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Contempt of Court: A Global Comparison

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The tendency of the courts in recent years to use its contempt jurisdiction regularly has sparked a heated discussion about the legality of such powers. In this context, I have made a modest attempt to investigate the origins of the court's power, which has been the topic of much scholarly discussion. Contempt of court can be either criminal or civil. "Contempt in the face of the court (in facie curiae), scandalizing, breaches of the sub judice rule, and other interferences with the administration of justice, such as intimidating a witness, are all examples of criminal contempt. Defiance of a court order, whether via affirmative behaviour or negligence or unwillingness to comply with an injunction, is considered civil contempt." The Supreme Court has also acknowledged the constitutionally inspired concept of "contempt of the Courts," which has yet to be developed by the courts. This article also discusses the sensitive problems surrounding recent instances in which the country's Apex Court's authority and integrity have been questioned, as well as how such challenges have been resolved. I examined the explanations offered by the judiciary in its defense objectively, especially in light of the judiciary's constantly changing image and position in a modern democratic setting by making a global comparison.

Keywords: courts, administration, judiciary, authority, criminal or civil.

INTRODUCTION

“Wrongs are often forgiven, but contempt never is. Our pride remembers it forever”

- Sir Lord Chesterfield

The interpretation clause of the Contempt of Court Act has been explicitly specified under section 2 (a). According to the act's definition, contempt of court is nothing more than civil or criminal contempt. In addition, sub-clauses (b) and (c) of section 2 of the contempt of court statute specify both civil and criminal contempt in great detail. In our country, there is a concept of basic rights, which has given citizens such rights. As Salmond points out, it is less essential what the law is than where it is issued and by whom it is controlled. So the Constitution of India, which is also known as the GRUND NORM of our country, grants us these essential rights.

“The Supreme Court decided in *Kapildeo Prasad Sah & Ors. V. State of Bihar & Ors.*¹ and *T.N Godavarman Thirumulpad via the Amicus Curiae v. Ashok Khot & Ane., AIR2006 SC2007* that disobedience of the court's decision would be a breach of the Rule of Law norm. As a result, the law of contempt may be thought of as the thread that binds the constitution's essential framework together.” One of the basic elements of Rule of Law is the preservation of the court's dignity. We all know that no one can alter the essential structure of the Indian Constitution, which is considered to be its pillars. The right to freedom of speech and expression is guaranteed by Article 19 of the Indian constitution². However, this does not imply that you are free to say whatever you wish.

The right to freedom of speech and expression does not include the right to defy the law³.

“If a person attempts to undermine the court's dignity or authority while exercising their right to freedom of speech and expression, the court may use its power to penalize for contempt under Article 129 or 215 as the case may be.”

¹ *Kapildeo Prasad Sah & Ors v State of Bihar & Ors* (1999) 7 SCC 569

² Constitution of India, art 14

³ *State of Bombay v P* AIR 1959 Bom 182

TYPES OF CONTEMPT OF COURT

- **Civil Contempt:** Section 2(b) of the Contempt of Court Act of 1971 defines civil contempt. Civil contempt necessitates disobedience as a primary element. This disobedience is referenced in this context concerning any court decision, decree, directive, order, writ, or other procedure. The second section discusses the wilful breach of a court-ordered undertaking⁴. This implies that if someone gives an undertaking to a court, even after being aware of all the requirements of the undertaking, and then breaks one of those terms, he is guilty of civil contempt.
- **Criminal Contempt:** *“Section 2(c) of the contempt of court statute of 1971 defines criminal contempt. The main component of criminal contempt is the publication of any matter, whether by words, spoken or written, or by signs, or by visible representation, or otherwise, and the second part discusses any act that⁵:*

1. scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court.
2. prejudices, or interferes or tends to interfere with the due course of any judicial proceeding.
3. interferes or threatens to interfere with the administration of justice, or obstructs or threatens to obstruct the administration of justice in any other way.”

PROCEDURE FOR CONTEMPT OF COURT

“Section 14 of the 1971 Contempt of Court Act establishes the procedure for contempt of court. When it is alleged or appears to the Supreme Court or the High Court, on its motion, that a person has been guilty of contempt committed in its presence or hearing, the court may order that such person be detained in custody, and, at any time before the court's rising, on the same day, or as soon as possible thereafter⁶, the court shall:

The court will offer him the chance to defend himself against the charge.

