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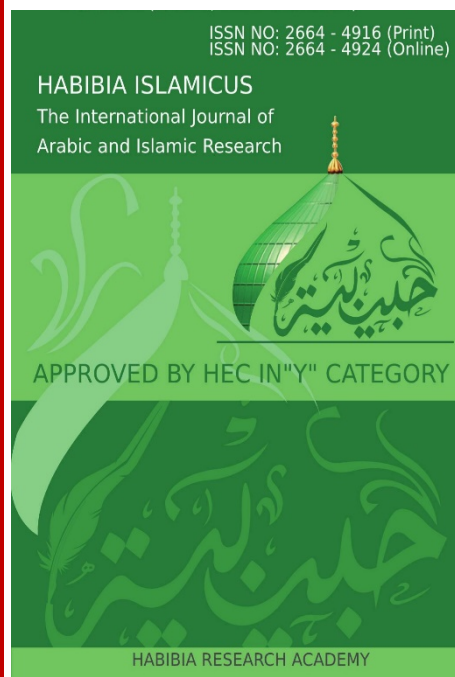
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TOPIC:

**LAW OF CONTEMPT OF COURT AND LEADING CASES OF PAKISTAN
A Study in the light of Constitution, 1973**

AUTHORS:

1. Abdullah Jumani, Research Scholar (Law) Department of Law Karachi University, Email ID: abdullahjumani1@gmail.com Orcid ID: <https://orcid.org/0000-0001-7801-059x>

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LAW OF CONTEMPT OF COURT AND LEADING CASES OF PAKISTAN

A Study in the light of Constitution, 1973

.Abdullah Jumani

ABSTRACT:

Pakistan emerged on the map of the world in 1947, the Contempt of the Courts Act, 1926 prevailing in sub-continent before partition was adopted. In 1976, under Article 204 of the constitution of Pakistan, 1973, the Contempt of Court Act, 1976 was enacted which repealed Contempt of Courts Act, 1926. There after Contempt of Court Ordinances, 1998, 2003, 2004 were promulgated from time to time and in 2012, the Contempt of Court Act, 2012 was enacted. The Supreme Court of Pakistan in a judgment declared the Act, 2012 unconstitutional and revived the Contempt of Court Ordinance, 2003. The purpose of this article is to study the revival of Ordinance, 2003 in the light of Constitution, 1973 and to ascertain that which law of Contempt of Court is holding the field in the country.

Keywords: *Act, constitution, contempt, ordinance, parliament, Supreme Court.*

INTRODUCTION & LITERATURE REVIEW

Act No: XII of 1926: Pakistan came into existence in 1947 and inherited the Contempt of Courts Act, 1926.

Act No: LXIV of 1976: In pursuance of Article 204 of the Constitution of Pakistan 1973, the Contempt of Court Act, 1976 was enacted whereby Contempt of Courts Act, 1926 was repealed.

Ordinance No X of 1998: In exercise of the powers conferred by clause (1) of Article 89 of the Constitution of Pakistan, 1973 the president promulgated the Contempt of Court Ordinance, 1998 on 27th October 1998 which repealed the Contempt of Court Act,

1976. However Ordinance, 1998 stood repealed after expiration of four months on 26th February 1999 by virtue of Article 89 of the Constitution.

Ordinance No: IV of 2003: Under clause (1) of Article 89 of the Constitution, the Contempt of Court Ordinance, 2003 was promulgated on 11th July 2003 which repealed on 10th November 2003 in terms of Article 89 of the constitution.

Ordinance No: V of 2003: In accordance with Article 89(1) of the constitution, the Contempt of Court Ordinance, 2003 was promulgated on 15th December 2003 and made applicable from 9th Nov 2003 to fill the vacuum created by the lapse of previous Ordinance, 2003. Before expiry of this Ordinance the Article 270 AA was inserted on 31.12.2003 in the Constitution through Constitution (Seventeenth Amendment) Act, 2003. Consequently the Ordinance was protected till its revocation or amendment by the competent authority.

