

**JOINT/SELECT
COMMITTEE REPORT
LEGISLATIVE
ASSEMBLY**

1925

The Contempt of Courts Bill

List of Reports of Select or Joint Committees
presented to the Legislative Assembly in 1925.

Serial No.	Short title of the Bill.	Date of presentation. Remarks.
1.	The Indian Soldiers (Litigation) Bill.	2.2.25.
2.	The Obscene Publications Bill.	11.2.25.
3.	The Code of Civil Procedure (Amendment) Bill.	13.2.25. <i>Copy not available</i>
4.	The Indian Penal Code (Amendment) Bill (Age of Consent) by Dr. Hari Singh Gour.	23.2.25. - do -
5.	The Cotton Gining and Pressing Factories Bill.	23.2.25.
6.	The Indian Tariff (Amendment) Bill.	5.3.25.
7.	The Indian Succession Bill.	26.8.25. Report of the Joint Committee
8.	The Indian Succession (Amendment) Bill (Sec. 27).	26.8.25. - do -
9.	The Code of Criminal Procedure (Amendment) Bill (Use of firearms) by Dewan Bahadur T. Rangechiarier.	26.8.25.
10.	The Indian Trade Unions Bill.	31.8.25.
11.	The Indian Carriage of Goods by Sea Bill.	31.8.25. - do -
12.	The Coal grading Board Bill.	31.8.25.
13.	The Indian Limitation (Amendment) Bill.	3.9.25.
14.	The Court-Fees (Amendment) Bill.	14.9.25.
15.	The Contempt of Courts Bill.	16.9.25.

LEGISLATIVE DEPARTMENT.

2. WE, the undersigned, Members of the Select Committee to which the Bill to define and limit the powers of certain Courts in punishing contempts of courts was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

1. Paper No. I.
2. Paper No. II.
3. Paper No. III.
4. Paper No. IV.
5. Paper No. V.

2. WE have re-drafted the Bill omitting or restricting the provisions of the Bill as introduced as indicated below :—

- (a) The definition of "contempt of court" has been omitted. We are of opinion that the case-law on the subject will form an adequate guide.
- (b) The provisions regulating the taking cognisance of offences under the Act and the procedure and powers of Courts in respect thereto have been omitted; the procedure at present followed by High Courts in respect of such offences is adequate, and we have provided that High Courts, in respect of offences committed against subordinate Courts and Chief Courts, should follow the same procedure.
- (c) Courts of Judicial Commissioners have been excluded as we are not of opinion that such Courts should have power to punish contempt.
- (d) the provisions empowering Chief Courts to punish contempt has been limited to contempts of themselves.
- (e) Simple imprisonment has been prescribed.
- (f) The amount of fine has been limited to two thousand rupees.

The decisions referred to in clauses (c), (d) and (f) *supra* were not unanimous decisions.

3. We have further provided that a High Court will have no jurisdiction in respect of a contempt committed against a subordinate Court when such contempt is an offence punishable under the ordinary law; and in the proviso added to clause 3 we have, in accordance with the opinion of the majority, recognised the existing practice in such cases of accepting apologies.

4. The Bill was published as follows :—

In English

<i>Gazette.</i>	<i>Date.</i>
Gazette of India	14th February, 1925.
Fort Saint George Gazette	3rd March, 1925.
Bombay Government Gazette	9th April, 1925.
Calcutta Gazette	12th March, 1925.
Punjab Government Gazette	13th March, 1925.
Central Provinces Gazette	21st February, 1925.
Assam Gazette	25th February, 1925.
Coorg District Gazette	2nd March, 1925.
N. W.-P. Province Gazette	6th March, 1925.

In the Vernaculars.

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Madras	Tamil	31st March, 1925.
	Telugu	24th March, 1925.
	Hindustani	31st March, 1925.
	Kanarese	31st March, 1925.
	Malayalam	24th March, 1925.
Bombay	Marathi	28th May, 1925.
	Gujarathi	28th May, 1925.
	Kanarese	21st May, 1925.
Punjab	Urdu	15th May, 1925.
Coorg	Kanarese	1st May, 1925.

5. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

A. P. MUDDIMAN.*

H. TONKINSON.*

L. GRAHAM.*

P. S. SIVASWAMY AIYER.*

GULAM BARI.*

HENRY J. STANYON.*

T. RANGACHARIAR.

A. RANGASWAMI IYENGAR.*

K. C. NEOGY.

N. M. DUMASIA.*

H. S. GOUR.*

S. C. GHOSE.

N. C. KELKAR.*

MOTILAL NEHRU.*

W. M. HUSSANALLY.*

The 16th September, 1925.

*Subject to minutes of dissent.

MINUTES OF DISSENT.

I am prepared to accept the view adopted by the Select Committee that the powers of punishment for criminal contempts of themselves and of Courts subordinate to themselves should not be extended to Courts of a lower status than Chief Courts. I do not, however, agree that Chief Courts should not have power to punish for criminal contempts of courts subordinate to themselves. Like the High Courts of Judicature established by Letters Patent they have superintendence over the Courts subject to their appellate jurisdiction; the Judges are required to possess qualifications similar to those of the Judges of High Courts; and the permanent Judges are appointed by the Governor General in Council. In my opinion these Courts require the same powers in this respect as the High Courts, and they can be safely entrusted with them.

I am also not prepared to accept the limitation of maximum fine to rupees two thousand only. In India in the past the High Courts have imposed higher fines, and the restriction of the maximum to this amount will only compel the Courts to inflict sentences of imprisonment in cases in which they would otherwise have regarded a sentence of a fine exceeding rupees two thousand as adequate. The power to fine should be unrestricted.

A. P. MUDDIMAN.

L. GRAHAM.

H. TONKINSON.

1. I do not approve of the amendment restricting the power of a Chief Court to cases where the contempt relates to the Chief Court itself. Contempts of courts subordinate to a Chief Court are just as likely to occur as contempts of courts subordinate to a High Court, and it is therefore necessary that the Chief Court should have and exercise the same powers as the High Court, for the purpose of protecting the administration of justice against interference.

2. I am unable to appreciate the logic of allowing a Chief Court to take cognizance of, and punish, contempts of its own authority where it may be supposed the Chief Court may have a bias against the person in contempt and refusing to allow it to take notice of contempts committed before a Subordinate Court where the Chief Court is not likely to have any bias at all.

3. As it has now been provided that the Bill should not apply in cases where provision already exists in the Penal Code and in which the Subordinate Courts are themselves competent to take action under the existing law, there is no fear of the new jurisdiction being invoked in cases already punishable under the Penal Code.

4. The apprehension in the minds of the majority of the committee that the officers presiding over the Subordinate Courts may have an overweening sense of their own personal dignity and exercise the new powers oppressively for the purpose of punishing legitimate outside criticism of their judgments seems to be unwarranted; for such criticism, where it exceeds the limits allowed by law, is punishable under the defamation sections of the Penal Code.

5. The main class of cases where protection is required consists of those in which an attempt is made to interfere with the administration of justice by comments on matters which are *sub judice* and attempts to create prejudice against one of the parties. It cannot be denied that there is no protection in such cases and that there is need for such protection. None of the opponents of the original clause in the Bill has been able to point out what remedy there is under the existing law. It is forgotten that the protection is really required not in the interests of the Courts but in the interests of the administration of justice and of parties.

6. The argument that the presiding officers of Chief Courts have not the same legal learning or knowledge of the traditions by which the High Courts are guided is neither sound nor entitled to weight, when regard is had to the actual personnel of the Chief Courts and the numerously manned High Courts, and also the fact that the Chief Courts are administering many branches of law, which have not been codified or reduced to writing.