⁴ Contempt of Court Act 1971, s 2 cl 2

⁵ Contempt of Court Act 1971, s 2 cl 3

⁶ Contempt of Court Act 1971, s 14

The procedure in the instance of criminal contempt is outlined in Section 15 of the Contempt of Court Act, 1971⁷. Also, according to Section 20 of the Contempt of Court Acts, no court shall start any contempt proceedings, either on its initiative or otherwise, after one year has passed from the day on which the contempt is claimed to have been committed⁸. This implies that a court can now initiate a procedure if the contempt was committed more than a year ago. According to Section 18 of the Contempt of Court Act of 1972, if the contempt is of a kind that falls under Section 15, it should be heard by a bench of at least two judges.”

PUNISHMENT OF CONTEMPT OF COURT

The punishment that the courts can impose for contempt of court is outlined in Section 12 of the Contempt of Court Act of 1971. Contempt of court is punishable by simple imprisonment for up to six months, a fine of up to two thousand rupees, or both. This section also discusses the possibility of the accused being released or the punishment being reduced if an apology is made to the satisfaction of the court⁹. While we all know that a company is a separate legal entity, every person who, at the time the contempt was committed, was in charge of and responsible to the company for the conduct of the company's business, as well as the company, shall be deemed guilty of the contempt, and the punishment may be enforced with the court's permission, by detention in a penal institution.

HISTORY AND AMENDMENTS

The founding of Corporations in each presidential town was mandated by the 1726 charter. This charter was extremely important in the development of India's legal system. The mayor court was established in each of the presidential towns and was given the authority to hear all civil matters¹⁰. Under the regulating Act 1773, the mayor court of Calcutta was superseded in 1774 by the Supreme Court of Judicature in Fort Williams, Calcutta.

⁷ Contempt of Court Act 1971, s 15

⁸ Contempt of Court Act 1971, s 20

⁹ Contempt of Courts Act 1971, s 12

¹⁰ Mahabir Prashad Jain, *Outlines of Indian Legal and Constitutional History* (6th edn, Lexis Nexis 2010)

The Government of India Act, 1800, also replaced the mayor courts of Madras and Bombay with the Supreme Court. These tribunals, which were established at the time, had the same powers of punishment for contempt as the English Superior Courts. Supreme Courts were replaced by High Courts in 1861, and they were given the ability to punish anybody who disobeyed them. Peacock C.J. established the laws relating to authority to penalize for contempt in a broad sense in 1867.

In *Re: Abdool and Mahtab*, the Supreme Court said unequivocally that every court of record has the authority to sentence anyone to prison for contempt. The court concluded in *Legal Remembrancer v Matilal Ghose & Ors.*¹¹ that the courts' contempt authority was arbitrary, limitless, and unregulated, and that it should be used with extreme caution: that this power deserved respect. This description will be realized once it is recognized that there is no restriction to the length of incarceration or the amount of fine that may be imposed other than the court's unrestricted power and that the subject is protected by a general fundamental right. In *Martin v. Lawrence*¹², a split bench of the Calcutta High Court questioned the high court's jurisdiction.

On April 1, 1960, a bill to alter the laws about contempt was introduced in the Lok Sabha. Existing laws, according to the bill, are unclear, imprecise, and unacceptable. A committee was created to examine the issues raised in the bill. Shri. H.N. Sanyal, the Additional Solicitor General at the time, was the head of the committee. He and his group then drafted a report, which they turned in in 1963. After discussing with the state government, the committee's proposal was approved by the administration. Then, in 1971, the Contempt of Court Legislation was adopted, which repealed and replaced the earlier act.

THE SCENARIO IN OTHER COUNTRIES

United States of America

¹¹ *Legal Remembrancer v Matilal Ghose & Ors* (1914) ILR 41 Cal 173

¹² *Martin v Lawrence* (1879) ILR 4 Cal 655

Contempt of court in the United States might be direct or indirect, civil or criminal. Let's start with the direct and indirect concepts. When an act of contempt is committed in front of the sitting judge, it is known as direct contempt of court. In the event of direct contempt, the judge informs the offender that the conduct he has performed constitutes a disturbance of the court or tribunal. The individual is then allowed to react to the charge, and after hearing the party, the court can instantly impose the penalty. In the instance of indirect contempt, the contempt is committed outside of the courtroom and consists of disobedience of a prior order of the court. A person who has been accused of such contempt is given notice of the allegation against him first. Second, he or she will have the chance to hear all of the evidence that he or she wants to submit to the honorable court. The case is then resolved, as well as the sentence if found guilty.

Let's look at the legal definitions of criminal and civil contempt of court in the United States. Contempt of court in a civil dispute is not thought to be a criminal violation, but in some situations, civil contempt appeared to be meant to destroy the plaintiff's, judge's, or court's image. As a result, the court dealt with the matter appropriately. When an offender is punished for criminal contempt, the contempt must be shown beyond a reasonable doubt, and the penalty must be imposed unconditionally after the accusation is proven. When a person is charged with civil contempt, the punishment is only imposed until the court's order is disobeyed; if the order is obeyed, the sanction is lifted. When it comes to civil contempt, the standard of proof is significantly lower than when it comes to criminal contempt¹³.

