

GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH

THE LAW COMMISSION

-SUBJECT-

**REPORT ON A REFERENCE BY THE GOVERNMENT FOR
REPEAL, REENACTMENT AND MODERNISING CONTEMPT
OF COURT ACT, 1926 (ACT XII OF 1926)**

OFFICE OF THE LAW COMMISSION

OLD HIGH COURT BUILDING

DHAKA-1000

JUNE 09, 2005

INTRODUCTION

1. In framing a maiden comprehensive Act on Contempt of Court the conceptual framework needs to be free from ambiguity.

2. There was and is no comprehensive statutory law of contempt in England. Contempt of Court Act, 1981 (Halsbury's Laws of England, 4th Edition, pp. 185 – 207) does not define, classify or limit contempt. This short Act deals only with the strict liability rule that is a principle of common law and relaxes its past rigours to a great extent. It also deals with some aspects of procedure and penalties for contempt and kindred offences. The rest is left to the Judges to develop, as the British Judges did from time immemorial. The law of contempt in England is still generally governed by common law, refined, developed, adapted to changed circumstances and modernized in the hands of generations of Judges.

3. In undivided India, the Indian Courts followed the English practice. Contempt was dealt with from case to case, on the merits of each, not following the straightjacket of a fixed definition. The superior Courts of undivided India developed a huge storehouse of decisions on the law of contempt, as diverse in range as divisive in opinions.

4. It must be made clear that as opposed to popular belief the Contempt of Courts Act, 1926 (Act No. XII of 1926) was not meant to be a law on contempt. This Act was enacted to serve a different purpose. The High Courts of Judicature established by Letters Patent were already Courts of Record and those Courts had the inherent and plenary power of punishment for contempt of themselves. Doubts arose whether the said High Courts had the power to punish contempts of subordinate Courts. The original Preamble to this Act clearly says that the enactment was made “to resolve these doubts.” The substantive sections of this Act were also restricted to the then High Courts’ power, procedure and limit of punishment for contempt of subordinate courts. Although the word “subordinate” was omitted by the Contempt of Courts (Amendment) Act, 1937 (Act No. XII of 1937), section 2 of Act No. XII of 1926, after various amendments, stands as follows:-

“2. –(1) Subject to the provisions of sub-section (3) , the High Court Division shall have and exercise the same Jurisdiction , powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself.”

5. As the purpose of Act No. XII of 1926 was and is to empower the then High Courts of India and the present High Court Division to punish contempts of

subordinate courts, this power will have to be retained, despite the existence of Article 109 of the Constitution, even if Act No. XII of 1926 has to be repealed.

6. The plain fact is that there is no statutory law in Bangladesh governing the powers, authority, procedure and practice in respect of contempt of court of both Divisions of the Supreme Court. It is a misnomer to say, therefore, that Act No. XII of 1926 is the only statute governing law of contempt in Bangladesh.

7. The law of contempt, however, was developed both in England and undivided India when there was no national and international thinking on human rights, no application of Universal Declaration of Human Rights adopted in 1940 to which undivided India was a party, no fundamental rights, no concept of transparency, legitimate criticism and accountability. The Constitution of Bangladesh contains a chapter on Fundamental Rights. The Supreme Court's jurisdiction to punish for contempt touches upon three important fundamental rights of citizens, namely, the right to personal liberty, the right to freedom of expression and the right to freedom of press.

8. India set up a Special Committee in 1961 under the chairmanship of the late H N Sanyal, the then additional solicitor general. The recommendations that the committee made took note of the importance given to some fundamental rights in the Indian Constitution and of the need for safeguarding the status and dignity of courts and interests of administration of justice. The Government of India generally accepted those recommendations after considering the views on those recommendations by the state governments, union territory administrations, the Supreme Court, the High Courts and the judicial commissioners. The Contempt of Courts Act, 1971 of India, enacted 10 years after formation of the Committee, seeks to give effect to the accepted recommendations of the Sanyal Committee.

9. In our country, all relevant provisions of the Constitution must be read together, harmonized and brought to a flexible, yet well-expressed parameter.

10. Our Constitution has provided in Article 108 as follows:-

“108. The Supreme Court shall be a court of record and shall have all the powers of such a court including the power subject to law to make an order for the investigation of or punishment for any contempt of itself.”