7. The powers of punishment now possessed by the High Courts to deal with contempts are unlimited. While I am prepared to welcome the reduction of the penalty of imprisonment in character and amount, the reduction of the amount of fine to be imposed is, in my opinion, a mistake as it will be utterly inadequate for the punishment of serious cases or for the determent of the offence.

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8. I cannot help feeling that the difference of opinion in the Select Committee is due to the fact that while the minority are thinking of cases of interference with the administration of justice by unfair comments on matters which are *sub judice*, a class of cases for which there is no remedy now, the majority are thinking of action by the Courts in cases of insult in the presence of the court or defamatory attacks outside the Court of the presiding officers, a class of cases for which a remedy is already available under the existing law.

P. S. SIVASWAMY AIYER,

13th September 1925.

Section 2, clause 3 of the Contempt of Courts Bill as re-drafted after the deliberations of the Select Committee fails to interpret properly the views expressed and agreed upon by the members thereof. In this redraft the clause runs thus:—

"No High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it, where such offence is an offence punishable under the Indian Penal Code."

I really take objection to the italicised phrase. Sections of the Indian Penal Code which deal with contempts of courts are 175 to 190. A perusal of all these sections shows that there can be many cases showing contempt of courts which do not fall under these sections. The Select Committee agreed, on my suggestion, to exclude from the jurisdiction of High Courts all cases of contempts before subordinate Courts in which the Courts concerned could themselves take action and defend themselves. The redraft of this clause is not, thus, according to the unanimous recommendation of the Select Committee.

Therefore the words "where such offence is an offence punishable under the Indian Penal Code", should be left out and the phrase "where the Court concerned can take action and defend itself under the ordinary law" should be inserted in their place.

I would not mind if any of the words recommended by me be changed in order to make the phrase convey a clearer idea of the recommendations of the Select Committee on this point.

GULAM BARI.

14th September 1925.

P. S.—This note of mine may be taken as a notice of amendment as well, as suggested above.

GULAM BARI.

14th September 1925.

I regret that I am unable to agree with the majority of my Honourable colleagues on the Select Committee in respect of four of the amendments of the original Bill made by them, viz.—

- (1) the denial of power to a Chief Court to deal with contempts against Courts subordinate thereto;
- (2) the withholding of all powers under the proposed enactment from the Courts of the Judicial Commissioners of the Central Provinces and Sind;
- (3) the exclusion from the summary jurisdiction of High Courts of contempts against subordinate Courts which amount to offences under the Indian Penal Code; and
- (4) the limitation of a fine under the proposed enactment to Rs. 2,000.

I will comment on each of these four points in the order given.

(1) I am unable to see any reason why Court subordinate to a provincial Chief Court should be denied the protection to be given by the enactment to Courts subordinate to a provincial High Court. Why should a newspaper, say, in Lucknow be immune and a newspaper, say, in Allahabad be criminally responsible for comments on a case *sub judice*, which comments, though not amounting to an offence punishable under the Indian Penal Code, are intended to prejudice the trial in a subordinate Court and therefore constitute a serious interference with the administration of justice?

(2) Each of the Courts excluded is a High Court within the meaning of that term under the General Causes Act, is a Court of the last resort in the province to which it belongs, and has all the powers of a Chartered High Court over the lives and liberties of the

