



St. Mary's University College

Faculty of law

Senior thesis proposal for LLB on offence
against integrity of court on contempt of
court in Ethiopia . The Law and Practice

Submitted to
Ato Binyam

Prepared by Dawit Dadi

February, 2009

INTRODUCTION

Offence against administration of justice is any conduct by threat or force that obstruct, impedes or endeavors to obstruct or impede the performance of justice.

It is impossible to administer the law if the courts are not armed with assertive power to maintain order and decimate court proceedings. Contempt of court as a legal doctrine is articulated to give the courts the power to punish those conducts that tend to bring the authority of the law into disrepute or in some manner impliedly and interfere in the due administration of justice.

Offence against administration of justice contains different offences in Ethiopia. Those offences are offences in judicial proceedings such as failure to report a crime, harboring and wading misleading justice, false denunciation or accusation and contempt of courts.

The scope of my discussion is concerned with offence against administration of justice in judicial procedure. Contempt of court is punishable because of the necessity of maintaining the dignity of and respect to words of the court and their decision.

The power of punishing contempt has sometimes been limited to the maintenance of order and decorum in court proceedings, to the enforcement of a court's writs and orders and to punishment of out-of-court acts tending to obstruct the due administration of justice. Generally, the purpose of this paper is to explain the nature of what acts constitute contempt of court in Ethiopia on the basis of Art 449 of the Criminal Code. And Art 480 and 481 of the Civil Procedural Code, the extent to which courts are empowered to punish acts of contempt and the impacts of contempt on proceedings.

2. Statement of the Problem

The proposal of this senior research is to show the practical analysis problems of contempt of courts under Art 449 cr. and Art 480 & 480 civil proc. Code.

In Ethiopia acts which constitute contempt of court, and empower courts with summary power are stated under art 449 (1) of criminal cod and under Art 480-481 of civil proc. Cod. According to Art 449 (1) of criminal cod, any act which amounts to insult, holding court in the courts of a proceeding is considered as court contempt through punishable summarily only where the acts is committed while the court is in session under Art 480 of the civil procedure code, the presiding judge summarily punishable a person who is guilty of improper conduct in court and administration of justice according to Art 480 proceeding judges are given wide powers when compared with Art 449 (1) of criminal code. The general statement possessed by art 480 of civil proc. Code such as improper conduct and administration of justice is not clear and specific enough to determine the contempt conduct that constitutes the offence. So my research will try to discuss the practical problems such as

- Inter-presentational problems of contempt provision presented by courts and also
- A gap created in the law and impact of summary contempt power.

To achieve my goal I formulate the question:-

- Why the law given wide powers to judges or courts
- Why the law is not given the chance to citizen for percent their evidence or why the offence their evidence or why the offence is divided by comment of chilot setting person.
- How can the law taken a significant measurement to avoid these practical problems of contempt of courts.

3. Objectives of the Paper

Any jurisdiction of the court is emanated from constitution. They out station of any country according to the political system of the time organized the judicial structures and identified the scope of powers the current constitution of courts. In Ethiopia, acts which constitute contempt of court, and empowered courts with summary criminal code & 480-480 civil procedural code But this acts which constitute contempt of courts have a problem of practical analysis of contempt of courts under this Art so, The main obstruct or the research are to discuss interpretational problem of contempt provision presented courts, a gap created in the law and impel of summary contempt proceeding and to analysis is the cause and its impact on the analysis the cause and its impact on the citizens whose punished for minor acts in the name of contempt of court.

Specific Objectives of the Study Will Be:-

- To determine the cause of contempt of court
- To verify each component of contempt of court and its advantage and disadvantage
- To assess the impact of contempt of court on punishing citizens
- To compare the degree of contempt of court and encounter problem related in foresight practice considers

4. Significance of the Study

This paper is based on the problem of contempt of courts. By doing this research paper, try to show how the practiced problem affecting the fundamental human rights or citizens who punished for minor acts in the name of contempt of court. The research tries to discuss and give the solution by recommending the following point:

- The courts should make careful consideration whether he necessity for summary action actually before punishing contemnor.

- Provision this law should be interpreted according to the principle of legality that is restrictive interpretation otherwise citizens may suffer from the arbitrariness of judges in different courts and it must affect the proceeding seems to be the test.
- The courts establish the mensrea of the contemnor before imposing sanction and give opportunity to have a say on the conviction
- Art 480 and 481 of civil procedure code be amended because cr. Pro. Code does not give summary contempt power to criminal court division.

But Crime Court division somehow summarily punish individuals for contempt of court through they do not the source of their authority.

5. Delimitation of the Study

The scope of the paper study is limited to judicial authority sectors. With a particular concerned with the case of administration of justice of courts on contempt of court proceeding around federal court with a particular reference with Addis Ababa courts and some place of oromiya woreda courts.

The research generally covered the historically back ground of Eth. Court on contempt of courts nature and what acts constitute contempt of court in Ethiopia on basis of Art 449 criminal code and 480-481 C. Proc. Code, the concept to which courts are empowered to punish acts as contempt and impacts of the contempt on procedure.

The paper also tries to define the meaning of the contempt law application and acts consequence of contempt law application and act constitute contempt.

Finally, the paper try to show (discuss) of the practical analysis of contempt of court under Art. 449 of cr. Code and Art. 480-481 of civil procedure code. Due to this I focused my research in this concept.

6. Methodology

This paper is about the practical problem of Ethiopia courts on contempt of court some cases are selected and analyzed in line with the relevant provision of the law.

The paper could be conducted through the following ways:

1. Literature Review

For make my research review on published and unpublished law material and relevant of lawyer literatures book or material which it deal with contempt of courts stated under art 449 of cr. Co Art 480-81 c-pro-c- the different draft on contempt of court power on contempt of court), the publisher commentary materials, the case with decided by different courts in the line with contempt provision under Ethiopia law and also some important foreign books and journal that deal with contempt have been used and comprehends a despising of the authentic justice, or dignity of courts

2. Interview:

It is the primary data it is used to get more relevant information help to understand about the subject matter and know the rational of the gab and how the subject material is solved.

So, to get more relevant information, the researcher will be conducted interview

- a. Some judges of the federal high court and first instance court
- b. The public prosecutor
- c. Antonym
- d. The defendant (offender) who punished with the name of contempt of courts and arrested by this case

ACKNOWLEDGEMENT

My first and foremost thank goes to the almighty god who enabled me to start and finish my college study with success.

Secondly, my heart full thanks to my lovely husband Tesfaye Duga for his moral and material support during my starting in college

3rd I think to my advisor Ato Biniyam Mahammed for his invaluable support in comments on the proposal and draft of my thesis.

Finally, I would like to thank you my brothers. Mhired Kebed for his moral and material support in school up to college. My thanks to this are beyond what words can explain but he and his deeds are always with me.

INTRODUCTION

Offence against administration of justice is any conduct by threat or force that obstructs, impedes or endeavors to obstruct or impede the performance of justice. It is impossible to administer the law if the courts are not armed with effective power to maintain order and decorum during court proceedings. Contempt of court as a legal doctrine is articulated to give the courts the power to punish those conducts that tend to bring the authority of the court and the administration of the law in to disrepute or in some manner impede and interfere in the due administration of justice.

The purpose of this paper is to explain the nature as to what acts constitute contempt of court in Ethiopia on the basis of Art. 449 of criminal code, and Art. 480 and 81 of the civil procedure code, the extent to which courts are empowered to punish acts contempt and impacts of the contempt on proceedings.

The information of this mainly gathered from cases decided by Ethiopian courts. Some important foreign books and journals that deal with contempt have been used. The writer also had the opportunity to interview some judges of the federal high court and first instance court. Likewise , the Ethiopia criminal code Art. 449 that deals with contempt of court and Art. 480 and 481 of the civil procedure code examined in the paper. In order to show the practice of Ethiopian courts on contempt of court some cases are selected and analyzed in line with the relevant provision of the law.

To outline the paper, chapter one deals with offence against administration of justice definition, classification and kinds of offence against administration of justice in Ethiopia, and purpose of contempt of court in general.

In the second chapter, we see the notion of contempt of court in common law and civil law legal systems. In this section conducts constituting contempt, types of contempt, power of courts to punish acts as contempt, procedural requirement and sanction for contempt will be discussed.

Chapter three is devoted to explain what acts constitute contempt in Ethiopian context, contempt. The circumstance the mentawinder art 449. Classification of contempt, summary contempt power in Ethiopia, practical problems of contempt proceeding such as interpretational problem, legal gaps, and impact of summary proceeding are discussed. More over, decided cases are analyzed in light of contempt provisions under Ethiopian law. Finally, the paper has ends with brief conclusion and recommendations.

