

# **VOICE OF FREEDOM AND RIGHTS**



**VOLME 1 AND ISSUE 1 OF 2023**

**INSTITUTE OF LEGAL EDUCATION**



**Voice of Freedom and Rights**  
**(Free Publication and Open Access Journal)**

**Journal's Home Page – <https://vfr.iledu.in/>**

**Journal's Editorial Page – <https://vfr.iledu.in/editorial-board/>**

**Volume 1 and Issue 1 (Access Full Issue on – <https://vfr.iledu.in/category/volume-1-and-issue-1-of-2023/>)**

**Publisher**

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 - [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



© Institute of Legal Education

**Copyright Disclaimer:** All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://vfr.iledu.in/terms-and-condition/>



## LEGISLATIVE COMMENTARY ON THE CONTEMPT OF COURTS ACT, 1971 (Act No. 70 of 1971)

**Author** - DEVANSH MISHRA, Student at Faculty of Law, Banaras Hindu University, Varanasi

**Best Citation** - DEVANSH MISHRA, LEGISLATIVE COMMENTARY ON THE CONTEMPT OF COURTS ACT, 1971 (Act No. 70 of 1971), *Voice of Freedom and Rights*, 1 (1) of 2023, Pg. 67-70, ISBN - 978-81-961120-1-1.

### Abstract

The very basic purpose of contempt of court is to safeguard the judiciary and to protect the whole image of the judicial institutions. Contempt of court has its roots in the English legal system. Since there were no statutes and regulations, this power was widely abused to suppress dissent in British India. Formerly, it was regarded as an inherent power of a Court of Record, and after the Constitution of India came into existence, by virtue of Articles 129 and 215, both the Supreme Court and High Court had powers to punish for both their own contempt and the contempt of the lower judiciary. The Contempt of Court Act, 1971, not only tried to define the meaning of contempt of court but also classifies it into two categories. This Act provides a broad and exhaustive description of various acts that may fall under contempt of court. Through this Act only, a proper mechanism for appeals against the orders of the High Courts was provided.

**Keywords:** Justice, Constitution, Power, Publication, Freedom, Punish

### I. Introduction

The Contempt of Courts Acts, 1971 is an Act comprise of twenty-four sections. The object behind the enactment of this legislature is to define and limit the powers of courts in punishing contempt of courts and to regulate its procedure.

Contempt of court is disobedience of the court, by acting in opposition to the authority, justice

and dignity thereof. It signifies a wilful disregard or disobedience of the court's order; it also signifies such conduct as tends to bring the authority of the court and the administration of law into dispute<sup>133</sup>.

### II. Background

Aristotle said that man is by nature a social animal and cannot live alone. In every society, there will be disputes among the people. From war to harmony, there were many ways in which these disputes were resolved. Courts are one of the mechanisms to solve disputes through settled principles and norms. The modern concept of contempt of court emerged in England. The king was regarded as the fountain of justice. The judicial function was a sovereign function. The order of the king was considered divine order. When other functions (military, administrative, etc.) of the king increased subsequently, he delegated judicial functions to his delegate, who began to be called judges. Thus, in a monarchy, the judge really exercises the delegated functions of the king, and for this, he requires the dignity and majesty that a king must have to get obedience from his subjects<sup>134</sup>. In modern times, *Rex v. Almon* is the most celebrated case of contempt of court.

In India, contempt of court was a weapon to suppress the freedom struggle and curtail criticism of the British Raj. To address the issue of uncertainty and ambiguity concerning the

<sup>133</sup> Baradakanta Mishra v. Bhimsen Dixit, (1973) 1 SCC 446

<sup>134</sup> Markandey Katju, Contempt of Court: The Need For a Fresh Look, 1 LW(JS) 1 (2007)

exercise of contempt and to provide it with a legislative basis, the Contempt of Court Act, 1926 was enacted. But after independence, the Contempt of Court Act, 1926 came into direct conflict with Part III (Fundamental Rights) of the Constitution of India. Article 13(1) of the Constitution states that any existing law inconsistent with Part III shall, to the extent of inconsistency, be void. Similarly, Article 19(1)(a), which states that all citizens have freedom of speech and expression, later in 1952, the Contempt of Court Act, 1952 replaced the 1926 Act. A committee was formed to examine the law relating to contempt of court, to suggest amendments wherever necessary, and to make recommendations for codification of the law in light of the examination. The Contempt of Court Act, 1971, was the outcome of the recommendations made by the committee.

