

CHAPTER-II

BAR BENCH RELATIONS

CONTEMPT OF COURT

Object of the Act: The main object of the contempt of court Act is to protect the dignity and decorum of the court and to uphold the majesty of law. The object is not to protect the judges from criticism. By providing punishment for contempt of the court the ability to deliver fearless and impartial justice is strengthened.

Definition: The definition given in the Act for the term contempt of court is not exhaustive. It is difficult to define it by words, because the scope of contempt of court is very wide. Contempt means

- (i) Any disrespect to the authority of law.
- (ii) Disobedience of the order of the court.
- (iii) Disturbance to the proceedings of the court.

Types: Following are the types of contempt (i) Civil contempt and (ii) Criminal contempt.

Civil contempt

S.2(b) defines the term 'civil contempt'. It means (i) Willful disobedience to any judgement, decree, direction, order, writ or other process of a court; or (ii) Willful breach of an undertaking given to a court.

For taking action for civil contempt on the ground of willful disobedience of court order, it should be established that the court which has passed the order has jurisdiction to pass such order. Disobedience of an order passed without jurisdiction is not a Contempt. Contempt must prove that the court has no jurisdiction.

A willful breach of an unconditional undertaking given orally or in writing either in person or through his Advocate will be treated as civil contempt. When undertakings are given orally, the court shall record it in the proceedings.

Breach of a compromise entered in the court cannot be treated as civil contempt. The remedy in such cases is only a civil suit for specific performance of the promise.

Punishment: S.12 prescribes the punishment for contempt. Court may award any one of the following punishments.

- (i) Simple imprisonment for a term which may extend to 6 months.

(ii) Fine which may extend to Rs.2000/-.

(iii)Both the punishment ie., Imprisonment and fine together.

Criminal contempt

S.2C defines the term 'criminal contempt'. It means

- (i) Publication of any matter (by words, spoken or written, or by signs or by visible representation or otherwise.)
- (ii) Doing of any other act which
 - (a) Scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or
 - (b) Prejudices or interferes or tends to interfere with the due course of judicial proceeding; or
 - (c) Interferes or tends to interfere with, or obstructs or tends to obstruct the Administration of justice.

Publication means publishing something orally or in writing through news paper, pamphlets, radio, television or cinema. conversation between two persons cannot be treated as publication.

To decide criminal contempt, the absence of criminal intention on the part of the person who has published the matter containing criminal contempt or done the act of contempt will not be taken into account.

In *E.M.S.Nambothriabad v.T.N.Mambiar* (AIR 1970 SC 2015) the then Chief Minister of Kerala, Mr.Nambothriabad in a press meet expressed the following about judiciary. judiciary is responsible for the suppression of people. Judges are favouring some class of people and working against the other classes. Judiciary is acting against the interest of working class and the agriculturist. judiciary is helping the oppressor group. The supreme court held that the act of Mr. Nambothriabad amounts to criminal contempt.

Making complaint against a Judge about his misconduct with sufficient evidence to the higher authorities is not a contempt. But, the same complaint is published in any manner then it amounts to contempt.

Preventing the court Amin from executing the court order, Threatening an Advocate not to appear in a particular case, Threatening the witness, Preventing the witnesses from attending the courts, Preventing the Commissioner from performing his duties are treated as criminal contempt.(see D.C. Saxina v. Chief Justice of India at P 67).

Punishment: Punishment for the criminal contempt is same like civil contempt.(see p 36)

Punishment for contempt

S.12 Prescribes the punishment for contempt of court. punishment is same for the civil as well as the criminal contempt. If the charge of contempt of court is proved, the Court shall award any one of the following punishment.

- 1.Simple imprisonment for a term which may extend to 6 months.
- 2.Fine which may extend to Rs.2000/-.
- 3.Both the punishments ie., imprisonment and fine together.

According to S.12(2),For contempt of court any one of the above mentioned punishment alone can be given and not any other punishment alone can be given and not any other punishment. But, in *Delhi Judicial Services Association v. State of Gujarat* (AIR 1991 SC 2176)the Supreme Court held punishment not mentioned in S.12 can also be given for contempt of court.

In *Re Vinay Chandra Mishra* (AIR 1995 SC2348)the supreme court held that for contempt of court committed by an Advocate, he shall be suspended from practice for a fixed period or he shall be permanently restrained from practice.

The Supreme Court Bar Association has filed a review petition against this order. In which the supreme court held that for contempt of court the court cannot cancel the Advocates right to practice. But, he shall be suspended from practice for a fixed period.