Table of content

Content page

Content

Chapter one

1.....O
 ffence against the administration

Table of Contents

Content

□ + acd

Acafmuhe`g`eent

In`rOduc4ikf

CH@PTAR ODE

1. o`denCe aeAinqt the a ^l llnaqtpatim, of *uspicec	1
1.1. Defin)ton	1
1.1.1. Adminisdratimj k` juqtIBe	1
1.1.2. OddEnbes agaajqt the adEilhsTpaTi/n mf juqtibe	0
1.1.3. Lffances `fahnqt the !dihni3tratigh Of jest)be in ETHikpia classifhca4imf \$ khldr	3
1.1.4. O&dElc` agaijct `ediciah prkceedijgs)) Ad overvieg	#
1.2. Ckntem`t ob clurt and its pub0or%	¶
1.2.1. Definitilj cojt%epT k" cmurp	±
Pur`nses gf !as of #kntem@t	6CH@+ TDP

TWO

2. The n`dion gf cnn4aept nf cmurt aj Cmmio* (au and #ivil la ^l lEGal system 8	
2.1. Cgnducts aknq4htutIng contelpP of cOurt	8
2.2. Tqpes ob bojtaept ob cOurt □ 11	
2.2.1. Aivil Vs abimilal cojteMpt	12
2.2.2. irect Vq in @irect 13	
2.3. The pmuer aourtc tM punhsh actq as cKntampt	1%
2.3.1. Su%mary power	16
2.4. Probedural rDquhremans	17

CHAPTER THRAE

3. Cohddmpt of colrd ulder aurren` hauc i` Ethio`ia	20
3.1. Ed`iopaan lau ln `mnta!pt or aou0t	20
3.2. AadS const)qtile ccjt`mpp nb aoerp al Ethinpia	↑ 1
3.3. ConpeMpt : Pha chrcuesTajce	21
3.4. The mental edelent ulddr Apt. 44+ □ 2+	
3.5. THE citHI • rihihAl davisian an` dipdct afDhrect distinDtioN o` coLtAmpt ujder Eth)opIa ,au	24
3.6. Sumeary co,tEmpt pmser il DthimpIa	26

AHAPTAR FMUR

3.7. Practical a.alx3ic of conteipt ob agqrt tn`er Edhiopia haw	
30An4erpret`¶ i+jal pro``emq of ckntempt Proriqmp preadjpe` bo5rtr in Eth(+pia	10
3.8. Cap cpeape` if the lau ahd p"!#PicaL prMb,ems d`aed by EthiOphaf `kupts	31
3.9. Ampacts of sqmm!py conte-pt Oroa%edhngs	24
3.10. The practaa\$ of cou2tq in c/ntempt h5dgee	

tq undeR EthiophaN law	34
Conclus(mn An RecoemejDA tign I.....	39
CodclUqhon 39	
Pec/LmEndapaoF.....	40
Bi`liograp(y	44
*Al.ex	

Offence against Integrity of Court in Ethiopia, the law and the Practice

CHAPTER ONE

1. Offence Against the Administration of Justice

Offence Against the Administration of Justices and related issues are broad concepts which need clarification to avoid possible confusions in understanding the whole spirit of the study at hand. Therefore, it is advisable to explain them shortly here under.

In this aspect I will like to explain, first what offences against the administration of justice means. Second, classification and kinds of offences against administration of justice in Ethiopia will death with I will see. Third, what acts constitute offence against judicial proceedings. Finally, the definition and purposes offence against court integrity will be discussed.

Definition

1.1.1 Administration of Justice

It is hardly possible to get a specific definition about administration of justice. According to one writer administration of justices has been regarded as a specific type of state activity. Besides it has been also a general requirement that special bodies, i.e. the courts should be interested to display the activity in question. According to this definition, administration of justice is approached as a specific type of state activity performed by court.¹

The criminal justice system is also one of the administrative justice, if is a an interdisciplinary approach in the law enforcement and crime control service. Criminal justice refers “to an area of knowledge and work based on controlling crime through scientific administration of criminal justice services” and it is composed of law enforcement prosecution, courts, and correctional institutions.²

An American writer defines administration of justice as the performance of acts and duties required by law in the discharge of judicial duty³. The trend of understanding of administration of Justice in US is, therefore, performance of acts and duties of judge required by law in discharge of their judicial duties. Therefore, administration of justice contains the

1. G/Michael Getaneh, Democracy and the participation of the people in the administration of justice in Eth. P.26 (unpublished)
2. Andargachew Tesfaye, , The crime problem and its correction., Vol. II, P.4
3. walter nelles, the summary power to punish for contempt Columbia L. rev Vol. III

normative suggestion of solution of dispute or infringements of the law by the court and quasi-judicial bodies on the basis of law.

1.1.2 Offences Against the Administration of Justice

To acquire precise and specific definition it is indeed difficult regarding the concept of offences against administration of justice. However, there are some agreeable general provisions of definitions as the one in Black's law dictionary: a felony or misdemeanor, a breach of criminal laws; violation of law for which penalty is prescribed. The word 'offence' while sometimes used in various senses, generally implies a felony or misdemeanor or infringing public as distinguished from mere private rights, and punishable under the criminal laws. It may also include the violation of criminal statute for which the remedy is merely a civil suit to recover the penalty. An act already prohibited by the lawful authority of the state, providing notice through published law constitutes an offence.⁴ In addition to the above the new encyclopedia of Britannica defines it as intentional commission of an act usually deemed socially harmful or dangerous and socially defined as prohibited and punishable under the criminal law. Despite these couple of definitions there are difficulties in the definitions because of practical problems frequently involved intermixing whether or to what degree an act is intentional, because some offences known as "strict liability of offence" are punished as crime even though they may be unintentional and because there are wide difference or opinion concerning what is socially harmful and dangerous⁵.

In Ethiopian criminal code 2004, Art.23 a little bit explicit definition of offence is provided as a criminal offence is an act or omission which is prohibited by law.⁶ Therefore, it is generally understood that from the above definitions an offence is an act or omission which is prohibited by law and its violation leads to punishment.

Offence against administration of justice is then any conduct by threat or force obstructs, impedes or endeavors to obstruct or impede the performance of judges is considered as offence against administration of justice and is punishable can be said, also, as It is any act that hinders the proper activity of courts.

4. H. camepel black, Black Low dictionary the new encyclopedia Britannica, Vol. 16, P. 796

5 Criminal code of FDRE, 2004 Art 23

6 Criminal Code of 2004, Art. 449(1)

1.1.3 Offences against Administration Justice in Ethiopia: Classifications and kinds.

An offence against administration of justice contains different offences in it. These offences are offences in judicial proceedings such as failure to report a crime, harboring and aiding, misleading justice, false denunciation or accusation and contempt of court, perjury and cognate offences such as false testimony, opinion or translation, and misrepresentation are considered as offence against administration of justice. However, the scope of the discussion at hand is focused on offence against administration of justice in judicial proceeding.

1.1.4 Offences against Judicial Proceeding – An Over View

Judicial proceeding means a proceeding in or under the authority of a court of justice; before a court judge. Under the Ethiopian criminal code, offence against judicial proceedings include the following:

a. *failure to Report a Crime*⁷:- “Whosoever, without good cause knowing the identity of the perpetrator of or of a crime punishable with death or rigorous imprisonment for life, fails to resport such things to a competent authorities; or is by law or by the rules of his profession, obliged to notify the competent authority in interests of public security or public order, of certain crimes or certain grave facts, and doesn’t do so, is punishable with fine not exceeding one thousand birr, or simple imprisonment not exceeding six month. Nothing in this article shall affect the provisions of Articles 254 and 335”.

Generally, a person who fails to report an offence which fill Articles 267, 344, and 438 are liable to punishment ⁸ and hence, considered as offence against administration of justice. These articles are currently stated under Art 254, 335 and 443 of Criminal Code of FDRE, 2004 respectively.

b. Harboring and Aiding,⁹ in Ethiopian Criminal Code harboring and aiding are one of the offences administration of justice. It states that whosoever knowingly saves from prosecution a person who has fallen under provision of criminal law, whether by warning him or hiding him, by concealing or destroying the traces or instruments of his crime, by misleading the investigation, or in any other way is punishable with simple imprisonment or fine. Therefore, harboring and aiding can be considered as offences against administration of justice.

