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# The Contempt of Courts Act, 1971

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MANSI PAHAL<sup>1</sup>

## ABSTRACT

*The ability to think about and critique the injustice requires information. Yet sometimes individual's reasoning talents may lead a country down the path to collapse since they cause people to doubt the much-praised and very effective process by which the country operates. If the judicial system ever becomes corrupt or disorganised, it might be fatal to the entire nation.*

*Thus, the notion of a "Contempt of Courts Act" is necessary to maintain order, efficiency, and productivity and to silence unwarranted critics. Thankfully, the concept of contempt of court is still widely used and effective in India's judicial system. It's true that things are better here at home because everybody knows that the judiciary will help the needy even if "the executive and legislative branches of government fail to do so".*

**Keywords:** Contempt, High Court, Supreme Court, proceedings.

## I. INTRODUCTION

The ability to think about and critique the injustice requires information. Yet sometimes individual's reasoning talents may lead a country down the path to collapse since they cause people to doubt the much-praised and very effective process by which the country operates. If the judicial system ever becomes corrupt or disorganised, it might be fatal to the entire nation.

Thus, the notion of a "Contempt of Courts Act" is necessary to maintain order, efficiency, and productivity and to silence unwarranted critics<sup>2</sup>. Thankfully, the concept of contempt of court is still widely used and effective in India's judicial system. It's true that things are better here at home because everybody knows that the judiciary will help the needy even if "the executive and legislative branches of government fail to do so"<sup>3</sup>.

## II. HISTORICAL EVOLUTION OF THE ACT

The common law doctrine of "Contemptus Curiae" dates back 800 years, establishing the concept of "contempt of court." "The common law norm in England requires states to uphold the King's judicial and executive authority". In time, the King nominated a number of judges

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<sup>1</sup> Author is a LL.M. Student at Symbiosis Law School, Pune, India.

<sup>2</sup> Ruchi Chaudhary & Kanad Bagchi, *Explainer: What Is the Contempt of Courts Act, and Why Is It Controversial?*, THE WIRE (Aug. 28, 2020, 10:04 AM), <https://thewire.in/law/explainer-what-is-the-contempt-of-courts-act-and-why-is-it-controversial>.

<sup>3</sup> Avikshit Verma, *Contempt of Court in India: An Analysis of the Current Scenario*, 10 IJLLJS 48, (2020).

who had previously served in this capacity on his behalf. As the king was removed from the decision-making process, many publicly disobeyed the ruling. Given that the King chose the judges, this was a flagrant violation of his instructions. This turned into a crime over time when people disobeyed their judgement or instructions. In the statutes of King Henry I, the term "contempt of the king's court" was first used to describe this. As a result, "at the end of the 12th century, the offence of 'contempt of court' could be used to penalise anyone who defied the King's selected judges".

"In the 17th century, however, the Court of Chancery" expanded the jurisdiction of contempt of court to include situations in which defendants had refused to carry out a judgement issued by a common law court. As a result of this change, the common law courts came up with the ideas of criminal and civil contempt, but it wasn't until the early modern period that it became clear what the difference between the two was. When "*Thomas Martin, the 'Mayor of Great Yamouth,' sent a bank note for £20 to Lord Hardwicke and the Lord Chancellor in 1747, the Lord Chancellor showed cause against him, asking why contempt action should not be initiated against him*", and Martin begged for forgiveness. This was one of the few instances in which contempt proceedings were brought forward. The Lord Chancellor, however, had legal proceedings against him dismissed because of the prestige of his position. A prisoner who was being brought to court for trial in 1631 threw a brick at the judge, just missing him. He was to be hung on the gallows with his right hand cut off. These instances demonstrate the fairness of trials and the roots of contempt of court in the tried-and-true method of discovery used by many common-law nations in the past. It wasn't until the 20th century (1906, to be exact) that common law courts debated whether or not legislation should be written outlining what constitutes contempt of court. This law, passed by Parliament in 1908, is widely recognised as the world's first comprehensive legislation dealing with contempt of court. The nineteenth and twentieth centuries saw the creation and revision of several pieces of legislation (such as in 1883, 1892, 1994, etc.), only the statute from 1908 provided any real insight into adaptability and effectiveness. It is to the courts' credit that they have tried and improved the provisions of the Contempt of Court Act by appointing an expert committee in 1971 to determine whether or not amendments to the Administration of Justice Act of the United Kingdom are necessary. The committee was chaired by Lord Phillimore, L.J. In 1974, the group delivered its reports and suggestions, and by 1981, they had been codified into law.

