Contempt of Court

THE NEED FOR SUBSTANTIVE CUM PROCEDURAL DEFINITION AND CODIFICATION OF

THE LAW IN SRI LANKA

HUMAN RIGHTS COMMISSION OF SRI LANKA

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Title	:	**CONTEMPT OF COURT** THE NEED FOR SUBSTANTIVE CUM PROCEDURAL DEFINITION AND CODIFICATION OF THE LAW IN SRI LANKA
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First Editon	:	December 2004
Published by	:	Law Review Project, Human Rights Commission of Sri Lanka
Funded by	:	UNDP
Printed by	:	E-kwality Graphics 315, Jampettah Street, Colombo 13. Tel : 2389848

CONTEMPT OF COURT - THE NEED FOR SUBSTANTIVE *CUM* PROCEDURAL DEFINITION AND CODIFICATION OF THE LAW IN SRI LANKA*

Introduction- the Modern Context of Contempt of Court

Freedoms of conscience, expression, assembly, association and political participation are inherent elements of the type of society contemplated by the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka, as reflected in the particular constitutional provisions relating to the same. These freedoms are specifically promoted in international instruments on human rights to which Sri Lanka is a signatory, including the International Covenant on Civil and Political Rights (ICCPR).

The above freedoms underlie the importance of public scrutiny of the processes of governance, which in present day thinking, encompasses the administration of justice. The primary justification for public scrutiny of the judiciary is that it constitutes a democratic check on judges who are not elected but who exercise public power. Importantly, this is a method of scrutiny that is appropriate where impeachment and removal from office of a judge under the Constitution is a remedy resorted to only in extreme situations in most countries, normally amounting to incapacity, gross incompetence or gross misconduct on the part of the judge.

International human rights law has maintained that when balancing rights of free speech with the principle of the authority of the judiciary, the question should be whether

the prohibition is strictly necessary in a democratic society.[1] The freedom to debate the conduct of public affairs by the judiciary does not however mean that unwarranted attacks on the judiciary as an institution, can be condoned. At all times, comment should be fair and without personal bias.

Salient Features of the Law of Contempt in the United Kingdom and India

Section 2(1) of the UK Contempt of Court Act (1981) states that there should be a substantial risk that the statement was intended and was likely to interfere with the administration of justice.

This Act incorporated the recommendations of the Phillimore Committee on Contempt of Court, (1974) and brought the UK law into line with the European Convention on Human Rights, providing for particular defences to contempt such as innocent publication and distribution etc.

In addition, the Act gave effect to the common law principle that a fair and accurate report of legal proceedings published in good faith could not constitute contempt of court. The Phillimore Committee recommended that this principle should be subject to no exceptions. The Committee's

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[1] Analysis engaged in by Dr Jayantha de Almeida Guneratne, President's Counsel and Ms Kishali Pinto-Jayawardena in their capacity as senior legal consultants for the Law Review Project of the National Human Rights Commission, 2002-2004. They formed part of the documents submitted by the National Human Rights Commission to the Parliamentary Select Committee on Contempt, which sat in late 2003.

[2] *The Sunday Times v United Kingdom*, Judgement of the European Court of Human Rights, 26 April, 1979, Series A. No 30, 14 EHRR 229

recommendations reflected the vigorous debates prevalent in regard to the proper balance that ought to be maintained between two compelling and equally important interests.[1a]

Relevant in this regard is the following - and particularly enlightened – caution;

> "(This) is a jurisdiction which undoubtedly belongs to us but which we will most sparingly exercise: more particularly as we ourselves have an interest in the matter.
>
> Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism not do we resent it. For there is something far more important at stake. It is no less than the freedom of speech itself.
>
> It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment on matters of public interest.
>
> Those who comment can deal faithfully with all that is done in a court of justice. They can say we are mistaken and our decisions erroneous, whether they are subject to appeal or not. All we ask is that those who criticise us will remember that, from the nature or our office, we cannot reply to those criticisms. We cannot enter into public controversy, still less political controversy. We must rely on our conduct itself to be its vindication."[2]

Similar principles are contained in the Indian law relating to contempt of court following the Report of the Sanyal Committee, which considered the working of the old 1952 Contempt of Court Act and found it unsatisfactory in its

substantive contents. Thereafter, the 1971 Contempt of Court Act was enacted, harmonising as far as possible the interests of the individual in exercising his or her freedom of expression and the interests of the administration of justice within the framework of the Republican Constitution.