7. P. Graven, An Introduction to Ethiopian Penal Law, (1965), p. 152

8. Ibid

9. criminal code Art. 445

c. Misleading Justice:- Justice is a proper administration of laws. In jurisprudence the constant and perpetual disposition of legal matters or disputes to render every one's due.¹⁰ . We understand from the above phrase that misleading justice is opposite of proper administration of laws. Ethiopian criminal code states that 'whosoever: falsely notifies the authorities of an offence which he has not committed; or falsely accuses himself a crime which he has not committed; or knowingly gives the authorities inaccurate information in relation to criminal investigation or proceedings, is punishable with simple imprisonment not exceeding six months or fine not exceeding one thousand birr.¹¹

The rationale of misleading justice may be to harm the innocent person due to contradiction in property, commercial or other socio-economic and political condition between themselves. It may also be to protect the true offender from punishment by incriminating himself without participating to the offense. The true offender may be his relative, or he may have other social relation. In addition to these, some body may want knowingly by his rational interest to miss the justice process of certain crime by giving false information for authorized person to the offence that is punishable. The rationality here may be to be free from the offence that is done by him. Misleading justice hinders the proper administration of justice.

d. False Denunciation or Accusation

The word denunciation is the act that an individual informs a public officer whose duty is to prosecute the offenders, that a crime has been committed. Against a person, to the effect that his guilty of a punishable offence laid before a court or other organ having jurisdiction to inquire in to the alleged crime.¹² . Therefore, false denunciation or accusation is the opposite of the above definitions. In Ethiopian criminal law: if one denounces or accuses the person knowingly to harm the innocent person or in other way especially by saying the offence is committed or without good ground in the absence of the commission of the offence by the innocent person is punishable with rigorous imprisonment not exceeding five years and fine. However, where the false denunciation or accusation has resulted in a more severe punishment he himself shall be sentenced to the punishment which he has caused to be wrongfully inflicted up on the innocent person.¹³ Therefore, we can say false denunciation or accusation hinders the administration of justice.

10. Criminal Code Art 446

11. Black's Law Dictionary, P. 435

12. Criminal Code , Art 447

13. American JURISPRUDENCE, (2nd , contempt, sect 10 P. 2)

e. Contempt of Court

Contempt of court is a general one embracing various offences against the administration of justice; interfering with judicial proceeding, perjury, refusal to obey a lawful court order, insulting or ridiculing the court etc. Since the entire body of the paper deals with contempt of court, it will be discussed in the following chapters in detail. ¹⁴

1.2. Contempt of Court and its Purpose

Contempt is said not to be a matter between opposing litigants but it has been described as an offence against the state and not against the judge personally. Contempt is punishable because of the necessity of maintaining the dignity of and respect towards the court and their decisions.¹⁵ The power of punishing contempt has some times bear limited to the maintenance of order and decorum in court proceedings, to the enforcement of a courts writs and orders and to the punishment of out of court acts tending to obstruct the due administration of justice.

1.2.1 Definition of Contempt of Court

Contempt of court is so manifold in its aspects that it is difficult to lay down any exact definition of it. According to corpus juris secundum; “contempt comprehends a despising of the authority; justice or dignity of a court; but in its broad sense it is a disregard of, disobedience to, or disorderly or insolent interruption of, the proceedings of legislative or judicial body”. ¹⁶ This concept implies that a contempt of court may be defined as disobedience of the court by acting in opposition to authority, justice, and dignity.

As per the above definition the contempt signifies not only a will full disregard or disobedience of the court’s orders but such conduct as tends to bring the authority of the court and the administration of law to disrepute, or in some manner to impend the due administration of justice.

The blacks law dictionary defines the contempt of court as follows: “contempt of court is any act which is calculated to embarrass, hinder, or obstruct court in administration of justice, or which is calculated to lessen its authority nor its dignity committed by a person who does any act in willful contravention of its authority or dignity, or tending to impede or frustrate administration of justice, or by one who being under the court’s authority as a party to a proceeding thee in, will full disobeys its law full orders or fails to comply with in under taking which he has given”. ¹⁷

14 <http://www.lectlaw.com/def/e118btmpage2>

15 Corpus jurisprudence, Vol. 17 contempt sect. 62 pages 5

16 Black law dictionary eight edition 2004 P, 336

17 Penal Code of the empire Ethiopia of 1957, Nagrit Gazeta . extra ordinary issue No. 1

When we come to the Ethiopian laws definition art 443(1) of the repealed penal code of Ethiopian defines as follows: “whosoever, in the course of a judicial inquiry proceeding of hearing, in any manner insults, holds up to ridicule, threatens or disturbs the court or any of members in the discharge of their duties; is punishable with simple imprisonment not exceeding SDC months or with fine not exceeding one thousand Ethiopian dollars. And also art 449(1) of the criminal code of the FDRE also explained that “contempt of court whoever, in the course of a judicial inquiry proceeding or hearing:

- a. in any manner insults, holds up to ridicule threatens or disturbs the court or a judge in the discharge of his duty; or
- b. in any other manner disturbs in activities of the court is punishable with simple imprisonment not exceeding one year of fine not exceeding three thousand birr”¹⁸

1.2.2 Purposes of Law of Contempt

Contempt of court is directed to wards the court itself rather than towards an individual judge. The judiciary’s inherent power to punish affronts to its authority as criminal contempt rests on the promise that courts must have the ability to vindicate their authority by ensuring obedience to their order and respect for their process.¹⁹

Respect for court, which is ordained to administer the laws which are necessary to the good order of society is as necessary as respect form the law them solves.²⁰ While discussing the rational for the power of court, a court explained that: all courts drive their authority from the people, and hold it in trust for their security and benefit. In this context all judges are elected by the people, and hold their authority in a double sense directly form them: the power they exercise is but the authority of the people themselves exercising through the court of their agents.²¹

It is the authority and laws emanating from the people, which the judge sit to exercise and enforce, contempt against these courts in the administration at their laws, are insults offered to the authority of the people themselves, and not the humble agents of the law, whom they employee in the conduct of their government.

The rules embodied in the law of contempt of court are intended to up hold and ensure the effective administration of justice and one of the basic principles of any civilized system of justice that a person is entitled to a fair trial free form prejudice. Accordingly, no system f

18. Proclamation No. 414 / 2004 9th of may, 2005, P. 261

19. B. Kuhns “the summary contempt power, Yale L.J. Vol. 88 (1978) P. 41

20. Ibid

21. Ibid

justice can be effective unless a fair trial to both sides is ensured and there are many rules of law and practice intended to support this principle. And it is the purpose of the law of contempt's to provide sanctions against any word or conduct that are likely to prejudice fair trial²²

in upholding the effective administration of justice if a court lacked the means to enforce its orders, if its orders could be disobeyed with impunity, not only would individual litigants suffer, the whole administration of justice would be brought in dispute or in to scorn.²⁴ Loss of respect for courts will quickly result in the distortion of the society.²³ So, the purpose of the law of contempt's to provide sanctions against any word or conduct that are likely to prejudice fair trial and also punishment of contempt of court is inherent in court and the rationale for an inherent judicial contempt power is necessary i.e. to preserve the effectiveness and sustain the power of the court and to protect and enforce the parties' rights by compelling obedience to court orders and judgment.²⁴

22. Ibid

23 Ibid

24 Ibid

CHAPTER TWO

2. The Notion of Contempt of Court in Common Law and Civil Law Legal Systems

The notion of contempt of court and related issues are the least understood areas of the law. The source of confusion is the various classifications of contempt depending on the type of penalty imposed civil or criminal, and direct or indirect based on the immediacy and location of the contemptuous act. Understanding this concept would avoid the possible confusion in understanding the message to be transferred. Therefore, it is better to explain them shortly hereunder.

Accordingly, the writer would like, first to state conducts constituting contempt of court. Then, the writer also explains the types of contempt of court and the power of courts to punish acts as contempt respectively and finally, procedural requirements and sanctions for contempt of court will be discussed.

2.1 Conducts Constituting Contempt of Court

In common law countries, the notion of ‘contempt of court’ is a general one embracing various offences against the administration of justice: interfering with judicial proceeding, perjury, refusal to obey a lawful court order, insulting the court or the judge and the like.

There are four types of conducts which at common law would be thought to constitute contempt²⁵.

A. Misconduct in the Court Room

In common law any conduct in or near the courtroom which in the opinion of the presiding judge disrupts proceedings taking place or in some way challenges the authority of the court in general may be held by the judge to constitute contempt and be punished accordingly. The conduct may take the form of disruptive actions, words or even refusal or omission to act (such as intentional failure by a legal representative to attend the court at the time appointed for hearing)

25 M.chesteran, “contempt in the common law, but not civil law, “introduction
contempt L Quarterly, Vol. 46 No. 1- 4 (1992)P. 521

B. Publication of Allegation Undermining Public Confidence in the Administration of Justice (Scandalizing the Court).

In this branch of contempt, public criticism of judges or courts may attract penal sanctions if the remarks made are of scandalizing' nature. A scandalizing remark is one which is "calculated to or has an inherent tendency to undermine public confidence in the administration of justices.

