

CONTEMPT OF COURT

Memorandum by the Government of Bangladesh

The paper prepared by the Commonwealth Secretariat on the law of contempt of court has given some very useful information. It has given a good idea as to the law as is being followed in many commonwealth countries. Some of the recommendations of the Phillimore Committee, as given in Appendix A of the paper, though made in the background of U.K. conditions, have universal appeal and may usefully be considered by any country which is contemplating enactment of an exhaustive law on contempt.

2. It appears from a study of the paper that the law of contempt is in many respect almost uniform in many commonwealth countries. This is perhaps because most of those countries still follow the British Law and practice, modified to the extent necessary to suit their local conditions.

3. There is no denying the fact that the law of contempt is essential to the fair and impartial administration of justice. As has been rightly pointed out in the Phillimore Report the law of contempt is required as a means of—

- (a) maintaining the right of the citizen to a fair and unimpeded system of justice; and
- (b) protecting the orderly administration of the law.

4. The basis of the law of contempt is that those whose duty it is to administer justice must not be interfered with from outside influences. It is to uphold the majesty of law and the dignity of the courts that resort is taken to contempt proceedings. If orders of the courts could be disobeyed with impunity, the confidence of the people in the judiciary will be shaken and the entire legal system will lose its meaning.

5. Sometimes there may be conflict between the right of a citizen to freedom of expression and the power of the court to punish contempt. An enactment with clear provisions defining the jurisdiction of the court and providing for safeguards of the rights of citizens definitely eliminate the causes of such conflict. But even in the absence of such law, a reconciliation between the fundamental rights of a citizen and the law of contempt may be made to a great extent by the court applying the law. Since often the role of the prosecutor and the judge is combined in one person, the Judge should exercise its power to punish contempt sparingly and only in very exceptional cases in the lesser interest of the administration of justice. It is for the judge to strike a just balance between the right of the individual and the interest of judicial administration.

6. In Bangladesh the law of contempt is mainly based in the English Common Law. The only

statutory provisions which substantially deal with the subject are those provided by the contempt of Courts Act, 1926, and certain sections of the Penal Code, Criminal Procedure Code, and Code of Civil Procedure. The defences available to a contemner are not also to be found in any Act or law. The present law on defence is mainly based on judicial decisions.

7. The Contempt of Courts Act, 1926, a British Indian law, was passed “to define and limit the powers exercised by the High Court Division in punishing contempts of courts”. The Act continued in force in Pakistan. Bangladesh inherited this law as an existing law. The Act is not a comprehensive law.

8. The Act provides—

- (1) That the High Court Division shall have and exercise the same jurisdiction, power and authority in respect of contempt of Courts subordinate to it as it has and exercises in respect of itself. (s.2(i)).
- (2) That the High Court Division shall not take cognizance of such contempt where it is an offence punishable under the Penal Code. (s.2(iii)).
- (3) That 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 two thousand rupees, or with both. (s.2(ii)).
- (4) That the High Court Division shall not impose a sentence for any contempt of itself or of any subordinate court.
- (5) That the accused may be discharged or the punishment may be remitted on apology being made to the satisfaction of the Court. (First Proviso to s.3)

9. Article 108 of the Constitution of the People’s Republic of Bangladesh has recognised the already existing power of the Supreme Court to make an order for the investigation of or punishment for any contempt of itself. This power is however, subject to law, and the Contempt of Courts 1926 as mentioned above is such a law on the subject. An appeal lies to the Appellate Division against punishment for contempt by High Court Division (Art. 103).

10. There is no definition of “contempt” either in the Constitution or in any law and no procedure is prescribed in the Contempt of Courts Act, 1926, for the trial and punishment of the offender. In the absence of such procedure the possibility of arbitrary decisions in Contempt proceedings can not be ruled out, though happily such instances are rare.

11. Though there is no definition of "Contempt of Court" in our country we usefully mean by it any Act, conduct or publication—

- (a) which tends to bring the court or a judge into disrespect;
- (b) which tends to interfere with or obstructs the course of justice or the lawful process of the courts; or
- (c) which tends to prejudice parties to a legal proceeding or their witnesses during the pendency of the proceeding.

13. Apart from the Contempt of Courts Act, other statutory provisions relating to contempt of court are to be found in—

- (a) Secs. 480 to 486 of the Cr. P.C. 1898;
- (b) Sections 175, 178, 179, 180 and 228 of the Penal Code.
- (c) Secs. 151 and Or. 21 Rule 32(1), (2), Order 39 Rule I, 2(3), (5); Order 40 Rule I of the Code of Civil Procedure.

14. Section 480 of the Criminal Procedure Code, 1890, confers special powers on all courts—Civil, Criminal and Revenue to deal summarily with five court or to interfere with course of justice *committed by any person in the face of the Court*. This section enables a court to preserve its decorum and maintain its dignity.

