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SUPPLEMENT

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CONTEMPT OF COURTS

(Private Members' Bill)

A

BILL

**to define and limit the powers of certain courts in punishing contempt of
courts and to regulate their procedure in relation thereto**

*To be presented in Parliament by Hon. Patali Champika Ranawaka, M.P.
for Colombo District*

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Contempt of Courts

AN ACT TO DEFINE AND LIMIT THE POWERS OF CERTAIN COURTS IN PUNISHING
CONTEMPT OF COURTS AND TO REGULATE THEIR PROCEDURE IN RELATION
THERE TO

BE it enacted by the Parliament of the Democratic Socialist
Republic of Sri Lanka as follows:-

1. This Act may be cited as the Contempt of Courts Act, No. of 2021 Short title
and extent

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

(a) “contempt of court” means civil contempt or criminal contempt;

10 (b) “civil contempt” means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;

15 (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) scandalizes or tends to scandalize or lowers or tends to lower the authority of, any court; or

20 (ii) prejudices or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with or obstructs or tends to obstruct, the administration of justice in any other manner;

3. (1) A person shall not be guilty of contempt of court on the ground that he has published (whether by words, spoken or written or by signs or by visible representations or otherwise) any matter which interferes or tends to interfere with or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at that time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

Innocent
publication
and
distribution
of matter not
contempt

(2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub-section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court.

(3) A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned in sub-section (1), if at the time of distribution, he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid:

Provided that this sub-section shall not apply in respect of the distribution of-

- (i) any publication which is a book or paper printed or published otherwise than in conformity with prevailing law;
- (ii) any publication which is a newspaper published otherwise than in conformity with the prevailing law.

Explanation - For the purposes of this section, a judicial proceeding,

- (a) is said to be pending-

- (1) in the case of a civil proceeding, then it is instituted by the filing of a plaint or otherwise,
- (2) in the case of a civil proceeding under the Code of Criminal Procedure, or any other law-

5 (i) Where it relates to the commission of an offence, when the charge-sheet is filed or when the court issues summons or warrant, as the case may be, against the accused, and

10 (ii) in any other case, when the court takes cognizance of the matter to which the proceeding relates and,

15 in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred until the period of limitation prescribed for such appeal or

20 revision has expired;

(b) which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the order decree or sentence passed therein are pending.

25

4. Subject to the provisions contained in section 7, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof.

Fair and accurate report of judicial proceeding not contempt

30 5. A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided.

Fair criticism of judicial act not contempt

6. A person shall not be guilty of contempt of court in respect of any statement made by him in good faith concerning the presiding officer of to whom is a subordinate.

Complaint against presiding officers of subordinate courts when not contempt

5 *Explanation*—In this section, “subordinate court” means any court under the purview of the Judicial Services Commission.

7. (1) Notwithstanding anything contained in this Act, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding before any court sitting in chambers or *in camera* except in the following cases, that is to say:—

Publication of information relating to proceedings in chambers or *in camera* not contempt except in certain cases

(a) where the publication is contrary to the provisions of any enactment for the time being in force;

15 (b) where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published;

20 (c) where the court sits in chambers or *in camera* for reasons connected with public order or the security of the State, the publication of information relating to those proceedings;

25 (d) where the information relates to a secret process, discovery or invention which is an issue in proceedings.

(2) Without prejudice to the provisions contained in sub-section (1), a person shall not be guilty of contempt of court for publishing the text or a fair and accurate summary of the whole, or any part, of an order made by a court sitting in chambers or *in camera*, unless the court has expressly prohibited the publication thereof on grounds of public policy or for reasons connected with public order or the

security of the State or on the ground that it contains information relating to a secret process, discovery or invention, or in exercise of any power vested in it.