For the civil contempt, normally fine alone will be imposed. If the court thinks that fine alone is not a sufficient punishment then he shall be put in the civil prison instead of ordinary imprisonment.

If the contempt of court is committed by a company in collusion of the Directors, Secretary and other Managerial staff then shall be detained in the civil prison.

If the contempt is committed by a firm then the punishment shall be enforced against the partners of the firm.

Defences in Criminal Contempt Or Criminal Contempt not Punishable

S.3 to 7 deals with the defences available in Criminal Contempt. They are as follows:

1. Innocent Publication(S.3): A person shall not be guilty of contempt of court if he had made any innocent publication of any matter pending before a court without knowing that the matter is pending in a court. The person charged with contempt must prove that publication is made without knowing that the matter is pending in the court.

2. Publication Relating to a Decided Case (S.3(2)): Publication about the decided case is not a contempt since the case is already decided by the court, the publication is not going to interfere with the disposal of the case. That is why it is not treated as contempt.

3. Distribution of publication without knowing that it contains contempt of court Matter(S.3(3)): If a person distributes a publication without knowing that it contains contempt of court matter then it cannot be treated as contempt. If the publication does not contain the name and address of the Author, publisher and printer then this defence cannot be used by the person distributing such publications.

4. Fair and Accurate Reporting of Judicial Proceedings(S.4): Fair and accurate reporting of judicial proceedings is not a contempt. This is because we are following the principle of openness in the matter of administration of justice.

The following reporting of judicial proceedings though it is fair and accurate it will be treated as contempt of court.

1. Reporting of the proceedings against any law which is in force.
2. Reporting of the proceedings when the court has prohibited the reporting in the interest of the general public.
3. Reporting of the proceedings conducted in the judge's chamber in the interest of defence of public order.
4. Reporting of information relating to secret process, discovery or invention which is an issue in the case.

5. Fair Criticism of Judicial Act(S.5): A proper and fair comment on a decision is not a contempt of court. Criticism is permitted to the extent where it does not interfere with the administration of justice. So, it is open to any one to express fair, reasonable and legitimate criticism of a judicial decision.

6. Bonafide Complaint against the Presiding Officers of a subordinate court(S.6): A bonafide complaint made in good faith against the presiding officer of a subordinate court to the higher authorities, who have control over such subordinate court, is not a contempt.

7. **No Substantial Interference with the Administration of Justice:** It means an act which is technically a contempt but such act does not substantially interfere with the administration of justice. For such acts no punishment is awarded.

**Defences in the Civil Contempt
or
Civil Contempt not Punishable**

Following are some of the important defences available to a person charged with civil contempt.

1. **Disobedience of the Order is Not Willful:** If the disobedience of the order is accidental or which is not willful then it's a good defence in a civil contempt proceedings.
2. **The Order Passed Without Jurisdiction:** If the order passed by the court is without jurisdiction then the disobedience or violation of such order cannot be treated as contempt of court.

An order passed without jurisdiction is void, hence it won't bind any person. The person charged with contempt must prove that the court has no jurisdiction to pass such order.

3. **Order Disobeyed is Vague or Ambiguous:** An order is treated as vague if it is not clear, specific and complete. For violation of such order contempt proceedings cannot be taken.
4. **Order Involves More than One Reasonable Interpretation:** If the order of the court involves more than reasonable interpretation, and one interpretation is adopted by the party and acted in accordance with such interpretation then he cannot be held liable for contempt of court for not following the order interpretation.
5. **Compliance with the Order is Impossible:** Impossibility means that the implementation of the order is practically not possible. Impossible is different from mere difficulty. Mere difficulty is not a defence. The person charged with contempt must prove the impossibility of compliance with the order.

In *Amar Singh v. K.P. Geetha Krishnan* (1993, 1 SCR 465) the court has passed an order to give some benefits to the retired employees. This order was not implemented. In the contempt proceeding it was argued that the implementation of the order involves huge expenditure hence compliance with the order is impossible. The court has not accepted this defence.

6.No Knowledge of the Order: A person cannot be held liable for civil contempt, if he has no knowledge about the order. If he has knowledge about the order, through it is not officially communicated to him, then he cannot put this defence for violation of the order.

Contempt against Subordinate Court

The Contempt of court Act, 1971 confers power only to the Supreme Court and High Courts to try the contempt of court and award suitable punishment.