C. Infringement of the Sub-Judice Principle

This type of conduct deals with the publication of material tending to prejudice or embarrass current or forthcoming legal proceedings. The sub-judice rule prohibits publications which have regard to all the circumstances of replication a "real and definite tendency as a matter of practical reality to prejudice or embarrass a current or forthcoming trial, civil or criminal".

The above three types of conduct in general are called criminal contempt because they are acts which consist in disrespect of the court or which obstruct the administration of justice. They are acts directly against the court.

D. Non – Compliance with a court order

Non-compliance with the court order is the fourth type of conduct which in common law constitutes contempt. This is civil contempt because it is failing to do something ordered to be done by in a civil action for the benefit of an opposing party. For example, if the party fails to pay the maintenance of the child, his act is non-compliance with a court order and constitutes civil contempt.

In continental countries there is apparently no such general notion as 'contempt' but certain offences against justice particularly, minor ones, are punishable summarily.²⁶ Misconduct in the Court Room And the contempt power of courts is not as comprehensive and widely practiced as it is in common law.

It is held that for the non-common law country the power of punishing contempt is a legal technique which is not only necessary to a working legal system, but also happens to be a violation of basic philosophical approach to the relations between government bodies and people. Neither Latin American nor European civil law legal system uses any device of the nature or proportions of common law court power to punish contempt²⁷. To this effect, one writer states "the self evident common law principle of responsibility for contempt is as a principle unknown in the civil law countries, at least to the extent to which it represents a sanction for non-performance of substantive duties."²⁸

26 S.Fisher, Ethiopia Criminal Procedure, (1963) P. 359

27 Asefa All "Power of Judge" under contempt of court research paper P. 117

28 Ibid

This is because, the non-performance of substantive duty is a non-compliance with a court order which results in civil contempt.

Although these countries recognize to some extent the propriety of punishment for some criminal contempt, they recoil at the suggestion of punishment for purposes of coercing an individual to act in a certain way in the future (civil contempt). This means they use punishment for compelling the contemnor with a court order. However, the Anglo American idea of responsibility, for contempt means, indeed, that the party who doesn't abide by certain specific decree emanating from a judicial body is contumacious person and may as a rule, be held in contempt of court.

To show how the continental system responds to the phenomena of contempt of court or resistance of judicial authority it is better to discuss the practice of different continental law countries, however, in a given time and scope of the paper it will be difficult to deal with all countries conception of judicial power therefore, the discussion will be limited to the practice of France.

To conduct this research the writer consults materials and laws of foreign countries hence most of the reference books used are common law sources. It is not because it deserves some attention but contempt of court is much discussed in common law. The writer consults continental sources however since the notion of contempt is not developed, and unavailability of books is a major restricting factor in discussing the criminal Code and Criminal Procedure Code of France from the Civil Code of France.

The absence of a general doctrine of contempt of court in continental system (penal law) doesn't mean that conduct which at common law is punishable as criminal contempt will never attract a penal sanction under French law. Some of the conduct which the common law treats as criminal contempt if committed in France would constitute an offence under one or more provisions of the French Criminal Code or Code of Criminal Procedure.

If serious offences relating to courtroom misconduct in French law they are tried according to summary procedure which closely resembles but which in some aspects differ from contempt in the face of the court which is established under criminal contempt in common law.

Article 676 of the criminal procedure code states “if a violation is committed during a hearing the court shall prepare an official report of the fact, hear the accused, the witness, the defendant’s counsel and with due delay apply the punishment provided by law.”

The justification for these powers of the court is not that swift and peremptory response which is essential in order to protect the authority of the court and thereby the administration of justice. Such justification is offered in response to the argument that the summary contempt in common law violates a number of deeply rooted assumptions (that pertain to common law practice) in criminal case. Indeed in French law (the prosecution and trial, of an offence by the judge on the basis of what he or she personally perceived is broadly compatible with the longstanding inquisitorial element in French criminal procedure i.e. the immediate prosecution and trial of a *delit d’audience* by the court affected constitute a residual instance of the old maxim in that every judge is a public prosecutor.

If we take the other common law classification of contempt i.e. civil contempt when a party to a civil proceeding is held to refuse or failed to obey an order of the court requiring him or her to do the specified thing it may impose an open-ended coercive sanction most commonly a fine or a prison sentence. This what the courts of continental system have been lacking. Most civil law countries do not impose or penalize such acts as contempt. For a lawyer in continental system it just doesn’t occur to him that the refusal of the defendant to deliver what has been ordered by the court to the plaintiff, purely private matter between plaintiff and defendant, may as soon as a judicial order is issued, become a matter to a certain extent personal to the court and the court, may feel hurt, insulted “contemned” because its order has been neglected or willfully disobeyed. The enforcement device which is compared frequently to the contempt sanction in France is called ‘*astreinte*’. This is pecuniary sanction imposed by the court for every single future act or single period of violation of a judicial decision.

2.2 Types of Contempt of Court

In the preceding chapter we have seen that contempt of court is an act that is calculated to lessen the authority or dignity of the court by embarrassing, hindering or obstructing the court in the administration of justice²⁹. It is disorderly behavior in the presence of the court or so

near the court room as to obstruct the administration of justice. It is also a disobedience or resistance to any lawful order, process or rule of the court.

When the issue of contempt of court comes in to scene, basically there are two considerations that have gone into a judge's initial determination. These are whether criminal or civil in nature and then direct or indirect. The court will broadly define each type and then will return to each one to discuss in a more detailed manner. Before directly defining the categories of contempt, Senait Bedassa, "Contempt of court in Ethiopia" under research paper discusses contumacious conduct as follows:³⁰

- i) Embarrassment or obstruction of the court if it's a disrespect to the authority or dignity of the court;
- ii) Bringing the administration of justice into disrepute.

iii) AonstitUte Diqobeÿience /f a CGurt KrdeB or Judgment

There `re twm typEs of conteipt caVil and `rimifad contempt and in addi4ion

contempt can be either direct or indirect.

2*2.1

Civil

Vs Criminal

Contempt:

Civil Contempt:

Civil contempt was originally called contempt in procedure and involves a person's passive refusal to obey a court order in a civil action for the benefit of another party. Therein, an offence against the party on whose behalf the violated order is made.⁷ It occurs when a person refuses to obey a court order. The remedy is to require the contemnor to desist from making or committing acts which would frustrate or impede on him by an order of the court.¹

Criminal Contempt

Criminal contempt's are perceived as positive acts of deliberate interference with the law. These acts which obstruct the administration of justice or tend to bring the court into disrepute. They are positive acts of deliberate interference with the law and as such are public offences. Criminal contempt being directed against the dignity and authority of the court is offence against organized society. In addition, it is also held to be a public offence and an issue between the public and the state, the sanction to be imposed is punitive.³²

Criminal contempt's are said to be all those acts which consist in disrespect of the court, which obstruct the administration of justice or tend to bring the court into disrepute, such as disorderly conduct, insulting behavior in presence or immediate vicinity of the court or acts of violence which interrupt its proceedings.³³

The distinction between criminal and civil contempt has been one of the most confusing and

30. <http://www.19thcircuitcourt-state.il.us/rules/rules13.htm>.

31. Walter Neles, the summary power to punish for contempt, *Columbia L. Rev.*, Vol. 31 p. 960

32. *Senaite Vs* at foot note 21

33. *Ibid* P. 17

More over, single acts of contempt can result in both criminal and civil contempt sanctions in some cases. Despite the difficulty in categorizing acts as of contempt, the ability to distinguish between civil and criminal contempt is of vital importance. This importance originates from the fact that different rules of procedure and constitutional safeguards apply to the two types of contempt.

Criminal contempt distinguished from civil contempt on the basis of the vindication of the authority of the court whereas civil contempt differs from criminal contempt depending upon the preservation and enforcement of the rights of the parties.³⁵ If the purpose of a law is to

punish the person for a past act that he or she was forbidden to do, criminal contempt proceedings may be instituted. If, on the other hand, the purpose of the sanction is to coerce the contemnor to do an act for the benefit of the compliant, then civil contempt proceeding is appropriate³⁶.

In some jurisdictions statutes recognize and preserve the fundamental distinction between civil and criminal contempt in substance but not in name. However, the rationale of both criminal and civil contempt is essentially the same; upholding the effective administration of justices.³⁷

In common law the two classifications of civil and criminal division is shaped in to a and the direct and indirect distinctions. The two classifications are not mutually exclusive. That is to say though each contempt can be criminal or civil, direct or indirect, criminal or civil contempt are at the same time direct or indirect.³⁸

1.2 Direct Contempt

Direct contempt is a contempt which is committed in the presence of the court. It is a contempt which is committed in the presence of the court and is a contempt which is committed in the presence of the court.

