

# Contempt of Court Ordinance, 1998

## Ordinance X of 1998

### An ordinance to regulate the exercise of the powers of courts to punish for contempt of court

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WHEREAS clause (3) of Article 204 of the Constitution of the Islamic Republic of Pakistan provides that the exercise of the power conferred on courts to punish for contempt may be regulated by laws:

AND WHEREAS the National Assembly is not in session and the president is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following ordinance:-

#### 1.

##### **Short title and commencement.-**

(1)

This Ordinance may be called the Contempt of Court Ordinance, 1998.

(2)

It extends to the whole of Pakistan.

(3)

It shall come into force at once.

#### 2.

##### **Definition.-**

In this Ordinance,-

(a)

'Academic critique' means an article written by a lawyer or a person holding an academic post containing an analysis of a judgment on the basis of legal criteria or desiderata;

(b)

'Civil contempt' means the wilful flouting or disregard of -

(i)

an order, whether interim or final, a judgment or decree of a court;

(ii)

a writ or order issued by a court in the exercise of its constitutional jurisdiction;

(iii)

an undertaking given to, and recorded by, a court; (iv) the process of a court;

(c)

'Criminal contempt' means the doing of any act with intent to, or having the effect of, obstructing the administration of justice;

(d)

'Judicial contempt' means the scandalisation of a court and includes personalised criticism of a judge while holding office;

(e)

'Notice' means a notice other than a show-cause notice issued by a court;

(f)

'Pending proceedings' means proceedings which have been instituted in a court of law until finally decided after exhausting all appeals, revisions or reviews provided by law or until the period of limitation therefore has expired; provided that the pendency of an execution application shall not detract from the finality of the proceedings.

(g)

'Personalised criticism' means a criticism of a judge or a judgment in which improper motives are imputed; and

(h)

'Superior court' means the Supreme Court or a High Court.

3.

#### **Jurisdiction.-**

(1)

Every superior court shall have the power to punish a contempt committed in relation to it.

(2)

Subject to sub-section (3), every High Court shall have the power to punish a contempt committed in relation to any court subordinate to it.

(3)

No High Court shall proceed in cases in which an alleged contempt is punishable by a subordinate court under the Pakistan Penal Code (Act No. XLV of 1860).

4.

#### **Punishment.-**

(1)

Subject to sub-section(2), any person who commits contempt of court shall be punished with imprisonment which may extend to six months simple imprisonment, or with fine which may extend to one hundred thousand rupees, or with both.

(2)

A person accused of having committed contempt of court may, at any stage, submit an apology and the court, if satisfied that it is bona fide, may discharge him or remit his sentence. Explanation.- The fact that an accused person genuinely believes that he has not committed contempt and enters a defence shall not detract from the bona fides of an apology.

(3)

In the case of a contempt having been committed, or alleged to have been committed, by a company, the responsibility therefore shall extend to the persons

in the company, directly or indirectly, responsible for the same, who shall also be liable to be punished accordingly.

(4)

Notwithstanding anything contained in any judgment, no court shall have the power to pass any order of punishment for or in relation to any act of contempt save and except in accordance with sub-section (1).

5.

**Criminal contempt when committed.-**

(1)

A criminal contempt shall be deemed to have been committed if a person-

(a)

attempts to influence a witness, or proposed witness, either by intimidation or improper inducement, not to give evidence, or not to tell the truth in any legal proceeding;

(b)

offers an improper inducement, or attempts to intimidate a judge, in order to secure a favorable verdict in any legal proceedings;

(c)

commits any other act with intent to divert the course of justice;

(2)

Nothing contained in sub-section (1) shall prejudice any other criminal proceedings which may be initiated against any such person as is mentioned therein.

6.

**Cognisance of criminal contempt.-**

(1)

In the case of a criminal contempt a superior court may take action;

(i)

suo motu, or

(ii)

on the initiative of any person connected with the proceedings in which the alleged contempt has been committed, or

(iii)

on the application of the law officer of a provincial or the federal government.

7.

