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Contempt of Court: An Analysis

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ABSTRACT

Contempt of court is a matter concerning the fair administration of justice, and aims to punish any act hurting the dignity and authority of judicial tribunals. Lord Diplock defines it in a following way:

Although criminal contempt of court may take a variety of forms they all share a common characteristic: they involve an interference with the due administration of justice, either in a particular case or more generally as a continuing process. It is justice itself that is flouted by contempt of court, not the individual court or judge who is attempting to administer it. Contempt of court because of its peculiar and contentious nature had led to contradictory opinions among scholars, jurists, and various masses, hence no satisfactory definition of contempt of court can be had. The term contempt of court is a generic term descriptive of conduct in relation to particular proceedings in a court of law that tends to undermine that system or inhibit citizens from availing themselves of it for the settlement of their disputes. The law concerning contempt of court has advanced over the centuries as a medium whereby the courts may act to forbid or punish conduct that tends to obstruct, humiliate or prejudice the administration of justice either with reference to a particular case or as in general.

Keywords: *Contempt, Court, Citizens, administration of justice.*

I. INTRODUCTION

The concept of contempt of court has been derived from latin words, contemptus curiae. "Contemner" and "tempier", two words have been synthesized to make contempt and it means to "value little".

Irreverently, the contempt has always been referred to as the "legal thumb screw" and thus for a long time the law on the subject remained in a confused state. In the common law system, from the very early time, Superior Courts (Courts of Record) in England had the power to commit and punish for contempt of Court. The King of England, by Charter, dated 24th September 1726, established the Corporation in each of the Presidency Towns and the Mayor's Courts. The Mayor Court, being the Court of Record, during the reign of East India Company, was empowered to punish for contempt. The Supreme Courts came into existence in Calcutta

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in 1774; Madras in 1800; and Bombay in 1823, which replaced the Mayor‟s Court and being Courts of Record, were empowered to punish for contempt of Court. The High Courts were established in 1861 in Bombay, Calcutta and Madras. These High Courts replaced the respective Supreme Courts. The Allahabad High Court was established in 1866.

All the High Courts being Court of record were competent to punish for contempt of court.

(**See: In Re: Abdool and Mahtab, (1867) 8 WR (Cr) 32; Legal Rememberancer v. Matilal Ghose, (1914) ILR 41 Cal 173; and Sukhdev Singh Sodhi v. The Chief Justice S. Tega Singh & Judges of the Pepsu High Court, AIR 1954 SC 186**).

The Contempt powers of all Courts of Record are inherent being necessary and incidental to maintain the dignity of the Court and enforce its Order. It is from the very nature of the Court itself. Power to punish for contempt is to secure public respect and confidence in Judicial process. The Court has all incidental and necessary powers to effectuate the jurisdiction. (**See: R.L. Kapur v. State of Madras., AIR 1972 SC 858; and In Re: Rameshwar Prasad Goyal., AIR 2014 SC 850).**

In Pritam Pal v. High Court of Madhya Pradesh, Jabalpur, AIR 1992 SC 904, while dealing with the nature and scope of power conferred upon Supreme Court and the High Court, being "courts of record" under Articles 129 and 215 of the Constitution of India respectively, the Supreme Court observed that the said power is an inherent power under which the Supreme Court and the High Court can deal with contempt of itself. The jurisdiction vested is a special one not derived from any other statute but derived only from Articles 129 and 215. Supreme Court further clarified that the constitutionally vested right cannot be either abridged, abrogated or cut down by legislation including the Contempt of Courts Act.

(**See also: Ajay Kumar Pandey, Re, AIR 1997 SC 260).**

Contempt law has no immunity as it is the mode of vindicating majesty of law. It also upholds dignity of courts and prevent perversion of course of justice. (**Vide: Advocate General, State of Bihar v. M.P. Khair Industries, AIR 1979 SC 2528; and Kapil Deo Prasad Sah v. State of Bihar, AIR 1999 SC 3215**).

II. COURT OF RECORD

Dictionary meaning of "A Court of Record" is "a court whereof the acts and judicial proceedings are enrolled for a perpetual memorial and testimony, and which has power to fine and imprison for contempt of its authority."

Articles 129 & 215 of the Constitution specifically provide that the Supreme Court and the High

Courts are Courts of Record and have inherent power to punish for contempt.

Under the Indian High Courts Act, 1861, the Courts of Calcutta, Bombay and Madras had inherited the same power for contempt. In 1866, the Allahabad High Court, established under the Act of 1861 enjoined with the same power.

The Superior Courts in India exercised the power of punishing for Contempt without any regulatory procedure. Thus, some Courts awarded punishments arbitrarily and imposed exorbitant fines. More so, there was no provision of Appeal against such Orders. In **Legal Remembrancer v. Matilal Ghose & Ors., (1914) ILR 41 Cal 173**, the Court expressed its concern on "Arbitrary, Unlimited and Uncontrolled" powers for punishing for contempt as there was no limit to the imprisonment or the fines, which could be imposed. Such unfettered discretion prompted the Calcutta High Court to suggest to the Legislature to regulate such powers.

