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FACULTY OF JURIDICAL SCIENCES

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LECTURE: 33

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Lecture-33



History of Contempt of Court in India

LECTURE 33 Know the History of Contempt of Court in India

History of Contempt of Court in India, the roots of contempt law in India can be traced back to the pre-independence period.

This Charter is considered to be an important landmark in the history of legal system in India as it introduced the English laws in the country. Mayor courts were constituted in each of the Presidency Towns and were made the Courts of Record, and authorised to decide all civil cases within the respective town and subordinate areas.

Subsequently, in the year 1774, the Mayor's Court at Calcutta was replaced by the Supreme Court of Judicature at Fort William, Calcutta under the Regulating Act 1773.

The Mayor's Courts at Madras and Bombay were superseded by the Recorder's Courts, which were also later abolished and replaced by the Supreme Courts under the Government of India Act, 1800.

While the Supreme Court at Madras came into existence in the year 1801 by the Charter of 1800, the Supreme Court at Bombay came into existence in 1824 by the Charter of 1823. The Recorder's Courts and Supreme Courts had the same powers in the matters of punishing for contempt as was exercised by the superior courts in England.

The Supreme Courts were in turn succeeded by the High Courts under the Indian High Courts Act of 1861. The three High Courts of Calcutta, Bombay and Madras had the inherent power to punish for contempt.

In 1866, the High Court of Allahabad was established under the Indian High Courts Act, 1861 and was constituted as a court of record with the power to punish for contempt.

In 1867, Peacock C.J. laid down the rule regarding the power to punish for contempt quite broadly In *Re : Abdool and Mahtab*, (supra) in the following words:

“there can be no doubt that every court of record has the power of summarily punishing for contempt.”

In *Legal Remembrancer v. Matilal Ghose & Ors.*, (1914) I.L.R. 41 Cal. 173, the Court observed that the power to punish for contempt was “arbitrary, unlimited and uncontrolled”, and therefore should be “*exercised with the greatest caution: that this power merits this description will be realised when it is understood that there is no limit to the imprisonment that may be inflicted or the fine that may be imposed save the Court's unfettered discretion, and that the subject is protected by no right of general appeal.*”

The Division Bench of the Calcutta High Court considered this jurisdiction of the High Court in 1879 in *Martin v. Lawrence*⁵ and observed:

“*The jurisdiction of the Court, under which this process (is) issued is a jurisdiction that it has inherited from the old Supreme Court, and was conferred upon that Court by the Charters of the Crown, which invested it with all the process and authority of the then Court of King's Bench and of the High Court of Chancery in Great Britain.*”

Prior to the coming into force of the Contempt of Courts Act, 1926 there was a conflict of opinion among the different High Courts as to their power to punish for contempt of subordinate courts. Madras and Bombay High Courts expressed the view that the High Courts have jurisdiction to deal with contempt of the Mofussil Courts.⁶ But the Calcutta High Court expressed the view that the High Courts in India did not possess identical power in matters of contempt of their subordinate courts as possessed by the Court of King's Bench in England.

In *Sukhdev Singh Sodhi v. The Chief Justice S. Teja Singh and Judges of The Pepsu High Court*, the aspect of contempt of court was broadly discussed –

“It is true the same learned Judges sitting in the Privy Council in 1883 traced the origin of the power in the case of the Calcutta, Bombay and Madras High Courts to the common law of England,..... but it is evident from other decisions of the Judicial Committee that the jurisdiction is broader based than that. But however that may be, Sir Barnes Peacock made it clear that the words “any other law” in section 5 of the Criminal Procedure Code do not cover contempt of a kind punishable summarily by the three Chartered High Courts....Apparently, because of this the Privy Council held in 1853 that the Recorder’s Court at Sierre Leone also had jurisdiction to punish for contempt, not because that court had inherited the jurisdiction of the English courts but because it was a court of record.... The High Court of Allahabad was established in 1866 under the High Courts Act of 1861 and was thus constituted a court of record.... The Lahore High Court was established by Letter Patent in 1919 and was duly constituted a court of record.”

The Contempt of Court Act, 1926 (hereinafter referred to as the “Act 1926”) was the first statute in India with relation to law of contempt. Section 2 of this Act recognized the existing jurisdiction in all the High Courts to punish for contempt of themselves and conferred on the High Courts the power to punish for contempt of courts subordinate to it. The Act also specified the upper limit of the punishment that can be imposed for the said contempts.

