

Reviewing the Contempt of Courts Act

The Contempt of Courts Act of 1971 is one of the most powerful statutes in the country. It gives the constitutional courts wide powers to restrict an individual's fundamental right to personal liberty for "scandalising the court" or for "wilful disobedience" of any judgment, writ, direction or order.

The offence of "scandalising the court" continues in India even though it was abolished as an offence in England and Wales long ago.

On March 8, 2018, the Department of Justice wrote to the Law Commission of India, asking it to examine an amendment to the Act to nix "scandalising the court" as a ground for contempt and restrict contempt to only "wilful disobedience" of directions/judgments of the court.

The Supreme Court recently published a report that noted that 568 criminal contempt cases and 96,310 civil contempt cases were found pending in the High Courts. In the Supreme Court, as of April 10, 683 civil contempt cases and 15 criminal contempt cases have been shown as pending.

But the Law Commission has submitted a report stating that there is no point "tinkering" with the 1971 Act. The statute, it said, only lays down the procedure in contempt cases. "The powers of contempt of the Supreme Court and High Courts are independent of the Act 1971," the report of the Commission said. The contempt powers of the higher courts are drawn from the Constitution itself.

The Commission said that "to delete the provision relating to 'criminal contempt' inter alia 'scandalising of courts' will have no impact on the power of the Superior Courts to punish for contempt (including criminal contempt) in view of their inherent constitutional powers, as these powers are independent of statutory provisions". Additionally, Article 142(2) enables the Supreme Court to investigate and punish any person for its contempt.

The Law Commission informed the government that the 1971 Act was a good influence. In fact, the statute, by laying down procedure, restricts the vast authority of the courts in wielding contempt powers, it said.

The 1971 Act contains "adequate safeguards to exclude instances which may not amount to criminal contempt" as defined under Section 2(c) of the Act 1971. The Commission said the statute has stood the test of judicial scrutiny for about five decades. It empowers the High Court to act if someone is in contempt of the subordinate courts. Diluting the Act would expose the subordinate judiciary to acts of contempt of court.

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