people and the property subject to its jurisdiction. The Central Provinces constitute a major province, under administration by a Governor with Ministers and a Legislative Council. Life, liberty and the due administration of justice are as important there and in Sind as in Bengal, Bombay or Madras. Is it proper or just that the Courts in the Central Provinces and Sind should have no power to deal with contempts which interfere with or obstruct the administration of justice, such as improper comments on cases *sub judice*? Such contempts demand prompt and final treatment by summary procedure. The lengthy process of trial, appeal and revision under the ordinary procedure cannot be as effectual. The proposed exclusion seems to indicate a suspicion of the integrity of the Courts excluded, which, in respect of the Central Provinces I know, and in respect of Sind I believe, to be wholly unfounded and unjustifiable. The Court of Oudh, as at present constituted, would be excluded by the Bill as amended, but, either before or shortly after the Bill becomes law, that Court will be transformed into a Chief Court. Most of the Judges will be those who are or have been Judicial Commissioners of Oudh. The result will be that under the Bill, as amended, the conferment of power under clause (2), if enacted, will depend upon the name and nominal status of the Court irrespective of any change in the personnel or jurisdiction. If the Legislature is pleased to pass the Bill as amended by the Select Committee, I hope the Government will eliminate, what is, in my humble opinion, an inconsistent and unjust exclusion of the Central Provinces and Sind Courts by a conversion of those tribunals into Chief Courts at the earliest opportunity. In the Central Provinces such a change was promised many years ago.

(3) It seems to me that the exclusion of contempts against subordinate Courts, which amount to offences under the Indian Penal Code and can be dealt with by such Courts under Chapter XXXV of the Criminal Procedure Code, is shortsighted and unwise. I quite agree that when a subordinate Court elects to proceed under that Chapter the High Court should not take action under the enactment proposed by the present Bill. But there may be cases of contempt, so serious in themselves, or so aggravated by repetition after and in disregard of several previous convictions under section 480 of the Criminal Procedure Code or section 228 of the Indian Penal Code, as to require that the subordinate Court concerned should be able to invoke the assistance of its High Court. In submitting this view I assume that the High Court will be in a position to inflict a punishment more severe than can be obtained by the use of Chapter XXXV of the Criminal Procedure Code.

(4) It seems to me, with due respect for my colleagues, that the limiting of the awardable fine to Rs. 2,000 is little short of an insult to the High Courts. It must be remembered that every Chartered High Court has had power, since the date of its establishment, to punish summarily for contempt by imprisonment and fine without limit of any kind. In no case in the history of any such High Court has the exercise of this unlimited power been criticised as indiscreet. Similarly, there has been no single instance of public dissatisfaction with the use by any non-Chartered High Court of the summary powers conferred by the Code of Criminal Procedure. Such records deserve a higher degree of trust than is indicated by clause (3) of this Bill as amended by the Select Committee. There may be nothing objectionable in fixing a form and extent of imprisonment beyond which no High Court would desire to go in summary proceedings for contempt. But, in the face of the antecedents above mentioned, there seems to be no ground for placing any limit on the amount of fine. Apart from the want of confidence in the discretion of the High Courts suggested by the proposed limit, there is the further reason against it that cases may occur in which a fine of Rs. 2,000 may be wholly inadequate, and in which it may nevertheless be highly undesirable to inflict a substantive sentence of imprisonment. For example a leading and affluent newspaper may seriously prejudice the trial and decision of a pending case by premature comment. A fine of Rs. 2,000 may be quite insufficient, but it may be wrong to send the editor to jail for what may be primarily the offence of some correspondent. Yet, under the limitations proposed in the Bill, a High Court would have no alternative between ordering a fine which would be a mere pin-prick to an affluent journal and amount to a failure of justice, and a consignment to jail of a gentleman of standing and repute for want of power to inflict the much more substantial fine that the facts of the case demanded.

I am in favour of the provision for remission of punishment on apology; but it seems to me that the scope of the provision should be more clearly defined than it is in the Bill as amended by the Select Committee. It appears to be expedient to make it clear that every such remission should be limited to the period during which the Court concerned is seized of the case. A sentence may have been pronounced, whether of fine or of imprisonment, and a fine may have been paid into Court, and yet the convict may be still in the presence of the Court. If an apology is then tendered the Court should be able to cancel its order of fine or imprisonment and, if necessary, to refund the money still in its hands paid to satisfy the fine. But once the sentence has been carried into execution, either by the incarceration of the accused in prison —i.e., after he has been delivered over by the Court to the Jail authority —, or by deposit of the fine on delivery by the Court thereof to the Treasury or Bank prescribed by law, then any remission by the Court would seem to be an encroachment on the

- prerogative of the Crown. It should also be made clear that where a Court remits a punishment on apology it may do so wholly or partially at its discretion. For example to a contrite accused a sentence of imprisonment might be remitted but not the added fine, or a fine might be substituted for imprisonment, or the amount of a fine reduced.

