



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

SUBJECT: Professional Ethics and
Professional Accounting System

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LECTURE: 40

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Lecture-40



Contempt of Court Act, 1971

Lecture 40: Amendments in Contempt of Court Act

Amendments in Contempt of Court Act

The Law Commission of India in its 274th report to the Ministry of Law and Justice has suggested that it is not necessary to make any amendment, to the Contempt of Court Act, 1971, after a reference from the Government confined only to Section 2(c) of the Act 1971. In the report titled “**Review Of Contempt Of Court Act 1971 (Limited To Section 2 Of The Act)**”, the commission to reach the conclusion, has taken into account — Articles 129 and 215 of the Constitution, stating that with respect to the power of contempt under the Constitution, the said Articles vest the Superior Courts with power to punish for their contempt, and hence, the Supreme Court and High Courts are empowered to investigate and punish the contemnor even in absence of any legislation outlining their procedural powers. Further, in addition, Article 142(2) of the Constitution also enables Supreme Court to investigate and punish for its contempt. Hence, the Commission stated that the suggestion to delete the provision relating to ‘criminal contempt’ inter alia ‘scandalising of courts’ will have no impact on power of Superior Courts to punish for contempt, as these powers are independent of statutory provisions.

Background —

The said Act has been amended twice, once in the year 1976 and then in 2006 as per the need of the hour. In England and Wales, the offence of ‘scandalising the court’ had almost been disused, before its abolition and therefore, by virtue of doctrine of desuetude and with its long and continued non-use, it stood to be insignificant. However, the Indian scenario, with the number of criminal contempt cases, paint a different picture. Furthermore, amendment in deleting the words ‘scandalising the court’ did not change the situation vis-à-vis such offences, in the United Kingdom, and they continue to be punishable under other existing statutes, i.e., the Public Order Act, 1986, and the Communications Act, 2003 [which is not the case in India where deletion of ‘criminal contempt’ from Act 1971 will leave a perceptible legislative gap].

Analysis —

Entry 77 of Union List of the Seventh Schedule enables Parliament to inter alia legislate on “jurisdiction and powers of the Supreme Court, (including contempt of such Court)”. Circling back to the legislation itself, the Act 1971 was enacted with the objective of regulating the power and procedure for contempt cases, and it does exactly that by placing limits, and prescribing procedures, and also contains adequate safeguards to exclude instances not amounting to criminal contempt, thereby restricting instances of misapplication.

Recommendations —

- The Act 1971 is not the source of ‘power to punish for contempt’ but a procedural statute that guides the enforcement and regulation of such power, since, prior to the commencement of Act 1926 these inherent powers were exercised by the Superior Courts.
- The powers of the Supreme Court and High Courts are independent of the Act 1971, and by making any amendment, the power to punish for contempt under the Constitution cannot be rescinded.
- The suggested amendment to Section 2(c) of the Act 1971, would not be a meaningful exercise and would not be in the larger public interest.
- In the interest of consistency and coherency, the commission has suggested to continue with the existing definition, which has stood the test of judicial scrutiny.
- Any amendment to the Act 1971, will lead to ambiguity because it will give rise to more spontaneous and multiple definitions and interpretations of “contempt”.
- Such a change in the law of contempt could potentially lessen the respect for/fear of courts and their authority and functioning.
- Further, viewed from the angle of the frequent indulgence of unscrupulous litigants and lawyers alike with administration of justice, it would not be in the interest of litigants and the public at large to minimise the effect of the exercise of powers of contempt as and when the need arises.
- It may lead to an undesired increase in the instances of deliberate denial and profanity of the courts.

Therefore, the Commission does not consider it necessary to make any amendment

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	The Law Commission of India in its 274 th report to the Ministry of Law and Justice has suggested that it is not necessary to make any amendment, to the Contempt of Court Act, 1971	True	False
2.	Articles 129 and 215 of the Constitution, stating that with respect to the power of contempt under the Constitution	True	False
3.	Section 13 has been added in the Contempt of Court Act, 1971 after amendment in 2006. The new Act may be called The Contempt of Court (Amendment) Act, 2006	True	False
4.	Entry 77 of Union List of the Seventh Schedule enables Parliament to inter alia legislate on "jurisdiction and powers of the Supreme Court	True	False
5.	Criminal Contempt rather than Civil Contempt committed outside the Court. Section 15(1) of the Contempt of Court Act, 1971 deals with the notice of Criminal Contempt by Court of Record such as the Supreme Court and the High Court.	True	False

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