



# RAMA UNIVERSITY

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## FACULTY OF JURIDICAL SCIENCES

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**LECTURE:** 37

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# Lecture-37



**Contempt of Court Act, 1971**

## LECTURE 37: Criminal Contempt

### Criminal Contempt

According to Section 2(c) of the Contempt of Court Act, 1971, Criminal Contempt is Defined as (i) the publication of any matter by words, spoken or written, or by gesture, or by signs, or by visible representation or (ii) doing of any act which includes:

1. a) Scandalize or tends to scandalise, or lowers or tends to lower the authority of any court, or
2. b) Biasness, interferes or tends to interfere with the due course of any type of Judicial proceedings, or
3. c) obstructs or tends to obstruct, interfere or tend to interfere with the administration of justice in any manner.

Case on Scandalizing the Court:

Jaswant Singh v. Virender Singh [332(NCE) of 1993]

In this case an advocate caste derogatory and scandalous attack on the judge of the High Court. An application was filed an election petitioner in the High Court, who was an advocate. He wanted to seek to stay for further arguments in an election petition and also the transfer of election petitions. These things cause an attack on the judicial proceeding of the High Court and had the tendency to scandalize the Court. It was held in this case that it was an attempt to intimidate the judge of the High Court and cause an interface in the conduct of a fair trial.

### Punishment for Contempt of Court

Section 12 of the Contempt of Court Act, 1971 deals with the punishment for Contempt of Court. High Court and the Supreme Court have been given the power to punish someone for the Contempt of Court. Section 12(1) of this Act states that a person who alleged with the Contempt of Court can be punished with simple imprisonment and this imprisonment can extend to six months, or with fine which may extend to two thousand rupees or can be of both type punishment. However, an accused may be discharged or the punishment that was awarded to him maybe remitted on the condition that if he makes an apology and this apology should satisfy the court then only he can be exempted from the punishment of Contempt of Court. Explanation of this sentence is that if the accused made an apology in the *bona fide* then this apology shall not be rejected on the ground that it is conditional or qualified.

The court can not impose a sentence for Contempt of Court in excess of what is prescribed under the given section of this Act either in respect of itself or of a court subordinate to it.

Remedies against an order of Punishment

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. This Section tells that contempt of court cannot be punished under certain circumstances or certain cases.

Clause (a) of Section 13 of the Contempt of Court (Amendment) Act, 2006 states that no Court under this Act shall be punished for Contempt of Court unless it is satisfied that the Contempt is of such a nature that it substantially interferes or tend to substantially interfere with the due course of Justice.

Clause (b) of Section 13 of this Act states that the court may give the defence on the justification of truth if it finds that the act done in the public interest and the request for invoking that defence is *bona fide*.

### Contempt Proceedings

Two Sections of the Contempt of Court Act, 1971 deals with the procedure of Contempt proceeding. One talks about the proceeding in the face of the court of records and other talks about the proceedings other than the court of records.

Section 14 of the Contempt of Court deals with the procedure of contempt proceeding in the face of the court of record whereas Section 15 of this Act deals with the procedure of the contempt proceeding outside the court of records.

These courts of record have got the power to punish for its contempt inherently. Therefore, these courts of record can deal with the matter of content by making their own procedure. While exercising the contempt jurisdiction by the courts of record the only case to be observed is that the procedure adopted must be fair and reasonable in which the alleged contemnor should be given full opportunity to defend himself. If the specific charge against the person who is punished for the contempt is distinctly stated and he is given a reasonable opportunity to answer and to defend himself against the charge then only he will be liable for contempt of court and the court proceeding runs against him. Where the person charged with contempt under this section applies whether orally or in writing to have the charge against him, tried by some judge other than the judge or judges in whose presence or hearing the contempt is alleged to have been committed and the court is of the opinion that it is necessary in the interest of justice that the application should be allowed, it shall cause the matter to be transferred before such judge as the Chief Justice may think fit and proper under the circumstances of the case or placed before the Chief Justice with the statement of facts of the case.

### Contempt committed outside the court

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. Following manners can be taken by the Supreme Court and the High Court for cognizance of the Criminal Contempt:

1. On the motion of court of records.
2. On the motion of the Advocate General of the Supreme Court and the High Court.
3. If any person proceeds the motion with the consent of the Advocate General in writing.

4. If the law officer who is related to the High Court for the Union Territory of Delhi as the Central Government notify proceeds the motion. Then it can be considered as contempt committed outside the court.

Section 15(2) of this Act states that in the criminal contempt of the subordinate court, the high court may take certain actions in the manner given in this Act.

### **Contempt by a Company**

In case any person is found guilty of contempt of court for any undertaking given to a court while he is a member of the company. Then the person who at that time was in charge of that company will be responsible for the conduct of the business of that company and shall be deemed to be guilty of the contempt. The punishment may be enforced by the detention in the civil prison of such person with the leave of the court

However, that person can be free from liability if such person proves that the contempt was committed without his knowledge or that he exercised all possible means to prevent its commission.

### **Liability of officer of the company**

If the contempt of court has been committed by a company and it is provided that the contempt has been committed with the consent of, or is attributable to any neglect on the part of, any director, manager, secretary or other officers of the company, then such persons shall also be deemed to be guilty of the contempt and the punishment will be enforced against them by the detention in civil prison of such director, manager, secretary or other officer with the leave of the court.

### **Contempt by the third party to the proceeding**

If a third party has a part to play in the offence then the third party to the offence may be guilty of contempt of court and proceeding can initiate against him. In LED Builders Pty Ltd v Eagles Homes Pty Ltd [[1999] FCA 1213] Lindgren J stated:

“It is not necessary to show that a person who has breached the order of the court can be liable for contempt of court but the only necessary thing to confirm his liability for contempt is to show that the person knew of the order which was breached.”