1.2.1 Direct Contempt

Direct contempt is a contempt which is committed in the presence of the court. It is a contempt which is committed in the presence of the court and is a contempt which is committed in the presence of the court.

34. Ibid

35. Ibid.

36. Ibid.

37. *Assefa Aill Vs* cited at foot not 27

38. *Senait Vs* cited at foot not 21 P. 17

It is important to be more readily recognizable as the are obstructive acts or inaction or
work in the presence of the fourth which interfere with the administration of justice in
Objections say,

Direct contempt normally involves disobedience or refusal to obey the
judge and the behavior interferes with the order of the trial or other judicial proceedings.
For the contempt to be direct, it must defy the authority of the court.³¹

- Committed in the presence of the court and is punished by the judge
- Court is punished by the judge

- The Supreme Court To make immediate corrective steps to Restke
 ob`Er and maintain the dignity and authority of the court. In America, it
 has been held that direct command as sponsored (aferessioe of fance Ex`r%sqly aamed d
 the court, hasd` /r at + Apti%q to the judicial process, which is bo\$mitted in Oh%
 pbErejed of t`e c+urd an` which tended to phyr!callx obStruct the adminhs0r!4)on Nf
 *u3ticd*⁴⁰ @irecp cmnTempd are such aq mpDf ilrul4 tn judge wHhhe dhey a2e
 pr%Rid`.g, dhroR eplx co.ducd

insulthng

D`iea,or

Witnesses at the trial, including the defendant's father, testified that the defendant was present at the scene of the crime, and that he was the one who fired the shot that killed the victim. The defendant's father also testified that he saw the defendant flee the scene of the crime.

In *People v. Williams*, the defendant was charged with the murder of a police officer. The defendant's father testified that he saw the defendant shoot the officer. The defendant's father also testified that he saw the defendant flee the scene of the crime. The defendant's father was also charged with the murder of the officer. The defendant's father was found guilty of the murder of the officer. The defendant's father was sentenced to life in prison. The defendant was also charged with the murder of the officer. The defendant was found guilty of the murder of the officer. The defendant was sentenced to life in prison.

insulthng

D`iea,or

in the presence of the court, etc.

The judge may, after giving the person the opportunity to respond, impose the sanction immediately.

Indirect Contempt

Indirect contempt is an act of misconduct, a part from the immediate proceeding in time or location, which by implication tends to interfere with administration of justice.²⁷ Mostly they are acts which occur distant to the court when court is not in session. It is a behavior which the court did not itself witness.⁴²

Indirect contempt normally involves behavior that can not be classified as direct contempt. Eg. Includes.⁴³ Publications which tend to impair the courts impartially and publications which prejudice the court's ability to determine the true facts. These act impair public confidence in the authority or integrity of the administration of justice.

39. Ibid P. 18
40. Ibid
41. Ibid
42. Ibid P. 19
43. Ibid

ally and those acts in
: amounts to indirect

2.3 The power of Courts to Punish Acts as Contempt

The power of the courts to punish contempt is one which traces historically back to the early days of England and the crown. At that time judges derived their authority from the monarch and if disrespect was shown to a judge it followed that the monarch had not been venerated, a serious matter calling for action in law. Curia Regis (the king's court) is a product of the days of kingly rule, it began as a natural vehicle for assuring the efficiency and dignity of, and respect for the governing sovereign.⁴⁴ Viewed as a legal doctrine which was articulated and immersed in common law, it is generally a product of Anglo- American society.⁴⁵

Earlier it was discussed the power of courts to punish contempt is inherent in courts and the rational for an inherent judicial contempt power is necessity i.e. to preserve the effectiveness and sustain the power of the courts and to protect and enforce the parties' right by compelling

obedience to court orders and judgments. Courts' authority to punish bor Boht!m@\$)q
inhepeht il phe ht hchal pgwap varpad il c)uPtq, Ij e0pl!hniyg 4 is `/haapP, OhE MiBhigad
L t† r%me AOtp4 #p`4eD:

*“Thape is anhe0ent piwep al #otrt(ph the DT(, ehtelT th`T it apIstdd in thd
BmqRt2 ed /jglal` `t th% cnmm%n law,)nd` e*d`h4 -f, aq ueld !q b1 paaco. i`
cT!te.*, sh)ch iq me0alx `eclapa4mpx ad` in \$fabhatioh thare cb, tj adjud#e an\$
pad)l` fir co`tdm`p...puah i.hdr\$ht pm'er ex4ands ,ot ljly pg cjF4aipd
afh4mh4\$E` il tha prec`nbe /b t`e bnurt bt4 `dS. t- cnlstrbtive bFlt@-pp `ph3`.g
froa rEduqa(+f defen\$ant tM a•Ip`/ w(th al -r`ep nd tHe akupt...*

OjE can ujddrQtan@ Frmm p@d a"ora thap t`a afherejt Pgwdr nd t`e aotrtr Dm ptfich !bTS
aq c&j0dapt ir bkt hdla \$ep%ndedt ep mf dibec` aMftempp But adcm iJdirect aoldem0t*

Ju\$ih`l adt`lrity pk aird ah indiv)dqah dkr cinpemp hf aie2t hs a3 mh` aq t`e coq 0s
 dhaaaelfeq. Hmbdofdp, phe Ogger tm pdliq` aatq)` c^l.pe\$pd (aQ been 2ec`ghixd` a" ijhdbelt
 ij alH churps(PHar Adhare,t atphcrd9 n0(eaj`dd2 drnm the nDc!ssipi fjp enfnpaaN' `ÿ qrt
 er@epS `Nd judb%alpr as well as Aailtailafg b`cic mrdep in AouptRgMm² Der phar
 raa1on² c)t0tq mf juptice `pe 5faDepral`q acknoqlEdaed 4m ba re`d%d(bp t(%ip p%r9
 ar%adioj(ghth pmuer tg iipn2` silelcd re2pdct !.d \$eckbq-(i* phahb ppesa,p aj` subiirsheh
 d- thdh` h`eb5h -äld`pe, **2&2*1 Cpiiary Pnqdr**

44. Ibid

45. America Jurispnedence, (2nd ed. 1064), Vol. 12, Contempt sect.10 P.2

rquazy pou p na a pm&%∠ y Cnicω ! c+u aajuæø! :na puj sωar ! bmLpeljmp qullar)l8,
 wi4hnt4 pr)or ,Ophce written c(ar'dq, Oldac(i@1qes .r triah,⁴⁶ Phd uord `Rtim`py a◀ 4` |
 0`mce`upah 5mp\$ afd Bhe. qRed an `m&n!cpien Wa4h
 /ntamp4 gF coqr4 †pAv)sifns(p`e follhu)ff sta¶ emdn4 dxplahjs ht bettar\$

◀T(d u-r\$ #uld`by' aC used ij pRo&iq o

s wid` 0e1pebD tk punhphla, bir Chntelpt dodc ,nd rebep to tHd pam).g nb thd
a`tijn uith pebebEj`e tm dHe nbbenca b`t radabp tg t(d prnb`da2e shich `is`ens`p
wa\$h th` "/r-!(itp\$ deha8(ajd `igrecaajn `hat ueth` pe#ql4 bbkl the issa@had .b
p2,adqs, sepv) e ob `ompLiant aJd `ncs%p hdl\$ang heapings, dak█lf erid\$ne\$
(istenif po ``#Dmdlts, aga)tinc `riefp, rub,hbsam. (b dhndings

*!fd all that goes with a conventional court trial.*⁴⁷

From the above statement, one can understand that the word summary is a special proceeding which dispenses with ordinary criminal procedural requirement of notice, written charges, right to council and the right to be confronted with witness etc.

There are two schools of thought on the subject. Some think that since the consequences of contempt convictions could be and often are serious and grave it requires the attendance of the court proceedings and argue that criminal contempt should be tried as other crimes are with all procedural guarantees protecting the accused.⁴⁸

The other school of thought believes that summary process to punish contempt is a necessary incident to every court to fine and imprison there and then.⁴⁹ The rational behind this approach is the defensive need asserted by courts to protect the trial from obstructive interference. One US Supreme Court stated:

*It has always been one of the attributes of one of the power necessarily incident to a court of justice that it should have this power of vindicating its dignity, or enforcing its orders, of protecting itself from insult, with out the necessity of calling up on jury to assist it in the exercise of this power.*⁵⁰

Generally, courts in US believe that punishing contempt is an inherent power of courts arising from the court's necessity of self preservation and preservation of obstruction of administration of justice. They believe that the object of contempt of law, its most valuable goal is "protection of fair trial" and hence they hold that for court contempt punishment no regular procedure is necessary. Therefore, it is exception for procedural requirements.