The 1971 Act, (in Section 5), provides expressly that fair criticism of judicial acts does not amount to contempt and stipulates also the defences of innocent publication/ distribution. It provides moreover that no sentence should be imposed for contempt unless the act substantially interferes with the administration of justice.

Crucially, (and contrasted to the UK Act of 1981), the Contempt of Court Act in India not only prescribes a minimum sentence for contempt but also lays down an exhaustive procedure for contempt hearings. Thus, an accused person is furnished with a charge and evidence is heard on the charge. In addition, Section 14 of the Act provides a right, on appeal and if it is practicable and in the interests of proper administration of justice, to be heard before a different court than the court, which the alleged contempt occurred.

Indian judges have generally dealt with the issue of contempt in a liberal manner, asserting that –

> "even intemperate and extreme statements do not amount to contempt because they carry within them their own condemnation

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[6] see for example, *AG v Times Newspapers Ltd*, (1974) AC 273, 1973 3 AER, 54, HL and *Ambard* vs *AG* for Trinidad and Tobago (1936) AC 355(1936) 1 AER 704 at 709 (per Lord Atken)

[7] Lord Denning in *Regina vs Commissioner of Police of the Metropolis* (1968 2 QB, 150 at 154)

and no one would attach importance to them as they would be dismissed as the ravings of a crank...".[3]

The necessary criterion for contempt to be found is that there must be a substantial likelihood of interference with the due administration of justice.

Again, in the case of *sub judice*, the test is whether there is a substantial likelihood of prejudice to the outcome of the case. Courts in the United Kingdom have declared that there must not be gagging of *bona fide* public discussion in the press, of controversial matters of general public interest, merely because there are in existence contemporaneous legal proceedings in which some particular instance of these controversial matters may be in issue.[3a]

Dealing with refusal to disclose sources of information, which is an issue particularly dear to a journalist's heart, the prevalent UK law prohibits courts from ordering media personnel to disclose confidential sources except when "disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime." The greater the legitimate public interest in the information which the source has given to the journalist, the greater would be the importance of protecting the source.[4]

The Sri Lankan Case Law Relating to Contempt

Unlike in the United Kingdom and India (and quite apart from the jurisprudence of the United States on these issues which concedes an even greater latitude to freedom of speech), Sri Lankan law on contempt of court has effectively

resulted in a 'chilling' of the freedoms of speech, expression and information on matters of public interest.

In the first instance, what amounts to contempt has been subjected to differing interpretations by the courts, the majority of which have inclined towards conservative views. This has had an inevitable impact on public discussion of vital public interest issues due to fears that journalists or citizens voicing their opinions on particular judgements of the Court or with regard to pending adjudications, will be cited for contempt.

Early cases in Sri Lanka concerning contempt of court and the press in particular, were fairly straightforward with regard to the question as to whether contempt should indeed, have been found. Thus, *In the Matter of a Rule on De Souza*[3] the deliberate and wilful publication of false and fabricated material concerning a trial held in court, calculated to hold the court or a judge thereof to odium and ridicule was ruled as amounting to contempt of court.