In another case of M/S. Gatraj Jain & Sons v. Janakiraman [Patent Appeal No.1 of 2009] it has been stated about the third party to the proceeding that if a third party to the contempt petition found to be wilfully disobeying the court order then he cannot prevent the court from restoring the *status quo*.

### **Criminal contempt and criminal defamation proceedings**

A question has been asked by the person that can an action for criminal contempt and criminal defamation initiated simultaneously. This can be understood by knowing the concept of Criminal contempt and criminal defamation. Earlier, in this article, we have talked about Criminal Contempt. But for an overview, we should know what does a criminal contempt mean. According to Section 2(c) of the Contempt of Court Act, 1971, criminal contempt is defined as (i) the publication of any matter by words,

spoken or written, or by gestures, or by signs, or by visible representation or (ii) doing of any act which includes:

1. a) Scandalize or tends to scandalise, or lowers or tends to lower the authority of any court, or
2. b) Biasness, interferes or tends to interfere with the due course of any type of Judicial proceedings, or
3. c) obstructs or tends to obstruct, interfere or tend to interfere with the administration of justice in any manner.

Now, we will know the concept of criminal defamation.

The definition of criminal defamation has been given under Section 499 of the Indian Penal Code, 1860. It states about defamation that “*Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.*”

There are certain exceptions of criminal defamation and these are:

1. If the publication of anything is in truth and for public good then it cannot be treated as defamation.
2. When a person touches any public questions then for that he cannot be liable.
3. If the publication is of the reports of the proceedings of the court.

As the right to reputation is an important facet of the right to life and personal liberty guaranteed under Article 21 of the Indian Constitution, hence, the aim of the criminal defamation is to prevent a person from maligning harming the reputation of others by using absurd or malign words with malafide intentions.

In the case of Dr. Subramanian Swamy vs. Union of India (UOI), Ministry of Law and Ors. the constitutional validity of the criminal defamation was upheld.

### **Limitation**

Section 20 of the Contempt of Court Act, 1971 deals with the limitation for the action of Contempt. It states that no court shall initiate any proceedings of contempt in two conditions:

1. Either the proceedings are on his own motion, or,
2. After the period of one year from the date on which the contempt is alleged to have been committed.

### **Landmark Contempt Judgments**

- Supreme Court Bar Association vs Union Of India & Anr. [AIR 1998 SC 1895 ]

In this case, the Judge held that procedural aspect for Contempt of Court may still be prescribed by the Parliament so that it could be applicable in the Supreme Court and the High Court. This means that Section 12(1) of the Contempt of Court Act, 1971 which prescribed a maximum fine of Rs. 5000 and imprisonment for a term of six months shall be applicable in this case.

- Zahira Habibullah Sheikh & Anr vs State Of Gujarat & Ors[(2004) 4 SCC 158]

It was held in this case that the punishment that is given for contempt in the Contempt of Court Act, 1971 shall only be applicable to the High Court but for Supreme Court, it acts as a guide. The judgment that was given was not accompanied by rationality, this was worrisome because the Supreme Court has been given great powers that the drafters of the Indian Constitution has also not given.

- Sudhakar Prasad vs. Govt. of A.P. and Ors.[(2001) 1 SCC 516]

This case is also similar to the Supreme Court Bar Association Case. In this case also once again the Supreme Court declared that the powers to punish for contempt are inherent in nature and the provision of the Constitution only recognised the said pre-existing situation.

The provision of the Contempt of Court cannot be used to limit the exercise of jurisdiction given in Article 129 and Article 215 of the Constitution.

Famous cases of contempt

- P.N. Duda vs V. P. Shiv Shankar & Others[1988 AIR 1208]

In this case, the Supreme Court observed that the judges cannot use the contempt jurisdiction for upholding their own dignity. Our country is the free marketplace of ideas and no one could be restricted to criticise the judicial system unless this criticism hampers the ‘administration of justice’.

- R. Rajagopal vs State Of T.N[1995 AIR 264]

This case is also known as the Auto Shankar case; in this case, Justice Jeevan Reddy invoked the very famous doctrine of John Sullivan. This doctrine states that public must be open to strict comments and accusations as long as made with bonafide diligence, even if it is untrue.

- In Re: Arundhati Roy [2002 AIR (SCW) 1210]

In this case, the Supreme Court observed that the fair criticism on the conduct of a Judge or the institution of Judiciary and its function may not amount to contempt if it is made in good faith and in the public interest.

- Indirect Tax practitioners’ Association v. R.K. Jain

In this case, the Supreme court observed that the defence of truth can be permitted to the person accused of contempt if the two conditions are satisfied. These are: (i) if it is in the interest of public and (ii) the request for invoking the said defence is bonafide. These are given in Section 13 of the Contempt of Court Act, 1971.

- Justice Karnan’s case

He was the first sitting High Court Judge to be jailed for six months on the accusation of Contempt of Court. In February 2017, contempt of court proceeding was initiated against him after he accused twenty Judges of the Higher Judiciary of Corruption. He wrote a letter to PM Modi against this but he did not provide any evidence against them

### SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	According to Section 2(c) of the Contempt of Court Act, 1971, Criminal Contempt is Defined as (i) the publication of any matter by words, spoken or written, or by gesture, or by signs.	True	False
2.	Section 12 of the Contempt of Court Act, 1971 deals with the punishment for Contempt of Court. High Court and the Supreme Court have been given the power to punish someone for the Contempt of Court.	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.	Section 14 of the Contempt of Court deals with the procedure of contempt proceeding in the face of the court of record whereas Section 15 of this Act deals with the procedure of the contempt proceeding outside the court of records.	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)**