H. J. STANYON.

14th September 1925.

I think that the clause which limits the present powers of the High Courts as regards punishment should be deleted. Those powers have never been abused by the award of disproportionate sentence and it is, therefore, not desirable to curtail the powers of the High Court, which act as a deterrent.

NAOROJI M. DUMASIA,
M. L. A.

SIMLA ;
12th September 1925.

In signing the report of the Select Committee I wish to make the following comment.

The Bill emerges from the Select Committee greatly improved, but I still doubt whether it will serve the purpose for which it has been introduced. The original Bill contained a definition of "contempt of court". The Select Committee have deleted it from their draft. It is said that the case law on the subject will form an adequate guide. But in order to afford such guide, the Courts will have to roam over a vast mass of case law and thus add to the uncertainty of the meaning of 'contempt of court' which it is for the public to understand in order that they may know what to avoid and how to avoid it, and for the Judges to administer it within the limits of the law.

As to this I beg to cite the following weighty opinion of Mr. Arthur E. Hughes published in 16 Quarterly Law Review (1900), pages 292-300. He says, "Another danger is due to the fact that owing to the vague nature of the offence the decisions of the Judges as to the law of contempt form precedents which are not merely declaratory but creative of the law; and every expansion of this peculiar jurisdiction diminishes the area within which public opinion can operate and control it." I fear that without a definition, the Courts may at times violate the principle laid down by the late Lord Justice Bowen who said, "The object of the discipline enforced by the Court in cases of contempt of court is not to vindicate the dignity of the Court or the person of the Judge but to prevent undue interference with the administration of justice". (*Helmore V. Smith* 35 Ch. D. 449). The definition of 'contempt of court' has been now narrowed down to this, that it is an offence of scandalizing the Court in its conduct of a pending case when it tends to materially prejudice its trial. In view of the hopeless conflict of cases quoted by Mr. Hughes in the article under reference, I doubt whether the omission of the definition of 'contempt of court' can be justified. Any libel upon the Judge does not amount to contempt of court. It was so held by the Privy Council in the *Daily Argus* case cited in 16 Quarterly Law Review, pages 298-299 (see 1899 A. C. 549) in which the Privy Council says, "Commitments for contempt of court by scandalizing the Court have become obsolete in this country".

I still think with the Calcutta High Court (41-C. p. 173; referred to in 45 C. 170) that even Presidency High Courts do not possess jurisdiction to punish for contempt of court committed before subordinate Courts. I have already pointed out in my speech on the motion to circulate the Bill printed on pp. 1110 to 1115 that the decisions of the Madras and Bombay High Courts do not settle the point. In the case of the Madras High Court the jurisdiction was conceded and the case was only argued by the Counsel as an *amicus curiae*. In the Bombay case Mr. Justice Shaw differed from the Chief Justices. In both the cases no punishment was awarded against which there could have been an appeal to the Privy Council. I am fortified in my view by the passage I have cited from Sir James Stephen who is of opinion that the jurisdiction to punish for contempt of subordinate courts was limited only to the King's Court. Lord Halsbury says that the origin of this jurisdiction in the Common Law Court is obscure. Before the Indian Legislature stereotypes this power it must be sure that the power was possessed by the High Court or that it is expedient to confer upon the High Courts this new power, if found necessary. I have not been able to prevail upon myself that any immediate necessity has arisen for this legislation. The power of summary conviction now conferred by the Bill was condemned by Sir Reginald Craddock who stated as follows :—

"Moreover, even Judges are human, and it is well to guard against the possibility, I will say the remote possibility, that the outraged feelings of the Judge might lead to a somewhat hasty or severe treatment of contempt of judicial authority. The Bill therefore contemplates that offences of this kind should be ordinary offences."