The Contempt of Courts Act, 1926 was enacted. The said Act was not applicable throughout the territory of British India as most of the Princely States had enacted their own laws dealing with contempt of Courts. All such Acts/Laws were repealed by **Contempt of Courts Act, 1952.**

As the Act 1952 proved to be, in certain circumstances, uncertain, undefined and unsatisfactory. The same was repealed by the **Contempt of Courts Act, 1971 (Act 1971)**

III. ARTICLE 19(1)(A) AND CONTEMPT OF COURT ACT

In Re: Prashant Bhushan., (2021) 3 SCC 160, the Apex Court held that no doubt, free speech is essential to democracy, but it cannot denigrate one of the institutions of democracy. Rights under Article 19(1)(a) are subject to reasonable restrictions under Art. 19(2) and rights of others cannot be infringed in the process. Hostile criticism of the Judges or judiciary amounting to scandalising the court is not protected under Art. 19(1)(a) of the Constitution.

Though a fair criticism of judgment is permissible in law, a person cannot exceed the right under Article 19(1)(a) of the Constitution to scandalise the institution.

(A) Nature of Contempt Proceedings

Contempt proceedings are quasi-criminal in nature. The Latin Maxim **"Affirmanti Non Neganti Incumbit Probatio"** meaning thereby "the burden of proof lies on the one who asserts and not the one who denies" has its due application in the matter of proof of allegation, said to constitute the contempt. Thus, the procedure prescribed by law for trial of contempt requires strict adherence. The standard of proof is that of a criminal case i.e., beyond reasonable doubt and where two views are possible the contemnor becomes entitled to benefit of doubt. (**Vide:**

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L.P. Misra v. State of U.P., AIR 1998 SC 3337; and R.S. Sujatha v. State of Karnataka., (2011) 5 SCC 689).

(B) Contempt – a matter between Court and Contemnor and Contempt - withdrawal

In Baradakanta Mishra v. Justice Gatikrushna Misra, C.J. of the Orissa H.C., AIR 1974 SC 2255, the Supreme Court held:

"The motion or reference is only for the purpose of drawing the attention of the Court to the contempt alleged to have been committed and it is for the Court, on a consideration of such motion or reference, to decide, in exercise of its discretion, whether or not to initiate a proceeding for contempt. The Court may decline to take cognizance and to initiate a proceeding for contempt either because in its opinion no contempt prima facie appears to have been committed or because, even if there is prima facie contempt, it is not a fit case in which action should be taken against the alleged contemner."

(See also: **Jaipur Municipal Corporation v. C.L Mishra (2005) 8 SCC 423**).

In **Amrit Nahata v. Union of India, AIR 1986 SC 791,** the Court held:

"The petitioner who has moved for taking action in contempt is not entitled as a matter of right to **withdraw** the petition whenever it suits his purpose. The matter is primarily between the Court and the contemner and it is for the Court to decide whether the contempt has been committed or not or whether it is appropriate to take action or at a later date whether to drop the proceedings."

(C) Contemnor is not in the position of an accused

In **Delhi Judicial Service Assn. v. State of Gujarat, AIR 1991 SC 2176**, the Supreme Court held:

"A contemner is not in the position of an accused, it is open to the court to cross-examine the contemner and even if the contemner is found to be guilty of contempt, the court may accept apology and discharge the notice of contempt, whereas tendering of apology is no defence to the trial of a criminal offence."

Section 2(a) defines the Contempt of Court as Civil Contempt and Criminal Contempt.

Section 2(b) defines Civil Contempt as **willful disobedience** to any judgment, decree,

Direction or Order of the Court or **willful breach** of an undertaking. In a case where interpretation of rules is involved, or where the Order itself is not clear and capable of different interpretations, the contempt is not willful. **(Vide: State of Bihar v. Rani Sonabati Kumari,**

AIR 1961 SC 221; and Pharmacy Council of India v. Atmaram Dariyani, (2018) 11 SCC 341).

(D) Contempt – Willful Disobedience

In order to punish a contemnor, it has to be established that disobedience of the order is "wilful". The word "wilful" introduces a mental element and hence, requires looking into the mind of person/contemnor by gauging his actions, which is an indication of one `s state of mind."Wilful" means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bonafide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct". (**Vide: S. Sundaram Pillai v. V.R. Pattabiraman, AIR 1985 SC 582; and Uniworth Textiles Ltd. v. CCE, Raipur, (2013) 9 SCC 753**).

(E) Interim Order not communicated

In **Mulraj v. Murti Raghunathji Maharaj, AIR 1967 SC 1386**, the Supreme Court considered the case were the subordinate court proceeded with the case in spite of interim stay granted by the High Court. The court held that as the interim order passed by the High Court had not been communicated to the subordinate court, the question of wilful defiance did not arise and therefore the question of contempt did not arise.

