

## **ANNEXURE - I**

### **The Contempt of Courts Act, 1971**

#### **INTRODUCTION**

The origin of the law of Contempt in India can be traced from the English law. In England Superior Courts of record have from early times, exercised the power to commit for contempt persons who scandalized the Court or the Judges. The right of the Indian High Courts to punish for contempt was in the first instance recognized by the Judicial Committee of the Privy Council which observed that the offence of the contempt of court and the powers of the High Courts to punish it are the same in such courts as in the Supreme Court in England. It also observed that the three chartered contempt. Almost all the High Courts in India, apart from the chartered High Courts have exercised the jurisdiction inherent in a court of record from the very nature of the court itself. It has been judicially accepted throughout India that the jurisdiction was a special one inherent in the very nature of the court.

The first Indian statute on the law of contempt i.e., the Contempt of Courts Act was passed in 1926. It was enacted to define and limit the powers of certain courts in punishing contempt of courts. When the Contempt of Courts Act, 1926 (XII of 1926) was in existence in British India, various Indian States also had their corresponding enactment. These States were Hyderabad, Madhya Bharat, Mysore, Pepsu, Rajasthan, Travancore-Cochin and Saurashtra. State enactments of the Indian States and the Contempt of Courts Act, 1926 were replaced by the Contempt of Courts Act, 1952 (32 of 1952).

An attempt was made in April, 1960 to introduce in the Lok Sabha a Bill to consolidate and amend the law relating to Contempt of Courts. On an examination of the Bill, government appears to have felt that the law relating to Contempt of Courts in uncertain, undefined and unsatisfactory and that in the light of the constitutional changes which have taken place in the country, it would be advisable to have the entire law on the subject scrutinized by a Special Committee set up for the purpose. In pursuance to that decision a Committee was set up on 29th July, 1961 and it submitted

its report on 28th February, 1963 to define and limit the powers of certain courts in punishing contempt of courts and to regulate their procedure in relation thereto.

Joint Select Committee of Parliament on Contempt of Courts went in detail and a new Bill, The Contempt of Courts Bill, 1968 was prepared by the Joint Select Committee.

## **STATEMENT OF OBJECTS AND REASONS**

It is generally felt that the existing law relating to contempt of Courts is somewhat uncertain undefined and unsatisfactory. The jurisdiction to punish for contempt touches upon two important fundamental rights of the citizens namely, the right to personal liberty and the right to freedom of expression. It was, therefore, considered advisable to have the entire law on the subject scrutinized by a special committee. In pursuance of this, a Committee was set up in 1961 under the Chairmanship of the late Shri H.N. Sanayal the then Additional Solicitor General. The Committee made a comprehensive examination of the law and problems relating to contempt of Court in the light of the position obtaining in our own country and various foreign countries. The recommendations which the Committee made took note of the importance given to freedom of speech in the Constitution and of the need for safeguarding the status and dignity of Courts and interests of administration of justice.

The recommendations of the Committee have been generally accepted by Government after considering the view expressed on those recommendations by the State Governments, Union Territory Administrations, the Supreme Court, the High Courts and the Judicial Commissioners. The Bill seeks to give effect to the accepted recommendations of the Sanyal Committee.

## **ACT 70 OF 1971**

The Contempt of Courts Act, 1971 (70 of 1971) was passed by the Parliament in December 1971 and it came into force w.e.f. 24th December, 1971.

## **LIST OF AMENDING ACT**

The Contempt of Courts (Amendment) Act, 1976 (45 of 1976)

### **Preamble**

(24th December, 1971)

An Act to define and limit the powers of certain courts in punishing contempt of courts and to regulate their procedure in relation thereto.

## **1. Short title and extent -**

### **ACT NO. 70 OF 1971**

AN ACT TO DEFINE AND LIMIT THE POWERS OF CERTAIN COURTS IN PUNISHING CONTEMPTS OF [24th December, 1971]

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows :-

(1) This Act may be called the Contempt of Courts Act, 1971.

(2) It extends to the whole of India

Provided that it shall not apply to the State of Jammu and Kashmir except to the extent to which the provisions of this Act relate to contempt of the Supreme Court.

## **COMMENTS**

(i) The law of contempt of Courts is for keeping the administration of justice pure and undefiled. While dignity of the court is to be maintained at all costs, the contempt jurisdiction, which is of a special nature, should be sparingly used; *Shakuntala Sahadevram Tewari v. Hemchand M. Singhania*, (1990) 3 Bom CR 82 (Bom).