### **III. Provisions**

#### **A. Meaning**

Contempt of court means civil contempt or criminal contempt<sup>135</sup>. As provided in definitions of the Act, civil contempt means wilful disobedience to any judgement, decree, order or wilful breach of an undertaking given to a court while criminal contempt means the publication of any matter or doing of any other act whatsoever which:

- scandalises or tends to scandalise the authority of any court;
- interferes or tends to interfere with, the due course of any judicial proceeding;
- Obstructs or tends to obstruct, the administration of justice in any other manner.

Scandalisation of the court is a species of contempt and may take several forms. A common form is the vilification of the judge. When proceedings in contempt are taken for such vilification, the main issue is whether such vilification is of the judge as a judge or of the

judge as an individual. If it is the vilification of the judge as an individual, then the court has no power to punish for contempt. The test in each case would be whether the impugned publication is merely a defamatory attack on the judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by his court. It is only in the latter case that contempt is punishable<sup>136</sup>.

According to the Act, a person shall not be held liable for contempt of court for any publication or distribution of publication that interferes with the course of justice in connection with any civil or criminal proceeding pending at the time of publication or distribution of publication, if he had no reasonable grounds to believe that the proceeding was pending in court<sup>137</sup>. A person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding before any court sitting in chambers or *in camera* except in the certain cases<sup>138</sup>.

Every High Court have same powers and authority to punish for the contempt of courts subordinate to it as it has and exercises in respect of contempt of itself, except that such contempt is an offence punishable under the Indian Penal Code<sup>139</sup>. In **Bathina Ramakrishna Reddy v. State of Madras**<sup>140</sup>, it was held that where an act alleged to constitute contempt of a subordinate court merely amounts to offences of another description for which punishment is provided in the Indian Penal Code, the High Court can punish for contempt. The High Court has the power to punish contempt committed outside of its jurisdiction.

#### **B. Punishment**

A person guilty of contempt of court may be punished with simple imprisonment for a term

<sup>135</sup> The Contempt of Court Act, 1971, § 2(a), No. 70, Acts of Parliament, 1971(India)

<sup>136</sup> Gobind Ram v. State of Maharashtra, AIR 1972 SC 989

<sup>137</sup> The Contempt of Court Act, 1971, § 3, No. 70, Acts of Parliament, 1971(India)

<sup>138</sup> The Contempt of Court Act, 1971, § 7, No. 70, Acts of Parliament, 1971(India)

<sup>139</sup> The Contempt of Court Act, 1971, § 10, No. 70, Acts of Parliament, 1971(India)

<sup>140</sup> AIR 1952 SC 149

which may extend to six months, or with fine which may extend to two thousand rupees, or with both. When a company is held liable for contempt of court then, every person who is responsible for the conduct of the business of the company at the time of contempt, shall be liable for contempt along with the company<sup>141</sup>. In **Subrata Roy Sahara v. Union of India**<sup>142</sup>, it was held that disobedience of orders of a court strikes at the very root of the rule of law on which the judicial system rests. Howsoever grave the effect may be, is no answer for non-compliance with a judicial order.

When a person has committed contempt in its presence or hearing before the Supreme Court or High Court, the Court may detain such a person in custody, and inform him in writing about the charge of contempt, provide him with an opportunity to defend himself, and make such an order as necessary<sup>143</sup>. In other cases of criminal contempt, the Supreme Court or High Court can take *suo moto* action or on motion made by the Advocate General or with any other person with the written consent of the Advocate General.

According to the Act, a judge, magistrate, or other person acting judicially can also be liable for contempt of his own court or of any other court in the same manner as any other individual is liable. Every case of criminal contempt shall be heard and determined by a bench of not less than two judges.