(F) Status Quo Order - Contempt

According to the ordinary legal connotation, the term "status quo" implies the existing state of things at any given point of time. (**Vide: Bharat Coking Coal Ltd. v. State of Bihar, AIR 1988 SC 127**).

Status quo order has to be understood ascertaining the facts as on the date the order was passed and then to decide whether the proceedings can be initiated. It is beyond the scope of contempt jurisdiction to pass any substantive order in contempt jurisdiction. (**Vide: Satyabrata Biswas v. Kalyan Kumar Kisku, (1994) 2 SCC 266**).

(G) Refusal to obey final order, and attempt to overreach the same

Refusal to obey final order and attempt to overreach the same was held, tantamount to contempt

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of court, legal malice and arbitrariness as it is not permissible for executive to scrutinize order of court. On facts held it was not permissible for appellant UoI to consider renewal of suspension order or pass fresh order without challenging order of Tribunal whereunder Tribunal had quashed suspension orders passed against respondent and said order had attained finality. (**Vide: Union of India v. Ashok Kumar Aggarwal, AIR 2014 SC 1020**).

1. Approaching the Court again and again, Even After Decision-Contempt - "It is a clear case of contempt committed by repeatedly approaching the courts of law for almost the same relief which was negatived by the courts" (**See: H.N. Jagannath v. State of Karnataka, AIR 2017 SC 5805**).

2. Difficulty in compliance of the Order – Contempt lies. Remedy lies to approach the Higher Authority in Appeal. (**Vide: Mohd. Iqbal Khanday v. Abdul Majid Rather., AIR 1994 SC 2252)**.

3. Execution of the Order not possible - No Contempt. (**Vide: Dushyant Somal v. Sushma Somal., AIR 1981 SC 1026**).

4. Contempt in a case of Consent Order – No - Unless the compromise deed between the parties is incorporated in the Court"s Order and made integral part thereof. (**Vide: Babu Ram Gupta v. Sudhir Bhasin., AIR 1979 SC 1528**)

Section 2(c) defines Criminal Contempt as (i) scandalising or tends to scandalise, or lowers or tends to lower the authority of any court, or to prejudice or prejudices, or interfere or tends to interfere with, the due course of any judicial proceeding, or interferes or tends to interfere with, or obstruct or tends to obstruct, the administration of Justice in any other manner.

In **Ashok Kumar Agarwal v. Neeraj Kumar., (2014) 3 SCC 602**, the Appellant therein was in jail for having two passports and travelling to Singapore on one of the two. The CBI seized the passport and during investigation, it came from the Singapore Authorities that the Appellant did not travel on the seized passport. However, this fact was not disclosed to the High Court while opposing the bail Application. Such non-disclosure was held to be contempt of court as **false Affidavit** had been filed by CBI and the Appellant remained in Jail for 36 days. It was a deliberate attempt to cause harm to, and prejudice to the said Appellant.

In **Afzal v. State of Haryana, AIR 1996 SC 2326**, the Supreme Court convicted the Inspector General of police for filing false affidavit and sentenced him for 6 months for committing the contempt of court.

(See also: Dhananjay Sharma, v. State of Haryana, AIR 1995 SC 1795)

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Section 3

Innocent publication and distribution of matter, if at the relevant time, the person had no reasonable grounds for believing that the proceeding was pending, or has reasonable ground to believe that such publication would not cause contempt of Court, shall not be contempt of Court.

Section 4

Fair and accurate report of judicial proceedings is not contempt as open justice permits fair and accurate reporting of Court proceedings. (Vide: Sahara India Real Estate Corpn Ltd. v. SEBI, AIR 2012 SC 3829: (2012) 10 SCC 603).

In Chandigarh Newsline (Indian Express Group), Re, (1998) 6 SCC 37, the Supreme Court held that wrong publication of order tantamounts to contempt of court

Section 5

Any fair criticism of any Judicial Act, on merits, which has been finally decided, is not contempt. (**See: Sheela Barse v. Union of India & Ors., AIR 1988 SC 2211).**

The defense of fair criticism is available even during the pendency of the proceedings. (**Vide: Rama Dayal Markarha v. State of M.P., AIR 1978 SC 921**).

In **Re: Arundhati Roy., AIR 2002 SC 1375**, the Supreme Court held that fair criticism of the conduct of a judge, or judiciary made in good faith and in public interest may not amount to contempt. However, citizens cannot be permitted to comment upon the conduct of the Court in the name of fair criticism which, if not checked, would destroy the Institution itself.

In **P.N. Duda v. P. Shivshankar., AIR 1988 SC 1208**, the Court held that judgment can be criticised but motives cannot be attributed to the Judges as it affects the faith in administration of justice.

Section 10 – High Court can punish for contempt of subordinate Court

However, the High Court shall not take cognizance of the contempt of the subordinate offence where such contempt is an offence under Section 228 IPC - Intentional insult or interruption to public servant sitting in judicial proceeding. Contempt is not a substitute for execution proceedings.