(ii) Proceedings of contempt are summary in nature and also are sui generis; *Golcha Advertising Agency v. The State of Maharashtra*, (1990) 2 Bom CR 262 (Bom).

## **2. Definitions -**

In this Act, unless the context otherwise requires -

(a) "Contempt of court" means civil contempt or criminal contempt"

(b) "Civil contempt" means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court.

(c) “Criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-

(d) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court, or

(ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or

(iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

(a) “High Court” means the High Court for a State or a Union territory and includes the court of the Judicial Commissioner in any Union territory.

## COMMENTS

(i) There are three different sorts of contempt viz., scandalizing the court, abusing parties who are concerned in causes here and prejudicing mankind against persons before the case is bear; In re: St. James Evening Post, (1974) 2 ATK 469

(ii) Courts seek to punish acts or conduct calculated to interference with the administration of justice; In re: P.C. Sen, AIR 1970 SC 1821.

(iii) Comment on pending case or abuse of a party may amount to contempt when the case is tribal by a judge: Subhash Chand v.S.M. Aggarwal, 1984 Crl LJ 481 (De.).

(iv) Judges by reason of their office are precluded from entering into any controversy in columns of the public press; The State v. Vikar Ahmed, AIR 1954 Hyd 175.

(v) There is no special principle attached to the Press to comment, criticize or investigate the facts of any case of the prejudice of the trial of the case; Sukhdev Singh v.Teja Singh, AIR 1954 SC 186.

(vi) No editor has a right to assume the role of investigator to try to prejudice the court against any person; The District Magistrate v. M.A. Hamid Ali gardish, AIR 1940 Oudh 137.

(vii) It is time to stem institutionalized procrastination, *K.V.Venkatesh v. Taluka Executive Magistrate*, AIR 1990 Kant 86.

(viii) “The law relating to contempt of court is well settled. Any act done or writing published which is calculated to bring a court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the court, is a contempt of court; *Q.R. v. Gray*, 1900 (2) QBD 36 (40)

(ix) Contempt by speech or writing may be by scandalizing the court itself, or by abusing parties to actions, or by prejudicing mankind in favor of or against a party before the cause is heard. It is incumbent upon courts of justice to preserve their proceedings from being misrepresented, for prejudicing the mind of the people against persons concerned as parties in causes before the cause is finally heard has pernicious consequences. Speech or writings misrepresenting the proceedings of the court of prejudicing the public for or against a party or involving reflections on parties to a proceeding amount to contempt. To make a speech tending to influence the result of a pending trial, whether civil or criminal is a grave contempt. Comments on pending proceedings, if emanating from the parties or their lawyers, are generally a more serious contempt than those coming from independent sources; *State of Haryana v. Ch. Bhajanlal*, AIR 1993 SC 1348.

(x) In contempt proceedings there are essentially two parties – The court and contemporary; *Shakuntala Sahadevram Tiwari v. Hemachand M. Singhanian*, (1990) 3 Bom CR 82 (Bom).

(xi) The law of contempt must be strictly interpreted and complied with before any person can be committed for contempt; *Roshan S. Boyce v. B.R. Cotton Mills Ltd.*, AIR 1990 SC 1881.

(xii) Any willful disobedience to the orders of the court to do or abstain from doing any act or breach of any undertaking given to the court is prima-facie Civil Contempt; *Vidya Sagar v. IIIrd Additional District Judge, Dehradun*, 1991 All CJ 586 (588); See also *State of Assam v. V.K. Vishnoi*, 1993 (23) ATC 581 (587-588); *State of Orissa v. Bijaya Mohanty*, (1993) 75 CLT 820 (830).

(xiii) Non caring of the warrant issued by the Criminal Court amounts to Criminal Contempt; *E.Venkaiah v. Government of Andhra Pradesh*, 1992 (3) ALT 193 (199).

### **3. Innocent publication and distribution of matter not contempt -**

(1) A person shall not be guilty of contempt of court on the ground that he has published (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at that time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

(2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub-section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court.

(3) A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned in sub-section (1), if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid:

Provided that this sub-section shall not apply in respect of the distribution of—

(i) any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in section 3 of the Press and Registration of Books Act, 1867 (25 of 1867);

(ii) any publication which is a newspaper published otherwise than in conformity with the rules contained in section 5 of the said Act.

