

CONTEMPT OF COURT ACT

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ABSTRACT

Any act that makes the authority and administration of Law contempt or discount or to impede with or prejudice parties or their witnesses during lawsuit. There are two types of contempt of court: criminal contempt and civil contempt. Civil contempt often involves the failure of someone to comply with a court order. Judges implement civil contempt sanctions to pressurize such a person to follow with a court order the person has violated. Criminal contempt charges, on the other hand are punitive, meaning they serve to discourage future acts of contempt by punishing the offender no matter what happens in the core proceeding. Judges have much discretion in deciding whom to hold in contempt and the type of contempt. A judge may impose sanctions such as a fine or jail for someone found guilty of contempt of court. Often, contempt takes the form of actions that are seen as damaging to the court's ability to administer justice

KEY WORDS: contempt, insulting, court, liability, defamation, discretionary powers, disrupting, criminal contempt.

RESEARCH QUESTION

What are the contempt power given to court and its maintainability?

P: whether excess discretionary power of court under contempt is maintainable or not?

I: Contempt of court, 1971, Indian penal code, 1860.

C: Comparative study on power of various courts relating to contempt.

O: The court is vested only with limited discretionary powers.

OBJECTIVE

1. To study the legal provisions relating to contempt.
2. To understand the difference between civil and criminal contempt.
3. To observe the amount of discretionary power used by the court.
4. To study on the limited power given to court in granting punishment for contempt.
5. To see the jurisdiction of the court.

HYPOTHESIS

HO: Excess discretionary power of court under contempt of court is not maintainable.

Ha: Excess discretionary power of court is maintainable.

RESEARCH METHODOLOGY:

The researcher has adopted the doctrinal form of research in completing this project. As the project is predominantly a case study on insanity, the doctrinal form of research was most appropriate. Primary as well as secondary sources of information have been used from Law Library. The above category of material consists of law reporters such as A.I.R., S.C.C., Cr. I.L. and elucidation on the Indian penal code written by eminent authors. Also, secondary soft copy sources of information have been perused from online databases such as Manupatra, J-Stor,

lexis-nexis, hein, India Code and Judis. No part of this project is plagiarized and it is the original work of the researcher.

INTRODUCTION:

Contempt of court is the offense of being disobedient to a court . Being impudent to legal authorities in the courtroom, or willfully failing to obey a court order may attract Contempt of Court proceedings. A judge may impose punishment such as a fine or jail for someone found guilty of contempt of court. Any act that makes the authority and administration of Law contempt or discount or to impede with or prejudice parties or their witnesses during lawsuit. Words spoken or written which obstruct or tend to obstruct the administration of justice publishing words which tend to bring the administration of Justice into contempt, to prejudice the fair trial of any cause or matter which is the subject of Civil or Criminal proceeding or in any way to barricade the cause of Justice. The Common has divided contempt of court into 2 categories - civil and criminal. We will elucidate them in more detail below and in later chapters, but in the simplest terms civil contempt is committed when an order of the court made in civil proceedings is disobeyed. More often than not its procedures are invoked by a party in whose favour an order has been made who wants to see it enforced. The term criminal contempt is executed to all other contempt, but more often than not those are contempt, which somehow impede with the administration of justice in a more general way i.e. disrupting court proceedings, , or insulting a Judge. At times the dividing line between the two forms of contempt becomes hazy.

THE CONTEMPT OF COURT ACT ³

Object of the Act:

To define and limit the powers of certain courts in punishing contempt of courts and to uphold the majesty and dignity of law courts and their image in the minds of the public is no way whittled down.

Contempt of court " - Civil Contempt or Criminal Contempt.

³ 1971

Civil contempt “- wilful disobedience to any judgment, decree, order, writ or other process of a court⁴

Criminal contempt " - publication (whether by words. Spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) Scandalizes or lowers or tends to lower the authority of, any court ; or

(ii) Prejudices, or impede or tends to interfere with, the due course of any judicial proceeding; or

(iii) Interferes or obstructs or tends to obstruct, the administration of justice in any other manner;

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Power of High Court to punish contempt of subordinate courts - Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure, in respect of contempt of courts subordinate to and exercises in respect of contempt of itself:

-Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate Power of High Court to try offences committed or offenders found outside jurisdiction⁶

Punishment for contempt of court

(1) 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 both. :

Provided the accused may be discharged or the punishment which was awarded may be remitted on apology being made by the person.

