act, 1971. This research paper discusses on the topics, such as, Kinds of Contempt of Court, Procedures to be followed in such cases, decisions of Indian Judiciary on this subject and the modern thoughts related with its.

(1) INTRODUCTION:

As per the theory of Kelson, there is always a fundamental law in a country that is known as GRUND NORM of that country. In India, we also have the fundamental law that is known as THE CONSTITUTION OF INDIA. Part 3 of our constitution deals with FUNDAMENTAL RIGHTS. So far as Art. 19(1) is concerned, freedom of speech and expression is having a taboo named CONTEMPT OF COURT. It means if a person crosses the boundary of that taboo, the law cannot tolerate that. We cannot ignore that FREEDOM OF SPEECH AND EXPRESSION is a sine-qua-non for a civilized society having democracy, but the dignity and purity of COURT must be protected. Not only the lawyer but also all the persons who are engaged in the field of SPEECH AND EXPRESSION may cross their limit by their professions such as, teachers, journalist, news readers, actors or whatever name we may give ! That is why a separate law exists in our country named THE CONTEMPTS OF COURTS ACT, 1971. For a lawyer, it is necessary to be acquainted with this act for the interest of JUSTICE and BAR-BENCH RELATIONS.

(2) MEANING OF CONTEMPT OF COURTS :

Section 2 of the Act is the INTERPRETAION CLAUSE. That defines Contempt of Court. Section 2(a) says that Contempt of Court means Civil Contempt or Criminal Contempt. It means there is no any straight jacket formula has been mentioned in this definition. The definition is of the inclusive nature. It suggests that –

(1) There are two types of Contempt of Court. (2) Civil or Criminal. Thereafter, Section 2(b) and Section 2(c) clears the meaning of Civil Contempt and Criminal Contempt respectively.

(3) KINDS OF CONTEMPT OF COURTS :

3.1 Civil Contempt :

Section 2(b) defines Civil Contempt. The main elements of the definition are as such : (1) There must be a WILFUL DISOBEDIENCE of a court or WILFUL BREACH OF AN UNDERTAKING given to a court by any person.

(2) Such willful disobedience must be related with –

1. Judgment,
2. decree,
3. direction, or 4. order, or 5. writ or, 6. other process of a court.

3.2 Criminal Contempt :

Section 2(c) defines Criminal Contempt. The essential elements are as such :

- (1) There must be a publication of any matter in the form of WORDS, SPOKEN, WRITTEN or by SIGNS or by VISIBLE REPRESENTATIONS or by ANY OTHER WAY or
- (2) There must be an act .
- (3) By such PUBLICATIONS or doing any act, if it is satisfied that-

- 3.1 it SCANDALISES or tends to scandalize, or LOWERS or tends to lower THE AUTHORITY OF ANY COURT, or
- 3.2 it PREDUDICES, or INTERFERES or tends to interfere with, THE

- DUE COURSE OF ANY JUDICIAL PROCEEDINGS, or
- 3.3 it INTERFERES or tends to interfere THE ADMINISTRATION OF JUSTICE in any manner.

In a nut shell we can bifurcate as such :

CIVIL CONTEMPT

WILFUL DISOBEDIENCE of	Judgment, Decree, Direction, Order, writ or Other Process	of COURT
WILFUL BREACH of	Undertaking	

CRIMINAL CONTEMPT

Publication by way of written or oral or by signs or by visible representations or doing any act that--	Scandalises or lowers or such tends to do so Prejudices or Interferes or such tends to do so Interference or Obstructs or Such tends to do so	of the court of the Judicial Proceedings of the Court The administration of Justice
---	---	---

However, there are other kinds of contempt of court, such as:

- (3) Contempt of Court in side of the premises of the Court.
- (4) Contempt of Court in outside the premises of the Court.
- (5) Contempt of Court by Judge, Magistrate or other person acting Judiciary (Sec. 16).
- (6) Contempt of Court by any other person:

(4) PROVISIONS RELATED WITH CONTEMPT OF COURTS IN INDIA :

The short title of the Act suggests that the Act deals with the contempt of the Court and the long title of the Act expresses the lights of the object of the Act. It says that the aim of the Act is (1) to define and limit the powers of certain Courts in punishing contempts of Courts and (2) to regulate the Courts procedure in related with Contempt of Court. There are 24 Sections in the Act. The Act comes in to force on 24th December 1971. The repealing clause declares that the previous Act of the year 1952 related with this subject is having no any effect and other provisions of the Act are as such:

GENERAL PROVISIONS

1. Section 3 says that innocent publication and distribution of matter is not contempt.
2. Section 4 says that fair and accurate report of Judicial Proceeding is not contempt.
3. Section 5 says that fair criticism of Judicial act is not contempt.
4. Section 6 says that complaint against presiding officers of subordinate Courts are not contempt and Section 7 says that publication of information relating to proceedings in chambers or In Camera not Contempt in certain cases.

PENAL PROVISIONS

5. Section 12 deals with PENAL PROVISIONS. It says that a Contempt of Court may be punished with simple imprisonment for a term which may extend to SIX MONTHS or with fine which may extend to TWO THOUSAND RUPEES, or

with BOTHs. However, the proviso is as an exception clause of the penal provision that says that the accused may be discharged or the punishment awarded may be REMITTED on apology being made to the satisfaction of the Court. The explanation of the proviso says that an apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide. However, there is no any distinction between Civil Contempt or Criminal Contempt regarding the penal provision. It means Section 12 applies in both the Contempt.

To interfere or tends to interfere with the due course of justice is a sine qua non for imposing a punishment, and if it is otherwise, Section 13 says that the punishment cannot be imposed. So it is necessary to read Section 12 with Section 13 for the interest of Justice.

PROCEDURE RELATED WITH CONTEMPT OF COURT

6. Procedure: (As per Sections 14-20):

6.1 : As per Section 20, no Court shall initiate any proceedings for contempt, either or its own motion or otherwise, after expiry of a period of one year from the date on which the contempt is alleged to have been committed.

6.2 As per Section 14, if a contempt is made in the Supreme Court or in a High Court, the Court may cause such person to be detained in custody and considering the principles of natural justice, the court cause that person to be informed the charges in writing and give necessary opportunities to defend the case and then after going through all the evidence before the court, the court may punish or discharge the person as the case may be. However, the person cannot be prosecuted before the same Judge of the court where the contempt is alleged to have been made and no any Judge can be forced to appear as witness in such proceedings. The statement of the Judge related with the contempt is sufficed as evidence for the proceedings.

Section 18 says that every criminal contempt shall be heard and determined by a Bench of not less than two Judges.

6.3 Contempt outside the Court:

As per Section 15, if a criminal contempt is made outside the Court, the procedure may be as such:

6.3.1 : By its own motion (By a High Court or the Supreme Court of India) 6.3.2 : By Advocate – General or by any person with the consent of Advocate General.

In such case, as per Section 17, a notice may be served to the person charged for it and the procedure may be followed as per Section 14 of the Act.

The property of the person may be attached if the person denies to co operate the court or the person may be detained or the court may take sureties from that person as the case may be.

The aggrieved person may make appeal to the High Court or the Supreme Court as per the provision.

RULE MAKING POWERS

7. Section 23 empowers any High Court or the Supreme Court of India to make rules regarding its procedure.

So, this Act follows the doctrine of natural justice in procedure and as per Section 16 any Judge or Magistrate or other person acting judicially shall also be liable for contempt of his own court, it suggests that the doctrine of RULE OF LAW prevails in the Act.

(5) INDIAN JUDICIARY ON CONTEMPT OF COURTS:

The Supreme Court of India is having original and appellate jurisdiction regarding such cases, so there are many occasions, our Supreme Court of India has thrown the lights on this subject. Some cases are as such:

5.1 : In case of the protection of Judicial Officers :

Delhi Judicial Service Association Tis Hazari Court, Delhi Vs. State of Gujarat & ors.