Distinction between Section 10 of Act 1971 and Order XXXIX Rule 2A, CPC – In

Kanwar Singh Saini v. High Court of Delhi, (2012) 4 SCC 307, the Supreme Court clarified that remedy for disobedience of the interim Order of a civil court/ undertaking given to the Court would be moving an Application under Order XXXIX Rule 2A. After decreeing the Suit,

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such Application is not maintainable and execution proceedings have to be filed under Order XXI, CPC for enforcement of such Decree or undertaking but contempt proceedings would not lie.

Section 11 - Power of the High Court to try Offences, committed or offenders outside its territorial jurisdiction

In State of U.P. v. Radheshyam Tripathi & Anr., (1983) CrLJ 1153, the Allahabad High Court dealt with a case where a person put in fetters filed a writ petition before the High Court challenging the same. He was forced to withdraw the petition by the persons outside the jurisdiction of the Allahabad High Court. However, such contemnors were convicted. The Court held that the Contempt of Court Act did not confer a new jurisdiction rather widened the scope of existing jurisdiction of a very special kind.

Section 12

The Preamble of the Act 1971 provides that the Act is to **define and limit** the powers of the Courts and **to regulate their procedure** in relation to contempt cases.

Most of the provisions of the Act 1971 are in negative terms, pointing out to the Court concerned, not to exceed its jurisdiction, and cross the limits prescribed by it. It is a rare piece of legislation, where the Legislature, in its wisdom, prescribed the maximum punishment, a court can award for contempt of court and put another provision, reminding the Court that it is restrained form awarding the punishment more than prescribed therein as it would become arbitrary.

IV. PUNISHMENT OF CONTEMPT OF COURT

The contemnor may be punished with **simple imprisonment** for a term which may extend to six months or with fine which may extend to Rs. 2000 or with both. The Court may accept a bona fide apology if found to the satisfaction of the Court. **Sub section (2) restrains the Court to impose a punishment in excess of the punishment provided in Clause (1).** The Apex Court has clearly laid down that apology tendered is not to be accepted as a matter of course. The Court can reject the apology and impose punishment recording reasons for the same, particularly where the words are calculated and clearly intended to cause insult, an apology tendered lacks penitence, regret or contrition may not be accepted. An apology should not be paper apology and it should come from heart as **"contrition is the essence of the purging of contempt."** (**See: Debabrata Bandopadhyay v. State of W.B., AIR 1969 SC 189 and SEBI v. Subrata Roy Sahara., (2019) 13 SCC 333**).

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The power to punish for contempt is a rare species of judicial power, which by the very nature, calls for exercise with great care and caution. Such power ought to be exercised only where "Silence is no longer an option". (**See: In re: S. Mulgaokar, AIR 1978 SC 727**).

In **L.D. Jaikwal v. State of U.P., AIR 1984 SC 1374**, the Supreme Court noted that it cannot subscribe to the **'slap-say sorry and forget'** school of thought in administration of contempt jurisprudence. Saying sorry does not make the slapper poorer.

Justification for contempt and tendering apology would not go together. (**Vide: Hoshiar Singh v. Gurbachan Singh, AIR 1962 SC 1089; and National Textile Workers Union v. P.R. Ramakrishnan, AIR 1983 SC 759**).

The Constitution Bench of the Supreme Court in **Supreme Court Bar Association v. Union of India, AIR 1998 SC 1895**, held that when a lawyer is convicted for contempt, the Court cannot restrain him from appearance in court as it is the exclusive prerogative of the Bar Council to pass such order in disciplinary proceedings.

The Constitution Bench of the Supreme Court in **Harish Uppal (Ex-Capt.) v. Union of India, (2003) 2 SCC 45**, categorically held that if a lawyer refuses to attend the court, it is not only unprofessional but also unbecoming of a lawyer dis-entitling him to continue to appear in Court.

In **Mahipal Singh Rana v. State of UP, AIR 2016 SC 3302**, the Supreme Court held that regulation of right of appearance in courts is within jurisdiction of courts and not Bar Councils Thus court can bar convicted advocate from appearing/pleading before any court for an appropriate period of time, till convicted advocate purges himself of the contempt, even in absence of suspension or termination of enrolment/right to practise/licence to practise. (**See also: Sadhana Uppadhyay v. State of UP, (2009) 4 ADJ 434 (All)**).

V. CONTEMPT JURISDICTION – PURGING – MEANS

In Pravin C. Shah v. K.A. Mohd. Ali, AIR 2001 SC 3041, the Supreme Court held: "Purging is a process by which an undesirable element is expelled either from one‟s own self or from a society. It is a cleansing process. Purge is a word which acquired implications first in theological connotations. In the case of a sin, purging of such sin is made through the expression of sincere remorse coupled with doing the penance required. In the case of a guilt, purging means to get himself cleared of the guilt. The concept of purgatory was evolved from the word "purge", which is a state of suffering after this life in which those souls, who depart this life with their deadly sins, are purified and render fit to enter into heaven where nothing defiled enters.