15. The section runs as follows:—

When any such offence as is described in sections 175, 178, 179, 180 or 228 of the Penal Code is committed in view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and at any time before the rising of the court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred taka, and in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

16. Intentional omission to produce a document by a person legally bound to produce it is an offence under section 175 of the Penal Code.

Refusal to take oath when duly required to take it is an offence under section 178.

Refusal to answer questions by one who is legally bound to state the truth is an offence under section 179.

Refusal to sign a statement made to a Court when legally required to do so is an offence under section 180.

An intentional insult or interruption to a Judge sitting in any stage of a judicial proceeding is an offence under section 228. Then offences are punishable with simple imprisonment for terms ranging from three months to six months or with fine extending from five hundred taka to one thousand taka. There may be regular criminal prosecution for such of terms of contempt. But section 480 Cr. P.C. empowers the court to punish such contempt in the

summary way if the offence is omitted in its presence. i.e. during the course of a judicial proceeding.

17. It is to be noted that this section prescribes a summary procedure enabling the courts to punish such contempts; but such procedure is optional. Where the Court considers that an offence described in section 480 need not be tried summarily by it or requires a heavier sentence, it can, after recording the facts and the statement of the accused, forward him to a Magistrate for trial in the ordinary way (S.482).

18. The remedy under S.480 being summary, it is provided for the safety of the accused that the record should be in detail. It is necessary that it should show (1) the facts; (2) the statement of the offender; and (3) the finding and sentence. If the offence is under S.228, then the record must further show (4) the nature and stage of the proceeding interrupted, and (5) the nature of the interruption or insult.

19. Section 485 is a special provision relating to a witness refusing to answer or to produce a document in his possession or power, and does not offer any reasonable excuse for such refusal. The Court can imprison the recalcitrant witness for a term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document or thing. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482.

20. Section 485A is a new special provision incorporated in the Criminal Procedure Code by the Law Reforms Ordinance, 1948. It provides for punishment on a summary trial for contempt committed by a witness by not attending court in obedience to a summons. If any witness being summoned to appear before a criminal court without just excuse neglects or refuses to attend at the appointed time and place or depart from the place where he has to attend before the time at which it is lawful for him to depart, the court may take cognizance of the offence and after giving the offender an opportunity of showing cause and following the procedure prescribed for summary trial, sentence him to fine not exceeding 250 taka.

21. Contempt of Court such as by the publication of comments calculated to obstruct the due administration of justice or to create a substantial prejudice against the parties or to scandalise the courts does not fall within the purview of section 48ZO. The power to punish a person committing such contempt can now be exercised only by the High Court Division under the Contempt of Courts Act, 1926.

22. Section 484 provides that where a person has been punished under section 480, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or jurisdiction of such court, or on apology being made to its satisfaction.

23. Under S.486 the accused in every case of conviction or sentence (under s.480, 485 or 485A), has a right of appeal to the court to which the decrees or orders of such court are appealable.

24. Under the Code of Civil Procedure, 1908, Contempt Proceedings are provided in Section 151, Order 21, Rule 32 (1), (2), Order 39, Rule 1,2(3),5, Order 40 Rule 1.

25. Section 151 provides for inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of process of the Court. In appropriate cases under its inherent power the Court may punish monetarily a person for its contempt.

26. Under Order 21, Rule 32 where the party against whom a decree for the specific performance of a contract or for an injunction has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in addition to other method, by his detention in the civil prison for a period not exceeding six weeks.

27. Disobedience of an interim injunction granted under Or. 39 can be punished by the High Court Division as a contempt of Court. Under Rule 2(3) Order 39, the Court granting an injunction may, in case of disobedience, or of breach of any term of the order injunction, order the person guilty of such disobedience or breach to be detained in the civil prison for a term not exceeding six months. Before a party can be punished for contempt, it must be established

that the order which is said to have been disobeyed is clear and unambiguous and that the party was not under a bonafide misapprehension as to its scope.

28. Order 40, Rule 1 provides for the appointment of “receiver” for the custody and management of any property. Possession of receiver is the possession of the courts. Hence, where a receiver is appointed of property, the subject of a suit, and the property is forcibly taken possession of by any person proceeding for contempt may be stated against him.

29. All cases in which punishment is awarded in terms of fine or detention in civil prison are appealable under the provisions of section 104 of the Code of Civil Procedure, 1908.

30. We have no contemplation at present to codify the existing law of contempt mainly consisting of judicial decisions in an exhaustive manner, as our neighbour India has done—laying down detailed procedure to be followed in the case of contempt in the face of the court and contempt outside the court and the defences available to the contemner.

31. Our system is working satisfactorily. In most cases contemnners tender apology and the proceedings end in pardon being granted to the contemner. Arbitrary use of the power of the court is very rare in Bangladesh.