Ordinance No: 1 of 2004: As per clause (1) of Article 89 of the Constitution, the Ordinance, 2004 was promulgated on 15th July 2004 and made applicable with effect from 15th April 2004 so it held the field in place of Ordinance, 2003 which was protected under Article 270 AA of the constitution until altered, repealed or amended by competent authority, so Ordinance, 2004 repealed the Ordinance 2003. But the Ordinance, 2004 stood repealed on 14th Nov 2004 after expiry of four months within the meaning of Article 89 of the constitution.

Bill No: V of 2005: The Contempt of Court Bill 2005 was introduced in the Senate on 10th February 2005 under clause (3) of Article 204 of the Constitution as Ordinance, 2004 was lapsed on 14-11-2004.

Act No XVIII of 2012: The Contempt of Court Act, 2012 was enacted by legislature and published in the Gazette on 12th July 2012 but Supreme Court of Pakistan declared it unconstitutional vide judgment in the case filed against the Federation of Pakistan. (PLD

2012 SC 923) and revived the Contempt of Court Ordinance No V of 2003 with effect from 12-7-2012 the day when Act, 2012 was enforced.

Issues to discuss

In view of above, following issues are liable to be discussed:-

- i) Whether the revival of Law through judgment (PLD 2012 SC 923) is in conformity with the provisions of Constitution, 1973 or not?
- ii) Which law of Contempt is prevailing in the country?

Leading cases

- The issue that which contempt law was prevailing in the country was first dealt by the Supreme Court of Pakistan in Suo Motu case No 1 of 2007 (PLD 2007 SC 688) wherein initially charge was framed under Contempt of Court Act, 1976 (PLD 2012 SC 923-para 89). However, on pointation during the hearing of the case it was viewed that the Ordinance No V of 2003 was holding the field as it was accorded permanence by incorporation of Article 270 AA in the Constitution by Constitution (seventeenth Amendment) Act, 2003. (PLD 2007 SC 688- Para 5).
- There after charge was amended and proceedings were finalized under Ordinance No V of 2003.
- Honorable supreme court of Pakistan in Suo Motu case No 4 of 2010 regarding contempt proceedings against Syed Yousaf Raza Gillani (PLD 2012 SC 553) placed reliance on Suo Motu case No 1 of 2007 (PLD 2007 SC 688) whereby it was held that the Contempt of Court Ordinance V of 2003 prevailing in the field and it also affirmed by the court in Justice Hasnat Ahmed Khan Vs Federation of Pakistan. (PLD 2011 SC 680)

- The Supreme Court of Pakistan in its judgment (PLD 2012 SC 923) declaring the Act, 2012 unconstitutional, revived the Ordinance No V of 2003.

Discussion in the Light of Constitution

Under Article 264 of the constitution, a repealed law may not be revived. The repealed law remains permanently repealed unless subsequently revived by a new Act. Furthermore, Constitution does not permit Supreme Court to legislate as legislation comes within the ambit of parliament. The Constitution of Pakistan is written Constitution with a concept of separation of powers and no organ of the state whether Executive, Legislature or Judiciary is supreme to one or other. Supreme is only the Constitution which reflects the will of the people.

The Supreme Court of Pakistan viewed that Ordinance No V of 2003 held the field due to insertion of Article 270 AA in the Constitution on 31-12-2003 by means of the Constitution (seventeenth Amendment) Act, 2003 whereas it was further specified in this Article that all such laws are protected until altered, repealed or amended by the competent authority. Therefore Ordinance, 2004 was promulgated so it may not be deemed that Ordinance, 2003 is still protected under Article 270 AA of the Constitution. However, Ordinance, 2004 also lapsed and came to an end on 14-11-2004.

Conclusion

- i) Revival of Ordinance V of 2003 through Judgment (PLD 2012 SC 923) is not in conformity with the provisions of the Constitution, 1973.
- ii) Undoubtedly there is no Law of Contempt in the country.

Recommendation

It is responsibility of Parliament to frame law under Article, 204 of the Constitution, so enactment of Law of Contempt of Court is recommended which has become necessitated to ensure dignity and sanctity of Judiciary.



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