

NATIONAL JUDICIAL ACADEMY



P-1280: NATIONAL CONFERENCE ON LAW OF CONTEMPT

(Virtual through Zoom meetings)

Organized by

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PROGRAMME REPORT

PREPARED BY

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Objectives of the seminar: The National Judicial Academy organized a one day ‘National Conference on Law of Contempt’ for High Court Judges (online) on 29th January, 2022. The conference provided a forum to judges from across India to discuss and deliberate on jurisprudential origins of the law of contempt and its various facets viz. civil and criminal contempt, issues regarding scandalizing the courts and contempt vis-à-vis fair criticism.

Session 1

Contempt of Courts: Jurisprudential Origins to the Modern Day Law of Contempt

Speakers: Justice B. S. Chauhan & Mr. R. Venkataramani

The discussion commenced by highlighting Article 215 of the Constitution and the Contempt of Courts Act, 1971 [*hereinafter* the Act] as a guide to the constitutional power. Concerns were expressed on the contempt faced by judges and litigants. The judgements in *Vardha Kant Mishra* 1974 (1) SCC 374 and *S. Mulgaonkar* 1978 (3) SCC 339 were referred. The issues related to unjust criticism of the judiciary, how far such unjust criticism can be taken as a contempt of court and how such criticism can be treated as undermining the majesty of the court were discussed.

The discussion further underscored the meaning of Court of Record in detail. It was stressed that court of record is a court where judicial proceedings are recorded for a perpetual memory and testimony and it must have the power to punish for its contempt. Another element of court of record developed by the Indian courts that was highlighted is that, such courts have a right to determine their own jurisdiction.

Historical developments of the court of record were discussed. During the period of East India Company, the king of England established the municipal corporations in three presidential towns of India and recorder courts were also established by the charter of 1726. These recorder courts were given the power to punish for contempt. The Regulating Act of 1773 was enacted to regulate the judicial system in the country. In 1774 the King of England issued a Charter by which the Supreme Court of Bengal was established. Clause 4 of the Charter

provided that judges of the Supreme Court shall exercise the same powers as that of judges of King's Court and Clause 21 provided that the Court shall have the power to punish for its contempt. The contempt power of courts of record is inherent, necessary and incidental to maintain the dignity of the court and to enforce its orders. The power of contempt is inalienable attributes of court of record in view of the old age tradition of the English common law. Under the High Court Act, 1861 three courts were established at Calcutta, Bombay and Madras. These courts inherited the powers of contempt. In the year 1866 Allahabad High Court was established and enjoyed the same power to punish for contempt. Section 106 of the Government of India Act, 1915 provided that High Courts in India shall be the Court of Record. The Government of India Act, 1935 repealed this Act and the Federal Court came into existence under this Act. This Act declared that High Courts and Federal Court shall be the court of record. Article 129 and Article 215 of the Constitution of India provided that the Supreme Court and all High Courts shall be the court of record.

The discussion then focused on the necessity for enacting the Contempt of Courts Act. It was opined that disparity in imposition of fine and punishment by different High Courts is one of the main reason for the enactment of this Act. The first Contempt of Court Act was introduced in 1926 and it put a limit on what could be the maximum punishment and maximum fine. Thereafter, this Act was replaced by the Contempt of Courts Act, 1952. Finally, the Contempt of Courts Act 1971 was enacted to remove problems of earlier Act.

It was highlighted that the main problem is how to strike a balance between freedom of speech & expression and the dignity of the court. Article 19(1)(a) of the Constitution provides for freedom of speech and expression and it has been considered as the life and blood of democracy but Article 19(2) provides that a reasonable restriction can be imposed. So there are limitations to right to freedom of speech and expression and its exercise should not be tantamount to contempt of court. The Act is a reasonable restriction under Article 19(2) of the Constitution as it regulates the right to freedom of speech and expression.

The Act defines and limits the powers of the court and to regulate their procedures. According to the Act there must be a right of fair hearing, opportunity for defense and the contemnor must know what the charges against him are. Section 12 of the Act said that court can award the punishment of six months imprisonment and Rs. 2000/- fine. Clause 2 of Section 12 specifically restrains the court to award punishment and fine beyond this. The contempt proceedings are quasi criminal in nature and the standard of proof to be followed should be beyond reasonable doubt. In case of doubt where two views are possible then the contemnor become entitled for the benefit of doubt. Section 4 of the Act provides that fair and accurate reporting of judicial proceedings is not contempt. An open justice system permit fair and accurate reporting of the judicial proceeding. When the reporting of judicial proceeding is done by a person who is not trained in law then problem can arise and questions asked by judges are misunderstood.

