

UNIT – III

Contempt of court

Civil · Criminal · Defences · Procedure

Explanatory Lecture Slides

Professional Ethics and Professional Accounting System · Clinical-I · Semester VII

PROFESSIONAL ETHICS & PROFESSIONAL ACCOUNTING SYSTEM

Topics covered in this unit

01

Define contempt and why the jurisdiction exists

02

Distinguish civil and criminal contempt

03

State defences under the 1971 Act

04

Place procedure and punishment

05

Read the leading cases a KSLU answer names

06

Note the tension with Art. 19(1)(a)

How this unit is organised

01

Why contempt

02

Civil contempt

03

Criminal contempt

04

Defences

05

Procedure &
punishment

06

Speech tension

Why contempt

To keep the stream of justice clear, not to massage a judge's ego. A court that cannot compel obedience is a seminar.

- Constitution: Arts. 129, 215 (SC and HC are courts of record — inherent contempt power). The 1971 Act regulates, it does not create, that power (Supreme Court Bar Association v Union of India nuance: punishment of an advocate-officer has a process).
- A 10-mark: source + purpose + one limit (not to chill fair criticism — S. Mulgaokar).

Why contempt

SOURCE

- Arts. 129, 215.
- 1971 Act.

PURPOSE

- Obedience.
- A clean stream.
- Not a thin skin.

Civil contempt — s.2(b)

Wilful disobedience of a judgment, decree, direction, order, writ, or wilful breach of an undertaking to the court.

- Wilful is the word. Inability is not contempt; defiance is. Undertaking of counsel binds as an order if given to the court.
- Remedy: purge — obey, plus possible punishment. A company officer who flouts an injunction is the textbook defendant.

Civil contempt — s.2(b)

NEED

- A clear order.
- Knowledge.
- Wilful breach.

NOT ENOUGH

- A genuine inability.
- A debatable reading, without more.

Criminal contempt — s.2(c)

Publication or act that (i) scandalises or tends to scandalise, or lowers the authority of, the court; (ii) prejudices or interferes with a proceeding; (iii) otherwise interferes with the administration of justice.

- Scandalising is the most-set and the most-abused head. Fair comment on the merits of a decided case is not contempt (s.5).
- Trial by media is (ii). A picket that stops a judge from entering is (iii).

Criminal contempt — s.2(c)

THREE LIMBS

- Scandalise.
- Prejudice a live case.
- Interfere.

NOT

- A reasoned academic criticism of a reported judgment.

Defences — ss.3–8

Innocent publication (s.3), fair reporting (s.4), fair criticism of a decided case (s.5), complaint against a presiding officer to a superior (s.6), no contempt in a bona fide defence / instruction (careful), consent of AG/HC for some criminal contempt (s.15).

- A 16-mark of defences with one illustration each. s.13: no punishment if the court is satisfied it does not substantially interfere — a real, under-used valve.

Defences — ss.3–8

MUST NAME

- ss.4, 5, 13.

PROCESS

- s.15 consent in many criminal-contempt motions.

Procedure and punishment

s.12: simple imprisonment up to 6 months, or fine up to ₹2,000, or both; apology that the court accepts may purge. s.14: contempt in the face. s.17: procedure in other cases. Limitation s.20: one year.

- SCBA v Union of India (1998): suspending an advocate's licence is not a contempt punishment the court invents — send the conduct to the Bar Council, or use the Act's menu.
- In Re Arundhati Roy; In Re Prashant Bhushan — name them as the modern scandalising docket, and take a reasoned side.

Procedure and punishment

MENU

- Fine.
- Simple imprisonment.
- Apology.

NOT ON THE MENU

- A court-invented disbarment as contempt punishment (SCBA).

Art. 19(1)(a) tension

P.N. Duda, S. Mulgaokar, Namboodiripad (E.M.S.): criticism of the judiciary is not a crime; attributing motive and lowering the institution as a whole can be. Brahma Prakash Sharma (1953, pre-Act) is the older headnote.

- Write a last paragraph that holds both: a robust press, and a court that can still sit.

Art. 19(1)(a) tension

PROTECT

- Fair comment.
- A report of proceedings.

PUNISH

- A mob at the gate.
- A wilful breach.
- A smear of motive at a sitting bench.

Defences — ss.3–8

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Cases a KSLU answer should name

CASE

Supreme Court Bar Association v Union of India

(1998) 4 SCC 409

Contempt punishment is the Act's menu; disbarment is the Bar Council's.

CASE

E.M.S. Namboodiripad v T.N. Nambiar

(1970) 2 SCC 325

Scandalising — a Chief Minister's speech, and the older width of the head.

CASE

In Re S. Mulgaokar

(1978) 3 SCC 339

The court's self-restraint: contempt is not a visor against fair criticism.

Provisions & materials to quote

Arts. 129, 215

Courts of record.

Contempt of Courts Act

Civil and criminal defined.

ss.3–8, 13

Defences and the substantial-interference valve.

ss.12, 14, 15, 20

Punishment, in-the-face, cognizance, limitation.

Art. 19(1)(a) / 19(2)

Speech, and contempt as a reasonable restriction in form.

10 / 16-mark frames from this unit

Q1

Define civil and criminal contempt. Illustrate.

Q2

What defences are available in a contempt proceeding?

Q3

Can the Supreme Court, in contempt, suspend an advocate's licence? Discuss SCBA.

Q4

How is the contempt power reconciled with freedom of speech?

Unit recap

- 1 Contempt protects the stream, not the ego.
- 2 Civil = wilful breach of an order / undertaking.
- 3 Criminal = scandalise / prejudice / interfere.
- 4 ss.5 and 13 are the writer's defences; SCBA limits the punishment menu.
- 5 Arts. 129/215 + 1971 Act; 19(1)(a) in the last paragraph.