46 Ibid

47 Ibid

48 Ibid

49 . Corpse Juries seconded, Vol. 17 contempt section 62 (2)

50. Ibid

pt of court depending on the type of penalty imposed (Civil or criminal), and the proximity of behavior penalized to the judicial proceeding with which it interferes (direct or indirect).⁵¹ The distinction between the direct and indirect contempp is lareely procedupal.⁵² ⁵² If the contempT is direct, the court may impose pu.ishment summarily, whEre as if the cojtemp is cnNstrqcive, Due proCess requires that phe court issue aj order tk cHow causes a.d hold a hearine there ol befo2e punishma.t is impos%d

This being the base, a more rational “Determinant insofar as procedure is concerned is “whether or not the contempt was committed under such circumstances that the judge has knowledge of all the facts and hence has no need to hear evidence” Generally having the above facts in mind, the following are the points to be considered in contempt proceedings before the court impose sanction, These are: ⁵³

Threshold Determinations

a) Informing alleged contemnor of the nature of the proceedings

Prior to initiation of the proceedings, the court must determine whether civil or criminal contempt proceedings are appropriate because a defendant charged with criminal contempt is entitled to be notified of the fact when he is notified of the charge &

b) Determining whether a hearing is required

After the court determines whether criminal or civil contempt proceedings are appropriate, the court must determine whether contempt is ‘direct’ or ‘indirect’. If the contempt was committed “during its sitting” and in the immediate view and presence of the court; the contempt is direct and the court may summarily make a finding of contempt and punish the contemnor. If, on the other hand, the court must rely on the testimony of others to establish that contumacious conduct has occurred, the contempt is indirect and a separate hearing must be held on the issue.

Procedural Due Process Requirements

51. Ibid

52. Charles John Fax, “The summary process to punish contempt” L.Q.REV. Vol. 25

53. Eilenbecker Vs distinct court of Plymouth county, 134 U.S. 31, at 36 (1890)

presence of the court, there is no need for serving the notice on the witness and calling witness to testify. This is because the act is committed under personal observation of the judge and the court did itself witness the act.

- b. General requirements for indirect cases of indirect contempt. In all cases of indirect contempt, proper notice of the charge, a reasonable opportunity to prepare a defense or explanation, and the opportunity to testify and call witnesses are basic procedural due process requirements.

- c. Procedural requirements that differ depending up on whether proceeding is civil or criminal. In cases of criminal contempt, the contemnor is entitled to the procedural protection that a defendant in a criminal case of equal gravity would be entitled. Criminal contempt must be proven “beyond a reasonable doubt” where as the civil contempt’s standard of proof is preponderance of the evidence.⁵⁴ In criminal contempt cases, the alleged contemnor is presumed innocent and must not be compelled to testify against presumed innocent and must not be compelled to testify against himself.

Summary Contempt Proceedings

Summary contempt proceedings are proper, where the act is committed in the immediate view and presence of the court, and ‘where immediate corrective steps are needed to restore order and maintain the dignity and authority of the court in absence of circumstances necessitat immediate corrective action’ a separate hearing before a different judge should be conducted.

Due process requires that summary contempt proceeding be used only when absolutely necessary to prevent “demoralization of the court’s authority.” Summary punishment of contempt that occurs in the court’s immediate view and presence doesn’t violet procedural due process requirements.

Prosecution of Action

In direct contempt cases, the judge who witnessed the contumacious conduct initiates the proceedings. There is no attorney for the complainant. In case of indirect contempt, the person who initiates the proceedings differs depending up on whether the proceedings are

civ 54. <http://www.capital.hawaii.gov/hrscurrent/Vol.14-choto-0853/hrso>

Sanctions for Contempt Of Court

The civil and criminal distinction not only determines the applicable procedural protections, it also affects the type of sanctions that can be imposed.⁵⁵ In general, the sanctions for civil contempt are coerciva An` remedial iN latupe whepe as the saNctionc for ariminal contEmpt ar% puji4ive in natura⁶

Tha sanctikns fo2 civIl contelpt are htended to aomPel cmepliance with court’s d)ractives by hmposing ! conditiolal qajctiol until the Contemnor c/mplieq nr ,o longer haq a duty or the

ability to comply, Two types of sanctions may be imposed in civil proceedings⁵⁷. Coercive sanctions, to force compliance with a court order, and compensatory sanctions, to compensate person injured by the contumacious conduct. Where compensation is intended, a fine is imposed, payable to the complainant.

On the other hand, sanctions for criminal contempt are intended to preserve the court's authority by punishing past misconduct through imposition of a fixed sanction. Where there is an opportunity provided for the court to compel the contemnor's obedience the court may impose an unconditional and fixed jail sentence, a penal fine, or both,

When the criminal contempt precedes all the procedural requirements, there is no problem associated with a court imposing a punitive fine or ordering confinement for a specified period of time. In contrast, the civil contemnor is usually imprisoned or fined until he purges himself or the contempt by submitting to the order of the court.

-
- 55 Ibid
 - 56 Ibid
 - 57 [Hyperlinkhttp://www.wappelinforeda.com/index.htm](http://www.wappelinforeda.com/index.htm)

CHAPTER PHPEE

3. Contempt of Court under current Laws of Ethiopia

The aspect of contempt of court is becoming a point of debate among many persons in Ethiopia because of its various dimensions. Understanding and differences in application by different judges in different courts. The failure to understand what constitutes contempt and consequences of contempt law application. may end up with arbitrariness of judgments.

The writer, in the first part of this chapter, discusses the meaning of contempt of court, acts constituting contempt, against whom and when the act is committed, the requirement of criminal intent, classification of contempt and summary contempt provisions in Ethiopia.

Ethiopian Laws on Contempt of Court

The relevant provisions of the law that deal with contempt of court are stated under article 449 of the 2004 FDRE Criminal Code and under Art. 480 and 481 of the 1965 Civil Procedure Code. Although the Civil procedure Code doesn't call it contempt of court, the concept of contempt can be implied from the general purpose of the said articles.

In the preceding chapter, we have seen that in foreign law "contempt comprehends a despising of the authority, justice, or dignity of a court; but in its broad sense it is a disregard of, disobedience to, or a disorderly or insolent interruption of the proceedings of a --- judicial body"⁵⁸. How is it defined in the law of Ethiopia. The relevant article is Art 449 of the Criminal Code of 2004.

Article 449- Contempt of Court.

1. Whoever, in the course of a judicial inquiry, proceeding or hearing, in any manner insults, holds up to ridicule, threatens or disturbs the court or a judge in the discharge of his duty; or in any other manner disturbs the activities of the court, is punishable with simple imprisonment not exceeding one year, or fine not exceeding 3 thousand Birr.

The court may deal with the crime summarily.

58. Corpus Juris Scandinavicum Vol. 17 Set 62(2) Page 5

2. Where the crime is committed in open court but while the judge is carrying out his duties, the punishment shall be simple imprisonment not exceeding six months, or fine not exceeding one thousand birr.
3. Where the crime is committed in open court or during judicial proceedings with violence or coercion, the relevant provision shall apply concurrently (Art. 441.)

So according to Art 449 contempt of court comprehends insult, holding up to ridicule, threats or disturbance directed to the court or a judge while they are engaged in judicial inquiry, proceeding or hearing. Generally this article provides the definitions of contempt in Ethiopia. The need to punish acts stated under Art. 449 is to maintain order in the court room and prevent interference with the administration of justice.

3.2. Acts constituting Contempt of Court in Ethiopia

Acts that amount to contempt are listed under Art 449(1) and sub (3) of the Criminal Code. These are: a) insult b) holding up to ridicule, c) threat d) disturbance e) attack or violence committed while the court or the judge is sitting in the course of judicial inquiry, proceeding or hearing. The list under Art. 449 1) of the Criminal Code is not an exhaustive list because the contemptuous can be made in any manner.⁵⁹ This shows that the acts can take either in the form of writing, orally, by gesture or by one's behavior.

The writer would like to give a highlight on the acts that constitute contempt of court in Ethiopia shortly here under.

Insult

Insult is an independent offence provided under Art. 615 of the Criminal Code. This, however, is not in the context of contempt. Under Art.449 of the Criminal code insult is made an offence constituting contempt of court. In this provision insult directed to the court or the judge while they are engaged in the judicial inquiry, proceeding or hearing will amount as a contempt of court. But whether or not the language used amounts to insulting the court is necessarily a question of fact in any particular case and it is impossible to give any exact definition. That is to say it is dependent upon the actual occurrence or existence which can be determined case by case.

59. Criminal code Art 449 (1) (B)

A court may be insulted by the most innocent words uttered in a peculiar manner or tone. If the words are innocent but the manner in which the person speaks is different from the normal tone such as shouting if amount to insult. Thus, while there are some words which are obviously insulting other words which may not appear in their face insulting would be held to be so according to the tone and manner in which they are said.⁶⁰

That is to say reason why law prohibits insulting the judge is not a mere protection of the dignity of the judge personally. But the law obliges the court to protect any interference to the administration of justice. Insulting the court or the judge will also constitute contempt of court in other jurisdiction also.