In a subsequent case, an article which imputed to the judges a serious breach of duty by taking an unauthorised holiday by going to race meets and thereby contributing to arrears of work, was ruled to be contempt of court.[4] In this case, Abrahams CJ opined that;

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[3] Mass Media Laws and Regulations in Sri Lanka, 1998 (2nd Ed.), Asian Media Information and Communication Centre, (AMIC), Singapore, at page 29

[3a] *Maxwell v. Pressdram Ltd.* (1987) 1 All ER 656, also, *Secretary of State v Guardian Newspapers Ltd.* (1985) AC 339, 1984 3 AER 601, HL

[4] *Attorney General v English* (1983) 1 AC, 116, also *AG. v Times Newspapers Ltd.* (1974) AC 273, 1973 3 AER, 54, HL

[5] 18, NLR, 41

> "It would be thoroughly undesirable that the press should be inhibited from criticising honestly and in good faith, the administration of justice as any other institution. But it is equally undesirable that such criticism should be unbounded."

A far more extreme rationale was evidenced in the mid seventies when a deputy editor of the Ceylon Daily News was sentenced for contempt when, commenting on an incident where a witness who had appeared in bush shirt and slacks before the Criminal Justice Commission (Exchange Control) had been ordered to return to give evidence properly attired, he wrote that such attitudes were not in keeping with the new legal trends of the day. The CJC ordered six months imprisonment for the deputy editor as well as a day's imprisonment for the acting editor of the paper.[7]

In another context altogether, the case of *Hewamanne v Manik de Silva and Another*[8] also illustrates unduly restrictive judicial attitudes. In this case, a divided bench of the Supreme Court dismissed *inter alia*, the argument that what constitutes contempt must be reviewed and modified in the light of Articles 3 and 4 of the Constitution which vests legal and political sovereignty in the people and consequently gives the people the right to comment actively on the administration of justice. Part of this argument that was dismissed was the contention that in any case, developed jurisdictions and in particular, courts in the United Kingdom have, in recent times, allowed greater latitude to the public to criticise judges and the administration of justice.

In delivering the judgement of the majority, Wanasundera J. preferred to depart from the developing modern law that strove to balance the rights of due administration of justice and freedom of speech, reasoning on the contrary, that;

> "the law of contempt ....would operate untrammelled by the fundamental right of freedom of speech and expression..."

He went on to add that, (subjecting the judiciary to public discussions);

> "....would engulf the judges and they would find themselves in a position where they would be directly exposed to the passing winds of popular excitement and sentiment..."

In finding justification for these views, (in a somewhat unfortunate reference), the majority relied on a decision from a wholly different age (McLeod's Case, 1899) where a distinction had been drawn between the United Kingdom and 'small colonies consisting primarily of coloured populations', the Court warning meanwhile of the dangers of indiscriminate use of decisions of western countries having their own social milieu and reflecting the permissive nature of their societies.

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[5] 39, NLR, 294

[6] The Ceylon Daily News, 6 June, 1974. The former became seriously ill as a result of the incarceration and had to be released prematurely.

[7] 1983, 1 SLR, 1

The *Sub-Judice* Rule

The *sub-judice* Rule is an issue that is highly relevant to public discussion and publications in Sri Lanka. The contentious nature of this Rule is very well illustrated in a fairly recent case[9] in which a provincial correspondent of a Sinhala paper, the 'Divaina', sent a report of a speech made by a member of Parliament in the opposition at a time when the presidential election petition was being heard, in which the latter said that –

> "the petition had already been proved and if the petitioner did not win her case, it would be the end of justice in Sri Lanka..."

Contempt proceedings were instituted against both the journalist and the editor. Though the latter pleaded guilty, the former took a no-guilt stand, contenting that he had merely transmitted the contents of the speech as was his duty as provincial correspondent, that he had no intention to prejudice the outcome of the election petition and that the speech in question was solely political and that the readers of the papers would take it in that context.

The Court, however, rejected this contention on the basis that the article insinuated that the judges had already made up their minds, with the effect of possibly deterring potential witnesses from coming before court. The decision in this case ran counter to the test of 'substantial likelihood of prejudice', preferring instead a far more fluid determining as to whether statements might or were likely to result in prejudice.

