



# RAMA UNIVERSITY

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## FACULTY OF JURIDICAL SCIENCES

**SUBJECT:** Professional Ethics and  
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**LECTURE:** 35

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# Lecture-35



**Contempt of Court Act, 1971**

## LECTURE 35: Contempt of Court

### Contempt of Court definition

*“The term ‘Contempt of Court’ is a generic term descriptive of conduct in relation to particular proceedings in a court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their disputes.”* This definition is given by **Lord Diplock** when he was giving the judgment in the case of *Attorney-General v. Times Newspapers Ltd.* [*Attorney-General v. Times Newspapers Ltd*, [1973] 3 W.L.R. 298.]

This term Contempt of Court can be easily understood as when we are disrespectful or disobedience towards the court of law which means that we wilfully fail to obey the court order or disrespect the legal authorities. Then the judge has the right to impose sanctions such as fines or can send the contemnor to jail for a certain period of time if he is found guilty of Contempt of Court.

This term can also be understood in terms of the freedom of limits of the judicial proceeding. As we know that all judges in courts can give judicial proceedings which have a certain limit in which it has the freedom to make any judicial proceeding and anything which curtails or stops it in making any judicial proceeding which is of necessity can amount to contempt of court.

Halsbury, Oswald, and Black Odgers have also given the definition of Contempt of Court and in addition to that, they have talked about its misuse and its wrong interpretation and also its broad prospectus.

In India, the concept of Contempt of Court is defined in Section 2(a) of the Contempt of Courts Act, 1971 which has broadly describe it as civil contempt or criminal contempt.

There are two Articles in the Constitution of India which talk about the Contempt of Court and these are Article 129 and Article 142(2) .

#### Article 129

Article 129 says that the Supreme Court shall be the ‘*Court of Record*’ and it has all the powers of such courts including the power to punish for contempt of itself.

Now, we should know about the meaning of ‘*Court of Record*’ to understand why anything commented wrongly against the decision of the courts leads to Contempt of Court.

Here, is the answer to this question. The ‘*Court of Record*’ means a Court having its acts and proceedings registered for everlasting memory or that memory which has no end and as evidence or proof. The truth of these records cannot be questioned and also these records are treated as a higher authority. And anything stated against the truth of these records comprised Contempt of Court.

## Article 142(2)

This article also talks about Contempt of Court. This Article says that when any law is made by the Parliament on the provisions mentioned in clause 1 of this Article, the Supreme Court has all the power to make an order for securing any person's attendance, production of any documents or has the power to give punishment to anyone for its contempt.

This also does not mean that the Supreme Court can do anything against the right of personal liberty if it has the power to punish for Contempt of Court. We know that it is the guardian of all the rights that we get from the Indian Constitution so it has to safeguard these rights and cannot violate these rights itself.

### **Origin of Contempt of Court**

The legal system that we see today is the summit of the long journey which has started from the divine rule that was in proclamation to the natural law and more further to the positive law that we see today. Contempt of Court is a matter which regards that justice should be administered fairly and it also punishes anyone who aims to hurt the dignity or authority of the judicial tribunals. This law has its origin from the medieval times when the royal powers of the monarch were transferred to the court and at this time the monarch was believed to be appointed by God and everyone was accountable to him. This power of accountability clearly depicts the same accountability the Supreme Court possesses nowadays under Article 129 and 142 of the Indian constitution against its contempt. In the English medieval ages the Judiciary was an important tool of the Monarch. At that time these judges and legislatures were representatives of the divine rule monarchy and these judges and legislatures played an important role in legitimizing the functions of these monarchs. The king was the superior head of justice and this power he has given to the judicial system and if anyone or the king himself disrespect or question the courts it became a challenge to the superiority of the king and as well as to his wisdom. So, this can be seen as although the source of the law has transformed in the society the unquestionability quality that a king enjoyed was upheld by the monarchy. There is a case of contempt against J. Almon in the year 1765; a statement was made by the Irish judge Sir Eardley Wilmot in regard to this contempt attacks on the judges. In this case, Almon has published a pamphlet libelling the decision of the bench of kings and the judgment given by the judge had given rise to many questions of several aspects of the judiciary which had not been questioned yet. This matter gives a great push in the establishment of the contempt of court. This judgement also recognised that the unbiasedness is also one of the features of the judiciary in making the decision which makes this institution different from its peer institutions.

### **History of Law of Contempt in India**

Sanyal Committee report deals with the historical aspect of the Law of Contempt in India. This committee has been responsible for starting the amendment process in this law. The law of contempt similar to many other laws has been brought from the English laws and statutes but this law has not been absolutely taken from the English laws it has other origins too. How has the indigenous development of contempt law taken place? It can be understood by the age-old system which our country was having to protect court or assemblies (*sabhas*) in the past. We know about the philosopher Kautilya, in his book Arthashastra has written about the governance at that time. He has written that "Any person who exposes the king or insults his council or make any type of bad attempt on the kings then the tongue of that person should be

cut off.” Adding to this statement, he also said that “When a judge threatens, bully or make silence to any of the disputants in the court then he should be punished.”