Explanation.-An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide. [Sec.12] to it where such contempt is punishable⁷

ESSENTIALS OF CIVIL CONTEMPT OF COURT:

⁴ [Sec. 2 (b)]

⁵ [Sec. 2 (c)]

⁶ [Sec.11]

⁷ Indian Penal Code.(45 of 1860) [Sec.10]

1. The making of a valid court order,
2. Knowledge of the order by respondent,
3. Ability of the respondent to render
Compliance, and
4. Wilful disobedience of the order

Cognizance of criminal contempt in other cases

(1) In the case of a criminal contempt, other than contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by-

- (a) The Advocate-General, or
- (b) Any other person, with the consent in writing of the Advocate General

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.⁸

Procedure after cognizance:

Notice of every proceeding under section 15 shall be served personally on the person charged, unless the court for reasons to be recorded directs otherwise⁹

CRIMINAL CONTEMPT

The law of criminal contempt is there to protect and keep clean the administration of justice. It may be committed in the face of the court (broadly speaking words spoken or acts done in or in the confines of a court, which obstruct or interfere with the due administration of justice or are calculated so to do) or outside the court (in general terms, words spoken or otherwise published, or acts done, outside the court which are anticipated or likely to interfere with or

Hinder the due administration of justice). Set out below are some examples of conduct which might be said to fall within this category -

⁸ [Sec.15]

⁹ [Sec.17]

(a) conduct in the face of the court such as committing an assault, insulting the court by language or manner, interrupting the proceedings, photography or sketches of the judge, jurors, parties or witnesses, refusing to be sworn or to give evidence or to answer a lawful question as a witness, misbehaviour by a juror;

(b) conduct outside the court, such as disgrace of the court by words written or spoken, publishing words written or spoken calculated to prejudice the due course of justice, doing any act (before, during or after the proceedings) calculated to prejudice the due course of justice, interfering with receivers or with property under arrest in certain actions, interfering with wards of court, impeding the service of process or forgoing or altering the process of the court, disobedience to a witness summons, acting as a solicitor when not qualified.

“Several traditional forms of criminal contempt in the face of the court have been codified and are punishable by the appropriate courts”. The following are some examples -

(a) the High Court or a District Court can punish a person summarily for contempt of court up to a maximum of two years' imprisonment (i) if a person disobeys a witness summons or order to attend court (ii) if a person refuses to give evidence or be sworn when required ¹⁰

(b) a magistrates' court may summarily impose a sentence of up to \$2,000 fine or 2 months' imprisonment on a person who behaves in an insulting manner or uses any threatening .

CIVIL CONTEMPT

Conceivably the most prime role of civil contempt procedures is to supply the necessary sanction when all else fails to secure compliance with orders of the court. Individuals can be sent to prison, corporate bodies can be punished by fine and confiscation of assets, or by the committal of their directors or other officers. The following are examples of conduct which has been held to be a civil contempt of court -

(a) Failure to carry out an undertaking given to the court;

(b) subject to certain restrictions, disobedience to a judgment or order for the payment of money within a specified period;

(c) Disobedience to an order for the payment of money into court in time;

¹⁰ (s.36 of the Criminal Procedure Ordinance (Cap. 221));

- (d) Failing to obey a judgment or order to do or abstain from doing an act within a specified time;
- (e) Failure to obey an order for interrogatories, inspection or discovery.

Courts with contempt jurisdiction:

The powers of the High Court and the Court of Appeal, as superior courts of record, to commit for all forms of contempt of court are now regulated by 0.52 of the Rules of the Supreme Court. A successful application will result in the offender being seized under the order of the court by a court official and taken to prison. The courts' inherent powers are expressly reserved by Order 52 Rule 9 and so there is jurisdiction to fine or take security for good behaviour or instead of committing, to grant an injunction against repetition of the contemptuous conduct. The assets of a company may be sequestered. The Court has power to suspend the execution of the order for committal on terms and may at any time on the application of the person committed, order his discharge.

