

## COMPREHENSIVE EXAMINATION OF THE CONTEMPT OF COURTS ACT, 1971

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### ABSTRACT

*The judiciary stands as a cornerstone of any nation, and safeguarding its integrity is paramount. To protect the integrity of the courts and ensure the public's trust, the Contempt of Courts Act, 1971 was enacted in India. This Act addresses offences of disrespect or disobedience to the court and its officers, thereby upholding the dignity of the judiciary. This article provides a thorough analysis of this Act, outlining its objectives, categories of contempt, defences available to contemnors, punishments, limitations, and remedies. The study highlights the classification of contempt into two categories: civil contempt and criminal contempt. It provides a comprehensive examination of the contempt laws in India and infers that the Contempt of Courts Act, 1971 is a vital legal instrument in upholding the sanctity of the judiciary. While freedom of speech and expression is essential, it must be balanced with the need to protect the judiciary's integrity. The Contempt of Courts Act, 1971, plays a crucial role in achieving this balance.*

**Keywords:** Judiciary, Contempt Of Courts, Integrity, Analysis, Balance.

### INTRODUCTION

A good and impartial judicial system is the key to maintaining a healthy society. Judiciary is an important pillar of any country and hence all matters related to it must be tended with utmost care and respect. However, it is possible that under certain circumstances the judiciary is subjected to certain unfair attacks and allegations which may lead to the downfall of the public perception of the judiciary. Such offence of being disrespectful or disobedient to the court of law or its officers is termed as “contempt”.

The Contempt of Courts Act, 1971 aims to penalise the people and organisations who are involved in the offence of disdaining the courts of law in India and it also provides punishment, defences, remedies and limitations to the offence. It encompasses the whole of India. This act is not essentially a power or tool given to the courts but rather a procedural statute that guides

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them to take proper actions against contempt. The contempt law aids judges in carrying out their responsibilities to make decisions in cases without fear, favour, affection or ill will. Section 2(a)<sup>1</sup> of this act broadly categorised contempt into two categories: civil contempt and criminal contempt.

## **CIVIL CONTEMPT**

Section 2(b)<sup>2</sup> of this act describes civil contempt as willful disobedience to any judgement, decree, direction, order, writ or other processes of a court or wilful breach of an undertaking given to the court. It means that any person or organisation who deliberately disobeys a court's valid decision or direction about a case is charged with civil contempt. Civil contempt involves intentionally breaching the undertaking given to the court at the time of judgement. Disobedience and breach of such manner amounts to questioning the validity and reliability of the court's decision and hence leads to contempt of court.

Example:- In 2013, Indian actor Rajpal Yadav and his wife Radha were convicted of contempt of court in a loan repayment case. The couple breached the undertaking of the court and failed to appear before the Delhi High Court in the civil suit.

## **DEFENCES TO CIVIL CONTEMPT**

### **1. Disobedience was not wilful**

If the party who has been charged with contempt proves that the disobedience of the order, decree or direction was not wilful, he can use it as a defence. It is up to the court to decide if the disobedience was intentional or not.

### **2. No knowledge of the order**

It may sometimes happen that the order of the court never reached the contemnor or other similar circumstance which leads to disobedience of the court's order. In such a case, the contemnor can avail the defence because he genuinely did not know the order.

### **3. The order may have more than one reasonable interpretation**

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<sup>1</sup> Contempt of Courts Act, 1971, s 2(a)

<sup>2</sup> Contempt of Courts Act, 1971, s 2(b)

Sometimes the order passed by the court may be ambiguous and has more than one reasonable interpretation. In such a case, if the contemnor proves that he failed to understand the real meaning and interpreted the order otherwise, he can avail the defence.

#### 4. Compliance with the order is impossible

Another defence to civil contempt is when the order passed by the court is impossible to carry out. If the compliance of the order is not possible at all, it cannot amount to contempt.

#### 5. Lack of jurisdiction on the part of the Court which passed the order

If the court that passes an order does not have absolute jurisdiction for the same, the order passed is void and cannot bind anyone. Lack of jurisdiction automatically amounts to defence against contempt.