- 5 **8.** Nothing contained in this Act shall be construed as implying that any other defense which would have been a valid defense in any proceeding for contempt of court has ceased to be available merely by reason of the provisions of this Act. Other defenses not affected
- 10 **9.** 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. Act not to imply enlargement of scope of contempt
- 15 **10.** The Court of Appeal shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of courts subordinate to it as it has and exercises in respect of contempt of itself. Power of the Court of Appeal to punish contempt of subordinate courts
- 20 **11.** Court of Appeal shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction and whether the person alleged to be guilty of contempt is within or outside such limits. Power of Court of Appeal to try offences committed or offenders found outside its jurisdiction
- 25 **12.** (1) Save as otherwise expressly provided 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 (6) months, or with fine which may extend to 10,000 rupees, or with both: Punishment for contempt of court

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

Explanation - An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it *bonafide*.

5 (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.

10 (3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in civil prison for such period not exceeding six months as it may think fit.

15 (4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the
20 company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:

25 Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

30 (5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be

deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

5 *Explanation.* - For the purpose of sub-sections (4) and (5), -

(a) “company” means anybody corporate and includes a firm or other association of individuals; and

10 (b) “Director”, in relation to a firm, means a partner in the firm.

13. Notwithstanding anything contained in any law for the time being in force— Contempt not punishable in certain cases.

15 (a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;

20 (b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defense if it is satisfied that it is in public interest and the request for invoking the said defense is *bonafide*.

14. (1) When it is alleged, or appears to the Court of Appeal upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall- procedure where contempt is in the face of the Court of Appeal

30 (a) cause him to be informed in writing of the contempt with which he is charged;

- (b) afford him an opportunity to make his defense to the charge;
- (c) 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
- (d) make such order for the punishment or discharge of such person as may be just.

(2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or 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, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) 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 a direction given under sub-section (2), by a Judge other than the Judge or Judges 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 and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

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

Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and
 5 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 him on his executing a bond without sureties for his attendance as
 10 aforesaid.

15. (1) Subject to the provisions of any law for the time being in force, a judge, magistrate or other person acting judicially shall also be liable for contempt of his own court or of any other court in the same manner as any other
 15 individual is liable and the provisions of this Act shall, so far as may be, apply accordingly.

Contempt by judge, magistrate or other person acting judicially.

(2) Nothing in this section shall apply to any observations or remarks made by a judge, magistrate or other person acting judicially, regarding a subordinate court in an
 20 appeal or revision pending before such judge, magistrate or other person of the subordinate court.

16. (1) Notice of every proceeding under section 14 shall be served personally on the person charged, unless the Court for reasons to be recorded directs otherwise.

Procedure after cognizance of contempt

25 (2) The documents accompanied along with the notices

(a) 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

30 (b) in case of proceedings commenced on a reference by a subordinate court, by a copy of the reference.

(3) The Court may, if it is satisfied that a person charged under section 14 is likely to abscond or keep out of the way to avoid service of the notice, order to sequester of his property of such value or amount as it may deem reasonable.

5 (4) Every order under sub-section (3) shall be effected in the manner provided in the Code of Civil Procedure, sequestration as in execution of a decree for payment of money, and if, after such sequestration, the person charged appears and shows to the satisfaction of the Court that he
10 did not abscond or keep out of the way to avoid service of the notice, the Court shall order the release of his property from sequestration upon such terms as to costs or otherwise as it may think fit.

15 (5) Any person charged with contempt of court under section 14 may file an affidavit in support of his defense, 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.

20 **17.** (1) An appeal shall lie as of right from any order or decision of the Court of Appeal in the exercise of its jurisdiction to punish for contempt— Appeals

(a) where the order or decision is that of a single judge, to a Bench of not less than two judges of the Court;

25 (b) where the order or decision is that of a Bench, to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that—

30 (a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

5 (3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

10 **18.** No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. Limitation for actions for contempt

15 **19.** The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law relating to contempt of courts. Act to be in addition to, and not in derogation of, other laws relating to contempt

20. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail. Sinhala text to prevail in case of inconsistency