Holding up to Ridicule

Holding up to ridicule is the other classic way in which contempt of court committed under Art 449. It is the most contemptuous act because it lowers the reputation of the courts down so that the public loss confidence on the courts as well as justice system. However, there is not such similar legislation found by the writer in other countries laws which make as ridicule as amounting to contempt of court as such I can't give any comprehensive definition to it and it is not possible to particularize the acts or words which can or can not constitute holding up to ridicule as the act varies from case to case. "Disturbing the proceeding, threatening or other wise including the judge or an officer of the court to depart from the course of his duty will constitute contempt and it is the most obvious interference with the course of justice".

Violence or Attack Directed to the Judge

In other countries attack or violence up on judges constitutes contempt of court. So also such act can constitute contempt of court in Ethiopia but the act can not be found directly under Art 449(3) of the Criminal Code only from the context of Art 441 to which Art 449(3) cross refers. Although the wording of this article refers to attack or use of violence directed against public servants, it can be fairly assumed that attack up on the judge is what is meant by Art. 449(3). For example, we can understand from the word "threatens" under both articles. The reader should bear in mind that the punishment for acts under Art. 449 is cross referred to Art. 441 of the same Criminal Code.

60. Halsbury's law of England. (13 ed, 1954), Vol. 8. Contempt, p.7

Generally acts that constitute offence of contempt of court are insult, holding up to ridicule, threat and disturbance of the court or the judge discharging their duty and acts in any manner disturbs the activities of the court during the course of judicial inquiry, proceeding or hearing.

Lastly, like to say on the Civil Procedure Code that it limits contempt of court to within the court and although the article doesn't fix how big a fine the court applying it can impose the act that amount to contempt is general and not clear enough to determine the conduct that constitute the offence, however, it doesn't limit or add any thing to Art. 449 of the Criminal Code.

3.3 Contempt : The Circumstance

It is obvious from Art 449 of the criminal Code that the act constituting contempt of court must be committed against the court or the judge. Court and judge are two different things. But the code requires that either the court or the judge be then in the course of judicial inquiry, proceeding or hearing. Here one can raise, can there be a court without judges? There can be a physical plant but if any one insults, etc, the physical plant Art. 449 can not be applied because a physical plant can not engage in judicial inquiry or proceeding. It is when judges sit in it that judicial inquiry or proceeding can take place. It is the same with judges. Unless he or she performs the judicial inquiry or proceeding in a physical plant that is officially set aside for the purpose, the judicial inquiry or proceeding may not be effective. The term therefore, does not exclude the other at least not under Art. 449. So the article doesn't mean that an act of contempt of court may be committed against one or the other, but when the two are combined, as it is only then that a judicial inquiry, proceeding or hearing may take place. For this reason the term "court" would only have its legal significance as far as Art. 449 are concerned when judges perform their functions in it. What should be stressed here is that the act must be committed while the judge performs his judicial duty in judicial capacity either in court or outside the court.

For the question when is the act committed, Art. 449 of the Criminal Code requires: whoever, in the course of the judicial inquiry (proceeding or hearing) in any manner insult, holds up to ridicule threatens or disturbs the court will be punished for contempt of court, that is the time is the course of judicial process.

The acts enumerated as constituting contempt of court must be committed in the course of judicial inquiry, proceeding or hearing. This means an offence of contempt of court can be

committed if the insult, or acts which holds up to ridicule or threat or disturbances are committed when the court determine a jural relation between one person and another, a group of persons or between him and the community or when it is engaged in some way to the administration of justice or the ascertainment of any right or liability. And if the contemptuous act occurred while the court is engaged in those activities he or she will be punished with simple imprisonment not exceeding one year, or fine not exceeding three thousand birr.⁶¹

3.4 The mental elements under Art. 449

Article 449 of the Criminal Code doesn't expressly mention "intention" as an ingredient of the offence of contempt to court. Although in some provision of the code "intention" is expressly mentioned as an ingredient of that particular offence, this fact alone does not justify a conclusion to the effect that, "intention" is not an ingredient of the offence of contempt of court. As Graven put it, "intention" is an express or implied ingredient of every offence.⁶²

This is so because intention is an absolute condition of liability. A mere breach of the law is not the only requirement for purposes of punishment something more than that is required. For, there are no guilty acts but only guilty persons.⁶³ A person is guilty if he commits an offence intentionally. So contempt of court being a criminal offence under Art. 449 of the Criminal Code "intention" is an implied ingredient of the offence. And as such, the fact that the court or the judge feels insulted, etc. is no reason for holding that any insult, etc. was intended. In the course of a judicial inquiry, proceeding or hearing and that, having this knowledge he intentionally did one or all the acts enumerated under Art. 449 as constituting contempt of court. Therefore, criminal intention is required for act under Art. 449 of the Criminal Code.

3.5 The Civil-Criminal division and Direcp Indirecp Distinction of Coftempt under Ethiopi` Law

In the preceding chapt2 we have seen that acts constituting contempt of court are classified in to civil, criminal, direct and indirect contempt: covering some particular aspect of the general power, respectively governed by a particular procedura,⁶⁴ As we shall see later, these

61. Criminal Code of 2004, Art. 449(1)

62. P. Graven, An Introduction to Ethiopian Penal Law, (1965), p. 152

63. Ibid

64. Assefa Aill Vs sited at fot not 27

The writer would like first to show the existence of these classifications and then deal with each of them shortly here under.

Civil-Criminal Contempt

Civil Contempt

The various classifications of contempt in this paper is based on Anglo American legal tradition. As far as the materials available to the writer indicate, the classification into civil and criminal contempt does not exist elsewhere. It is typical of Anglo-American legal tradition. Except to mention it in passing the writer would like to avoid commenting in depth on "civil contempt". This is not only because the classification does not exist in Ethiopian law but the problem of how to distinguish between criminal and civil contempt of court has raised difficult problems which the courts of these countries have not yet succeeded in solving satisfactorily.

However, the writer has other aims in putting this classification in this paper; they are:

1. To indicate the non-existence of so called "civil contempt" under Art 449 of the Criminal Code
2. To indicate also that Articles 480 and 481 of the Civil Procedure Code do not amount to "civil contempt" as understood by Anglo American legal tradition, although some of the acts might be considered as such in that legal system. This is so, because, their ultimate object is punitive as opposed to the Anglo-American "civil contempt" whose ultimate object is remedial.

Criminal Contempt

As to the acts which constitute contempt of court under Art 449, we have already attempted to explain their nature and essence. They are not at all different from the definition we have given for criminal contempt in chapter two of this paper. What one might add here is, that all the acts constituting contempt of court under art 449(1) are criminal contempt. They in no way constitute civil contempt as understood by Anglo-American legal tradition because their primary purpose is to vindicate public authority rather than the enforcement of civil rights

10. R.Gold Farb, cited above at 28,p.1

Direct-Indirect Distinction of Contempt

Direct Contempt

A direct contempt has been defined as one committed in the presence of the judge thereby making all the elements of the offence matter within his personal knowledge.⁶⁵

The existence of such a classification under Art 449 if not in name at least in substance is obvious. Sub Article (a) and (b) of Art 449 (1) define and enumerates acts that constitute contempt of court in general. It, further, states that such acts committed while the court or the judge in the discharge of his duty. Paragraph 2 of this sub-article states also the court may deal with the crime summarily. Although the term 'direct' is not stated, one can infer from the reading of Art 449(1) that the act is committed in the presence of the judge and hence considered as direct contempt.

Indirect Contempt

Indirect contempt, it is said are acts of misconduct, apart from the immediate proceedings in time or location, which by implication tended to interfere with administration of justice.⁶⁶

The existence of such contempt under Art 449 of Criminal Code can be inferred from what has been said under direct contempt. Unless one of the acts enumerated under sub-art (a) and (b) of Art 449(1) as constituting contempt of court is committed in the very presence of the court, they fall under indirect contempt. The existence of an indirect contempt under Art 449 can be established not only by such an inference but directly from sub-article 2 of Art. 449, Where it says, "where the crime is not committed in open court..." Therefore, the interrelation between para. 2 of sub Article 1 of Art 449 enable us to determine the existence of direct and indirect contempt under the law of Ethiopia. The distinction between direct contempt shows procedural difference as well as the punishment attached to each category of offences.

3.6 Summary Contempt Power in Ethiopia

Under chapter two of this paper we have seen how summary contempt power is looked as a valuable and necessary procedure to prevent obstruction of administration of justice from rude behavior of litigants. The necessity of the summary power lies in securing judicial authority from obstruction in the performance of court duties.