### CRIMINAL CONTEMPT

“Criminal contempt” is defined in section 2(c)<sup>3</sup> as the 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) Scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court;

Scandalising or lowering the authority of the court is a criminal contempt which may include defaming or attacking a judge or a court as a whole. In the Vijay Kurle case of 2019<sup>4</sup>, the Supreme Court held that “No litigant has the right to question the integrity of a Judge. When the ability, dignity and integrity of the Judges are questioned, this is an attack on the institution”.

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

Sources like the media and newspapers may spread misinformation or one-sided information which tends to affect the administration of justice. Such things create prejudices in the minds

<sup>3</sup> Contempt of Courts Act, 1971, s 2(c)

<sup>4</sup> Vijay Kurle v Unknown, Suo Motu Contempt Petition (CRL.) No(s). 2/2019

of the public and put undue pressure on the judges which may affect the administration of justice. Any publication spreading such misinformation amounts to criminal contempt.

or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

It covers all other cases which are not expressly covered under Section 2(c). It may include approaching a judge for undue favours, threatening parties to litigation and other offences which interfere with or obstruct the administration of justice.

Example- The Supreme Court of India arrested and charged writer Arundhati Roy with contempt of court in 2002 after she penned a criticism of one of the court's rulings involving the Narmada Dam.

## **DEFENCES TO CRIMINAL CONTEMPT**

### **1. Innocent publication and distribution of matter**

A person who publishes or distributes any comments or remarks that defame or obstruct the proceedings of the court would be accused of criminal contempt. However, even if the contemnor's remarks have caused any undue pressure but he was not aware that the case was still pending, then he may not be held guilty because it was due to his genuine misunderstanding and innocence. *Journal of Legal Research and Juridical Sciences*

### **2. A fair and accurate report of judicial proceedings**

A party may avail the defence to contempt under Section 4<sup>5</sup> if the publications by them were a fair and accurate representation of the facts. Misrepresentation of facts or any misleading comments in a report amounts to contempt.

### **3. Fair criticism of the judicial act**

There is a thin line between constructive criticism about any judgement and defaming the court, so one should always stick to the proper facts while publishing anything. Section 5<sup>6</sup> tells us

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<sup>5</sup> Contempt of Courts Act, 1971, s 4

<sup>6</sup> Contempt of Courts Act, 1971, s 5

that fair criticism is always welcome but it should not question the ability of the court in any way.

#### 4. Complaint against presiding officers of subordinate courts to higher courts in good faith

Section 6<sup>7</sup> provides a defence if a person complains about officers of the lower court to the higher court in a bonafide manner without any ill intentions. If one feels that the officer is discriminating or involved in unfair practices and complains about it, it would not amount to contempt. However, if the complaint is out of revenge, grudges or false accusations, then the defence cannot be availed.

#### 5. Publication of information relating to proceedings in chambers or camera

One can provide a fair and accurate report of any case when the proceedings are held in an open court. However, some proceedings are held in chambers or cameras and the right to publish information about such proceedings is not extended. However, Section 7(1)<sup>8</sup> provides certain

defences for publishing such proceedings if they are related to matters of public policy or any issue which is connected to public issues and security.

#### 6. No substantial interference with due course of justice and truth as a defence

The Contempt of Courts Act, 1971 was amended in 2006 to add Section 13<sup>9</sup> as a defence. This section of the act provides defence if the contempt is not very serious and when it does not hamper the course of justice or truth in any way. Such contempt can be forgiven by the court.

### **PUNISHMENT FOR CONTEMPT**

The Supreme Court and the High Courts of India have the ultimate power to punish the contempt of any court. Article 129<sup>10</sup> and Article 215<sup>11</sup> respectively make the Supreme Court and High Courts 'The Court of Records' and that vests them with the power to make decisions regarding contempt. Section 14<sup>12</sup> empowers these Court of Records to punish people or

<sup>7</sup> Contempt of Courts Act, 1971, s 6

<sup>8</sup> Contempt of Courts Act, 1971, s 7(1)

<sup>9</sup> Contempt of Courts Act, 1971, s 13

<sup>10</sup> Constitution of India, 1950, art 129

<sup>11</sup> Constitution of India, 1950, art 215

<sup>12</sup> Contempt of Courts Act, 1971, s 14

organisations for contempt of their own court. However, if there is contempt of any other subordinate court, the Supreme Court and the High Courts have the power to take action against such contempt on the motion moved by the Advocate General.