**Fair reporting.-**

(1)

Subject to sub-section(2), the publication of a substantially accurate account of what has transpired in a court, or of legal proceedings, shall not constitute contempt of court.

(2)

The court may, for reasons to be recorded in writing, in the interest of justice, prohibit the publication of information pertaining to legal proceedings.

8.

**Personalised criticism.-**

(1)

Subject to the provisions of this Ordinance, personalised criticism of a specific judge, or judges, may constitute judicial contempt save and except if made in good faith and in temperate language in a complaint made:-

- (a) to the administrative superior of a judge of a subordinate court; or
- (b) to a provincial government; or
- (c) to the Chief Justice of a High Court; or
- (d) to the Supreme Court; or
- (e) to the Supreme Judicial Council; or
- (f) to the federal government for examination and being forwarded to the Supreme Judicial Council.

(2) Nothing contained in sub-section (1) is intended to deprive a judge of the right to file a suit for defamation.

**9.**

**Academic criticism.-**

An academic critique of a judgment in a case of public importance shall not constitute contempt notwithstanding the fact that an appeal maybe pending if:-

- (i) it is phrased in temperate language;
- (ii) it is not made by or on behalf of a party, or by an advocate appearing in the case; and
- (iii) does not pertain to a pending criminal case, or disciplinary proceedings against a public servant, or a case involving disqualification of a member of the Majlis-e-Shoora (parliament) or a Provincial Assembly.

**10.**

**Criticism of judgments.-**

No criticism of a judgment in a case which has been finally decided and is no longer pending shall constitute contempt, no matter how far reaching or outspoken in nature it may be, if it is phrased in temperate language and does not impute improper motives to the judge.

**11.**

**Judicial contempt.-**

(1) A superior court may only take action in a case of judicial contempt on its own initiative.

(2) Subject to sub-section (1) any person may lay information relating to the commission of an alleged judicial contempt before a superior court, but such

information shall not be registered as a case (although it may be placed in the case file) and nor shall any such person have the right of audience before the court.

(3)

Any person laying false information relating to the commission of an alleged judicial contempt shall himself be liable to be proceeded against for contempt of court.

(4)

Judicial contempt proceedings initiated by a judge, or relating to a judge, shall not be heard by the said judge, but shall (unless he is himself the Chief Justice) be referred to the Chief Justice, who may hear the same personally or refer it to some other judge, and, in a case in which the judge himself is the Chief Justice, shall be referred to the senior most judge available for disposal similarly.

(5)

No proceedings for judicial contempt shall be initiated after the expiry of one year.

**12.**

**Civil contempt.-**

(1)

Proceedings for civil contempt may be initiated suo motu or at the instance of an aggrieved party.

(2)

The provisions contained herein are intended to be in addition to, and not in derogation of, the power of the court under any other law for the time being in force to enforce compliance of its orders, judgments or decrees.

**13.**

**Procedure in cases of contempt in the face of the court.-**

(1)

In the case of a contempt committed in the face of the court, if the accused, persists in disorderly conduct, the court may direct that he leaves the court room, and, failing compliance, may further direct that he be physically removed from the court room.

(2)

In all cases of contempt in the face of the court, the judge shall pass an order in open court recording separately what was said or done by the accused person and what was observed by the judge and shall, if he is not the Chief Justice, refer the matter to the Chief Justice, and, if he is the Chief Justice, to the senior most available judge of a the court, who shall either hear and decide the matter himself or refer it to some other judge for disposal; Provided that it shall not be necessary for the matter to be so referred if the accused person requests in writing that it be decided by the judge before whom the contempt, or alleged contempt, was committed.

(3)

In the ensuing proceedings for contempt it shall not be necessary for the judge in whose presence the alleged contempt was committed to appear as a witness and the statement of events recorded by him under sub-section (2) may be treated as evidence; Provided that the judge hearing the case may seek further comments

from the said judge, or make such further enquiry (including the calling of witnesses on his own motion) as he deems fit.

14.

**Parliamentary speech.-**

Nothing contained in this Ordinance or any other law is intended to stifle discussion in the Majlis-e-Shoora (parliament) or a Provincial Assembly on any matter of public importance without criticism of the conduct of a judge in the discharge of his duties.