(Vide: Words and Phrases, Permanent Edn., Vol. 35A, page 307). In Black‟s Law Dictionary

the word "purge" is given the following meaning: "To cleanse; to clear or exonerate form some charges imputation of guilt, or from a contempt." it is preposterous to suggest that if the convicted person undergoes punishment or if he tenders the fine amount imposed on him the purge would be completed."

(**See also: Noorali Babul Thanewala v. K.M.M. Shetty, AIR 1990 SC 464**).

(A) Contempt also lies against a juristic person as provided under Section 12(4) and 12(5) of the Act

In **The Aligarh Municipal Board & Ors v. Ekka Tonga Mazdoor Union & Ors., AIR 1970 SC 1767**, the Supreme Court dismissed the appeal filed by the Municipal Board against the order of the Allahabad High Court imposing fine on the Municipal Board being a corporate body represented by its employees, after finding its employees guilty of contempt, holding:

"The law as it exists today admits of no doubt that a Corporation is liable to be punished by imposition of fine and by sequestration for contempt for disobeying orders of competent courts directed against them. A command to a Corporation is in fact a command to those who are officially responsible for the conduct of its affairs. If they, after being apprised of the order directed to the Corporation, prevent compliance or fail to take appropriate action, within their power, for the performance of| the duty of obeying those orders, they and the corporate body are both guilty of disobedience and may be punished for contempt."

Section 13

Section 13 provides that for imposing the punishment the Court must be satisfied that the contempt is of such nature that it will interfere with due course of Justice. (**Vide: Murray and Co. v. Ashok Kumar Newalia., AIR 2000 SC 833**).

Technical contempt(s) have to be ignored. (**Vide: Baradakanta Mishra v. Registrar, Orissa High Court., AIR 1974 SC 710**).

The Court may permit the contemnor to defend himself **justifying by truth as a valid defense, if the defense is bona fide**. [w.e.f.: 15.03.2006]. Such amendment had been made in public interest as there may be appropriate cases where prayer made to lead evidence is bona fide. (**Vide: Subramanian Swamy v. Arun Shourie., AIR 2014 SC 3020: (2014) 12 SCC 344**).

Section 14: Ex facie Contempt

A person may be detained in custody and the matter may be heard expeditiously.

However, the Court shall

(a) Inform the Contemnor in writing of the charges;

(b) Give him an opportunity to defend;

(c) Take the evidence as may be necessary adduced by such person and after hearing

him;

(d) Award punishment, if found guilty.

Clause 2 thereof provides that the Contemnor, if applies, orally or by moving an Application, that he may be tried by Judge(s) other than the Judge(s) in whose presence the alleged contempt has been committed. The Court may refer the matter to the Chief Justice to pass an appropriate Order.

In **Leila David v. State of Maharashtra, AIR 2010 SC 862,** the contemnors made contumacious allegations in the writ petition and supporting affidavits. Contempt proceedings were initiated. Writ Petitioners disrupted the proceedings by using very offensive, intemperate and abusive language at a high pitch. Judges should be jailed by initiating proceedings against them and threw footwear at the Judges. The question was, therefore arose, whether the Petitioners were entitled to any opportunity of hearing. The Bench opined:

"Section 14 of the Contempt of Courts Act no doubt 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 scandalise or humiliate the Judge, but to scandalise the institution itself and thereby lower its dignity in the eyes of the public."

In case no action is taken in ex facie contempt, the cognizance of criminal contempt can always be taken, resorting to procedure, prescribed under Section 15. (**Vide: Manisha Mukharjee v. Ashoke Chaterjee., (1985) CrLJ 1224 (Cal)).**

In a case of ex facie contempt, motive/intention is immaterial. (**See: Brahma Prakash Sharma v. State of U.P., AIR 1954 SC 10).**

As per Section 18 of the Act, criminal contempt is to be heard by a Division Bench. In case, the ex-facie contempt is committed before a single Judge, the same Judge can commit and punish on its own motion. (**Vide: Court on Its Own Motion v. Kasturi Lal., AIR 1980 P&H 72**

(FB)).

In **Mehmood Pracha v. Central Administrative Tribunal, 2022 SCC OnLine SC 1029**, the Supreme Court held that when charges are denied by the contemnor, proper procedure has to be followed and fair trial to be held meeting the requirements of principles of natural justice.

The **principles of natural justice** consist primarily of two main rules, namely, "nemo judex in cause sua" ("no man shall be a judge in his own cause") and "audi alteram partem" ("hear the other side"). The corollary deduced from the above two rules and particularly the audi alteram partem rule was "qui aliquid statuerit parte inaudita altera, adguum licet dixerit, haud aequum fecerit" ("he who shall decide anything without the other side having been heard, although he may have said what is right will not have done what is right" or as is now expressed "justice should not only be done but should manifestly be seen to be done").

(**See: Dr. Bonham's Case, [1610] 8 Co. Rep. 113b; and Union of India v. Tulsi Ram Patel., AIR 1985 SC 1416**).

Power to punish for ex facie contempt is an exception to the aforesaid principles of natural justice that no person can be a judge of its own cause.