England

The Contempt of Court Act of 1981 formalized the contempt provisions in this country. Civil or criminal contempt are the two forms of contempt recognized by the government. The highest penalty for criminal contempt under the 1981 Contempt of Court Act is a two-year jail sentence. Contemptuous behaviour directed towards the judge or magistrates while the court is in session, with the intent to disrupt the proper conduct of a trial or other judicial procedure, may be punished as "direct" contempt. The word "direct" refers to when the court names the individual

¹³ 'Contempt of Court' (*Legal Information Institute*, 2020) <https://www.law.cornell.edu/wex/contempt_of_court> accessed 23 July 2021

who is in contempt by detailing the actions that were witnessed on the record. Direct contempt differs from indirect contempt, in which a third party may file documents charging contempt against someone who has deliberately disobeyed a legal court order.

According to the Senior Courts Act, 1981, the crown court is the higher court in England, and the crown courts have the authority to punish criminal contempt. In the following situations, a penalty may be imposed:

- In front of the court, there is contempt.
- Court order disobedience.
- Breach of a court-ordered obligation.

If the court deems the case urgent, it may order imprisonment; if the contempt is indirect, the Attorney General may intervene, and the Crown Prosecution Service will bring criminal proceedings on his behalf before a Divisional Court of the Queen's Bench Division of the High Court of Justice of England. Under the 1981 Act, magistrates' courts can also decide that anybody who "insults the court" or disturbs its proceedings be detained until the end of the sitting. If contempt is confessed or proven, the District Judge acting as a magistrate may sentence the offender to one month in jail and impose a fine of up to £2,500 or both.

A person is considered to have committed contempt in civil proceedings in one of two ways. First, when a summons order is obtained in the person's favour and he or she fails to appear in court on the scheduled day. A writ of *Latitat* was previously granted, but now a bench warrant is issued, which mandates the arrest of the individual and his detention until the court schedules the next session. If the individual afterward apologizes to the court, he may be released on bond following his arrest. Second, if he or she does not follow the court's order. The individual affected is handed a copy of the order, which contains a criminal notice, which informs the receiver that if they do not comply, they will be imprisoned. If they continue to violate the order, procedures may be initiated, and the individual implicated may be sentenced to jail. This seldom occurs since the expense of initiating these actions to the claimant is substantial, and

incarceration is rarely awarded in practice because an apology or fine is typically thought appropriate¹⁴.

Hong Kong

Judges from the Court of Final Appeal, the High Court, the District Court, and members of different tribunals, and the Coroner's Court all have the authority to penalize for contempt in the face of the court in Hong Kong, which stems from common law laws. This includes insulting a judge or justice, a witness, or officers of the court, interfering with the court's proceedings, misbehaving in the court, leaving the court without the court's permission during a proceeding, disobedience of a court's judgment or order, breaching an undertaking given to the court, and breaching a duty imposed by the court. If an offender uses threatening or offensive words against a magistrate, the magistrate can sentence the offender to a level 3 fine and 6 months in prison¹⁵.

CONCLUSION

The laws that penalize acts of contempt of court should not be seen as a threat to the fundamental rights guaranteed by the Indian Constitution. The right to free expression does not include the right to be insulted. The right to freedom of speech and expression is guaranteed to every Indian citizen, however, contempt of court is an exception to this basic right.

Other limits on the right to freedom of speech and expression include decency, morality, defamation, public order, and encouragement to commit crimes. A country must have stringent rules against contempt of court to maintain the court's decorum. To have trust in the legal system, citizens of a country must respect it within themselves. Faith is immediately included when there is respect. Not only India, but several of the world's most powerful countries have enacted laws that make contempt of court a criminal offense. This should not be seen as a limitation on any basic right, but rather as a reflection of the legal system's good aspects. Justice

¹⁴ 'Contempt of Court' (GOV.UK) <<https://www.gov.uk/contempt-of-court>> accessed 28 July 2021

¹⁵ 'LCQ3: Conducts of Contempt of Court' (Info.gov.hk, 2018)

<<https://www.info.gov.hk/gia/general/201802/07/P2018020700514.htm>> accessed 28 July 2021

is inherent in the name of the judiciary, and it strives to achieve justice in every case that comes before it. Isn't it an obligation to provide justice and respect to the nation's Justice Provider? Yes, it is correct.