**Explanation.**— For the purposes of this section, a judicial proceeding—

(a) is said to be pending—

(A) in the case of a civil proceeding, when it is instituted by the filing of a plaint or otherwise,

(B) in the case of a criminal proceeding under the Code of Criminal Procedure, 1898 (5 of 1898)<sup>1</sup>, or any other law—

(i) where it relates to the commission of an offence, when the charge-sheet or challan is filed, or when the court issues summons or warrant, as the case may be, against the accused, and

(ii) in any other case, when the court takes cognizance of the matter to which the proceeding relates, and in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired;

(b) which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending.

## Comments

(i) The liberty of free expression is not to be compounded with a licence to make unfounded allegations of corruption against judiciary; M.R. Prashar v. Dr. Farooq Abdullah, (1984) 1 Cr LJ 433.

(ii) The abuse of the liberty of free speech and expression carries the case nearer the law of contempt; M.R. Prashar v. Dr. Farooq Abdullah, (1984) 1 Cr LJ 433.

(iii) A defence of truth or justification is not available to the publisher of a newspaper in proceedings for contempt of court; Md. Vamin v. O.P. Bensal, 1982 Cr LJ 322 (Raj).

## **4. Fair and accurate report of judicial proceeding not contempt -**

Subject to the provisions contained in section 7, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any state thereof.

## **COMMENTS**

(i) The words “judicial proceeding” means day-to-day proceedings of the court. The media reports must represent a fair and accurate report of a judicial proceeding and not be a one-sided picture; *Subhash Chand v. S.M. Aggarwal*, 1984 Cr LJ 481.

(ii) Fair and accurate reporting of the judgment is essential for the healthy administration of justice; *Progressive Port and Dock Workers Union (in re:)*, 1984 Cr LJ 1061 (Ker).

### **5. Fair criticism of judicial act not contempt -**

A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided.

## **COMMENTS**

Judgments are open to criticism that must be done without casting aspersions on the judges and the courts and without adverse comments amounting to scandalizing the courts; *Advocate General v. Abraham George*, 1976 Cr LJ 158 (161).

### **6. Complaint against presiding officers of subordinate courts when not contempt-**

A person shall not be guilty of contempt of court in respect of any statement made by him in good faith concerning the presiding officer or any subordinate court to -

(a) Any other subordinate court, or

(b) The High court to which it is subordinate.

Explanation – In this section, ”subordinate court” means any court subordinate to a High court.

## **COMMENTS**

Immunity is provided to a citizen making a complaint to the High Court against a Presiding Officer of a subordinate court so long as the complaint is made in good faith; *Court on its own motion (in re:)*, 1973 Cr LJ 1106 (P&H).



## **7. Publication of information relating to proceeding in chambers or in camera not contempt except in certain cases-**

(1) Notwithstanding anything contained in this Act, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceedings before any court sitting in chambers or in camera except in the following cases, that is to say-

(a) Where the publication is contrary to the provisions of any enactment for the time being in force.

(b) Where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published.

(c) Where the court sits in chambers or in camera for reason connected with public order or the security of the State, the publication of information relating to those proceedings,

(d) Where the information relates to secret process, discovery or invention which is an issue in the proceedings.

(2) Without prejudice to the provisions contained in sub section (1) a person shall not be guilty of contempt of court for publishing the text or a fair and accurate summary of the whole, or any part, of an order made by a court sitting in chambers or in camera, unless the court has expressly prohibited the publication thereof on grounds of public policy, or for reasons connected with public order or the security of the State, or on the ground that it contains information relating to secret process, discovery or invention, or in exercise of any power vested on it.

## **8. Other defenses not affected -**

Nothing contained in this Act shall be construed as implying that any other defense which would have been a valid defense in any proceedings for contempt of court has ceased to be available merely by reason of the provisions of this Act.

### **9. Act not to imply enlargement of scope of contempt-**

Nothing contained in this Act shall be construed as implying that any disobedience, breach, publication or other act is punishable as contempt of court which not be so punishable apart from this Act.

### **10. Power of High Court to punish contempt's of subordinate courts -**

Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt's of courts subordinate to it and it has and exercise in respect of contempt's of itself.

Provided that no High Court shall take cognizance of contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).

### **COMMENTS**

The phrase "courts subordinate to it" used in section 10 is wide enough to include all courts which are judicially subordinate to the High Court even though administrative control over them under Article 235 of the Constitution does not vest in the High Court; S.K. Sarkar, Member, Board of Revenue, U.P. Lucknow v. Vinay Chandra Mishra, 1981 Cr LJ 283 (286).