Until the year 1952, there were no statutory provisions for the contempt of court in India but after the enactment of Contempt of Court Act, 1952 statutory provisions for contempt of court in India has established. This Act extends to the whole of India except Jammu and Kashmir. This Act gives power to the High Court to punish contempt of the subordinate court. This Act has repealed the existing law from the Contempt of Court Act, 1926 that was prevailing in the state of Rajasthan and the state of Saurashtra. Although this Act was extended to the whole of Bangladesh. It can be surprising knowing that although these Acts have been introduced earlier then also these Acts do not give the definition of the term ‘Contempt’ and also there was still a lot of ambiguity present around the law of contempt. This law has to be dealt with in light of two fundamental rights given by our Indian Constitution and these rights are (i) freedom of speech and expression and (ii) right to personal liberty.

There was a bill introduced in the Lok Sabha to make any changes or to make the existing law relating to contempt more strong. This law was introduced by Shri B B Das Gupta on 1st of April 1960. The government after examining the bill discern the need for reform in the existing Act. So, they made a special committee to look into the matter or inspect the existing Act. This committee was set up in 1961, under the chairmanship of H.N. Sanyal which gives its report on 28th February, 1963. The report of this committee took the form of Contempt of Court Act, 1971. The procedure and application of enactment something that was done earlier by the Contempt of Court Act of 1926 and 1952 was given several changes through the Contempt of Court Act, 1971. This Act segregates the ‘Contempt of Court’ into criminal and civil contempt with their definition respectively. This thing was not mentioned in the earlier existing courts. Now, let us know something about the Contempt of Court Act, 1971.

### **Contempts of Courts Act 1971 notes**

This Act extended to the whole of India and it has also provided that this Act shall not apply to the state of Jammu and Kashmir except in certain conditions in which the provision of the Act is connected to the Contempt of Supreme Court. Another thing is that this Act provides the definition of Contempt of Court which has not been given by the earlier Act of Contempt of Court. This Act under Section 2(a) defines Contempt of Court as ‘*Civil Contempt*’ and ‘*Criminal Contempt*’. There is a case of Noorali Babul Thanewala v. K.M.M. Shetty [Noorali Babul Thanewala v. K.M.M. Shetty, AIR 1990 S.C. 464] in which an undertaking was given to a Court in civil proceedings by a person, on the faith that undertaking was correct the Court sanctions a course of action in regard to that undertaking but the undertaking seems to be incorrect. Hence, this was considered as misconduct and amount to Contempt of Court. In this act there are several provisions given that it does not amount to Contempt of Court. Although, these provisions have to be discussed later in this article some of them you should know at this point in time. These are: (i) innocent publication of a matter or its distribution does not amount to Contempt of Court. (ii) publishing of fair and accurate reports of the Judicial proceedings does not amount to Contempt of Court. (iii) fair criticism on judicial acts does not amount to Contempt of Court. Next, in this Act, the High Court has been given the power to make decisions on the matter which is outside its jurisdiction. Punishment for Contempt of Court has been given in this Act and also what type of misconduct not amount to Contempt of Court has been given, how we can deal with that contempt has also been given. The Judge, Magistrate or any other person who is acting judicially can also be contempt for their actions. Also, this Act gives

certain limitations where this Act does not apply. This Act does not apply to the Courts of *Nyaya Panchayat* and other Courts of the village. This Act repealed the old existing Act of Contempt of Court which came into force in 1952.

### **Essentials of Contempt of Court**

If a person named Akash has to prove that the other person named Sita is guilty of committing an act which is an offence in a court of law. Then he has to show the court that the offence which Sita has done is fulfilling the essential required to commit that act or not. If the essentials of that will be fulfilled then he will be liable for that act. Similarly, every offence has certain exceptions that has to be fulfilled for making the person liable for doing that act. Contempt of Court also has certain essentials and these are as follows:

1. Disobedience to any type of court proceedings, its orders, judgment, decree, etc should be done '**willfully**' in case of Civil Contempt.
2. In Criminal Contempt '**publication**' is the most important thing and this publication can be either spoken or written, or by words, or by signs, or by visible representation.
3. The court should make a '**valid order**' and this order should be in '**knowledge**' of the respondent.
4. The action of contemnor should be deliberate and also it should be clearly disregard of the court's order.

These essentials should be fulfilled while making someone accused of Contempt of Court.

### **Types of Contempt of Court in India**

Depending on the nature of the case in India, Contempt of Court is of two types.

1. Civil Contempt
2. Criminal Contempt

### SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	The term 'Contempt of Court' is a generic term descriptive of conduct in relation to particular proceedings in a court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their disputes.	True	False
2.	In India, the concept of Contempt of Court is defined in Section 2(a) of the Contempt of Courts Act, 1971.	True	False
3.	There are two Articles in the Constitution of India which talk about the Contempt of Court and these are Article 129 and Article 142(2) .	True	False
4.	The ' <i>Court of Record</i> ' means a Court having its acts and proceedings registered for everlasting memory or that memory which has no end and as evidence or proof.	True	False
5.	Sanyal Committee report deals with the historical aspect of the Law of Contempt in India	True	False

**Answers: 1-(b),2-(a), 3-(a),4-(a),5-(a)**