

## Contempt of court: Procedural aspects

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### Abstract

Rule of law is the basic principle of governance of any democratic society and judiciary is the guardian of rule of law. For protection and preservation of authority and dignity of the courts, the law of contempt has been evolved. Contempt jurisdiction is a special jurisdiction which aims at vindicating the prestige of not only the particular judicial officer who has been made a target, but of the judicial system as a whole. The quest for conferring society's support and respect to the judiciary led to the conferment of ancillary powers in the judiciary to prevent any act which may lead to disrespect towards the authority of the court and eventually this power developed into law of contempt of court. Thus, every offender who tarnishes the image of judiciary is to be punished for the contumacious acts under the relevant provisions. Contempt of Courts Act, 1971 is a significant development in this field because this Act does not only define the contempt, it also prescribes the procedure applicable to the contempt proceedings, the defences available to a person who is being prosecuted for contempt of court and authorities to which appeal may be preferred.

**Keywords:** Judiciary, Protection, Contempt, Justice, Procedure

### Introduction

It is an established fact that the support of the society is necessary for the survival of all types of institutions in society. Same is true for the judiciary also. Thus the foundation of sound judicial system lies in the trust and confidence of the people in its ability to deliver justice fearlessly. Independent or impartial judiciary is the *sine qua non* of a healthy society. Therefore, it is imperative that the judiciary is to be protected from all sorts of evils which may affect the administration of justice. The quest for conferring society's support and respect to the judiciary led to the conferment of ancillary powers in the judiciary to prevent any act which may lead to disrespect towards the authority of the court and eventually this power developed into law of contempt of court. Like most of the other constitutional and legal principles, the law of contempt of court also owes its origin to the common law. In *R v. Davison* [1] Abott CJ pointed out that it was utterly impossible that the law could be properly administered where persons charged with the duty of administration of law had no power to prevent instances of indecorum outpourings in their own presence.

### Contempt Defined

It is indeed a difficult task to confine the word "contempt" within the four walls of a definition because if some fixed parameters are laid as to the acts or conducts which may or may not amount to contempt of court, that would restrict the ambit of protection which this jurisdiction provides to the judicial system.

As per *Halsbury's*, "any act done or writing published which is calculated to bring a court or judge into contempt or to lower his authority or to interfere with the due course of justice or the lawful process of the court is contempt of court [2].

*Corpus Juris Secundum* defines contempt of court as disobedience to the Court by acting in opposition to the authority, justice and dignity thereof. It signifies a wilful disregard or disobedience to the court's order. It also signifies such conduct as tends to bring the authority of the court and the administration of law into disrespect [3].

Section 2 of the Contempt of Court Act, 1971, instead of defining contempt of court says that, "*contempt of court means civil contempt or criminal contempt.*"

**Civil Contempt:** civil contempt means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court. In the celebrated decision of *Attorney General v. Times Newspaper Ltd.* [4], Lord Diplock stated, "There is an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity."

**Criminal contempt:** criminal contempt means 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) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any Court; or
- ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
- iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner

A criminal contempt, thus, has been defined as a conduct that is directed against the dignity and authority of a court or a judge acting judicially. It is an action obstructing the administration of justice which tends to bring the court in to disrepute or disrespect. The definition of criminal contempt is wide enough to include any act of a person that lowers the authority of the court. The scope of the criminal contempt has been made very wide so as to empower the court to preserve the majesty of law which is in turn indispensable for rule of law.

### Procedure applicable to proceedings for contempt

Section 14 and 15 of the Contempt of Court Act, 1971 deal with procedure applicable to the proceedings for contempt of court. Where contempt is committed in the presence of the Supreme Court or High Court, procedure prescribed in Section

14 has to be followed. In all other cases, procedure of Section 15 applies. Proceedings under Sections 14 and 15 thus contemplate two entirely different types of and mutually exclusive procedures.

Section 14 of the Contempt of Courts Act, 1971 reads as under: Procedure where contempt is in the face of the Supreme Court or a High Court.-

1. When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall-
  - a) Cause him to be informed in writing of the contempt with which he is charged;
  - b) Afford him an opportunity to make his defence to the charge;
  - c) After taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and
  - d) Make such order for the punishment or discharge of such person as may be just.
2. Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.
3. Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under sub-section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.
4. Pending the determination of the charge, the Court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify: Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court: Provided further that the Court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid. Thus, Section 14 of the Contempt of Courts Act contemplates issuance of notice and an opportunity to the contemnor to answer the charges levelled in the notice. However, sub-section (2) of Section 14 provides that a person charged with contempt under sub-section (1) can apply whether orally or in writing to have the charge against him tried by some Judge other than the

Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of the opinion that it is practicable to do so and that in the interest of proper administration of justice, the request of such person may be allowed. Then, the Judge shall cause the matter to be placed together with a statement of facts of the case, before the Chief Justice for such directions as he may think fit to issue in respect of the trial thereof. Subsection (3) provides that when once the Judges act under sub-section (2) of Section 14, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness. The statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