Section 15

Section 15 provides for taking cognizance of criminal contempt in other cases. In addition to power to take cognizance of its own motion, the High Court can also take cognizance if the motion is made by the Advocate General or any person with the consent, in writing, from the Advocate General, or on a reference made by the subordinate Court to the High Court. The consent so required is to avoid frivolous trial. (**Vide: Bal Thackeray v. Harish Pimpalkhute., AIR 2005 SC 396).**

As the matter has a greater impact on the administration of justice and on the justice delivery system, the Court is competent to take cognizance of contempt even without the consent of the Advocate General. (**Vide: Muthu Karuppan v. Parithi Ilamvazhuthi., AIR 2011 SC 1645).**

Section 15(2) – High Court competent to take cognizance of criminal contempt of subordinate courts

The High Court can initiate the proceedings for any criminal contempt of a subordinate court, suo moto or on a reference by the subordinate court or on a motion made by the Advocate General. The provisions of Sections 10 and 15 have to be read harmoniously as the High Court and the Supreme Court can exercise the suo moto power under Article 129 and 215 of the Constitution.

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(See: S.K. Sarkar v. Vinay Chandra Sharma, AIR 1981 SC 723; and In re: Ajay Kumar Pandey, AIR 1998 SC 3299).

Section 16

Section 16 deals with the contempt by the presiding officer of the Court and the procedure prescribed for other cases is to be followed. However, in case any observation or a remark made by a judge, in respect of a subordinate court, in appeal or revision, before such a judge, against the order such subordinate Court, shall not amount to contempt.

This is so that a Judge may not pollute the judicial administration by his misdemeanors. (**Vide: Baradakanta Mishra v. Registrar, Orissa High Court., AIR 1974 SC 710; and S. Abdul Karim v. M.K. Prakash, AIR 1976 SC 859**).

The 7-Judge bench of the Supreme Court In **re: Hon'ble Justice C.S. Karnan, AIR 2017 SC 3191,** dealt with a contempt committed by a High Court judge by open denouncement in public, by making unsubstantiated/baseless obligations, disparaging letters to the Constitutional functionaries and passing illegal orders against 33 former and sitting Judges (named) of the Supreme Court and High Courts to ridicule the judiciary and particularly the Supreme Court. He initiated criminal cases against sitting Judges, restrained them from travelling abroad and sentenced them to 5 years rigorous imprisonment without following any procedure known in law despite knowing the fact that the Supreme Court had withdrawn all his judicial and administrative powers. The contemnor was punished and sentenced to 6 months imprisonment.

Section 17: Procedure after taking cognizance

(i) Notice of every proceeding, under Section 15 shall be served personally on the person charged, unless the Court, for reasons to be recorded, directs otherwise.

(ii) Such Notice should accompany a copy of the Motion or Affidavit on which such Motion is founded, or the copy of the Reference made by the Subordinate Court.

(iii) The Court may force the attendance of the Contemnor.

(iv) The person may file an Affidavit in defense.

(v) The Court after examining the same, or taking further evidence may pass the appropriate Order.

In **Sahdeo v. State of U.P., (2010) 3 SCC 705**, the Supreme Court set aside the conviction of the Contemnor, awarded by the High Court, on the ground that the Court did not follow the procedure prescribed under Chapter 35E of Allahabad High Court Rules, 1952, which requires supplying of documents, to be relied upon by the Court and framing of charges.

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However, in **Bal Krishan Giri v. State of U.P., (2014) 7 SCC 280**, an advocate alleged that a Judge would grant bail to the accused, prior to consideration of the bail Application, was convicted by the High Court and Supreme Court in spite of the fact that the procedure prescribed in Chapter 35E of the Allahabad High Court Rules had not been followed and charges had not been framed for the reason that the contemnor had admitted in his Affidavit that he had written the letter containing scandalous allegation against such a Judge. In such a case, application of principles of natural justice becomes a futile exercise on the face of admission of the charge.

CrPC does not apply in contempt jurisdiction. (**Vide: Sukhdev Singh Sodhi v. S. Teja Singh, AIR 1954 SC 186**). Court should decide as per the procedure prescribed by rules, if any. In absence of any rules, it can adopt any fair procedure. It is summary procedure. (**Vide: Pritam Pal v. High Court of Madhya Pradesh, Jabalpur, AIR 1992 SC 904).**

Section 19

While interpreting the provisions of section 19 of the Contempt of Courts Act, 1971 the Supreme Court in **Baradakanta Mishra v. Justice Gatikrushna Misra, C.J. of the Orissa H.C., AIR 1974 SC 2255**, held that an appeal shall lie only against those orders or decisions in which some point is decided or finding is given in exercise of jurisdiction by the Court to punish for contempt. Appeal shall not lie under section 19 of the Act 1971 against any other kind of interlocutory order.