One of the most carefully considered disputes emerged in the late 1960s, when judges were asked to reconsider whether or not media pieces constituted contempt of court. Fortunately, the Lord Phillimore Committee advised (and it was adopted) that the scope of this statute does not

include newspaper articles or journalists. The “European Court of Human Rights found that the United Kingdom's contempt statute violated Article 10 of the European Convention on Human Rights”, notwithstanding swift efforts to correct the inconsistencies. The Sunday Times versus but the court held that because of the need to preserve such rights, “the UK courts cannot permit disobedience to the ruling or contempt for its order”.

#### **(A) History & origin of contempt of courts in India**

“The King under the Charter of 1726 allowed the construction of corporations in each presidency and town to allow the East India Company to occupy territory in India, which led to the Contempt of Courts Act in India”<sup>4</sup>. It was during this era that we were subject to English law. Each President sets up its own Court of Mayor to hear and rule on civil issues within its purview and to maintain official records. In 1774, following the passage of “The Regulating Act in 1773, the Mayor's Court of Calcutta was replaced by the Supreme Court of Judicature”. “The Indian High Courts Act of 1861 established high courts in the presidencies of Calcutta, Madras, and Bombay, all of which had the authority to penalise for contempt and so assisted the Supreme Court of Judicature at the basic level”. Justice Peacock CJ, in his 1867 ruling "Abdul and Mehtab" (supra), established which courts had the ability to punish for contempt, and he said explicitly that “every court of record had the right to punish anyone for its contempt”<sup>5</sup>.

The case of Legal Remembrancer v. Matilal Ghosh<sup>6</sup> provided further details on this issue. Indian courts' ability to impose sanctions for contempt of court has been deemed arbitrary, unrestricted, and unchecked by the court. The Court said that due to the lack of a maximum fine or number of years in jail for undermining public confidence in the legal system, the statute should be used with extreme discretion. Meanwhile, several disputes were raised on the issue before the various high courts of the period. One point of debate was whether or not superior courts properly punished inferior courts for contempt. It's important to remember that this dispute was first raised long before the "Contempt of Courts Act, 1926."

The Calcutta High Court said that “subordinate courts cannot be punished for contempt” because Indian contempt laws are different from UK contempt laws. However, the Madras and Bombay High Courts said that “subordinate courts are under their jurisdiction and that they have the right to use their contempt power on such courts”. This discrepancy was quickly “resolved in the Indian case *Sukhdev Singh Sodhi v. Chief Justice Teja Singh and Judges of the*

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<sup>4</sup> Sankalp Jain, *The Contempt of Court Act, 1971: A Law in Need of Reform*, 11(2) IJCAL 1-20, 13 (2017).

<sup>5</sup> M. Jagannadha Rao, *The Law of Contempt in Light of Sahara v. Sebi*, 25(1) NLSIR 1-26, 19 (2013).

<sup>6</sup> Legal Remembrancer v. Matilal Ghosh, (1913) SCC OnLine Cal 443 (India).

*Pepsu High Court*<sup>7</sup>, with Justice Peacock” pointing out that “Section 5 of the Civil Procedure Code does give the right to punish any organisation, person, or entity, and even subordinate courts, for contempt if they find their speech or publication derogatory enough to lower the reputation and belief of the people in the courts”.

Nevertheless, the "Contempt of Courts Act, 1926" was the first law of its kind to be established<sup>8</sup>, and it defined and guided the high courts on how to use their authority to punish contempt. This act not only established the maximum punishment for contempt but also made it clear that high courts may sanction courts of equal or lower hierarchy than themselves but not courts of a higher hierarchy. But, as the High Court of Lahore noted in “The Crown v. Sayyad Habbib<sup>9</sup>”, which challenged the constitutionality of the aforementioned act, “contempt authority is bestowed on every Indian court and not only registered and chartered high courts”. Nevertheless, “the inconsistency was fixed in an amendment made in 1937”, which gave all courts in India (even subordinate courts) the authority to impose punishments for contempt and further clarified and explained the maximum sentence allowed under the statute of 1926.