With regard to the requirement of following the summary procedure laid down in Section 14, the Apex Court in *Dr. L. P. Mishra v. State of UP* <sup>[5]</sup>, set aside the order of Division Bench of Allahabad High Court, Lucknow bench at Lucknow as the Bench failed to follow the procedure prescribed under section 14 of the Contempt of Courts Act, 1971. The Court laid down that although the high Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with procedure prescribed by law. The proposition, however, underwent a change in the case of *Leila David v. State of Maharashtra & Ors* <sup>[6]</sup>. The contemnor went to the extent of throwing a footwear at the Judges in the presence of the learned Solicitor General of India, two learned Additional Solicitor Generals and a large number of learned counsel and advocates, including the President of the Supreme Court Advocates-on-Record Association. Having recorded the said incidents which had occurred within the sight of the Hon'ble Judges and the other persons present in Court, Dr. Justice Pasayat held such behaviour to be contemptuous in the face of the Court. Since the petitioners stood by what they had said and done in Court, His Lordship felt that there was no need to issue any notice and holding them to be guilty of criminal contempt of the Court, inflicted a punishment of three months' simple imprisonment on them.

The said course of action did not meet the approval of the other learned Judge, the Hon'ble Mr. Justice Ashok Kumar Ganguly, who by a separate order, observed that the writ petitioners could not have been punished for contempt without due compliance with the provisions of Section 14(1) (a)(b)(c) and (d) of the Contempt of Courts Act, 1971. His Lordship was also of the view that the Court's power under Article 142 was not meant to circumvent the statutory requirements. His Lordship, accordingly, observed as follows:

Therefore, in this view of the matter, I cannot agree with the view expressed in the order of His Lordship Justice Pasayat, for sending the alleged contemnors to prison for allegedly committing the contempt in the face of the Court without following the mandate of the Statute under Section 14. I, therefore, cannot at all agree with His Lordship's order by which sentence has been imposed. I am of the view that the liberty of those persons cannot be affected in this manner without proceeding against them under Section 14 of the Act. In my opinion Section 14 is in consonance with a person's fundamental right under Article 21.

Having regard to the difference of opinion as to the procedure to be adopted before the petitioners could be found guilty of contempt of Court and sentenced, the matter was directed to be placed before Hon'ble The Chief Justice of India and a

direction was given that the contemnors would remain in custody till the matter could be heard by an appropriate Bench. Accordingly, the Bench was constituted comprising the Hon'ble Mr. Justice B.N. Agrawal, the Hon'ble Mr. Justice G.S. Singhvi and the Hon'ble Mr. Justice H.L. Dattu. Agreeing with the procedure adopted by Dr. Justice Pasayat, the Bench did not interfere with the sentence imposed upon the contemnors. The Bench observed as under:

Section 14 of the Contempt of Courts Act, 1971, deals with contempt in the face of the Supreme Court or the High Court. The expression "Contempt in the face of the Supreme Court" has been interpreted to mean an incident taking place within the sight of the learned Judges and others present at the time of the incident, who had witnessed such incident. No doubt, Section 14 contemplates issuance of notice and an opportunity to the contemnors to answer the charges in the notice to satisfy the principles of natural justice. However, where an incident of the instant nature takes place within the presence and sight of the learned Judges, the same amounts to contempt in the face of the Court and is required to be dealt with at the time of the incident itself. This is necessary for the dignity and majesty of the Courts to be maintained. When an object, such as a footwear, is thrown at the Presiding Officer in a Court proceeding, the object is not to merely scandalize or humiliate the Judge, but to scandalize the institution itself and thereby lower its dignity in the eyes of the public.

Section 14 provides for the cases when the contempt is committed on the face of the Court. With respect to other cases, i.e., when the contempt is committed otherwise than on the face of the Court, procedure has been provided by section 15 of the Contempt of Courts Act, 1971, which is being reproduced as under:

- 1) Section 15- Cognizance of criminal contempt in other cases.- (1) In the case of a criminal contempt, other than a 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 to the Advocate- General, or
  - C. In relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.
- 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.
- 3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.
- 4) Explanation.-In this section, the expression "Advocate-General" means-
  - A. in relation to the Supreme Court, the Attorney-General or the Solicitor-General;

- B. in relation to the High Court, the Advocate- General of the State or any of the States for which the High Court has been established;
- C. In relation to the Court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

When the contempt is on the face of the Court, then it is very essential for that Court to follow the procedure as prescribed in Section 14 of the Act. But for any reason if the concerned Court does not proceed in accordance with Section 14 of the Act and refers the matter to the Hon'ble Chief Justice of the High Court informing about the alleged contempt, then in that event, it is always open and within the powers of the High Court to take suo motu cognizance of the same and proceed against the alleged contemnor in accordance with the procedure as laid down under Section 15 of the Act. The High Court can deal with contempt summarily and adopt its own procedure. All that is required is that the procedure is fair and the contemnor is made aware of the charge against him and is given a fair and reasonable opportunity to defend himself.