A succinct analysis of the decision in the *'Divaina' Case* put the matter well at that time;

> ... is the exclusive judicial function of the Court to determine cases really usurped by an unbalanced and patently partisan opinion expressed by some politician? I cannot believe that is so. Is the expression of such an opinion really a pre-judgement of the pending case? Is that be so, then in every home and on every street corner every day, thousands of contempts will be committed...[10]

Disclosure of Sources

Prevalent Sri Lankan law is to the effect that a court has the authority to order disclosure of sources if it thinks necessary, which principle was put to the strict test in two recent cases where indictments were filed against two newspaper editors on the basis that the newspapers had criminally defamed President Chandrika Kumaranatunge. [11]

In the *Sunday Times* Case, the editor was sentenced under both the Penal Code and the Press Council Law to one and a half years simple imprisonment suspended for seven years and a fine of approximately US $111 for publication of a gossip item in the newspaper which, (incorrectly), stated that President Kumaratunge had attended the birthday party of a parliamentarian at a hotel suite around midnight.

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[9] In Re Garuminige Tillekeratne 1991, 1 SLR, 134

[10] *Freedom of Expression and Sub Judice*, Lakshman Kadirgamar, P.C., OPA Journal, Vol. 15, 1992-3, see also in same publication, a comment by HL de Silva P.C. on *Free Press and Fair Trial*, calling for a separate legal enactment on contempt that would permit a reasonable degree of public discussion, even when judicial proceedings are pending.

[11] The Democratic Socialist Republic of Sri Lanka vs Sinha Ratnatunge (HC/No 7397/95) per judgement of then High Court Judge Upali De Z. Gunewardene and The Democratic Socialist Republic of Sri Lanka vs P.A. Bandula Padmakumara (HC/No 7580/95) per judgement of then High Court Judge Shiranee Tillekewardene

The trial judge in this case castigated the editor for not revealing the source of the information, proceeding to infer that such a "suppression of evidence" meant only that the editor was himself the author of the impugned item.

Not long thereafter, another accused editor was acquitted of criminal defamation charges in another trial court upon publication of a substantially similar news item in a Sinhala language newspaper on the basis that the necessary intent was not found to lie. In this instance, the trial judge in the *Lakbima* case adopted a directly contrary line of reasoning to her colleague in the parallel High Court as far as the rule pertaining to disclosure of sources was concerned, pointing out that the confidentiality of such sources needs to be protected as otherwise, this would lead to –

> "very serious consequences and do much to restrain freedom of communication which is so essential to comfort and well being."

Though both judgements came before the appellate courts, they were disposed of without any final judicial pronouncement on the relevant issues when the criminal defamation law itself was repealed in Sri Lanka on 18th June, 2002. The repeal came at a point when *the Sunday Times* appeal was before the Supreme Court following the conviction being affirmed by the Court of Appeal and the *Lakbima* case, (where the State appealed against the acquittal), was also pending in the Court of Appeal.

The *Times* editor was discharged from all proceedings and the conviction set aside by the Supreme Court after the newspaper agreed to publish a statement in the newspaper wherein the editor accepted responsibility for the impugned

publication as editor, reiterated that there was no malicious intent whatsoever on the part of the writer, the newspaper or himself in wanting to defame the President and regretted the publication of the said erroneous excerpt. The *Lakbima* appeal against the acquittal of the editor was withdrawn by the State.

In consequence, contrasting judicial attitudes in regard to the circumstances in which disclosure of sources may be ordered by court were not resolved in a satisfactory manner, highlighting yet again therein, the need for a specific enactment on contempt of court that would pertain to substantive issues relating to the use of contempt powers as well as lay down fair procedures in regard to the exercise of such powers."[12]

Contempt of Court – Is a Constitutional Amendment necessary for Enacting a Contempt of Court Act?