Thereafter, the discussion highlighted how to record the contempt in court. It was opined that each and every word spoken against the dignity of court should be recorded and it is pertinent to deal with the main arguments in the judgment about what the counsel has stated in court then facts and laws should be written so that if the counsel goes in appeal then the appellate court will know what the main argument before the court was. It was emphasized that judges must know how to control the situation and how they should deal with contemnors. The ways to deal with persons who abuse the process of law was discussed. Further, it was opined that fair criticism of the court decision, fair criticism of a judge or judiciary is permissible but it should be made in good faith and public interest. It was suggested that undoubtedly, freedom of speech and expression exists but the person exercising this right should also be aware about the allied limitations especially while addressing the judiciary or a judge. When a statement is made to shake the public confidence in judicial institutions the same will come within the ambit of criminal contempt. Various sources of power of contempt including Article 129, Article 215, Article 142 (2), Section 228, Indian Penal Code and Section 345, Code of Criminal Procedure were also elaborated.

Session 2

Facets of Contempt of Court: Civil Contempt & Criminal Contempt

Speakers: Justice B. S. Chauhan & Mr. Rakesh Dwivedi

The discussion commenced by emphasizing on the nature of civil and criminal contempt and the relevant provisions under The Contempt of Courts Act, 1971 (hereinafter the Act). Thereafter, facets of civil contempt as willful disobedience of court order and incidences when disobedience of court order will not amount to contempt were discussed. Relevant case laws viz. *B.K. Kar v. Chief Justice and Companion Justices of Orissa High Court.*, AIR 1961 SC 1367; *Debabrata Bandopadhyay v. State of W.B.*, AIR 1969 SC 189; *Union of India v. Satish Chandra Sharma.*, AIR 1980 SC 600; *Lt. Col. K.D. Gupta v. Union of India.*, AIR 1989 SC 2071; *Maj. Gen. B.M. Bhattacharjee (Retd.) v. Russel Estate Corpn.*, AIR 1993 SC 1632; and *T.M.A. Pai Foundation v. State of Karnataka.*, (1995) 4 SCC 1 were discussed. It was emphasized that it is not only act which scandalizes court but which tends to scandalize it amounts to contempt of criminal nature. Other facets of criminal contempt viz. lowering the authority of any court, interfering with the administration of justice or obstructing it in any manner were also contemplated upon. Discussion on provision of Article 235 of Indian Constitution and Section 10 of The Contempt of Court Act, 1971 with respect to power of High Court to punish for contempt of subordinate courts also formed part of the session. Provisions relating to punishment for contempt viz. sec. 12 and 13 of the Act were highlighted and it was emphasized that no punishment should be imposed for contempt unless the court is satisfied that contempt is of such a nature that it will interfere with due course of Justice. Power of courts to accept apology was also discussed in great details with relevant case-laws viz. *Asharam Jain v. A.T. Gupta.*, AIR 1983 SC 1151; *Mohd. Zaheer Khan v. Vijay Singh.*, AIR 1992 SC 642; *Patel Rajnikant Dhulabhai v. Patel Chandrakant Dhulabha.*, AIR 2008 SC 3016; *Ranveer Yadav v. State of Bihar.*, (2010) 11 SCC 492; *Inacio Fernandes v. Gurudas G. Pai.*, (2018) 15 SCC 262; and *SEBI v. Subrata Roy Sahara.*, (2019) 13 SCC 333. The discussion also dealt with ex-facie Contempt and power of court to decide summarily. Modalities of taking cognizance of contempt, limitation for taking cognizance, Role of Advocate General etc were elaborated. It was highlighted that law of contempt is all about

rule of law. Rule of law requires that the majesty of the court be preserved and that is why law of contempt is required. In that sense contempt law is important to preserve the democracy of the country. The session further discussed the amendment in Contempt of Court Act, 1971 which allowed “truth” as defence for contempt of court. It was stressed that contempt jurisdiction is not to shield the corrupt. The power of contempt is so intrinsic that even parliament by legislation cannot take it away but it should be used with utmost caution. *Bar Council of India vs High Court of Kerala (2004) 6 SCC 311* was discussed wherein High Court framed rules for barring entry of certain advocates to high court, which was declared as valid. The bar and advocates’ rowdyism and strikes, boycotts etc. causing serious problem in dispensation of justice and need to punish such elements was stressed. *Dr. L. P. Mishra case*, was discussed in this regard. Accepting apologies in cases of contempt by courts was also touch upon. It was suggested that no doubt it is the discretion of the court to accept or refuse apology, but factors like gravity of offence, remorse, promptness of apology etc. should be the deciding factors. On point of sentencing, cases like *DDA vs Skipper Construction (1996) 4 SCC 622*, *Sahara contempt case (2012) 10 SCC 603* were discussed to exemplify sentencing policies.