Contempt of court against the subordinate courts shall be tried by the High court. The concerned subordinate court or the Advocate General of the state shall file the petition before the High court. In the Union Territories, the officer authorized in this behalf shall file the petition.

A contempt which comes within the definition of S.228 of I.P.C. shall be tried and punished by the subordinate courts.

S.228: When judicial proceedings are going on, a person causing disturbance to the proceedings and thereby shows disrespect to the court shall be punished with simple imprisonment for a term which may extend to 6 months or with a fine which may extend to Rs.1000/-or with both.

In the trial of such cases the court shall follow the procedure laid down in S.345 & 346 of Criminal procedure Code. This section deals with summary procedure. So the court shall follow summary procedure and no detailed enquiry is needed.

Contempt Procedure in the Supreme Court or the High Court

The Contempt of the court Act confers the following two types of powers to the supreme court and the High courts with regard to contempt of court.

- 1.Power to punish a person who has committed contempt of court inside the court(S.14).
- 2.Power to punish a person who has committed contempt of court outside the court(S.15).

1. Contempt of Court Inside the Court: When judicial proceedings are going on, if it appears to the court that a person is guilty of contempt of court in their presence then the court shall take the following actions.

- (i) Pass an order to arrest the person.

- (ii) Give a notice in writing immediately regarding the charges against him.
- (iii) Offered him opportunity to make his defence to the charge.
- (iv) Take such evidence as may be necessary or as may be offered by such person and hear him.

During the trial, if the person charged with contempt applies either orally or in writing, for a trial by some other judge other than the judge in whose presence the alleged contempt is committed then the request along with the statement of facts of the alleged contempt shall be placed before the Chief Justice shall be taken as evidence.

If the case is transferred to some other Judge then the judge in whose presence the alleged contempt was committed need not appear as witness. The facts submitted by him to the Chief Justice shall be taken as evidence.

During the pendency of the proceedings, the person charged with contempt shall be detained in such custody as the court may specify. He may be released on bail with or without sureties or on a self bond as the court thinks fit.

In **Sugdev Singh v. Deeja Singh**(AIR 1954 SC 186)the supreme court has advised that to the extent possible, the judge in whose presence the alleged contempt was committed, must avoid to conduct the trial by himself.

2. Contempt of Court Outside the Court: The supreme court or the High Court shall take action for contempt of court committed outside the court in the following situations.

- (i) On its own motion.
- (ii) On a petition made by the Advocate General(in relation to the High Court)(or the Attorney General or the solicitor General(in relation to the Supreme Court).
- (iii) On a petition by any other person(if consent is given in writing to file such petition by the Advocate General or Attorney General or Solicitor General as the case may be).

A person cannot file a contempt of court petition without the consent of the Advocate General or the Attorney General or the Solicitor General. After Admitting a petition the court shall follow the following procedure.

1. Notice shall be sent to the person charged with contempt.
2. Person charged with contempt shall be allowed to submit his defence in an affidavit.
3. The trial shall be conducted by perusing the defences submitted by him or taking such other evidences as may be necessary.
4. The trial shall be conducted by a bench consisting of two judges.
5. If the court feels that the person charged with contempt may abscond then his properties shall be attached.

Limitation: The limitation period for filing a petition for contempt of court is one year. After one year even the court cannot take action on its own motion(s.20).

Contempt by Judicial Officers

S.16 of the Act deals with contempt by judges, Magistrates and other persons acting Judicially. According to this section these persons are also liable for contempt of his own court or any other court just like an ordinary individual. If they are not made liable for contempt then people may lose faith on judiciary by the contempt act of judges.

Observation or remark made by a Judge regarding a subordinate court in an appeal or revision pending before him shall not be treated as contempt of court.

In State of Rajasthan v. Prakash Chand (AIR 1988 SC 1344) the Supreme Court held that S.16 has no application against the judges of the High Court and the Supreme Court. So they cannot be punished for contempt of court.

In B.K. Mishra v. Bhemsan Dixit (1973, 1 SCC 446) the Supreme Court held that refusal to follow the decision of the High Court or the Supreme Court by a subordinate court amounts to contempt of court.

No Special Privilege for Advocates: In the contempt of court Act, there is no special privilege for Advocates. A contempt of court Act, A contempt of court committed by an Advocate will be dealt with just like a contempt committed by any other person.

Bar Bench Relations

The court hall where cases are conducted consists of two parts namely:

- (i) The place where the judges sit is called as Bench
- (ii) The place where the Advocate sit is called as Bar.