Re: Limits & Scope for Punishment

In *Chandradasa Nanayakkara* vs. *Liyanage Cyril*,[13] Article 105 (3) of the Constitution which provides that –

> "The S.C. and the C. A. ..... (being) a Superior Court of Record shall have all the

[12] Public pressure to stipulate fair procedures for contempt inquiries intensified after a lay litigant Tony Michael Fernando was sentenced by the Supreme Court on 6 February, 2003 to one year rigorous imprisonment for contempt of court for 'filing applications without any basis, raising his voice and insisting on his right to pursue the application." (Bench comprised Sarath Nanda Silva, CJ and JJ Yapa and Edussuriya). Fernando appealed to the Geneva based UN Human Rights Committee (Vide Communication No 1189/2003 submitted to the UNHRC under the International Covenant on Civil and Political Rights (ICCPR)) as a consequence of which the UNHRC ordered interim measures to be taken by the State for the protection of Mr Fernando after he was

> power including the power to punish for contempt of itself ..... or elsewhere with imprisonment or fine or both as the Court may deem fit ...",

came in for interpretation and it was said that,

> *"The punishment that can be imposed is imprisonment or fine or both as the court may deem fit."*

The Supreme Court (S.C.) and the Court of Appeal (C.A.), both regarded as Superior Courts of Record, derive their powers under the Constitution (and other statutes). The important point is that, both these courts are creatures of the Constitution, (thus, the label, Superior Courts of Record), unlike the subordinate courts, (which are creatures of an Act of Parliament).[14]

Parliament as well as the S.C. and the C.A. being creatures of the Constitution and being subordinate to the Constitution, (the doctrine of constitutional supremacy), it appears to follow that if Parliament in terms of Article 4 (a) read with Article 75 of the Constitution seeks to limit the power of the S.C. or the C.A. to impose punishment by imprisonment or fine or both as the "Court may deem fit", then there would have to be a constitutional amendment. This part of the analysis puts forward the competing arguments that may be advanced in this regard.

Re: Procedure to be followed

Subordinate courts have to follow the procedure laid down in Acts of Parliament, another apparent concomitant

of the proposition that they are not Superior Courts of Record on account of their being creatures of Acts of Parliament as opposed to the S.C. and the C.A. (which are constitutional creatures) the case of *Paramasothy* vs. *Delgoda*[15] is indicative of the circumscribed procedural limits within which subordinate courts are required to operate. No such procedure is laid down in the Constitution in regard to the S.C. or the C.A. and the question is whether such procedure could be laid down by an 'Ordinary' Act of Parliament.

Article 136 (1) of the Constitution confers power on the S.C. to make rules regulating generally the practice and procedure of the Court. Article 136 (1) (b) is explicit when it decrees that the S.C. has power to make rules as to the proceedings in the S.C. and the C.A. in the exercise of the several jurisdictions conferred on such Courts by the Constitution (which would therefore include the power to charge for contempt of Court as envisaged in Article 105 (3) of the Constitution.

The S.C. in pursuance of those provisions has not made any rules to date. The question then is, could the legislature in terms of Article 4(a) read with Article 75 enact an ordinary law spelling out the procedure to be followed by the S.C. and the C.A. in contempt proceedings when the said Courts exercise the said constitutionally conferred power under Article 105 (3) of the Constitution?

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threatened by unnamed individuals following release from prison in late 2003 consequent to serving eight months of his sentence. The substantive application is still pending before the Committee.

[15] (1984 (2) SLR 193)

[16] Judicature Act, No 2 of 1978

[15] (1981 (2) SLR 489 and 493)

The contention that procedures with regard to the exercise of contempt powers by the S.C. and the C.A. could be prescribed in an ordinary law as opposed to a constitutional amendment could be supported by reason of the following arguments;

a) **By reason of the constitutional limitation contained in Article 136 (3) of the Constitution itself.**

Article 136 (3) decrees that,

> All rules made under this Article shall as soon as convenient after their publication in the Gazette be brought before Parliament for approval. Any such rule which is not so approved but without prejudice to anything previously done there under.