I do not know why the Government of India have altered their view from what they undoubtedly held in 1914. I should have thought that they would revive the old Bill by the addition of two sections, 288A and 288B to the Indian Penal Code to deal with cases now dealt with under this Bill.

In the case of Chief Courts certainly, and possibly even in the case of the High Courts other than the Presidency High Courts, the power of summary punishment conferred by the Bill is new. In the case of such High Courts and in the case of the Chief Courts there is not always a provision for the hearing of such cases by Benches and no provision is made in the Bill that such cases shall only be heard by a Bench of Judges. If the Legislature confers upon all the Courts named the summary power of punishment I would give the accused the right of appeal or provide that such punishment shall be awarded by a Bench of Judges.

On the whole, after giving my most anxious consideration to the Bill, I feel that it should not be proceeded with, and if proceeded with, the term "contempt of court" should certainly be defined and limited to interference with the administration of justice excluding therefrom any libel on the Judge himself. This is the trend of all the recent English cases. Without such definition the Courts in India are liable to go astray. The Courts in England have gone astray in the past and there are reported cases which show that they are apt to go astray even now.

Dated, 15th September, 1925.

H. S. GOUR.

Clause 2.—The whole law of contempt of court so far as it is not covered by the ordinary criminal law is based on a legal fiction applicable specially to certain Courts in England and should not in our opinion be extended beyond the limits of that fiction. In India only those High Courts which have been held by the Privy Council to have inherited from the Supreme Courts the special power to deal with such contempts should continue to exercise that power in respect of contempt of themselves and of Courts subordinate to them. The only Courts answering to that description are the Presidency High Courts. There is no justification for investing any other High Courts much less the Chief Courts which are not even established by Letters Patent with this special jurisdiction. We would therefore insert the word "Presidency" between the words "the" and "High Courts" in sub-clause (1) and would omit sub-clause (2) altogether.

The new proviso added to clause (3) by the Select Committee should leave it open to the Court to accept the apology of the accused either before or after conviction and sentence. As framed the proviso would seem to give the Court no discretion to accept an apology until after the accused is convicted and sentenced. There is no reason to limit the discretion of the Court in this way. The proviso should therefore run as follows:—

"Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made, etc."

MOTILAL NEHRU.

14th September 1925.

I agree with the above view.

N. C. KELKAR.

I entirely agree with the minute of Pandit Motilal Nehru.

A. RANGASWAMI IYENGAR.

14th September 1925.

In my opinion the amount of fine fixed by the majority is too small.

W. M. HUSSANALLY.

A

BILL

TO

Define and limit the powers of certain Courts in punishing contempts of courts.

WHEREAS doubts have arisen as to the powers of a High Court of Judicature to punish contempts of subordinate Courts;

AND WHEREAS it is expedient to resolve these doubts and to define and limit the powers exercisable by High Courts and Chief Courts in punishing contempts of court; It is hereby enacted as follows:—

1. (1) This Act may be called the Contempt of Courts Act, 1925.

Short title, extent and commencement.

(2) It shall extend to the whole of British India.

(3) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

2. (1) Subject to the provisions of sub-section (3), the High Courts of Judicature established by Letters Patent shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to them as they have and exercise in respect of contempts of themselves.

(2) Subject to the provisions of sub-section (3), a Chief Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of itself as a High Court referred to in sub-section (1).

(3) No High Court shall take cognisance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

XLV of 1860.

3. Save as otherwise expressly provided by any law for the time being in force, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine, which may extend to two thousand rupees, or with both:

Provided that such punishment may be remitted on apology being made to the satisfaction of the High Court or Chief Court, as the case may be.

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GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

Report of the Select Committee on the
Bill to define and limit the powers of certain
Courts in punishing contempts of courts.
(With the Bill as re-drafted).