A.I.R. 1991 S.C.2176

Mr.N.L.Patel who was posted as Chief Judicial Officer at Nadiad in October, 1988 who was illegally detained in police station and tortured by policemen on dated 25th September 1989. False Charges were framed and had been threatened to fit in another false charges.

The Supreme Court of India has held that this is a case of CRIMINAL CONTEMPT OF COURT. A guideline for arresting Judicial Officers has been mentioned in this case. The accused were sentenced as per Section 12 of the Act.

5.2 : In case of not maintaining public peace :

Mohammad Aslam Vs. Union of India : A.I.R. 1995 S.C. 548 : As the Chief Minister could not protect the religious property, it was treated as the breach of the undertaking given by the court and was considered as a CIVIL CONTEMPT OF COURT. It reflects that the doctrine of RULE OF LAW prevails in India.

5.3 : In case of defamation and allegations against Judicial Officers :

Dr.D.C.Saxena Vs. Chief Justice of India : A.I.R. 1996 S.C. 2481 : When a P.L.L. against Prime Minister of India was rejected by the Chief Justice of India, the petitioner filed another application against the Chief Justice of India stating that the Chief Justice of India himself was involved with the Prime Minister of India and so he must be punished. It was held that making such types of allegations against the judiciary was itself a CONTEMPT OF COURT.

5.4 : In case of making relations with Judicial Officers with illegal purpose :

J. Vasudevan Vs. T.R.Dhananjaya : A.I.R. 1996 S.C.137 :

It has been observed that intentionally visiting residential place of a judicial officer and then making a request to do favor in the pending case can be treated as a CONTEMPT OF COURT.

5.5 : In case of giving a slap to a Judicial Officer :

Prem Surana Vs. Additional Munsif and Judicial Magistrate : Dated 13th August 2002.

On dated 20th December 1993, in Jaipur, a lawyer gave a slap on left cheek of the Magistrate in open Court. It was treated as the CRIMINAL CONTEMPT OF COURT. It has held in this case that the slap on the face of a Judicial Officer is in fact a slap on the face of THE JUDICIAL DELIVERY SYSTEM in the country.

5.6 : In case of allegation against Judiciary by the use of literature :

In RE : ARUNDHATI ROY CASE : Contempt Petition (Cr) 10 of 2001 : Dated 6/3/2002 in THE SUPREME COURT OF INDIA :

The authoress of THE GOD OF SMALL THINGS and an article writer named THE GREATER COMMEN GOOD, Arundhati Roy was faced a contempt notice regarding making various allegations against the Judiciary of India in her writings. That was considered as the CONTEMPT OF COURT. The apex Court has held " As the respondent has not shown any repentance or regret or remorse, no lenient view should be taken in the matter. However, showing the magnanimity of law by keeping in mind that the respondent is a woman, and hoping that better sense and wisdom shall down upon the respondent in the future to serve the cause of art and literature by her creative skill and imagination, we feel that the ends of justice would be met if she is sentenced to symbolic imprisonment besides paying a fine of Rs.2000/-."

5.7 : In case of making Dharna against the decision of apex Court :

J.R.Parashar, Advocate and others VS. Prashant Bhusan, Advocate and others. :

Contempt Petition No. (Cr) 2 of 2001 : Supreme Court of India : 28\8\2001

After the decisions of the apex court regarding the case of Sardar Sarovar Dam, the Dharna Programme was observed by some advocates near the premises of the apex Court. It has been held in this case that holding a dharna by itself may not amount to Contempt. But if by doing such Dharna, the administration of Justice is effected, than it can be treated as the CONTEMPT OF COURT.

