

CONTEMPT OF COURT

Memorandum by the Government of Sri Lanka

The jurisdiction to deal with contempt of court in Sri Lanka is purely statutory. Such jurisdiction was expressly conferred on the Supreme Court and the inferior courts by the Courts Ordinance of 1889 and certain provisions of the Criminal Procedure Code and the Civil Procedure Code. The distinction in England between the powers of the superior and the inferior courts of record to punish for contempt, appears to have been followed in our legislation. Broadly speaking, the jurisdiction of the inferior courts is confined to contempts committed *in facie curiae*. Sections 18 and 55 of the Judicature Act No. 2 of 1978, which relate to contempt of court, have now replaced the provisions of the repealed Courts Ordinance. It is the principles of the English law of contempt that have been followed in our courts.

2. Cases of civil contempt often arise in our courts. The question in such cases would be one of mere disobedience by a party to a civil action of a specific order of court or of a failure to observe an undertaking given to court. It is, however, in contempts classified as "criminal contempts" that the element of *public interest* in the due administration of justice becomes a matter of vital importance. It is here that questions of public policy which require a balancing of conflicting interests arise. While the fountain of justice must remain unpolluted, yet freedom of speech and publication should not be circumscribed beyond reasonable limits.

3. In this context, it is right to remind ourselves of the celebrated dicta of Lord Atkin in *Ambard v. Attorney-General for Trinidad and Tobago*, (1936) 1 A.E.R. 704, 709:

But whether the authority and position of an individual judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public, the public act done in the seat of justice. The path of criticism is a public way; the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.

4. As far back as the year 1936, there appeared in a leading daily newspaper, an article entitled "Justice on Holiday"—The article is of a sufficiently provocative character to justify quotation in full:

Justice on Holiday

With all this talk of the law's delays it seems an ironical jest that the Supreme Court and the District Courts of Colombo should close for two weeks from Friday,

presumably for the Race Meet in Colombo. This fortnight's relaxation appears to be the special privilege of these Courts, for the other Courts in Colombo and the outstations, as well as the Legal Department, are expected to perform their duties during that period. His Majesty's Judges in England are not off duty for the Derby or for the fashionable Ascot meet. They do not obviously mix up sport with their judicial functions. Here in Ceylon, Public Servants have a surfeit of holidays to make less fortunate members of the public grow green with envy. But when in addition to Christmas holidays, the long Easter vacation, and the other leave privileges the Supreme Court and the District Courts of Colombo close shop during the August race meet, the public has a right to question the propriety of this tradition. It is indeed a tradition of what old bureaucrats would call the halcyon days of the Public Service when Government officials did just as they liked. Now times have changed and especially in the case of the judiciary there is the greater necessity to speed up the administration of justice if the public grievance about the law's delays is to be redressed. But instead of removing the obvious causes which lead to arrears of work the tendency is to talk glibly about the lack of staff and the need for more officers to man the judiciary. The taxpayer is always there is give his money to pay for more Judges, more Commissioners of Assize and other officers. Even in his Budget speech Sir Baron Jayatileke dwelt at length on the law's delays and prefaced his remarks on that point by announcing the increase in the financial provision made for the Supreme Court. Neither more funds nor more personnel for the judiciary will help in preventing delays in the administration of justice as long as the tradition symbolized in the August Race Meet holidays continues. After all what is this great sport for which justice is held up for a fortnight? It may have been sport in the past but to-day it seems to have descended into an orgy of gambling shared by the high and low of the land. It does seem incongruous that the two weeks' intensive operations in spotting the Double and the Treble should coincide with special leave for Courts of law. The sooner the judicial officers and members of the legal profession co-operate to stop this exclusive August holiday the nearer will be the day when there will be no complaint about the law's delays.

5. The Supreme Court issued notice on the editor of the newspaper to show cause why he should not be committed for contempt of Court—It was contended on behalf of the editor that it is "the holidays and not the judges that are being attacked, that it is an onslaught on measures, not on men". These submissions were rejected, the editor was convicted, and Chief Justice Abrahams in the course of his judgment said:

It would be thoroughly undesirable that the press should be inhibited from criticizing honestly and in good faith the administration of justice as freely as any other institution. But it is equally undesirable that such criticism should be unbounded. It was open to the defendant, as to anyone else, to hold and express the

opinion that there are too many court vacations or that they are too long or are fixed at inconvenient times, or that portions of them should at this juncture be sacrificed to the public interest, and had that been all no objection could have been taken in this court.”

6. Many years later, there was a case when a member of the legislature was found guilty of contempt of court by the Supreme Court when he paid a visit to a prison for the purpose of inspection and made the following entry in the Prison Visitor’s Book—

The present practice of appeals of remand prisoners being heard in their absence is not healthy. When represented by Counsel or otherwise, the prisoner should be present at proceedings.

This entry was made in view of a complaint received by the writer that only undefended prisoners are present in court when their appeals are heard. Factually, there was no basis for this complaint.

7. There was an appeal against the conviction to the Privy Council and Lord Radcliffe delivering the opinion of the Privy Council stated—

They have given the matter the anxious scrutiny that is due to any suggestion that something has been done which might impede the due administration of justice in Ceylon. And it is proper that the courts there should be vigilant to correct any misapprehension in the public that would lead to the belief that accused persons or prisoners are denied a right that ought to be theirs. But Mr. Perera (i.e. the appellant), too, has rights that must be respected and Their Lordships are unable to find anything in his conduct that comes within the definition of Contempt of Court . . . Mr. Perera was acting in good faith and in discharge of what he believed to be his duty as a member of the Legislature. His information was inaccurate but he made no public use of it, contenting himself with entering his comment in the appropriate instrument, the Visitors’ Book, and writing to the responsible Minister. The words that he used made no direct reference to the Court or to any judge of the Court, or indeed to the course of justice or to the process of the Courts. What he thought he was protesting against was a prison regulation Finally, his criticism was honest criticism on a matter of public importance. Where these and no other are the circumstances that attend the action complained of, there cannot be Contempt of Court.