

[TO BE INTRODUCED IN THE NATIONAL ASSEMBLY]

A

BILL

to enact a law relating to contempt of court

WHEREAS it is expedient to repeal and reenact a law of contempt in exercise of the powers conferred by clause (3) of Article 204 of the Constitution of Islamic Republic of Pakistan;

It is hereby enacted as follows:-

- (1) **Short title, extent and commencement.**- (1) This Act may be called the Contempt of Court Act, 2012.
- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once.

2. Interpretation.- In this Act, unless there is anything repugnant in the subject or context,—

- (a) “judge” includes all officers acting in a judicial capacity in the administration of justice; and
- (b) judicial proceedings in relation to any matter shall be deemed to be pending from the time when a court has come to be seized of the matter in a judicial capacity, till such time as the appellate, revisional or review proceedings in respect of the matter have come to an end or the period of limitation for filing such proceedings has expired without any such proceedings having been initiated.

3. Contempt of court.- Whoever disobeys or disregards any order, direction or process of a court, which he is legally bound to obey; or commits a willful breach of a valid undertaking given to a court; or does anything which is intended to or tends to bring the authority of a court or the administration of law into disrespect or disrepute, or to interfere with or obstruct or interrupt the process of law or the due course of any judicial proceedings, or to lower the authority of a court or scandalize a judge in relation to his office, or to disturb the order or decorum of a court, is said to commit “contempt of court”:

Provided that the following shall not amount to commission of contempt of court—

- (i) exercise of powers and performance of functions by a public office holder of his respective office under clause (1) of Article 248 of the Constitution for any act done or purported to be done in exercise of those powers and performance of those functions;
- (ii) fair comments about the general working of courts made in good faith in the public interest and in temperate language;
- (iii) fair comments on the merits of a decision of a court made, after the pendency of the proceeding in a case, in good faith and in temperate language;
- (iv) subject to a prohibition of publication under section 9 or under any other law for the time being in force, the publication of a fair and substantially accurate report of any judicial proceedings;
- (v) the publication of any matter, amounting to a contempt of court by reason of its being published during the pendency of some judicial proceedings, by a person who had no reasonable ground for believing that such judicial proceedings were pending at the time of the publication of the matter;
- (vi) the distribution of a publication, containing matter amounting to contempt of court, by a person who had no reasonable ground for believing that the publication contained, or was likely to contain, any such matter;
- (vii) a true averment made in good faith and in temperate language for initiation of action or in the course of disciplinary proceedings against a judge, before the Chief Justice of a High Court, the Chief Justice of Pakistan, the Supreme Judicial Council, the Federal Government or a Provincial Government;
- (viii) a plea of truth taken up as a defence in terms of clause (vi) in proceedings for contempt of court arising from an earlier averment unless it is false;
- (ix) relevant observations made in judicial capacity, such as, those by a higher court on an appeal or revision or application for transfer of a case, or by a court in judicial proceedings against a judge;
- (x) 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
- (xi) a true statements made in good faith respecting the conduct of a judge in a matter not connected with the performance of his judicial functions.

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 bonafide, 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 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 subsection (1).

5. Jurisdiction.—(1) A High Court or the Supreme Court, on its own information or on information laid before it by any person, may take cognizance of an alleged commission of contempt of the court.

(2) The Supreme Court shall have the power to take cognizance of any contempt of itself or of any judge of the Supreme Court alleged to have been committed anywhere and a High Court shall have the power to take cognizance of any contempt of itself or of any judge thereof or of any other High Court or of any judge thereof alleged to have been committed within the territorial limits of its jurisdiction.

(3) A High Court shall exercise the same jurisdiction in respect of contempts of courts subordinate to it or to any other High Court as it exercises in respect of contempts of itself.

(4) Nothing contained herein shall affect the power of any court to punish any offence of contempt under the Pakistan Penal Code.

6. Bars to taking cognizance.—(1) No High Court shall take cognizance under this Act of a contempt alleged to have been committed in respect of a court subordinate to it where the said contempt is an offence punishable under the Pakistan Penal Code.

(2) No court shall take cognizance, as of a contempt of court, of any averment made before the Supreme Judicial Council in respect of which the Supreme Judicial Council has given a finding that the averment fulfilled the requirements of clause (vi) of the proviso to section 3.

(3) No court shall take cognizance of contempt of court arising from an averment made in due course in appellate, revisional review proceedings, till such proceedings have been finalized and no further appeal, revision or review lies.

(4) No court shall cognizance of a contempt of court arising from an averment made before the Chief Justice of a High Court, the Chief Justice of Pakistan, the Supreme Judicial Council, the Federal Government or a Provincial Government—

- (a) until the petition to which the averment relates has been finally disposed of; or
- (b) otherwise than under the orders of the Chief Justice of the High Court, the Chief Justice of Pakistan, the Supreme Judicial Council, the Federal Government or the Provincial Government, as the case may be.

7. Procedure for Supreme Court and High Court.—(1) Whenever it appears to the Supreme Court or a High Court that there is sufficient ground for believing that a person has committed contempt of court and that it is necessary in the interest of effective administration of justice to proceed against him, it shall make an order in writing to that effect setting forth the substance of the charge against the accused, and, unless he is present in court, shall require by means of an appropriate process that he appear or be brought before it to answer the charge.