In **Purushotam Dass Goel v. Hon'ble Mr. Justice B.S. Dhillon, AIR 1978 SC 1014**, the Supreme Court observed:

"No appeal can lie as a matter of right from any kind of order made by the High Court in the proceeding for contempt. The proceeding is initiated under section 17 by issuance of a notice. Thereafter, there may be many interlocutory orders passed in the said proceeding by the High Court. It could not be the intention of the legislature to provide for an appeal to the Court as a matter of right from each and every such order made by the High Court. The order or the decision must be such that it decides some bone of contention raised before the High Court affecting the right of the party aggrieved. Mere initiation of a proceeding for contempt by the issuance of the notice on the prima facie view that the case is a fit one for drawing up the proceeding, does not decide any question."

In **R.N. Dey v. Bhagyabati Pramanik, (2000) 4 SCC 400**, the Supreme Court held:

"The exercise of jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt and if the order is passed not discharging the rule issued in contempt proceedings, it would be an order or decision in exercise of its jurisdiction to punish for

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contempt. Against such order, appeal would be maintainable."

The Court further observed that if the order decides some disputes raised before the Court by the contemnor asking to drop the proceedings on one ground or the other, the appeal against the said order is maintainable.

In **Midnapore Peoples' Co-op. Bank Ltd. v. Chunilal Nanda, AIR 2006 SC 2190**, the Supreme Court held:

"Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:

(i) Orders which finally decide a question or issue in controversy in the main case.

(ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.

(iii) Orders which finally decide a collateral issue or question which is not the subject matter of the main case.

(iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.

(v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

The term "judgment" occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in section 2(9), CPC and orders enumerated in Order XLIII, rule I, CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, "judgments" for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not "judgments" for the purpose of filing appeals provided under the Letters Patent."

Section 20 – Limitation

The Court cannot initiate contempt proceedings after the expiry of a period of one year from the date on which the alleged contempt is committed. It means, it is only when the Court has formed an opinion that a prima facie case for initiating proceedings for contempt is made out and the alleged contemnor be called to show cause why he should not be punished, the Court can be said to have initiated the contempt proceedings. (**Vide: Pallav Seth v. Custodian., AIR**

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2001 SC 2763).

The question as what is continuous wrong gets importance for the purpose of limitation for the simple reason that if a wrong is continuing, the limitation would change accordingly.

In **Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan, AIR 1959 SC 798**, the Apex Court considered the provisions of section 23 of the Limitation Act, 1908 corresponding to section 22 of the Limitation Act, 1963 and held that it is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that injury caused by it itself continues, then the act constitutes a continuing wrong.

In **M.R. Gupta v. Union of India, AIR 1996 SC 669** ,the Court held as the effect of wrong fixation of pay continues and whenever the monthly salary is paid according to wrong calculation, a cause of action arises every month on the basis of wrong computation made contrary to rules. In such a case, limitation has to be computed differently.

In **Firm Ganpat Ram Rajkumar v. Kalu Ram, AIR 1989 SC 2285**, the Apex Court considered a case of not giving possession in spite of the order of the Court. The Court held that it was continuing wrong for the purpose of calculating the period of limitation under

Section 20 of the Contempt of Courts Act.

Similar view has been taken by the Apex Court in **Khoday India Ltd. v. Scotch Whisky Association, AIR 2008 SC 2737.**

Limitation – from date of knowledge

In a particular case, limitation may start from the date of knowledge. However, there must specific pleadings for that purpose. (**Vide: Bank of Baroda v. Sadruddin Hassan Daya., AIR**

2004 SC 942; and Pallav Seth v. Custodian (Supra))

Section 22

The Act is in addition to, and not in derogation of other laws relating to contempt. Thus, the Act is incorporated as supplemental to already existing laws on contempt i.e., Articles 129 & 215 of the Constitution, Section 228 of the IPC etc. (**See: Harish Chandra Mishra v. The Hon'ble Mr. Justice S. Ali., AIR 1986 Pat 65).**

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VI. CONTEMPT BETWEEN COURT AND LEGISLATURE

Powers, Privileges and Immunities of State Legislatures, In re, AIR 1965 SC 745, on March 23, 1964, one Keshav Singh threw the pamphlets containing allegations of corruption against one of the MLA‟s and caused disturbance to the House. He was tried for contempt of the House and imprisoned for 7 days. When he was in jail, he was granted bail by the Division Bench of the High Court and thus he stood released. The House took it as an interference in the internal affairs of the house and directed the police to arrest Keshav Singh and produce both the Judges who had granted him bail before the House in custody. The writ petition filed by one of the Judges was heard by the Bench consisting of all the Judges except the Judges who passed the bail order. The Full Bench stayed the operation of the resolution of the House. Thus, the conflict between the Legislature and the Court alleging the contempt of each other arose. Thus, the President made the reference to the Supreme Court under Article 143 of the Constitution. The Court held that a Judge of a High Court who entertains or deals with a petition challenging any order/decision or resolution of a Legislature imposing any penalty or issuing any process against any person for its contempt, or for infringement of its privileges and immunities does not commit contempt of the said Legislature; and the said Legislature is not competent to take proceedings against such a Judge in the exercise and enforcement of its power, privileges and immunities.