With respect to the procedural requirements laid down in Section 15, when a private person seeks to file a contempt petition in the Supreme Court or in the High Court, the apex court has in a number of cases laid down that the requirement of obtaining the consent of Advocate general in writing is mandatory and in no case it can be dispensed with.

In *State of Kerala v. M.S. Mani* <sup>[7]</sup>, the Supreme Court observed as under:

The requirement of consent of the Advocate-General/Attorney-General/Solicitor-General where any person other than the said law officers makes motion in the case of a criminal contempt in a High Court or Supreme Court, as the case may be, is not a mere formality; it has a salutary purpose. The said law officers being the highest law officers at the level of the State/Centre as also the officers of the courts are vitally interested in the purity of the administration of justice and in preserving the dignity of the courts. They are expected to examine whether the averments in the proposed motion of a criminal contempt are made vindicating public interest or personal vendetta and accord or decline consent postulated in the said provision. Further, cases found to be vexatious, malicious or motivated by personal vendetta and not in public interest will get filtered at that level. If a motion of criminal contempt in the High Court/Supreme Court is not accompanied by the written consent of the aforementioned law officers, the very purpose of the requirement of prior consent will be frustrated. For a valid motion compliance with the requirements of Section 15 of the Act is mandatory. A motion under Section 15 not in conformity with the provisions of Section 15, is not maintainable".

The above mentioned decision of the apex court was again reiterated by the court in *Biman Basu v. Kallol Guha Thakurta* <sup>[8]</sup>. In this case, a petition was filed by a litigant for initiating contempt proceedings against a person for making deliberate and wilful, derogatory, defamatory and filthy statements against a Judge which constituted contempt of Court. Petition was held to be not maintainable without written consent of Advocate General as required under Section 15.

However, in some subsequent cases, the requirement of strict compliance with Section 15 has not been insisted by the Court

in cases where the court uses its powers under Article 129 of the Constitution<sup>[9]</sup>.

In *Rajeshwar Singh v. Subrata Roy Sahara*<sup>[10]</sup>, contempt proceedings were initiated against the respondents for interfering in court monitored investigation and thereby interfering in due administration of justice by the court. Respondents alleged that contempt proceedings were not maintainable as consent of Advocate General has not been obtained as required u/s 15 of Contempt of Courts Act, 1971. Apex Court held that even assuming that there has not been any proper compliance of the provisions of the Contempt of Courts Act, 1971, as contended by the learned senior counsels for the respondents, that would not deter or take away the constitutional powers conferred on this Court under Article 129 of the Constitution of India to examine, whether, there has been any attempt by anybody to interfere with an investigation, which is being monitored by this Court. The jurisdiction of the Supreme Court under Article 129 of the Constitution is independent of the Contempt of Courts Act and the powers conferred under Article 129 of the Constitution cannot be denuded, restricted or limited by the Contempt of Courts Act, 1971. Holding the petition as perfectly maintainable, the court issued notice to the respondents to show cause why proceedings be not initiated against them for interfering with the court monitored criminal investigation.

The proposition that the powers of the Supreme Court and the High Courts being the Courts of Record as embodied under Articles 129 and 215 respectively cannot be restricted and trammled by any ordinary legislation including the provisions of the Contempt of Courts Act and their inherent power is elastic, unfettered and not subjected to any limit has also been upheld by the High Court of Bombay in *Ramesh Jairamdas Jaising v. Bansi Jairamdas Jaising*<sup>[11]</sup>.

### Conclusion

Rule of law is the basic principle of governance of any democratic society and judiciary is the guardian of rule of law. For protection and preservation of authority and dignity of the courts, the law of contempt has been evolved. Contempt jurisdiction is a special jurisdiction which aims at vindicating the prestige of not only the particular judicial officer who has been made a target, but of the judicial system as a whole. Thus, every offender who tarnishes the image of judiciary is to be punished for the contumacious acts under the relevant provisions. But, at the same time it is also necessary that these provisions are not to be misused by the judiciary because objective criticism is very much necessary for maintaining the health of all public institutions including the judiciary.

### Reference

1. 106 ER 958 (1821).
2. Halsbury, Law of England, Vol. 8, p.7 (3<sup>rd</sup> Edn.).
3. Corpus Juris Secundum, Vol. 17, pp. 5 and 6.
4. AIR 1974 AC 273.
5. 1998 (4) Scale 662. This batch of criminal appeals arise out of an order passed by the Division Bench of the Allahabad High Court, Lucknow Bench at Lucknow, holding the appellants guilty under the Contempt of Courts Act for committing contempt on the face of the court.
6. AIR 2010 SC 862.
7. 2001(4) R.C.R. (Criminal) 631.
8. AIR 2010 SC 3328.

9. Article 129- The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

10. 2015 (1) SCC (Cri) 329.

11. 2015 (5) Mh.L.J 255.