Misbehaviour act in court:

It is universally accepted that Courts of law must possess adequate powers to check and prevent misbehaviour during judicial proceedings so that an atmosphere conducive to the orderly administration of justice is maintained. As Chapter III of the Report has shown the legislature has granted the courts at different levels wide powers to punish for contempt committed in their face. Where a contempt amounts also to a criminal offence such as assault (in a recent case an angry defendant threw one of his shoes at the presiding magistrate) the offender will normally be tried in the usual way before another magistrate and there will be nothing extraordinary about the procedure. But misbehaviour in court which interrupts the proceedings will often be dealt with by the summary procedure and it is here that the Court's powers are seen by some to be arbitrary in that the Judge, as it were, frames the charge, initiates and conducts the prosecution and fixes the penalty. A warning, a reprimand or, in suitable cases, the removal of the offender from court, will often suffice to restore order and allow the case to proceed. However, the apparent harshness of the summary procedure has been reduced by the vigilance of the superior courts, so that the offender must be told the precise nature of the alleged contempt and given a full chance of defending himself. We think that the following passage from the judgment of Lord Denning in

Balogh v. Crown Court¹¹ aptly summarises the modern approach to the exercise of summary powers -

"This power of summary punishment is a great power. It is given to maintain the dignity and authority of the judge to ensure a fair trial. It is to be exercised by the judge of his own motion only when it is imperative to act immediately - so as to maintain the authority of the court - to prevent disorder - to enable witnesses to be free from fear - and jurors from being improperly influenced - and the like. It is, of course, to be exercised with scrupulous care, and only when the case is clear and beyond reasonable doubt. But properly exercised, it is a power of the utmost importance which should not be curtailed."

The summary procedure:

There are indeed powerful arguments for the retention of the summary procedure to punish contempt in the face of the court. The presiding judge must be able to deal with a disruption of the proceedings quickly and effectively so that the hearing can continue. The facts will rarely be seriously in dispute and the judge who has seen and heard what has happened will be in as good a position as another judge to determine guilt and decide the right penalty. He will moreover be better able to place the behaviour complained of in its proper context. The deterrent factor must also be borne in mind. The threat of an immediate sanction is more likely to be effective than that of postponed proceedings elsewhere. We entertain no doubt that the power to deal with a contempt committed in its face is one that a court must of necessity continue to possess. There will be examples of conduct which need to be restrained and punished at once if the machinery of justice is to function properly. However we consider that the interests of justice demand that the growing current practice of using summary powers only when it is a matter of urgency and it is imperative to act immediately, be reflected in legislation. It seems to us that for justice to be seen to be done, the ordinary process should be the rule and the summary procedure the exception. We are also of the opinion that the steps invariably taken by a judge to safeguard the interests of an offender when the summary procedure is invoked should be similarly codified.

¹¹ 1974 13 All E.R.283 at 288

Proposals for reform:

We believe it to be unsatisfactory that misbehaviour in court is dealt with, as it is at present, in different Ordinances with varying definitions and penalties. To cover the worst cases, the maximum penalty, we feel, ought to be a fine of \$50,000 or 2 years' imprisonment in the High Court or the Court of Appeal. Where the contempt is committed in the District Court, we think that a maximum of a fine of \$20,000 or 1 years imprisonment would be adequate. We also think that a magistrates' court or a tribunal with power to punish for contempt should have power to impose a maximum penalty of a fine of \$5,000 or 3 months' imprisonment.

The following offences now scattered in different Ordinances should be included in the new Ordinance -

- (i) Disobeying a summons or order to appear as a witness;
- (ii) Refusing to give evidence, or to answer lawful questions, or to be sworn, when required;
- (iii) Failing to attend as a juror or absenting oneself without leave.

In this area of the law of contempt in the face of the court, the legislation we envisage would -

- (a) Create the offence
- (b) provide that the judge or magistrate presiding at the proceedings in which the offence was committed shall remand the offender in custody or on bail for trial in the usual way before another court.
- (c) Provide that where the offence is dealt with summarily by the presiding judge or magistrate before whom it was committed, the judge or magistrate should.
 - (i) Reduce the charge into writing and ask the offender to show cause why he should not be punished for contempt.
 - (ii) Except where official shorthand-writers are present, take a full note of the proceedings;
 - (iii) Where an offender is punished for contempt, inform him of his right of appeal;
 - (iv) Have power to review an order of committal on his own motion or on application and order the discharge from custody of the offender.