VII. CONTEMPT – PROCEEDINGS DURING PENDENCY OF APPEAL/REVIEW

In **State of J and K v. Mohd. Yaqoob Khan & Ors. (1992) 4 SCC 167**, the High court instead of considering the application for stay application in writ petition entertained the contempt petition for non-compliance of order impugned in the writ petition. The Supreme Court held that in such a situation, the stay application should have been decided before initiating contempt proceedings.

In **Modern Food Industries (India) Ltd. & Anr. v. Sachidanand Dass & Anr, 1995 Supp (4) SCC 465**, the Supreme Court held that initiation of contempt proceedings for noncompliance of the impugned order during the pendency of appeal and application for staying operation of the impugned order was not proper.

However, the Supreme Court in **Reliance Industries Limited v. Vijayan A (Authorised Representative of Securities And Exchange Board Of India), 2022 SCC OnLine SC 1715**, entertained the contempt petition during the pendency of the review petition distinguishing the aforesaid judgments of the Supreme Court.

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Order 41 Rule 5, CPC mere pendency of appeal does not bar execution of the impugned judgment, unless the stay is granted by the Appellate Court.

Other Relevant Issues

1. Contempt Application moved by a non-party – Permissible only in case where the Court had issued directions of general nature e.g., in PIL etc. wherein such a nonparty can be an aggrieved person. (**Vide: RBI v. Jayantilal & Mistry., AIR 2016 SC 1: (2016) 3 SCC 525; and Girish Mittal v. Parvati M. Sundaram., (2019) 20 SCC 747: 2019 SCC OnLine SC 607**).

2. Contempt against a non-party - It may be permissible in a case of aiding or abetting for contempt. (**See: Ashok Kumar v. Dipendar Singh., (2019) 8 SCC 280**). Lawyer sending notice to Magistrate on behalf of his client in contemptuous language, is liable to face contempt proceedings. (**Vide: S.N. Banerjee v. Kuchwar Lime and Stone Co. Ltd., AIR 1938 PC 295; Shamsher Singh Bedi v. High Court, Punjab and Haryana, AIR 1995 SC 1514; and Babulal v. Municipal Corpn., Ratlam, (2005) 13 SCC 101).**

3. Request by a Superior Court means "Command" - The language of request often employed by the Supreme Court is to be read by the High Court as an obligation. (**See: Bayer India Ltd. v. State of Maharashtra., (1993) 3 SCC 29; and Spencer & Co. Ltd. v. Vishwadarshan Distributors (P) Ltd., (1995) 1 SCC 259)**.

Even otherwise any "request" of the Government to a subordinate authority is tantamount to a positive direction or order and it will be difficult for the subordinate authority to disregard the same. (**Vide: Chintapalli Agency Taluk Arrack Sales Coop. Society Ltd. v. Secy. (Food and Agriculture), Govt. of A.P., AIR 1977 SC 2313).**

4. Order beyond Original Order – NO – In contempt jurisdiction, the court should not enlarge the scope of the order passed originally. (See also: Noorali Babul Thanewala v. K.M.M. Shetty, AIR 1990 SC 464; and Social Forestry Division Agra v. Lakshmi Chandra., (2020) 15 SCC 636).

It cannot grant substantive relief. **(Vide: Thereswar Prasad Paul v. Tarak Nath Ganguly, AIR 2002 SC 2215; and V. M. Manohar Prasad v. N. Ratnam Raju, (2004) 13 SCC 610).**

5. Contempt of a void Order being passed by a court having no jurisdiction – Contempt will lie - The remedy for the aggrieved person to approach the same Court or to get the Judgment and Order set aside by an Appellate or Revisional Court. **(Vide: Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd., AIR 1997 SC 1240).**

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For Contra, In Union of India v. Prakash P. Hinduja, AIR 2003 SC 2612, the Supreme Court held that directions issued by the Supreme Court in exercise of its power in the nature of legislation, being in violation of the sovereign function of the Parliament, violation of direction does not amount to contempt.

In contempt proceedings, the Court cannot examine correctness of the judgment.

(Vide: Prithwi Nath Ram v. State of Jharkhand, AIR 2004 SC 4277).

6. Contempt Jurisdiction cannot be invoked on the basis of impressions - In Badri Vishal Pandey Rajesh Mittal, AIR 2019 SC 289, the Court held that such jurisdiction cannot be invoked on the basis of mere impressions, drawn by a party, though the Court did not intend to issue such order nor it had passed such order specifically.

7. Contemnor cannot enjoy the fruits of the contempt. – (See: DDA v. Skipper Construction Co. (P) Ltd., AIR 1996 SC 2005).

8. Dismissal of contempt does not destroy the substantive right In Purushottam v. Chairman, M.SEB, (1999) 6 SCC 49, the duly selected person was not given appointment though there were certain directions issued by the High Court. The said person filed contempt petition which was dismissed. The Supreme Court held that such dismissal of contempt petition would not take away the substantive right of the candidate in appropriate proceedings.

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