### **11. Power of High Court to try offences committed or offenders found outside jurisdiction**

A High Court shall have jurisdiction to inquire into or try contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits.

### **COMMENTS**

This section expands the ambit of the authority beyond what was till then considered to be possible but it does not confer a new jurisdiction. It merely widens the scope of our existing jurisdiction of a very special kind; State of Uttar Pradesh v. Radhey Shyam, 1983 Cr LJ 1153 (1162).

## **12. Punishment for contempt of court -**

(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation – An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub section for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person.

Provided that nothing contained in this sub section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub section (4) where the contempt of court referred to therein has been committed by a company and it is provided that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the

company, such director, manager , secretary or other officer shall also be deemed to be guilty of the be contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation – For the purpose of sub sections (4) and (5)-

(a) “Company” means anybody corporate and includes a firm or other association of individuals, and

(b) “Director” in relation to a firm, means a partner in the firm.

## **COMMENTS**

(i) Court dealing with application for contempt of court cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction with an application for initiation of contempt proceedings. The same would be impermissible and indefensible; Prithavi Nath Ram v. State of Jharkhand, AIR 2004 SC 4277A.

(ii) The various different modes of execution of orders and decrees, as recognised by law, cannot be resorted to by the Court in a contempt proceeding; Bonbehari Roy v. Kolkata Metropolitan Development Authority, AIR 2004 Cal 254B.

(iii) The common English phrase “he who asserts must prove” has its due application in the matter of proof of the allegations said to constitute the act of contempt. As regards the standard of proof, be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi judicial, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt; Mrityunjoy Das v. Sayed Hasibur Rahaman, AIR 2001 SC 1293.

(iv) The power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of “professional misconduct” in a summary manner; Supreme Court Bar Association v. Union of India, AIR 1998 SC 1895.

(v) Breach of an injunction, or breach of an undertaking given to a court by a person in a civil proceeding amounts to contempt; Noorali Babul Thanewala v. K.M.M. Shetty, AIR 1990 SC 564.

(vi) Committing the contemnor to prison is always discretionary with the court; Shakuntala Sahadevram Tiwari v. Hemchand M. Singhanian, (1990) 3 Bom CR 82 (Bom).

(vii) The court can, even when accepts the apology, commit an offender to prison or otherwise punish him; Rupert J. Bamabas v. N. Bharani, 1990 LW (Cr1) 27 (Mad).

### **13. Contempt's not punishable in certain cases-**

<sup>1</sup>[13. Contempt's not punishable in certain cases - Notwithstanding anything contained in any law for the time being in force,-

(a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;

(b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defense if it is satisfied that it is in public interest and the request for invoking the said defense is bona fide.]

### **COMMENTS**

(i) Section 13 postulates no punishment for contemptuous conduct in certain cases and the language used therein seems to be with utmost care and caution when it records that unless the court is satisfied that the contempt is of such a nature that the act complained of substantially interferes with the due course of justice, question of any punishment would not arise. It is not enough that there should be some technical contempt of court but it must be shown that the act of contempt would otherwise substantially interfere with the due course of justice which has been equated with "due administration of justice"; Murray & Co. v. Ashok Kumar Newalia, AIR 2000 SC 833.

(ii) Technical contempt's are to be ignored; Baradakanta Mishra v. The Registrar, Orissa High Court, AIR 1974 SC 710.

(iii) A party (or person) can be committed for contempt only owing to any willful or deliberate or reckless disobedience of the order of the Court; *Jiwani Kumari v. Satyabrata Chakraborty*, AIR 1991 SC 326.

(iv) Exemplary costs may be awarded instead of imposing a fine; *Naamunnissa Shaukat Ali v. Municipal Corporation of Greater Bombay*, (1990) Mah LR 329 (Bom).

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**1. Subs. by Act 6 of 2006, sec. 2, for section 13 (w.e.f. 17-3-2006).  
Section 13, before substitution, stood as under:**

“13. Contempt’s not punishable in certain cases.—Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice:”.

**14. Procedure where contempt is in the face of the Supreme Court or a High Court-**

(1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the court may cause such person to be detained in custody, and, at any time before the rising of the court, on the same day, or as early as possible thereafter, shall

- (a) Cause him to be informed in writing of the contempt with which he is charged.
- (b) Afford him an opportunity to make his defense to the charge,
- (c) After taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment , to determine the matter of the charge, and
- (d) Make such order for the punishment or discharge of such person as may be just.