The fundamental shortcoming of the statute of 1926 was that it only applied throughout India; certain “princely kingdoms (including Hyderabad, Madhya Pradesh, Mysore, Rajasthan, Travancore, Cochin, Saurashtra, and Pepsu) had their own contempt enactments”. Due to the variances and the inability of the legislation to be applied consistently in all areas, the foreign authority, which wanted to maintain control over the country for a longer period of time, was really guiding the people along the path to self-determination. The Contempt of Courts Act has traditionally played an important role in protecting the honour of the court, particularly in democracies that value free speech. The basic concept of contempt of court sprang from the need to establish limits on speech<sup>10</sup>. An already volatile situation in a nation where many groups are fighting for independence through rallies, hunger strikes, and the like may have been stoked by derogatory comments against the court. While the contempt measures were intended to increase confidence in the country's judicial system, the existence of such inconsistencies in the law showed how cohesive the ruling regime was. In a few decades, the oppressive, foreign-imposed laws will be gone, along with the country that has been ruling there.

### III. CONTEMPT OF COURTS ACT, 1926

The act's preamble did not define contempt. Instead, it gave “the judges of the High Court and

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<sup>7</sup> Sukhdev Singh Sodhi v. Chief Justice Teja Singh, A.I.R. 1961 S.C. 493 (India).

<sup>8</sup> Akshat Gaur, *Contempt of Court in India: A Brief Overview*, 1 JLS D 151, (2016).

<sup>9</sup> The King-Emperor v. Sayyad Habib, (1942) 44 P.L.R. 55 (Lah.).

<sup>10</sup> Saurav Basu, *Contempt of Court and the Freedom of Speech and Expression*, 4 IJLS 74, (2013).

Supreme Court the power and authority to punish people for contempt”. The major drawback, however, was that it left the judges with many issues regarding what constitutes contempt and what does not. The fact that judges can penalise or imprison people indefinitely for contempt of court is another negative. Subordinate courts have the same power for contempt as high courts, according to Section 12 of the aforementioned legislation, which was revised in 1937 to include and add the maximum cap of penalty. *“In 10 Cal. 109(B), the Lordship Judicial Committee said that every court that is a court of record has the exclusive responsibility, duty, and authority to punish individual violators, including legal bodies, for its contempt”*, and that codes and laws like a country's Criminal Penal Code do not affect the contempt punishments given by the High Court. The Court of Lordship continued by noting that the High Court of a UK-ruled nation has the same authority to punish for contempt as English courts do. The subject of whether or not the Act of 1926 is still unsuccessful, after several interventions, citations, and suggested courses of action, is asked frequently.

Sadly, that's the case. There were numerous problems with the law, so in 1952 a new one, called the "Contempt of Courts Act," was passed in its place. Secondly, despite the act's preamble stipulating that it would be implemented evenly across India, several princely states continued to use their own contempt measures alongside the central government's. Second, the Judicial Commissioner's role, which should have been given equal authority to penalise for contempt under the Act of 1926, was not so included. Third, there is no clearly demarcated boundary outlining the scope of the jurisdiction of the said high court; furthermore, there is no clearly defined way to “ensure that the alleged contemnor is within or outside the jurisdiction of a high court, or within his own limits, giving the high courts unlimited powers to punish for contempt”. As a result of these shortcomings, the Indians had to figure out what constituted contempt of court when they gained independence (a question eventually “resolved by the Supreme Court in the case of State v. Padmakant Malriya & Anr., 1953”). As the current laws needed some revisions, Parliament was obligated to evaluate and propose legislation protecting individual rights and maintaining “the very dignity of the courts to secure people's belief in the same”.

#### **IV. CONTEMPT OF COURTS ACT, 1952**

As far as we can tell, this is the first contempt of court provision in Indian legislation. Except for “the state of Jammu and Kashmir”, this applied to the entirety of India. This statute firmly established “powers in the hands of the high courts to punish the subordinate courts in situations of contempt”, and it was abolished in the states of Rajasthan and Saurashtra. The “right to freedom of speech and the right to personal life and liberty” were both violated by this act,

making it similar to the preceding one in this respect.