11. What are the incidents of a court of record? They are:

- (1) It's judgments, orders, decrees and all that are filed by parties to litigations are to be preserved forever for eternal record. Our Constitution imposes no fetters upon this attribute of a court of record.

- (2) It has the inherent and plenary power to determine questions about its own jurisdiction, unless barred or restricted by the Constitution. Our Constitution imposes no fetters upon this attribute of a court of record, except those provisions of the Constitution that contain an express bar of jurisdiction of any court.
- (3) It has the inherent and plenary power to punish for its contempt summarily. It is here that our Constitution makes an inroad. This inherent and plenary power of a court of record is reiterated by making an inclusive provision mentioning this power exclusively. The power to punish for its contempt is preserved, but “the power” “to make an order for the investigation of or punishment for any contempt of itself” is “subject to law.” The express mention of the subject matters of this inherent power appears to be the limitation on the law-making power of the Parliament in relation to contempt of court. The limitation, appears to be clearer if we read Article 108 without the words “subject to law”, thus:

108.- The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to make an order for the investigation of or punishment for any contempt of itself.

12. The Bangla version of Article 108 presents, in our opinion, the same picture. The Bangla version is as follows:-

”108 | mçg tKvU©GKwU “tKvU©Ae&tiKW© nBteb Ges Bnvi Aegvbbvi Rb` Z` t\$†
Av†` k` vb ev ` Üv†` k` v†bi ¶lgZvnn AvBb mv†ct¶¶ Abjfc Av` vj †Zi mKj ¶lgZvi AwKvix
_wKteb|0

13. It is necessary to note the words “for any contempt of itself” in the English version and the words “ইহার অবমাননার জন্য” in the Bangla version. “Contempt” or “অবমাননা” is a matter of assumption in both the English and Bangla versions. Therefore, what is “Contempt” or “অবমাননা” of the Supreme Court will not be, in our opinion, the subject matter of law. When the Constitution says that “The Supreme Court shall be a court of record and shall have all the powers of such a court” and the Bangla version says “অনুরূপ আদালতের সকল ক্ষমতার অধিকারী হইবেন”, it means that the inherent and plenary power of the Supreme Court to determine what is contempt of itself will remain inherent and plenary as a court of record traditionally possesses, but the law that will govern this power will be limited to the power of the Supreme Court to make an order for the investigation of or punishment for any contempt of itself. We shall revert to this discussion later.

14. We notice now Article 32 of the Constitution, a fundamental right, which is as follows:-

“32. No person shall be deprived of life or personal liberty save in accordance with law”.

15. Next, we notice Article 39(2), a fundamental right, which is as follows:-

“39(1).....

(2) Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order or morality, or in relation to contempt of court, defamation or incitement to an offence –

- (a) the right of every citizen to freedom of speech and expression ; and
 - (b) freedom of the press,
- are guaranteed.”

16. It seems to be fairly clear that the Parliament has the power to enact a law to impose what it in its wisdom considers to be reasonable restrictions on the enjoyment of the above rights. Conversely the Parliament can also enact a law to remove what it in its wisdom considers to be unreasonable restrictions on the enjoyment of the above rights. Of course, if challenged, the Supreme Court is the final arbiter of what is reasonable or unreasonable. But the Parliament does not lack the authority to act primarily. Reverting to our discussions in paragraph 10 above Parliament may do this exercise by not defining contempt at all, but by classifying contempt, providing what may not constitute contempt, providing different procedures for dealing with various classes of contempt and providing for punishment for contempt. It can also remove from the common law what it in its wisdom thinks the unreasonable restrictions are by providing what in the light of Articles 32 and 39(2) can no longer be treated as contempt. This way, we believe, the status of the Supreme Court as a court of record will be preserved and at the same time Articles 32 and 39(2) of the Constitution will be rendered more meaningful and effective. It is an exercise in a harmonious blending of Article 108 and the fundamental rights and this is what we have attempted to do in our work.

17. For the purpose of recommending for enactment of a new comprehensive law on Contempt of Court, we have considered the relevant laws of several countries that have faced similar situations in which we are in. We have consulted the Indian Contempt of Court Act, 1971, Pakistan Contempt of Court Act, 1976, Pakistan Contempt of Court Ordinance, 1998 and 2003, British Contempt of Court Act, 1981 and also our existing Contempt of Court Act, 1926. We have also studied some text books of different countries, such as Oswald’s Contempt of Court, Third Edition, K.J.Aiyar’s Law of Contempt of Courts with Parliament, State assemblies and public servants, Ninth Edition, Obaidul Huq Chowdhury’s Law on Contempt of Court, Second Edition etc. We have also accessed some websites and obtained relevant information.