(2) The court shall inform the accused of the ground on which he is charged with contempt of court and call upon to show cause why he should not be punished.

(3) The court, after holding such inquiry and taking such evidence as it deems necessary or is produced by the accused in his own defence and after hearing the accused and such other person as it deems fit, shall give a decision in the case:

Provided that, in any such proceedings, before the Supreme Court or a High Court, any finding given in its own proceedings, by the Supreme Judicial Council about the nature of an averment made before it, that is relevant to the requirements of clause (vi) the proviso to section 3, shall be conclusive evidence of the nature of such averment.

(4) If contempt of court is committed in the view or presence of the court, the court, may cause the offender to be detained in custody and, at any time before the rising of the court on the same day, may proceed against him in the manner provided for in the preceding sub-sections.

(5) If any case referred to in sub-section (4) cannot be finally disposed of on the same day, the court shall order the release of the offender from custody either on bail or on his own bond.

8. Transfer of proceedings for reasons personal to the judge.—(1) Where, in a case in which a judge has made an order under sub-section (1) of section 7, not being a case referred to in sub-section (4) of that section, the alleged contempt of court involves

scandalization personal to such judge and is not scandalization of the court as a whole or of all the judges of the court, judge shall forward the record of the case and such comments, if any, as he deems fit to make, to the Chief Justice of the court.

(2) On receipt of the papers, mentioned in sub-section (1), the Chief Justice, after inviting, if he deems fit, further comments, if any, from the judge first taking cognizance of the offence and making such inquiry in such manner as he deems fit, shall pass orders specifying which one of the following shall hear the case—

(a) another judge, which if the Chief Justice so orders, may be the Chief Justice;

(b) a Bench of judges set up by the Chief Justice, of which the judge first taking cognizance of the offence is not a member;

and the case shall then be heard accordingly.

(3) If, at any stage of a case in which the Chief Justice has passed an order under clause (a) of sub section (2), the Chief Justice is of opinion that, in the interests of justice, the case shall be transferred to another judge, he may pass an order accordingly; and the case shall then be heard by such other judge.

(4) When, in pursuance of an order under sub-section (2), the Judge first taking cognizance of the case is not hearing the case,—

(a) the other judge or, as the case may be, the Bench of judges hearing the case may invite or receive any further comments from the judge first taking cognizance of the offence and shall call and hear any witnesses whom such judge desires to be examined; and

(b) all comments furnished by the judge first taking cognizance of the offence shall be treated as evidence in the case and such judge shall not be required to appear to give evidence.

(5) When in a case the first cognizance of the offence has been taken by the Chief Justice, the functions of the Chief Justice, under sub-sections (1), (2) and (3) shall be performed by a Bench of judges composed of the two next most senior judges available.

9. Proceedings in camera and prohibition of publication of proceedings.- In case of proceedings for transfer of a hearing under section 8 or of any proceedings in which truth is pleaded as a defence in terms of clause (vi) of the proviso to section 3, the court, if it deems it fit in the public interest, may hear the case or any part thereof in camera and prohibit the publication of the proceedings of the case or any part thereof.

10. 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.

11. Appeal and limitation for appeal.—(1) From an original order passed by the High Court under this Act an appeal shall lie, if the order is passed by a single judge, to a Division Bench, and if it is passed by a Bench of two or more judges, to the Supreme Court.

(2) An appeal shall lie to the Supreme Court from an order passed by a Division Bench of a High Court in appeal against an order passed by a single judge.

(3) An intra-court appeal shall lie against the issuance of a show cause notice or an original order including an interim order passed by a Bench of the Supreme Court in any case, including a pending case, to a larger bench consisting of a remaining available judges of the Court within the country:

Provided that in the event the impugned show cause or order has been passed by half or more of the judges of Court, the matter shall, on the application of an aggrieved person, be put up for re-appraisal before the full court:

Provided further that the operation of the impugned show cause notice or order shall remain suspended until the final disposal of the matter in the manner herein before provided.

(4) An appeal under sub-section (1) or sub-section(2) shall be filed—

- (a) in the case of an appeal to a Bench of the High Court, within thirty days; and
- (b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.

(5) An intra court appeal or application for re-appraisal shall be filed within thirty days from the date of show cause notice or the order, as the case may be.

12 Power to make rules.— The Federal Government may make rules, not inconsistent with the provisions of this Act, providing for any matter relating to its procedure.

13 Repeal.— (1) The Contempt of Court Ordinance, 2003 (V of 2003) is hereby repealed.

(2) For removal of doubt it is hereby declared that the Contempt of Court Act, 1976(LXIV of 1976), Contempt of Court Ordinance, 2003 (IV of 2003) and Contempt of Court Ordinance, 2004 (I of 2004) stand repealed.

STATEMENT OF OBJECTS AND REASONS

The contempt law is a blend of the power of the court to punish for its contempt and the rights of the citizens in a democracy for fair comments and criticism. It is, therefore, necessary that whereas the law may provide for punishment for contempt the full opportunity should also be provided to the alleged accused to have fair trial including transparent procedure for right to appeal. Right to appeal is being streamlined and other necessary provisions relevant to contempt proceedings are being incorporated in the Bill.

2. The Bill is designed to achieve the said object.

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