On April 1, 1960, Mr. B. Das Gupta sent a bill to Parliament to clarify and update the controversial section so that it better reflected the realities of a growing, modern India. "The Central Government decided to re-examine the aforementioned statute when they discovered issues", so they established "an expert committee in 1961 under the direction of HM Sanyal, which eventually delivered its findings in 1963". If you want trustworthiness and openness in the act's revision process, look no further than this committee. The committee's findings and suggestions were included in the current law, the "Contempt of Courts Act of 1971". All loopholes have been ironed out, and the basics of what constitutes contempt of court have been properly defined and enshrined in the present legislation.

## V. CONTEMPT OF COURTS ACT, 1971

This legislation established the jurisdictional boundaries and the authority of specific courts. It established the correct procedure for determining contempt and imposing punishment<sup>11</sup>. "Section 2(a) of this act went on to describe the various types of contempt are. First, there was civil contempt, which was defined as the wilful disobedience of any sentence or decree granted by a court. Secondly, there was criminal contempt, which was defined as the dissemination of any material, in writing or via spoken words or signals, that seeks to scandalise or undermine the authority of the court in the eyes of the public."

The fundamentals of an Indian contempt proceeding are as follows:

- "Wilful disobedience of any order, judgement or decree passed by any Court of the Republic, or
- Scandalize or tends to scandalise, or lowers or tends to lower the authority of any court, or
- Biasness, interferes or tends to interfere with the due course of any type of Judicial proceedings, or
- Obstructs or tends to obstruct, interfere or tend to interfere with the administration of justice in any manner."

"It is important to have a solid understanding of what the legislation defines as not constituting contempt of court." The concept of contempt does not include fair, unmodified accounts of court proceedings or fair criticism of judicial rulings after the verdict has been announced and the

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<sup>11</sup> Ranvir Singh, *Contempt of Court: A Critical Analysis of the Contempt of Court Act, 1971*, 3(1) IJCAL 81-105, 98 (2009).

petition has been rejected<sup>12</sup>. At first, the truth did not serve as a defence against “the punishment for contempt since it was widely thought that the court may penalise anybody for any disrespectful utterance in order to protect its reputation”. Nevertheless, “the Act was revised in 2006 to include ‘truth’ as a defence if the statement was made for the public good and the motivation was honest from the start”. Innocent publication or commission of an act without knowing that judicial proceedings were pending in court on a matter connected to what he occurred to publish is another defence recognised under the range of this statute.

Contempt proceedings against a person who publicly insults the court's authority are another pressing issue. *Suo moto*, which means "on their own", courts may commence contempt proceedings against anyone they believe is trying to slander or undermine the authority of the court, following the act's outlined procedure. The court may, on its own initiative, begin contempt proceedings against any individual and issue a summons to that person for an appearance. Only if the act or words of contempt are committed in the presence of a court can this be enforced. Those who have been falsely accused of an action or statement should be given the opportunity to explain their position. During a contempt trial, the court can also hold the accused in judicial custody. A court cannot begin contempt proceedings without the “written consent of the highest law officer, who in the case of the Supreme Court would be the Attorney General and the Solicitor General and in the case of the High Courts would be the State's Advocate General”, if the court is “unaware of an act or speech that is derogatory enough to scandalise or lower the authority of a court”. The courts must then decide whether or not to hear the lawsuit based on that information.

## VI. PUNISHMENT

The punishment for violating the existing act is specified in detail. The law specifies that “*a violator might get up to six months in imprisonment, a fine of up to ₹2,000, or both*”. It is up to the discretion of the court to decide whether or not a contemnor is eligible for pardon once he or she offers an apology under “Section 12 of the Contempt of Courts Act, 1971”.

In subsection 2 of said provision, it is stated that punishment shall in no event exceed the duration specified in said section.

If the court determines that fining the contemnor for civil contempt is not sufficient punishment, the court may, under Subsection 3, order the contemnor to serve a term of simple imprisonment.

If a firm or its director or secretary is found guilty of contempt, the court must follow the

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<sup>12</sup> SAMARADITYA PAL, *THE LAW OF CONTEMPT – CONTEMPT OF COURTS AND LEGISLATURES* (Lexis Nexis, 5<sup>th</sup> ed. 2012).

processes outlined in subsections 4 and 5; the maximum penalty for such an offence is still “six months of simple imprisonment, a fine of up to ₹2,000, or both”.