In 1927, a Five Judge Bench of the Lahore High Court reexamined the aforesaid position in the matter of *Muslim Outlook, Lahore*⁹ and affirmed its earlier decision in the case of *The Crown v. Sayyad Habib* observing that the contempt jurisdiction was inherent in every High Court and not only in the three Chartered High Courts. The Act 1926 was later amended in 1937 to clarify that the limits of punishment provided in the Act related not only to contempt of subordinate courts but of all courts.

It is to be noted that while the Act 1926 was applicable to the whole of British India, the princely states of Hyderabad, Madhya Bharat, Mysore, Rajasthan, Travancore-Cochin, Saurashtra and Pepsu had their own corresponding state enactments on contempt.

In 1948, the Pepsu High Court was established by an Ordinance, section 33 of which provided that it would be a court of record and would have power to punish for contempt.

The Act of 1926 along with the aforementioned state enactments were repealed and replaced by the Contempt of Courts Act, 1952 (hereinafter referred to as the “Act 1952”), which made significant departures from the earlier Act. Firstly, the expression “High Court” was defined to include the Courts of Judicial Commissioner, which were not so included in the purview of the Act 1926; and secondly, the High Courts, which now included the Courts of Judicial Commissioner, were conferred jurisdiction to

inquire into and try any contempt of itself or that of any court subordinate to it. This was irrespective of whether the contempt was alleged to have been committed within or outside the local limits of its jurisdiction, and irrespective of whether the alleged contemnor was within or outside such limits.

Under the aforesaid legislation the Chief Courts were also vested with the power to try and punish for any contempt of itself. The legislation itself prescribed the nature, type, as well as the extent of punishment that could be imposed by the High Courts and the Chief Courts.

On April 1, 1960, a Bill was introduced in the Lok Sabha to consolidate and amend the law relating to contempt of court. Observing the law on the subject to be “uncertain, undefined and unsatisfactory”, and in the light of the constitutional changes in the country, the Government, to scrutinise the law on the subject and to further study the said bill, appointed a special committee in 1961, under the Chairmanship of Shri H.N. Sanyal, the then Additional Solicitor General of India. The Sanyal Committee examined the law relating to contempt of courts in general, and the law relating to the procedure for contempt proceedings including the punishment thereof in particular. The Committee submitted its report in 1963, which inter alia defined and limited the powers of certain courts in punishing for contempt of courts and provided to regulate the procedure in relation thereto. It is to be noted that the Committee in its report made specific mention of criminal contempt, recommending specifically the “procedure (to be followed) in cases of criminal contempt”.

The recommendations of the Committee were generally accepted by the Government after having wide consultation with the State Governments, Union Territory Administrations, and all other stakeholders.

The aforesaid Bill was also examined by the Joint Select Committee of the Houses of Parliament, which also suggested few changes in the said Bill; one of which was in respect of the period of limitation for initiating contempt proceedings.

After the aforesaid deliberations the Contempt of Courts Act, 1971 (70 of 1971) came to be enacted (hereinafter referred to as the “Act 1971”), which repealed and replaced the Act 1952. The said Act 1971 inter alia categorises contempt under two heads i.e. ‘civil contempt’ and ‘criminal contempt’, providing thereunder specific definitions for both (Section 2). It also carved out a few exceptions, prescribing guidelines for reporting and commenting on judicial proceedings that would not attract the provisions of the Act. For example, “fair and accurate report of a judicial proceeding” (Section 4) and “fair comment on the merits of any case which has been heard and finally decided” (Section 5) would not give rise to the proceedings under the Act. The Act also categorically provided that an alleged act would not be punishable thereunder unless it “substantially interferes or tends substantially to interfere with the due course of justice” (Section 13). The Act also provides for the period of limitation for initiating the contempt proceedings (section 20).

It can be observed from a scrutiny that since the enactment of the Act 1926 and subsequently with that of the Acts of 1952 and 1971, the power of the court to impose punishment for contempt of the court ceased to be uncontrolled or unlimited.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	In the year 1774, the Mayor's Court at Calcutta was replaced by the Supreme Court of Judicature at Fort William, Calcutta under the Regulating Act 1773	True	False
2.	The Mayor's Courts at Madras and Bombay were superseded by the Recorder's Courts, which were also later abolished and replaced by the Supreme Courts under the Government of India Act, 1800.	True	False
3.	The Supreme Courts were in turn succeeded by the High Courts under the Indian High Courts Act of 1861.	True	False
4.	In 1866, the High Court of Allahabad was established under the Indian High Courts Act, 1861 and was constituted as a court of record with the power to punish for contempt	True	False
5.	In all Courts including the Supreme Court	True	False

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