15.

**Expunged material.-**

No material which has been expunged from the record under the orders of - (i) a court of competent jurisdiction; or (ii) the presiding officer of the Senate, the National Assembly or a Provincial Assembly, shall be admissible in evidence.

16.

**Innocent publication.-**

No person shall be guilty of contempt of court for making any statement, or publishing any material, pertaining to any matter which forms the subject of pending proceedings, if he was not aware of the pendency thereof.

17.

**Protected statements.-**

No proceedings for contempt of court shall lie in relation to the following:-

(i)

Observations made by a higher or appellate court in a judicial order or judgment;

(ii)

remarks made in an administrative capacity by any authority in the course of official business, including those in connection with a disciplinary inquiry or in an inspection note or a character roll or confidential report; and

(iii)

a true statement regarding the conduct of a judge in a matter not connected with the performance of his judicial functions.

18.

**Amicus briefs.-**

(1)

In any case pending in a superior court in which issues of public importance are involved, it shall be open to persons or organisations other than the parties to the litigation to file, with the permission of the court, amicus briefs confined to the legal issues arising in the case and the said briefs may contain such submissions as are legally relevant and do not contravene the provisions of this Ordinance.

(2)

Permission to file amicus briefs may be granted without notice subject to the condition that copies thereof shall be supplied to the parties to the case but the grant of such a permission shall not entitle the person or the organisation concerned to a right of audience, or appeal, and nor shall the court be bound to discuss such submissions in the judgment.

(3)

The provisions of this section shall not affect the power of the court to request an advocate to appear as amicus curiae.

**19.**

**Procedure.-**

(1)

Save as expressly provided to the contrary, proceedings in cases of contempt shall be commenced by the issuance of a notice, or a show-cause notice, at the discretion of the court.

(2)

In the case of a notice, the alleged contemner may enter appearance in person or through an advocate, and, in the case of a show-cause notice, shall appear personally; Provided that the court may at any time exempt the alleged contemner from appearing personally.

(3)

If, after giving the alleged contemner an opportunity of a preliminary hearing, the court is prima facie satisfied that the interest of justice so requires, it shall fix a date for framing a charge in open court and proceed to decide the matter either on that date, or on a subsequent date or dates, on the basis of affidavits, or after recording evidence; Provided that the alleged contemner shall not, if he so requests, be denied the right of cross examination in relation to any affidavit used in evidence against him.

**20.**

**Substantial detriment.-**

(1)

No person shall be found guilty of contempt of court, or punished accordingly, unless the court is satisfied that the contempt is one which is substantially detrimental to the administration of justice.

**Explanation.-** (1) A serious discussion of substantive issues of public importance without intent to influence a legal proceeding which may incidentally be pending will not constitute contempt of court.

(2)

In the event of a person being found not guilty of contempt by reason of sub-section (1), the court may pass an order deprecating the conduct, or actions, of the person accused of having committed contempt.

(3)

Notwithstanding anything contained in this Ordinance, truth shall be a valid defence in cases of contempt of court.

**21.**

**Appeal.-**

(1)

Orders passed by a superior court in cases of contempt shall be appealable in the following manner:-

(i)

In the case of an order passed by a single judge of a High Court, an intra-court appeal shall lie to a bench of two or more judges;

(ii)

in a case in which the original order has been passed by a division or large bench of a High Court, an appeal as of right shall lie to the Supreme Court; and

(iii)

in the case of an original order passed by a bench of the Supreme Court, an intra-court appeal shall lie to a larger bench of the court.

(2)

The appellate court may suspend the impugned order pending disposal of the appeal.

(3)

The period of filing an appeal shall be thirty days.

**22.**

**Ordinance to be exhaustive.-**

Save as, and to the extent expressly provided in this Ordinance, no act or statement of any person shall constitute contempt of court or be punishable therefor.

**23.**

**Repeal.-**

The Contempt of Court Act, 1976 (LXIV of 1976) is hereby repealed.

(MUHAMMAD RAFIQ TARAR) PRESIDENT