RECOMMENDATION

In view of the discussions above, we recommend that a new comprehensive law relating to Contempt of Court be enacted and the existing law of Contempt of Court Act, 1926 (Act XII of 1026) be repealed.

For convenience and ready reference we are enclosing herewith a Draft Bill as Annexure “A”.

**A Proposed Bill
for
Enactment of a new law relating to Contempt of Court

Contempt of Court Act, 2005

Bill No ---- of 2005**

An Act to provide for the classification and delimitation of the law of Contempt of Court and to provide for a general and special procedure to make an order for the investigation of and punishment for contempt of the Supreme Court and all courts and tribunals subordinate to the High Court Division.

WHEREAS in the light of Article 108 of the Constitution it is necessary to preserve, protect and defend the status of the Supreme Court as a court of record

AND WHEREAS in the light of Fundamental Rights guaranteed under article 32 and article 39 (2) of the Constitution it is necessary that the law of contempt ensures these rights to be meaningful

AND WHEREAS it is necessary that the law of contempt should therefore be classified and delimited and a general and special procedure to make an order for the investigation of and punishment for contempt of the Supreme Court and all courts and tribunals subordinate to the High Court Division should be provided for

Now, therefore, it is enacted as follows; -

1. Short title, extent and commencement.- (1) This Act may be called the Contempt of Courts Act, 2005.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force at once.

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

(a) “contempt of court” means civil contempt or criminal contempt;

(b) “civil contempt” means wilful flouting or disregard or disobedience or procrastination in the execution of any judgment, decree, direction, order, writ or other process of a Court or a wilful breach of 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-

- (i) incurs a substantial risk, as opposed to a remote possibility, by scandalising or tending to scandalize, or lowering, or tending 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;

(d) “judicial proceeding” means day-to-day proceedings of the Court.

(e) “pending proceedings” means proceedings, civil, or criminal, which have been instituted in a court of law until finally decided.

(f) “Supreme Court” means the Supreme Court of Bangladesh, consisting of the Appellate Division and the High Court Division.

3. Jurisdiction.- (1) Supreme Court shall have the power as a court of record to punish for a contempt committed in relation to it.

(2) The High Court Division shall have and exercise the same Jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts and tribunals subordinate to it as it has and exercises in respect of contempts of itself;

Provided that the High Court Division shall not take cognizance of a contempt alleged to have been committed in respect of a court or tribunal subordinate to it where such contempt is an offence punishable under the Penal Code (Act No. XLV of 1860).

4. Punishment.- (1) Subject to sub-section (2) any person who commits contempt of court shall be punished with imprisonment which may extend to

six months simple imprisonment or with fine which may extend to Taka 25,000 thousand, or with both;

Provided that no person shall be treated as an accused and meted out with any form of punishment till that person is found by the court as guilty of contempt of court.

(2) A person accused of having committed a contempt of court may, at any stage, submit an unqualified and unconditional apology and the court, if satisfied that it is bona fide, may discharge him or remit his punishment that may have been awarded;

Provided that an apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide to the satisfaction of the court even after entering a defence.

(3) In case of a contempt having been committed or alleged to have been committed by 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, shall be deemed to be guilty of the contempt and punishment shall be awarded accordingly.

5. Fair and accurate report of judicial proceeding not contempt.- (1) Subject to subsection (2) the publication of a substantially fair and accurate report of a judicial proceeding or any part thereof shall not constitute contempt of court.

(2) The Court may for reasons to be recorded in writing in the interest of justice prohibit the publication of information pertaining to any judicial proceedings.

6. Fair comments on a judgment not contempt.- Fair and analytical comments on, criticism of and expression of difference with a judgment involving question of public importance in a case which has been heard and finally decided and is no longer pending, shall not constitute contempt of court, provided that it is phrased in temperate language and the integrity and impartiality of a judge is not impugned.

7. Innocent publication and distribution of matter not contempt.- (1) A person shall not be guilty of contempt of court for making any statement or publishing any material, or distributing any statement or material pertaining to any matter which forms the subject of a pending proceeding, if

at that time he had no reasonable ground 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 making the statement, publication or distribution, shall not constitute contempt of court.