Section 12<sup>13</sup> of the act underlines the punishment provided to a person guilty of contempt. A fine of up to two thousand rupees or simple imprisonment for a term of up to six months or both may be imposed on a person for contempt of court.

**Punishment to a Company-** According to Section 12(4)<sup>14</sup> of the Act, every employee of the company who was in charge at the time the contempt was committed shall be deemed to be guilty of contempt and the punishment may be enforced by the detention of each such employee in the civil prison.

**Punishment to a person acting judicially-** According to Section 16(1)<sup>15</sup>, a judge, magistrate, or other person functioning in a judicial capacity is also liable for contempt of his own court or of any other court in the same way that any other person is guilty under this act.

However, Section 16(2)<sup>16</sup> provides that it would not be considered contempt to make any remarks or observations about a subordinate court in the course of an appeal or revision that is currently before the judge, magistrate, or other person acting in a judicial capacity.

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## **LIMITATIONS AND EXCEPTIONS**

According to Section 20<sup>17</sup>, no court may begin any contempt proceedings, either on its own initiative or in any other way, once a year has passed from the alleged date of the contempt. This means that all contempt proceedings, whether they are for civil or criminal contempt, must be started within a year of the incident.

The only exception to the rules of the Contempt of Courts Act, 1971 is provided by Section 21<sup>18</sup>. Nothing in this act is to be applied in cases of contempt of Nyaya Panchayats or other village tribunals for the administration of justice formed under any law, under whatever name they may be known.

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<sup>13</sup> Contempt of Courts Act, 1971, s 12

<sup>14</sup> Contempt of Courts Act, 1971, s 12(4)

<sup>15</sup> Contempt of Courts Act, 1971, s 16(1)

<sup>16</sup> Contempt of Courts Act, 1971, s 16(2)

<sup>17</sup> Contempt of Courts Act, 1971, s 20

<sup>18</sup> Contempt of Courts Act, 1971, s 21

## REMEDIES

**Apology:** A contemnor can avail the remedy of apology for his contempt. This apology should be sincere and not just for the sake of getting away from the punishment. The court may accept this apology if it is satisfied with the apology tendered by the contemnor and believes that it is tendered with utmost sincerity and a real sense of repentance.

**Appeal:** Section 19(1)<sup>19</sup> says that appeal is a right that shall lie with any person or organisation charged with contempt. If the order or decision regarding contempt is passed by a single judge of the High Court, then it may be appealed to a divisional Bench (not less than two judges) of the High Court. If the order or decision is passed by the divisional Bench of the High Court, then the case may be appealed to the Supreme Court.

## CONCLUSION

The judiciary consists of highly learned judges and other persons acting judicially who play a major role in dispensing justice. Insulting such people and their decisions or putting undue pressure on them and disturbing the course of justice will only harm our society at large. One may argue that Article 19(1)(a)<sup>20</sup> of our constitution provides us with freedom of speech and expression; however, the contempt provisions curb the citizen's right to speak against the court's functioning. With the proliferation of digital media and social networking platforms, questions have arisen about how the Act applies to online speech and publications as well. It is necessary to make the people aware of the fine line between contempt of the courts and constructive criticism. However, for this to happen, the court should also make sure that the contempt laws are up-to-date and do not change from case to case.

Over the years, the Act has seen several amendments and has been the subject of various interpretations by the courts. The application and interpretation of the contempt legislation continue to be a subject of legal debate and evolution. There should be a firm ground to assess and punish the contempt rather than subjective standards. Hence, the lawmakers must revisit the Contempt of the Courts Act, 1971 and make necessary changes to it which will result in more balanced and objective contempt laws.

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<sup>19</sup> Contempt of Courts Act, 1971, s 19(1)

<sup>20</sup> Constitution of India, 1950, art 19(1)(a)