(2) Notwithstanding anything contained in sub section (1) where a person Charged with contempt under the sub 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 offence is alleged to have been committed, and the court is of opinion that it is practicable to do so and that in that interest of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub section (1) which is held, in pursuance of a direction given under sub section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub section (2) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify.

Provided that the shall be released on bail, of a bond for such sum of money As the court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue t so attend until otherwise directed by the court.

Provided further that the court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid.

## **COMMENTS**

If the court did not take action under section 14 then the procedure of section 15 cannot be adopted later; *Manisha Mukherjee v. Ashoke Chatterjee*, 1985 Cr LJ 1224.

## **15. Cognizance of criminal contempt in other cases-**

(1) In the case of a criminal contempt, other than contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by—

(a) the Advocate-General, or

(b) any other person, with the consent in writing to the Advocate-General,<sup>1</sup>[or]

<sup>1</sup>[(c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.]

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

**Explanation.**—In this section, the expression “Advocate-General” means—

(a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;

(b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;

(c) in relation to the Court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

## COMMENTS

(i) The whole object of prescribing procedural mode of taking cognizance is to safeguard the valuable time of the Court from being wasted by frivolous contempt petitions; *Bal Thackrey v. Haris Pimpalkhute*, (2005) 1 SCC 254E.

(ii) Where an advocate who had apparently no case on the Board of Bench, shouted slogans in the open court and thereafter hurled his shoe towards the court thereby interrupting the court proceedings, his action, both by his words and deeds, in the presence of court amounts to gross criminal contempt of court; *In re: Nand Lal Balwani*, AIR 1999 SC 1300.



(iii) Procedure of making a reference cannot apply in a case when the Presiding Officer of a subordinate court himself is guilty of contempt of court; *Berely v. Xavier*, 1988 Cr LJ 90.

(iv) It is always open to the High Court to take action suo motu in respect of a subordinate court; *State of Orissa v. R.N. Patra*, 1976 Cr LJ 440 (Ori). See also *A.R. Rao v. C.P. Rao*, 1981 Cr lj 1322.

(v) Nobody has a right to compel the subordinate court to make a reference to the High Court; *Jomon v. State of Kerala*, (1987) IJ Reports 273 (Ker).

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**1. Ins. by Act 45 of 1976, sec. 2 (w.e.f. 30-3-1976).**

**16. Contempt by judge, magistrate or other person acting judicially -**

(1) Subject to the provisions of any law for the time being in force, a judge, magistrate or other persons act in judicially shall also be liable for contempt of his own court or of any other court in the same manner as any other individual is liable and the provisions of this Act, so far as may be, apply accordingly.

(2) Notwithstanding in this section shall apply to any observations or remarks made by a judge, magistrate or other person act in judicially, regarding a subordinate court in an appeal or revision pending before such judge, magistrate or other person against the order or judgment of the subordinate court.

**COMMENTS**

(i) Only a Judge of a subordinate court can be said to have committed contempt of his own court i.e. the court in which such judge is presiding; *Harish Chandra v.S. Ali Ahmed*, 1987 Cr LJ 320 (Pat).

(ii) A judge can foul judicial administration by misdemeanors while engaged in the exercise of the functions of a Judge; *Baradakanta v. The Registrar, Orissa High Court*, AIR 1974 SC 710.

(iii) The Magistrates should be conscious of their heavy responsibilities and should not act in a manner prejudicial to the litigants; B.N. Choudhary v.S.M. Singh, 1967 Cr LJ 1141 (Pat).

### **17. Procedure after cognizance-**

(1) Notice of every proceeding under Section 15 shall be served personally on the person charged, unless the court for reasons to be recorded directs otherwise.

(2) The notice shall be accompanied-

(a) In the case of proceedings commenced on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded and,

(b) In case of proceedings commenced on a reference by a subordinate court, by a copy of the reference.

(3) The court may, if it is satisfied that a person charged under Section 15 is likely to abscond or keep out of the way to avoid service of the notice, order the attachment of his property of such value or amount as it may deem reasonable.

(4) Every attachment under sub section (3) shall be effected in the manner provided in the code of Civil procedure., 1908 (5 of 1908)<sup>1</sup>, for the attachment of property in execution of a decree for payment of money, and if , after such attachment, the person charged appears and shows to the satisfaction of the court that he did not abscond or keep out of the way to avoid service of the notice, the court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit.