(3) Notwithstanding anything contrary in this Act or any other law for the time being in force, a publication made as or as part of a discussion in good faith of public affairs or other matters of general public interest is not to be treated as contempt of court if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion.

8. Publication of information relating to proceeding in chambers not contempt.- A person shall not be guilty of contempt of court for publishing the text or a fair and accurate summary of the whole order made by a court sitting in chamber or in camera, unless the court has expressly prohibited the publication thereof in the interest of justice, or on grounds of public order or the security of the state or on the ground that it contains information relating to secret process, discovery or inspection or in exercise of any power vested in it.

9. Protected statements.- No proceedings for contempt of court shall lie in relation to the following:

- (i) observations made by a higher or appellate court in a judicial order or judgment;
- (ii) remarks made in an administrative capacity by any authority in the course of official business, including those in connection with a disciplinary inquiry or in an inspection note or a character roll or confidential report; and
- (iii) a true statement made or any action taken by any person or any event without intent to scandalize a judge regarding his conduct in a matter not connected with the performance of his judicial functions.

10. Contempt 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.

11. Special procedure where contempt is in the face of the Supreme Court.- When it is alleged or appears to the Supreme 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 defence to the charge;
- (c) after taking affidavit evidence and/or such other evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournments to determine the matter of the charge; and
- (d) make such order for the punishment or discharge of such person as may be just.

12. Criminal contempt when committed.- (1) A criminal contempt shall be deemed to have been committed if a person-

- (a) attempts to influence a witness or proposed witness, either by intimidation or improper inducement, not to give evidence or not to tell the truth in any legal proceeding;
- (b) offers an improper inducement or attempts to intimidate a judge, in order to secure a favorable verdict or order in any legal proceeding;
- (c) commits any other act with intent to divert the course of justice.

(2) Nothing contained in subsection (1) shall prejudice any other criminal proceedings which may be initiated against any such person as is mentioned therein.

13. Cognizance of criminal contempt:- (1) In the case of a criminal contempt, other than a contempt referred to in section 11, the Supreme Court may take action on its own motion or on a motion made by-

- (a) the Attorney General, or
- (b) any other person, with the consent in writing of the Attorney General.

(2) In the case of any criminal contempt of a subordinate court, the High Court Division may take action on a reference made to it by the subordinate court or on a motion made by the Attorney General.

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

14. Procedure after cognizance.- (1) Notice of every proceeding under section 13 shall be served personally on the person charged, unless the court for reasons to be recorded in writing 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 13 is likely to abscond or keep out of the way to avoid service of notice, order the attachment of his property of such value as it may deem reasonable.

(4) Any person charged with contempt under section 13 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 such further evidence as may be necessary and pass such order as the justice of the case requires.

15. Hearing of cases of criminal contempt to be by benches.- Every case of criminal contempt under section 12 shall be heard and determined by a bench of the High Court Division of not less than two judges.

16. Civil contempt.- Proceeding for civil contempt may be initiated suo motu by any court or at the instance of an aggrieved party.

17. Limitation for actions for contempt.- No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of six months from the date on which the contempt is alleged to have been committed.

18. Appeals.- (1) An Appeal shall lie as of right from any order or decision of the High Court Division in the exercise of its jurisdiction to punish for contempt-

- (a) where the order or decision is made by a single judge, to a division bench of not less than two judges of the court, and
- (b) where the order or decision is made by a division bench, to the Appellate Division.

(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 expeditiously.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court Division that he intends to prefer an appeal, the High Court Division 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 division bench of the High Court Division, within 30 days and
- (b) in the case of an appeal to the Appellate Division, within 60 days from the date of the order appealed against.

19. Power of the Supreme Court to make rules.- The Supreme Court may make rules, not inconsistent with the provisions of this Act, providing

for any matter relating to its procedure for carrying out the purposes of this Act.

20. Repeal.- The Contempt of Courts Act, 1926 (Act no XII of 1926) is hereby repealed. After the repeal the pending proceedings, if any under the repealed Act, shall be disposed of in accordance with the provisions of this Act.

(Dr. M. Enamul Hoque)
Member

(Justice Md. Sirajul Islam)
Member

(Justice Mustafa Kamal)
Chairman