So the term 'Bench' refers to the judges and the 'Bar' refers to the Advocates. Bar-Bench relation means the cardinal relation between the judges and the Advocates.

The faith on the judiciary to the general public and the speedy justice mainly depends on the cardinal relation between the judges and the Advocates. In the Administration of justice the role of Advocates are also equally important just like the judges. Rendering justice is their joint responsibility. Without the help of Advocates, it is very difficult for the judges to arrive a correct decision in a dispute.

If good relation exists between exists between the judges and Advocates then delay in rendering justice and high expences for getting justice can be very much reduced. To strengthen the good relation both should have some good qualities and mutual responsibilities.

Role of the Bar to Strengthen Bar-Bench Relation

To strengthen the Bar-Bench relation, the Advocates must take the following steps.

1. They should give the due respect to the judges and they must avoid speaking ill of the judges and the judiciary.
2. They should help the judges in the trial of the cases by presenting the relevant law in the correct and clear manner. They should never act in such away to irritate the judges.
3. If the judges pronounces a wrong order, they should not criticize the judges. They should try to set right the wrong order through appeal.
4. For getting favourable order they should not give pressure or influence the judges.
5. If the judges behavior is irritating and disrespect to the Advocates should not enter in to a direct confrontation with the judge. Through the Bar Association the matter should be discussed with the judge in his chamber and shall request to avoid such misbehavior.(see generally the Duties to the court at p 16)

Role of the Bench to Strengthen Bar –Bench Relation

Only when Bar-Bench relations are strengthened, people will get confidence and fair on the Judiciary. To strengthen Bar-Bench relation the Judges should follow and practice the following.

1. **Judicial Respect:** Just like the Advocates are giving respect to the Judges the Judges should also give to the Advocates and the brethren Judges.

2. **Patient Hearing:** Judges should hear the case with open and respective mind without any prejudice or bias. They should act only to the interest of justice. They should give sufficient opportunity for the Advocates to present the case in full.

3. **Impartiality:** Judges should act impartially. They should not act in favour of any Advocate or a party to the dispute.

4. **Avoidance of Interruptions:** As far as possible, Judges must avoid interruptions while the Advocate is examining witnesses and arguing the case.

Unwarranted interference and adverse comments by the Judges may upset the Advocates and thereby he may not be able to present the case properly. This may cause the failure of justice.

Interference may be limited to the following circumstances(i)to prevent repetition and waste of time(ii)to check the relevancy(iii)to get clarifications (iv)to express courts view on a point and (v)to promote speedy disposal of the case.

5. **Proper Interpretation:** During the process of administration of justice, often the courts have to interpret the Act, Rules, Orders and Notifications in order to ascertain the actual meaning of the provisions or to remove the ambiguity or inconsistency. In such cases proper interpretation should be given with the object of rendering complete justice to the parties.

6. **Avoidance of Unreasonable Adjournments:** Adjournments are given to afford reasonable opportunity to the parties to present the case. As far as possible cases shall not be adjourned without reasonable and sufficient grounds . Unreasonable adjournment is the main reason for the mounting arrears of cases and it causes hardship to the parties.

7. **Speedy Disposal:** 'Justice delayed is justice denied', hence cases should be disposed off as quickly as possible. When preference is given for disposal of old cases, care should be given to see that new cases should not get into arrears.

8. **Avoiding Unwarranted comments:** Judges should not make any unwarranted comments in the open court about the Advocates lack of knowledge in the law. They should not ask any Advocate to leave the

court, without sufficient reasons. Similarly, they should not ask any Advocate not to come to his court hereafter.

9. *Knowing in Law:* Judges should possess deep knowledge in law. They should have the ability to apply the proper law to the disputed facts and to take the right decision.

10. *Independence:* Judges have the primary responsibility to protect and preserve the independence of judiciary, hence they should not yield to the pressure of the Government.

11. *Integrity:* A Judge should be honest and morally upright. He should have personal and intellectual integrity. His character and conduct should be praise worthy. Then only the Advocates and the general public will have confidence on him.

12. *Industriousness:* It means regular and systematic hard work and study. A Judge should get acquainted with the latest developments and changes in the law by regular updating of the knowledge.

13. *Meeting of Judges and Lawyers:* To strengthen Bar-Bench relation, at regular intervals meeting of judges and the Advocates shall be arranged. In such meetings the respective sides difficulties can be discussed and the differences can be sorted out.