The aforesaid constitutional provision clearly classes the Rules made by the Supreme Court on par with any other subordinate legislation, (and therefore certainly lower in level to "legislation"), bringing in the concept of negative laying in procedure in Parliament established in the area of Administrative Law.

The traditional constitutional justification for this is also clear in as much as 'law' (as a means of resolving conflicting interests or a norm affecting rights) is the domain of the supreme legislature (the courts' function being to interpret the law). The only way in which the doctrine of separation of powers embodied in Article 4(a), (b) and (c) of the Constitution, (subject perhaps to certain qualifications in the context of our Constitution, which qualifications have no relevance to the issue under consideration), could have been

preserved is by what the Constitution, in the philosophy of its framers, has done, namely by putting in Article 136 (3) conferring the final say on Parliament (as the supreme legislature) as a check on any Rule making body as opposed to its superior law making function. (Note: the reference to the word "Rules" in Article 136 is also significant in the context of that constitutional philosophy)

b) By reason of the constitutional language employed in Article 136 (1) itself;

The said Article opens thus:

> "Subject to the provisions of the Constitution and of any law the Chief Justice ..... may .... rules ..." (*our emphasis*)

The language employed in the said Article may be contrasted with that employed in Article 140 of the Constitution which decrees "Subject to the provisions of the Constitution....." (with no reference to the words 'and of any law'), which prompted the Supreme Court to hold that, "the ouster clauses" referred to in the Interpretation (Amendment) Act, No. 18 of 1972, (Vide: Section 22 or that Act), did not prevail over the constitutional jurisdiction conferred on the Supreme Court to grant writs as provided for, in Article 140 of the Constitution.[16]

The point sought to be underscored is that, in contrast with the language employed under Article 140 which led the Supreme Court in the said decisions to hold that the writ jurisdiction is untrammelled by reason of it being a post 1972 constitutional provision (the year of the Interpretation

(Amendment) Act No. 18 of 1972 designing "the ouster clauses"), the rule making power conferred by Article 136 (1) being not subject not only to the provisions of the Constitution, which in any event gives power to Parliament in terms of Article 4 (a) read with Article 75) and more significantly "subject to the provisions of any other law" (and therefore, retrospectively – though absent in the present context, but prospectively authorised by reason of Article 4 (a) read with Article 75 of the Constitution), there is nothing to prevent Parliament enacting an ordinary law prescribing the procedure to be followed in regard to contempt proceedings.

c) By reason of the Theory of Jurisdiction

"Jurisdiction" is the power to decide or determine which is a proposition that needs no elaboration. "Jurisdiction" is also the power to decide or determine "according to law" (this is also a proposition that needs no elaboration). "Law" as it commonly and (indeed) jurisprudentially understood is both substantive and procedural.[17] Accordingly, it could be contended that there is no fetter on the legislative powers of Parliament, taking the initiative as it might, in laying down "by law", procedure to be followed by the S.C. and the C.A. in regard to contempt proceedings that, the said Courts may take cognisance of. This, Parliament, could do by law (meaning, ordinary legislation).

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[16] Vide: *Atapattu* vs. *Peoples Bank* 1997 (1) SLR 208 at 221 to 223 though perhaps obiter on the facts of that case, through a cursus curiae (Vide: *Coorey* vs. *Bandaranayake* 1999 (1) SLR and *Wijepala Mendis* vs. *Perera* 1999 (2) SLR 110 at page 119) and presently forming the ratio in the Supreme Court decision in *Mooslees Ltd* vs. *Arthur and others* (SC/58/2001- SC minutes of 5/12/2002).

[17] Vide: the inveterate and/or established classifications of law into (i) Public Law and Private Law (ii) Civil Law and Criminal Law and (iii) Substantive Law and Procedural Law). Consequently, the law making power of Parliament, (Vide: Article 4 (a) read with Article 75) encompasses not only substantive law but also procedural law.