5.8 : In case of making interference in administration of justice :

R.K.Anand Vs. Registrar, Delhi High Court : (Criminal Appeal No.1393\2008)

Supreme Court of India : Dated 21st November 2012 :

The appellant was found guilty of suborning the court witness in a criminal trial in which he represented the accused as the senior advocate by the Delhi High Court. So the appeal was filed in the Supreme Court of India by this lawyer. In Para 10 of the case, it has been held that we feel that no useful purpose will be served by sending the contemnor to jail. It was treated as the Contempt of the Court and the contemnor was ordered to pay Rs.21 Lac to any law college as per the instructions of the Bar Council of India and the contemnor was also ordered to render free legal aid for one year.

5.9 In case of various allegation against Judiciary by eminent Judicial Officer :

In RE, Hon'ble Shri Justice C.S.karnan : Sue moto Contempt Petition (Civil) 1\2017

Supreme Court of India : Dated 9th May 2017 :

The most reputed Justice of Indian Judiciary, in many occasions, made serious allegations against other reputed Justices of Indian Judiciary and that was the reason behind the filing of the case. As per Para 35 of the case, the allegations were found to be defamatory and as per Para 36 it was treated as the CONTEMPT OF THE COURT. It suggests that RULE OF LAW prevails in India.

5.10 : In case of avoiding interim order of Court :

Mahant Lalita Sharanji Vs. Deoki Devi, alleged contemnor : Contempt Petition No.(Civil) 1758 of 2017 : Supreme Court of India : Dated 16th February 2018 :

Despite the interim orders, Deoki Devi raised construction on the disputed land. Para 6 of the case reflects the wilful disobedience of the interim order of the Court and it was sufficed to prove her guilty of the CONTEMPT OF COURT.

(6) CONCLUSION:

We can see that this Act follows the doctrine of NATURAL JUSTICE and RULE OF LAW. By this article, I have gone through the cases of Supreme Court of India from 1991 to 2018, i.e. 28 years journey of the Judicial Decisions of the apex Courts. I would like to through some lights on the following topics :

MEDIA PERSON AND CONTEMPT OF COURT

Media person should have the knowledge of the Act. However, there is another principles named MARDID PRINCIPLES are put for the defense of the Media side. But in India, in SAHARA INDIA REAL ESTATE CORPORATION LTD VS. SEBI, on dated 10th February 2012, our apex court has expressed the views that the guideline regarding reporting of Court proceedings are invited. Anyhow, a media person is not having any immunity regarding this subject.

LAWYER AND CONTEMPT OF COURT

A lawyer has to defend the client. So he has to act each and every role for defending the case. But a lawyer is not having any immunity regarding Contempt of Court and the proposed amendment that Contempt of Court may be treated as Professional Misconduct is yet to be introduced in the Advocates Act.

SUGGESTIONS

1. There must be separate penal provisions regarding Civil Contempt of Court and Criminal Contempt of Court.
2. The monetary provision related with fine should be extended to 25 Lac rupees. So it should be such as:
A minimum fine of Rs.2000 and it may be extended to Rs. 25 Lac as the case may be.
3. The Penal provisions should also be extended up to 5 years of imprisonment.
4. The strict interpretation of the Act is necessary for maintaining the object of the Act.
5. It should be considered as a non-bailable offence in criminal Contempt of Court.

So far as lawyers are concerned, a message of the apex Court is as under in the case of R.K.Anand (2012) in Para 200 : " No judicial system in a democratic society can work satisfactory unless it is supported by a bar that enjoys the unqualified trust and confidence of the people, that share the aspirations, hopes and the ideals of the people."

(7) REFERENCES :

1. THE CONTEMPT OF COURTS ACT, 1971.
2. ALL INDIA REPORTER.
3. JURISPRUDENCE.
4. www.supremecourtofindia.nic.in
5. www.indiacode.nic.in
6. Re : Arundhati Roy Case.
7. R.K.Anand Vs.Registrar.
8. Prem Surana Vs. Additional Munsif and Judicial Magistrate.
9. Dr.D.C.Saxena Vs. Chief Justice of India.
10. J.R.Parashar Vs. Prashant Bhusan and ors.