

Drafted by a committee on Contempt of Court established by the Bar Association of Sri Lanka in 2006 which Committee constituted Dr J de Almeida Guneratne, P.C.(Chair) Kishali Pinto-Jayawardena, AAL and JC Weliamuna AAL. The draft benefited from advisory comments by former judge of the Supreme Court, MDH Fernando. Assistance was given by the British law firm of Kirkland and Ellis International together with INTERIGHTS, the International Centre for the Legal Protection of Rights (United Kingdom).

Approved by the Bar Council of Sri Lanka on 25th February 2006 and forwarded to the Government by then President of the Bar Association, Desmond Fernando, P.C.

THE CONTEMPT OF COURTS ACT

AN ACT TO DEFINE AND LIMIT THE POWERS OF COURTS IN PUNISHING CONTEMPT OF COURTS

Be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka in ... , as follows;

Short title and extent

1. This Act may be called the Contempt of Courts Act, ...

Definitions

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

- a) 'contempt of court' means civil contempt or criminal contempt;
- b) 'civil contempt' means wilful disobedience to any judgement, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

- c) 'criminal contempt' means the publication (whether by words spoken or written or by signs or by visible representations or otherwise) of any matter or the doing of any other act whatsoever which;
- (i) lowers or tends to lower the authority of any court;
 - (ii) prejudices or interferes with the due course of any judicial proceeding;
 - (iii) interferes or obstructs the administration of justice in any other manner;

Provided that the provisions of this Act shall be in addition to and not in derogation of, the provisions of any other law presently in force defining contempt of court

Contempt in respect of Pending Proceedings

3. A person shall be guilty of contempt on the ground that, that person has published (whether by words spoken or written or by signs or by visible representations or otherwise) of any matter or the doing of any other act whatsoever which lowers or tends to lower the authority of any court, prejudices or interferes with the due course of any judicial proceeding, interferes or obstructs the administration of justice in any other manner only if;
- (1) the contempt is in respect of pending proceedings and
 - (2) is contained in a publication addressed to the public at large or any section of the public which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced.

Innocent Publication or Distribution

4. (1) A person is not guilty of contempt of court if at the time of publication of matter amounting to contempt of court under this Act, (having taken all reasonable care), that person does not know and has no reason to suspect that relevant proceedings are pending;
- (2) A person is not guilty of contempt of court as the distributor of such publication containing matter if at the time of publication of matter amounting to contempt of court under this Act (having taken all reasonable care) if that person does not know that it contains such matter and has no reason to suspect that it is likely to do so;
- (3) The burden of proof of any fact tending to establish a defence afforded by this section lies upon that person

Contemporary reports of proceedings

5. (1) A person is not guilty of contempt of court in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith;

(2) A person is not guilty of contempt of court in respect of an abridged or condensed report of legal proceedings held in public, published contemporaneously and in good faith, provided it gives a correct and just impression of the proceedings.

Discussion of Public Affairs

6. A publication made as or as part of a discussion in good faith of public affairs or other matters of general public interest does not amount to contempt of court under this Act if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion.

Sources of Information

7. No court may require a person to disclose, nor is a person guilty of contempt of court for refusing to disclose, nor may any adverse inferences be drawn against him/her consequent to such refusal to disclose the source of information contained in a publication for which that person is responsible.

Provided that a court may order a person to disclose a source of information if it is established to the satisfaction of the court that disclosure is necessary in a democratic society in the interests of justice or national security or for the prevention of disorder or crime.

Limitations

8. A person is not guilty of contempt of court for;

- 1) publishing any fair comment on the merits of a case which has been heard and finally decided;
- 2) honest and fair criticism on a matter of public importance or public concern;
- 3) fair criticism of the legal merits of judicial decisions;

9. Notwithstanding anything contained in any law for the time being in force, contempt of court shall not be found under this Act unless the contempt is of such a nature that it substantially interferes with the due course of justice.