However, for some reason or rationale, if some argument was to be put forward that, Parliament cannot do so, then the prescribing of procedures for the exercise of contempt powers could be done in any event through a constitutional amendment, which process (given the direct importance of the issue to the people in this country), should be engaged in as a matter of priority by the country's legislature.

Conclusion - the need for a Specific Enactment on Contempt of Court

The preceding analysis illustrates why Sri Lanka should consider the enactment of a Contempt of Court Act, which may be modelled on the UK and Indian Acts but with even greater emphasis on modern standards relating to contempt of court.

The Act, in order to clarify substantive issues relating to contempt as well as clear up confusion in prevalent case law, should;

a) Define what amounts to contempt;

b) Define what could be legitimately prohibited with reference to the *sub judice* rule;

and

c) Clarify the rule regarding disclosure of sources.

The draft Act should also address the parallel – but no less urgent – need to stipulate fair procedures for contempt inquiries in a manner akin to the Indian Act on Contempt of Court, particularly in regard to contempt hearings in the appellate courts in Sri Lanka.

THE CONTEMPT OF COURTS ACT, ...

AN ACT TO DEFINE AND LIMIT THE POWERS OF COURTS IN PUNISHING CONTEMPT OF COURTS

Be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka in ... , as follows;

Short title and extent

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

Definitions

2. In this Act, unless the context otherwise requires-

a) 'contempt of court' means civil contempt or criminal contempt;

b) 'civil contempt' means wilful disobedience to any judgement, decree, direction, order, writ or other process of a court or wilful 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 representations or otherwise) of any matter or the doing of any other act whatsoever which;

(i) lowers or tends to lower the authority of any court;

(ii) prejudices or interferes with the due course of any judicial proceeding;

(iii) interferes or obstructs the administration of justice in any other manner; Provided that the provisions of this Act shall be in addition to and not in derogation of, the provisions of any other law presently in force defining contempt of court

Contempt in respect of Pending Proceedings

3. A person shall be guilty of contempt on the ground that, that person has published (whether by words spoken or written or by signs or by visible representations or otherwise) of any matter or the doing of any other act whatsoever which lowers or tends to lower the authority of any court, prejudices or interferes with the due course of any judicial proceeding, interferes or obstructs the administration of justice in any other manner only if;

(1) the contempt is in respect of pending proceedings and

(2) is contained in a publication addressed to the public at large or any section of the public which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced.

Innocent Publication or Distribution

4. (1) A person is not guilty of contempt of court if at the time of publication of matter amounting to contempt of court under this Act, (having taken all reasonable care), that person does not know and has no reason to suspect that relevant proceedings are pending;

(2) A person is not guilty of contempt of court as the distributor of such publication containing matter if at the time of publication of matter amounting to contempt of court under this Act (having taken all reasonable care) if that person does not know that it contains such matter and has no reason to suspect that it is likely to do so;

(3) The burden of proof of any fact tending to establish a defence afforded by this section lies upon that person

Contemporary reports of proceedings

5. (1) A person is not guilty of contempt of court in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith;

(2) A person is not guilty of contempt of court in respect of an abridged or condensed report of legal proceedings held in public, published

contemporaneously and in good faith, provided it gives a correct and just impression of the proceedings

Discussion of Public Affairs

6. A publication made as or as part of a discussion in good faith of public affairs or other matters of general public interest does not amount to contempt of court under this Act if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion.

Sources of Information

7. No court may require a person to disclose, nor is a person guilty of contempt of court for refusing to disclose, nor may any adverse inferences be drawn against him/her consequent to such refusal to disclose the source of information contained in a publication for which that person is responsible.

Provided that a court may order a person to disclose a source of information if it is established to the satisfaction of the court that disclosure is necessary in a democratic society in the interests of justice or national security or for the prevention of disorder or crime.