### C. Appeal

An appeal can be filed against any order of the High Court to punish for contempt<sup>144</sup>:

- From the decision of a single judge, to a bench of not less than two judges of the Court, within thirty days from the date of order;

- From the decision of a bench, to the Supreme Court within sixty days from the date of order.

The conferment of appellate power on the supreme court under Section 19 cannot affect the width and amplitude of its inherent power under Article 129 of the constitution. Where jurisdiction is conferred on a court by a statute, the extent of jurisdiction is limited to the extent prescribed under the statute. But there is no such limitation on a superior court of record in matters relating to the exercise of constitutional powers<sup>145</sup>. The right of appeal does not give the right to commit contempt of court, nor can it be used as a cover to bring the authority of the High Court into disrespect and disregard<sup>146</sup>.

### IV. Critical Analysis

The basic purpose of contempt of court is to preserve the authority of court, not to protect the dignity of individual judges. The justification for the contempt law in England was that the judges performed the functions delegated to them by the King. But in a democratic nation like India, people are supreme, and they can criticise any authority if it is not functioning properly. The Act leaves too much space for the discretion of the judges to decide whether the said act may be contempt or not. In **Samar Ghosh v. Somnath Chakraborty**<sup>147</sup>, the court punishes a sub-inspector of police who wrote out a poem alleging corruption which was published in a Bengali fortnightly magazine. Even though the Supreme Court framed various guidelines, most of the time contempt petitions are heard of by the injured judge, which is against the principle of natural justice<sup>148</sup>. Similarly, in **Re Prasant Bhushan & Anr.**<sup>149</sup>, the court held a contempt charge in the name of dashing public confidence in the judiciary.

### V. Conclusions

<sup>141</sup> The Contempt of Court Act, 1971, § 12, No. 70, Acts of Parliament, 1971 (India)

<sup>142</sup> AIR 2014 SC 3241

<sup>143</sup> The Contempt of Court Act, 1971, § 14, No. 70, Acts of Parliament, 1971 (India)

<sup>144</sup> The Contempt of Court Act, 1971, § 19, No. 70, Acts of Parliament, 1971 (India)

<sup>145</sup> Delhi Judicial Service Association v. State of Gujarat, AIR 1991 SC 2176

<sup>146</sup> *Supra* note 5

<sup>147</sup> 1989 Cri LJ 1638

<sup>148</sup> Nina R. Nariman, Criminal Contempt of Court in India: A Critique, 5 SCC J 34 (2011)

<sup>149</sup> *Suo Motu Contempt Petition (Crl.) No. 1 of 2020*



It is good that India has a statute to deal with contempt of court. This Act tried to cover almost all aspects related to the contempt proceedings. But it also has many defects; for example, the ordinary citizen may not know where he stands because contempt may take new forms and shapes in today's ever-changing, complicated world. Firstly, since the Constitution is the supreme law of the land, to some extent, it directly contradicts the provisions of the Constitution. So, it can be said that it affects the freedom of speech of the people and the press. Secondly, the terms used in the Act have too wide and vague meanings. So, it leaves too much space at the discretion of the judge. A single act may be contempt for one judge, but not for the other. Thirdly, the courts do not recognise the defence of truthfulness or factual correctness in the law of contempt. To conclude, it can be said that for the proper functioning of the country, the law needs to be at the same pace as the times. It should not stick to a fixed point, but it should change according to the needs of society.

## **VII. References**

- The Contempt of Court Act, 1971, No. 70, Acts of Parliament, 1971(India)
- Baradakanta Mishra v. Bhimsen Dixit, (1973) 1 SCC 446
- Markandey Katju, Contempt of Court: The Need for a Fresh Look, 1 LW(JS) 1 (2007)
- Gobind Ram v. State of Maharashtra, AIR 1972 SC 989
- Bathina Ramakrishna Reddy v. State of Madras, AIR 1952 SC 149
- Subrata Roy Sahara v. Union of India, AIR 2014 SC 3241
- Delhi Judicial Service Association v. State of Gujarat, AIR 1991 SC 2176
- Nina R. Nariman, Criminal Contempt of Court in India: A Critique, 5 SCC J 34 (2011)
- Re Prasant Bhushan & Anr., 1989 Cri LJ 1638