Other defence not affected

10. Nothing contained in this Act shall be construed as implying that any other defence which would have been a valid defence in any proceedings for contempt has ceased to be available merely by reason of the provisions of this Act

Act not to imply enlargement of scope of contempt Procedure

11. Nothing contained in this Act shall be construed as implying that any disobedience, breach, publication or other act is punishable as contempt of court, which would not be so punishable apart from this Act.

12. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, where it is alleged or appears to the Supreme Court or the Court of Appeal that a person has been guilty of contempt committed in its presence or hearing, such Court may cause such person to be detained in custody and at any time before the rising of

that Court, on the same day or as early as possible thereafter, shall cause that person to be informed in writing of the contempt with which that person is charged and nominate a date for the hearing of the charge.

(2) On the date so nominated, such Court shall afford such person an opportunity to make his defence to the charge; and;

- a) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed either forthwith or after adjournment, to determine the matter of the charge; and
- b) make such order for the punishment or discharge of such person as may be just.

(3) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, in writing, to have the charge against him tried by some judge other than the judge or judges in whose presence or hearing, the offence is alleged to have been committed, such application shall be placed before the Chief Justice (or a bench of the three most senior judges of the Supreme Court where the said application concerns a charge issued by the Chief Justice himself) together with a statement of the facts of the case, for such directions as the Chief Justice (or the Bench assigned as aforesaid), may think fit to issue as respects the trial thereof.

(4) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1), which is held in pursuance of directions issued under sub-section (3) by a Court other than the Court in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the judge or judges in whose presence or hearing the offence is alleged to have been committed, to appear as a witness or witnesses and the statement placed before the Chief Justice (or the Bench assigned) under sub-section (3) shall be treated as evidence in the case.

(5) Pending the determination of the charge, the Court may direct that a person charged with contempt under this section, be detained in such custody as it may specify;

Provided that, that person may be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties with the condition that the person charged, shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court

Provided further that the Court may, if it thinks fit, instead of taking bail from such person, discharge that person on execution of a bond without sureties for his attendance as

aforesaid.

13. In the case of contempt committed under this Act, other than contempt *ex facie*, the Supreme Court or the Court of Appeal may take action on its own motion or on a motion made by
 - a) the Attorney General
 - b) any other person, with the consent in writing of the Attorney General

or

 - c) where power is exercised by the Court of Appeal in respect of the High Court of the Provinces and such other courts of First Instance, tribunals or other institutions as Parliament may from time to time, ordain and establish, on the motion of such court.

Every motion or reference made under this section shall specify the contempt of which the person or persons charged, is alleged to have committed.

14. (1) Notice of every proceeding under Section 16 shall be served personally on the person charged;
 - (3) The notice shall be accompanied;
 - (i) 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
 - (ii) in the case of proceedings commenced on a reference by a subordinate court, by a copy of the reference
 - (4) Any person charged with contempt under Section 16 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 taking such further evidence as may be necessary and pass such order as the justice of the case requires.
 - (4) An appeal shall lie to the Supreme Court from any order, judgement, decree or sentence of the Court of Appeal in the exercise of its jurisdiction to punish for contempt or in the exercise of its appellate powers in respect of the same if the Court of Appeal grants leave to appeal to the Supreme Court *ex mero motu* or at the instance of any aggrieved party. Provided that, the Supreme Court may, in its discretion grant special leave to appeal to the Supreme Court from any order, judgement, decree or sentence of the Court of Appeal, where the Court of Appeal has refused to grant leave to appeal to the Supreme Court.
15. Pending any appeal, the Supreme Court or the Court of Appeal may order that;

- a) the execution of the punishment or order appealed against, be suspended;
- b) if the appellant is in confinement, that he or she be released on bail

**Punishment
for contempt
of court**

16 (1) Save as otherwise expressly provided for in this Act or in any other Law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months or with a fine which may extend to twenty thousand rupees or with both.

Provided that the accused may be discharged or the punishment awarded may be remitted on apology made to the satisfaction of court.

Explanation; An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any Law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a sentence of imprisonment is imposed by a court under this Act, specific reasons must be given by such court, that a sentence of imprisonment alone is called for in the facts and circumstances of the case.