Limitations

8. A person is not guilty of contempt of court for;

1) publishing any fair comment on the merits of a case which has been heard and finally decided;

2) honest and fair criticism on a matter of public importance or public concern;

3) fair criticism of the legal merits of judicial decisions;

9. Notwithstanding anything contained in any law for the time being in force, contempt of court shall not be found under this Act unless the contempt is of such a nature that it substantially interferes with the due course of justice.

Other defence not affected

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

Act not to imply enlargement of scope of contempt

11. 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 would not be so punishable apart from this Act.

Procedure

12. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, where it is alleged or appears to the Supreme Court or the Court of Appeal that a

person has been guilty of contempt committed in its presence or hearing, such Court may cause such person to be detained in custody and at any time before the rising of that Court, on the same day or as early as possible thereafter, shall cause that person to be informed in writing of the contempt with which that person is charged and nominate a date for the hearing of the charge.

(2) On the date so nominated, such Court shall afford such person an opportunity to make his defence to the charge; and;

a) 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

b) make such order for the punishment or discharge of such person as may be just.

(3) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, 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, such application shall be placed before the Chief Justice (or a bench of the three most senior judges of the Supreme Court where the said application concerns a charge issued by the Chief Justice himself) together with a statement of the facts of the case, for such directions as the Chief Justice (or the Bench assigned as aforesaid), may think fit to issue as respects the trial thereof.

(4) 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 directions issued under sub-section (3) by a Court other than the Court 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 or witnesses and the statement placed before the Chief Justice (or the Bench assigned) under sub-section (3) shall be treated as evidence in the case.

(5) Pending the determination of the charge, the Court may direct that a person charged with contempt under this section, be detained in such custody as it may specify;

Provided that, that person may be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties with the condition that the person charged, shall attend at the time and place mentioned in the bond and shall continue to 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 that person on execution of a bond without sureties for his attendance as aforesaid.

13. In the case of contempt committed under this Act, other than contempt *ex facie*, the Supreme Court or the Court of Appeal may take action on its own motion or on a motion made by

a) the Attorney General

b) any other person, with the consent in writing of the Attorney General

or

c) where power is exercised by the Court of Appeal in respect of the High Court of the Provinces and such other courts of First Instance, tribunals or other institutions as Parliament may from time to time, ordain and establish, on the motion of such court.

Every motion or reference made under this section shall specify the contempt of which the person or persons charged, is alleged to have committed.

14. (1) Notice of every proceeding under Section 16 shall be served personally on the person charged;

(2) The notice shall be accompanied;

(i) 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

(ii) in the case of proceedings commenced on a reference by a subordinate court, by a copy of the reference

(3) Any person charged with contempt under Section 16 may file an affidavit in support of his defence 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.

(4) An appeal shall lie to the Supreme Court from any order, judgement, decree or sentence of the Court of Appeal in the exercise of its jurisdiction to punish for contempt or in the exercise of its appellate powers in respect of the same if the Court of Appeal grants leave to appeal to the Supreme Court *ex mero motu* or at the instance of any aggrieved party. Provided that, the Supreme Court may, in its discretion grant special leave to appeal to the Supreme Court from any order, judgement, decree or sentence of the Court of Appeal, where the Court of Appeal has refused to grant leave to appeal to the Supreme Court.

15. Pending any appeal, the Supreme Court or the Court of Appeal may order that;

a) the execution of the punishment or order appealed against, be suspended;

b) if the appellant is in confinement, that he or she be released on bail

Punishment for contempt of court

16. (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 twenty thousand rupees or with both.

Provided that the accused may be discharged or the punishment awarded may be remitted on apology 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 *bonfide*

(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 subsection (1) for any contempt either in respect of itself or of a court subordoinate to it.

(3) Notwithstanding anything contained in this section, where a sentence of imprisonment is imposed by a court under this Act, specific reasons must be given by such court, that a sentence of imprisonment alone is called for in the facts and circumstances of the case.

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