## VII. CASE LAWS

“All illustrious cases have been updated to reflect events since 2010”<sup>13</sup>:

- “*M.V. Jayarajan vs. High Court of Kerala & Another*”<sup>14</sup>:

M. Jayarajan, head of the Communist Party of India (Marxist) (CPI-M), continued to condemn and spread hate speech in 2010 in response to the Kerala High Court's order to ban gatherings in specific public areas. Extremely harsh language was used towards the judges, and it was decided that remarks that used language that may inspire violence against the judiciary should not be tolerated. The Supreme Court reduced his “original six-month prison term from the Kerala High Court to four months” after hearing his appeal.

- “*Raj Pal Yadav vs. Murli Projects Pvt. Ltd*”:

“In 2013, actor Rajpal Yadav and his wife Radha Yadav” were given a one-year sentence of simple imprisonment by the Delhi High Court for failing to appear in “court in a petition made by a Delhi-based businessman for the recovery of Rs 5 crore<sup>15</sup>”. Although his wife had a new born to care for, the judge reduced her sentence to one day, while Rajpal Yadav was incarcerated for ten days.

- “*Justice C.S. Karnan vs. The Honourable Supreme Court of India & Others*”<sup>16</sup>:

“In 2015, a judge from the Madras High Court named Justice Karnan” threatened to bring “contempt proceedings against the then-Chief Justice of India, Justice HL Dattu, because he found the ongoing dispute over the treatment and welfare of the Dalit judges in the judiciary” to be personally offensive. Contempt proceedings were initiated against Judge Karnan when “the letter was brought to the attention of the Supreme Court”, and he was finally sentenced to six months in jail, which he was forced to spend against his will.

- “*In Re: Prashant Bhushan and Another (Suo moto contempt)*”<sup>17</sup>:

“Justice Sharad Arvind Bobde, the current Chief Justice of India”, was spotted in 2020 riding a high-end motorbike without a face mask, drawing a protest from “notable lawyer and activist Prashant Bhushan on Twitter”. There was no impact on the trial or the administration of justice

<sup>13</sup> Gopal Sankaranarayanan, *Contempt of Court in India: A Critical Appraisal*, 49(8) EPW 39-46, 42 (2014).

<sup>14</sup> M.V. Jayarajan v. High Court of Kerala, A.I.R. 2004 S.C. 3125 (India).

<sup>15</sup> G. Mohan Gopal, *The Media and Contempt of Court in India*, 7(1) JML 29-45, 32 (2015).

<sup>16</sup> Justice C.S. Karnan v. Hon'ble Supreme Court of India, (2017) 1 S.C.C. 1 (India).

<sup>17</sup> *In Re: Prashant Bhushan and Another (Suo moto contempt)*, (2020) 9 S.C.C. 559 (India).

as a whole from these comments; they were made only to the CJI. “The Supreme Court's contempt penalty for the lawyer was a one-rupee fine, which turned out to be the funniest aspect of the ruling”. Prashant Bhushan countered by filing “a petition challenging the constitutionality of the Contempt of Courts Act”, which is still in existence in the United States despite being disregarded by the judicial systems of many other nations.

### VIII. CONCLUSION

The “Contempt of Courts Act, 1971, is the most updated and well-crafted statute in the country for convicting anyone who publicly insults our judicial system”. The Sanyal committee did their utmost to ensure that it was perfect in every manner, responding to the concerns of the legal system and the more sophisticated critiques that have arisen as a result of the spread of education and literacy. Unfortunately, the Supreme Court has never elaborated on exactly what kinds of language or conduct might amount to contempt. The Supreme Court has issued rulings that frequently run counter to its own prior rulings. For instance, the Supreme Court ruled in “Brahma Prakash Sharma & Ors. v. State of Uttar Pradesh”<sup>18</sup> that comments on the judges' character that do not disrupt judicial proceedings should not result in a contempt of court charge<sup>19</sup>. In Prashant Bhushan's case, however, the comment was about the CJI's fancy motorbike, not the judiciary as a whole.

There must be contempt laws in India since so many individuals spew lies and hatred towards the judicial system. Fixing this and similar issues would, however, make the legislation even more solid, substantial, and faultless.

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<sup>18</sup> Brahma Prakash Sharma & Ors. v. State of Uttar Pradesh, A.I.R. 1954 S.C. 10 (India).

<sup>19</sup> Shuvro Prosun Singh, *The Contempt of Court Act, 1971 and the Balance Between Judicial Power and Free Speech*, 2(1) AJLS 85-103, 98 (2013).

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