(5) Any person charged with contempt under Section 15 may file an affidavit in support of this defense, and the court may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary, and pass such order as the justice of the case requires.

### **COMMENTS**

(i) The period of one year has to be reckoned from the date on which a notice under this section has been issued; K.K.R. Nair v. Mohan Das, 1990 Cr LJ 1641 (AP).

(ii) An order initiating proceeding for contempt by a notice issued under section 17 is not appealable under section 19 of the Act; *The Union of India v. Mario Coural Sa*, AIR 1982 SC 691.

(iii) The position of a contemnor is that of an accused person; M.R.

*Parashar v. Dr. Farooq Abdullah*, 1984 Cr LJ 337 (SC).

(iv) Personal appearance, unless dispensed with, of a contemnor is mandatory; B.N. Jaisimha v. N.T. Prabhakar, (1985) 29 MLJC Cri 640.

### **1. Now see Code of Criminal Procedure, 1973 (2 of 1974).**

### **18. Hearing of cases of criminal contempt to be by Benches -**

(1) Every case of criminal contempt under section 15 shall be heard and determined by a Bench of not less than two Judges.

(2) Sub section (1) shall not apply to the court of a judicial commissioner.

### **COMMENTS**

(i) The jurisdiction rests exclusively with a Bench of not less than two Judges of the High Court; *B.R. Karandikar v.M.Y.Joshy*, (1983) 2 Bom Cr 558 (Bom).

(ii) However, it was observed that a single Judge can also deal with criminal contempt's committed in facie curium; *In re: Court on its own motion*, AIR 1980 P & H 72.

### **19. Appeals -**

(1) An appeals shall lie as of right from any order to decision of High Court in the exercise of its jurisdiction to punish for contempt-

(a) Where the order or decision is that of a single judge, to a Bench of not less than two Judges of the Court.

(b) Where the order or decision is that of a Bench, to the Supreme Court.

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal. The appellate court may order that-

(a) The execution of the punishment or order appealed against be suspended

(b) If the appellant is in confinement, he be released on bail, and

(c) The appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfied the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub section (2).

(4) An appeal under sub section (1) shall be filed-

(a) In the case of an appeal to a Bench of the High Court, within thirty days.

(b) In the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.

## **COMMENTS**

(a) When the High Court acquits the contemnor, no appeal lies; Subhash Chandra v.B.R. Kakkar, (1992) 2 Punj Lr 46 (P & H).

(ii) If the order of committal for contempt of court is made -

(b) By a single Judge of the High Court, an appeal lies to a Division Bench thereof; or

(c) By a Division Bench of the High Court, an appeal lies to the Supreme Court, As of a statutory right; Mohammad Idris v.R.J. Babuji, (1984) 2 Crimes 880 (SC).

(iii) It is not each and every order passed during the contempt proceedings that is appealable; S.P. Wahi v.Surendra Singh, 1983 Cr LJ 1426.

(iv) An Appeal does not automatically operate as a stay of the order appealed against; Hans Raj v.State of Himachal Pradesh, 1985 Cr LJ 1030.

## **20. Limitation for actions for contempt -**

No court shall initiate any proceedings if contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

### **COMMENTS**

(i) In order to appreciate the exact connotation of the expression “initiate any proceedings of contempt” it is necessary to notice several situations or stages which may arise before the court dealing with contempt proceedings. These are—

(i) (a) a private party may file or present an application or petition for initiating any proceedings for civil contempt;

(b) the court may receive a motion or reference from the Advocate-General or with his consent in writing from any other person or a specified Law Officer or a court subordinate to High Court:

(ii) (a) the court may in routine issue notice to the person sought to be proceeded against, or

(b) the court may issue notice to the respondent calling upon him to show cause why the proceedings for contempt be not initiated;

(iii) the court may issue notice to the person sought to be proceeded against calling upon him to show cause why he be not punished for contempt.

In the cases contemplated by (i) or (ii) it cannot be said that any proceedings for contempt have been initiated. It is only when the court has found an opinion that a prima facie case for initiating proceedings for contempt is made out and that the respondents or the alleged contemnors should be called upon to show cause why they should not be punished then the court can be said to have initiated proceedings for contempt; *Om Prakash Jaiswal v. D.K. Mittal*, AIR 2000 SC 1136.

(ii) Initiation of any proceedings for contempt is barred after the expiry of a period of one year from the date on which the contempt is alleged to have been committed; *V.M. Kanade v. Madhao Gadkari*, (1990) 1 Mah LR 544 (Bom).