CONCLUSION:

Contempt of Court common and in general refers to the conduct that disobeys disrespects or insults the authority or dignity of a court. Often, contempt takes the form of actions that are seen as damaging to the court's ability to administer justice. Judges typically have much discretion in deciding whom to hold in contempt and the type of contempt. Those held in contempt can include parties to a proceeding, attorneys, witnesses, jurors, people in or around a proceeding, and officers or staff of the court itself. There are two types of contempt of court: criminal contempt and civil contempt. Civil contempt often involves the failure of someone to comply with a court order. Judges use civil contempt sanctions to pressurize such a person into complying with a court order the person has violated. Criminal contempt charges, on the other hand are punitive, meaning they serve to discourage future acts of contempt by punishing the offender no matter what happens in the core proceeding. Someone imprisoned for criminal contempt cannot secure their own release by deciding to comply with the Court. Judges use various factors when deciding, whether to clutch someone in civil or criminal contempt, including the nature of the underlying court pre-court proceeding (criminal or civil) and the sternness of the contemnor's behaviour.

SUGGESTIONS:

- The law of contempt in the face of the court should be retained.
- If, contrary to our provisional view, contempt in the face of the court is to be abolished, there should be an offence of disrupting judicial proceedings.
- The *mens rea* element should comprise intention or recklessness. The offence should not require that the disruption have a likely or intended effect on the administration of justice.
- The offence should not make it an offence to insult a judge where this does not disrupt the proceedings.
- The proposed offence of disrupting proceedings should be of a generic nature; specific types of disruption should constitute particularised modes of committing this offence without risk of a prosecution failing for duplicity.
- The offences specified in the *Juries Act 1976* in respect of juror misconduct.

- The failure by a witness to answer a question in circumstances which at present render the witness guilty of contempt of court;
- The culpable failure to attend court by a witness or a legal representative
- Failure to comply with the court's requirements as to the use of sound recorders in court

REFERENCES:

1. <http://www.legalserviceindia.com/article/1255-Contempt-of-Court.html>
2. <https://indiankanoon.org/doc/1396751/>
3. <https://blog.ipleaders.in/what-is-contempt-of-court/>
4. <https://lawrato.com/indian-kanoon/criminal-law/what-all-comprises-contempt-of-court-in-india-639>
5. <https://www.livemint.com/Politics/vwdCg7zPRglANLWwNvPleO/A-guide-to-contempt-law.html>
6. <https://www.clearias.com/contempt-of-court/>
7. <https://www.gktoday.in/academy/civils/question/issues-with-contempt-of-court/>
8. <http://www.thehindu.com/todays-paper/tp-opinion/Contempt-of-court-need-for-a-second-look/article14709304.ece>
9. <http://doj.gov.in/sites/default/files/contempt.pdf>
10. <https://www.youtube.com/watch?reload=9&v=br1wnEp9VSc>
11. <http://www.shareyouressays.com/knowledge/difference-between-civil-contempt-and-criminal-contempt/116835>
12. <http://www.judicere.co.in/blog/contempt-court-article-129-constitution/>
13. <https://www.myadvo.in/blog/disrespected-the-court-face-jail-time/>
14. <https://timesofindia.indiatimes.com/india/no-need-to-dilute-contempt-of-court-act-law-panel/articleshow/63807821.cms>
15. <http://www.livelaw.in/indian-judiciarys-take-on-contempt-of-courts-revisiting-the-year-2015/>
16. <https://www.quora.com/What-exactly-is-contempt-of-court-If-a-supreme-court-high-court-judge-may-be-retired-criticizes-a-supreme-court-decision-would-it-be-considered-contempt-of-court-And-can-an-apex-court-judge-be-summoned-in-court>

17. <http://www.judicere.co.in/blog/contempt-court-article-129-constitution/>
18. <https://theprint.in/governance/law-commission-says-no-changes-to-dreaded-contempt-of-court-law/50533/>
19. <http://www.mgutheses.in/page/?q=T%202281&search=&page=&rad=>
20. <http://www.ebc-india.com/lawyer/articles/87v4a6.htm>
21. Dr.Lakshmi T and Rajeshkumar S “In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25, March 2018
22. Trishala A , Lakshmi T and Rajeshkumar S,“ Physicochemical profile of Acacia catechu bark extract –An In vitro study”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30, April 2018.