65. Corpus Juris Secundum, Vol. 17 section 3

66. Ibid

I. Act Constituting Contempt and Empower Courts With Summary Power In Ethiopia

In Ethiopia, acts which constitute contempt of court, and empower courts with summary power are stated under Art 449(1) of the Criminal Code and under Art 480 and 481 of Civil Procedure Code. According to Art 449(1) of Criminal Code, any act which amounts to insult, holding up to ridicule or threatening or disturbing court in the course of a proceeding is considered as court contempt though punishable summarily only where these act is committed while the court is in session. Under, Art 480 of the civil procedure code, the presiding judge summarily punishes a person who is guilty of improper conduct in court proceedings so as to affect order in court and administration of justice.

According to art 480 presiding judges are given wide powers when compared with Art 449 (1) of the criminal code. The general statement passed by Art 480 of the civil procedure code such as “improper conduct, order in court and administration of justice” is not clear and specific enough to determine the contempt conduct that constitutes the offence. Further, Ethiopian courts under Art. 481 of the Civil Procedure Code are empowered to punish summarily certain offences in flagrant cases. Under this provision, refusal to aid justice, false statement by a party in a proceeding and false testimony, opinion or translating are considered as direct contempt.

Article 449(1) of Criminal Code and Art 480 of Civil Procedure Code show that the need for summary contempt power emanated from the necessity that courts in Ethiopia have power for removing interruptions to their proceedings. True enough, if courts are not provided with summary power under Art. 449(1) of Criminal Code and disciplinary power like Art 480 of Civil Procedure Code it is more likely that some litigants could defy their orders, disrupt court order and hence rob confidence of society in the judiciary. Art. 480 of Civil Procedure Code precisely seem designed to provide power to courts to obtain obedience and respect from litigants and the public.

Under this sub-topic, the writer would like to touch up on the nature of offence and the scope of application of Art 449(1) of Criminal Code and Art 480 of Civil Procedure Code.

Article 449(1) gives summary power to courts to punish any conduct that insults, holds up to ridicule, threatens or disturbs the court or a judge in the discharge of his duty or obstructs the activities of the court. On the other hand, Art 480 of Civil Procedure Code gives summary

powers to a presiding judge to punish any person “who is guilty of improper conduct” although this is consistent with “in any other manner disturbs the activities of the court” under Art. 449 (1)(b) of the Criminal Code, one may rise what is improper conduct? Here it is very difficult to give an exact definition of “improper conduct” for it is something that greatly depends up on out perception. What seems “improper conduct” in one court may be tolerated and perceived as normal conduct in another court.

When we come to the scope of application, the phrase “in the course of ...” under Art 449(1) Criminal Code and the sentence “the judge may take such action as may be necessary to ensure order in court” under Art 480 of Civil Procedure Code indicate that acts are taking place in the presence of the court while judges are conducting a proceeding. The whole threat seems to take place in the presence of the court. Therefore, the application of these articles comes in to scene when the offences take place while the judge is in session.

Article 481 of Civil Procedure Code is explicit and gives summary punishment power to courts for flagrant offences committed in violation of Art.442, 446 and 447 of Penal Code of 1957.⁶⁷ The Amharic version of the same provision gives summary power for flagrant violation of Art 442-446 or 447 of the 1957, Penal Code. In the Amharic version, the hyphen between 442 and 446 whether it is intentional or a printing error we do not know. But, it has to be known the English version gives summary power for violation of the three Penal Code provisions.⁶⁸ Namely Art 442 (refusal to aid justice), Art. 446 (false statement by a party), Art 447 (false testimony, opinion or translation). The Amharic version gives summary power to courts when six provisions of the Penal Code (Art. 442-446 or 447) are violated. Since Amharic is the federal working language, for the purpose of this paper we will follow the Amharic version.

It must be noted that Art 481 gives, summary power to courts when the violation of Penal Code Art 442-446 or 447 amounts to a flagrant offences. One may raise what is a flagrant offence?

A flagrant offence is said to exist,

“Where the offender is found committing the offense attempts to commit the offence or has just committed the offence”.⁶⁹ From this we can understand that the term “flagrant” offence means capturing a person while he is in the process of committing crime or just after he committed the crime but in sufficient proximity to the action.

67. Recently, these provisions of the old penal code replaced by Art 448, 452 and 453, respectively in the new Criminal Code of FDRE, 2004

68. Ibid

69. Article 19, Criminal Code of Ethiopia

The policy reason behind this article seems that to render the judiciary:

- i. With the necessary preventive power by punishing those who are in the process of violation of Penal Code provisions Art 442-446 or 447⁷⁰
- ii. With the necessary punitive power to punish those who just violated the said penal code provisions immediately with out resort to the ordinary Criminal Procedure

Article 481 has limited the power to be exercised by first instant court and high court⁷¹. Courts to one year and three years imprisonment respectively. Since the summary power of high court and supreme courts is not limited under art 481, it seems that these courts can exercise the maximum punishment allowed in the Criminal Code. However, as to the writer, the reason for limiting Awraja and Woreda courts power seems clear. As much as summary power presents due process problem, the policy seems not to give undue power to lower courts who lack sufficient judges and who may use the power arbitrarily and in an unrestrained manner. The limitation seems intended to restrict abuse of the power that may result form the summary power.

70. Assefa Vs sited foot not 27

71. Recently there is no Awraja Court; its jurisdiction now given to First Instance Court and to High Court where the case brought by appeal.

CHAPTER FOUR

4. Practical Analysis of Contempt Of Court Under Ethiopian Law

In the preceding sub topic of this paper, we have dealt with the meaning of contempt of court, acts constituting contempt, against whom and when the act is committed, the requirement of criminal intention to establish the offense of contempt, the existence of various classifications of contempt and summary contempt power in Ethiopia. This subtopic is devoted to the discussion of the practical analysis of contempt of court under Art. 449 of criminal code and Art. 480 and 481 of Civil procedure code.

Under this sub topic the writer will make his point of discussion on interpretational problem of contempt provision presented before the courts, gap created in the law and impact of summary contempt proceeding. The sources of the discussion will be the reading of the contempt provisions, practical problems raised through interview made with some judges and decided cases that the writer assesses. Finally, the writer will analyse some model cases that come across him.

4.1 Interpretational Problems of Contempt Provisions Presented by Courts in Ethiopia.

In order to properly carry out the judicial duty that is vested on the courts by supreme law of the land (constitution) the need to punish acts that have the effect of hindering proper administration of justice is necessary and the rules embodied in the law of contempt of law are intended to uphold and ensure the effective administration of justice.

However, there are some interpretational problems of contempt provisions presented by the literal interpretation of judges in different levels of courts. Unless interpreted strictly, some concepts in the law of contempt may defeat the very purpose of the law in Ethiopia.

Art. 480 of Civil procedure code reads “Any president of a court or presiding judge may take such action as may be necessary to enable order in court and administration of justice in accordance with the provisions of this code and may summarily punish with a fine any party, pleader or other person who is guilty of improper conduct in the course of any proceedings”. Here, unless concepts like “order in court,” and “improper conducts” are interpreted strictly, it invites judges to punish citizen for minor acts in the name of contempt of court. For instance, improper conduct to one court may be tolerated and perceived as normal conduct in another court. In one case the court punished the defendant for the reason that the latter said

“the production of such document seems unnecessary” while the court ordered to produce a document⁷². Had the “improper conduct” under Art. 480 strictly interpreted by the court, it would have not exposed the defendant for punishment. If strictly interpreted this case may not amount to contempt in another court because, the court, instead of punishing the defendant in contempt, it can pass a judgment for failure of producing a document as it is for the benefit of the party.

In addition to this, unless interpreted strictly, the concept “in any manner....” under Art. 449 (1) (b) of the criminal code paves the way to the arbitrariness of the judges. Courts at different levels are not practically seen applying the principle of legality which advocates for the restrictive interpretation of the criminal provisions. As a result of this judges are punishing citizens for minor acts in the name of contempt.

4.2 Gap Created in the law and practical problems faced by Ethiopian courts

Under this sub topic the writer would like to discuss a gap either in the criminal code or criminal procedure code regarding contempt proceeding. In addition to this, practical problems faced by Ethiopian courts by not having similar provision like that of Art 480 and 481 of Civil procedure code in the criminal procedure code will be stated based on the reading of the codes and the discussion made with some judges here under.

A. Gap either In the Criminal Code or Criminal Procedure Code

In countries where contempt of court is a criminal offence, there is a special section in their criminal procedure code to deal with the issue. The offense as such is provided for in the criminal codes. Then as its proceedings are exceptional to the regular proceedings, this peculiarity has deserved a special title in the criminal procedure code. As already observed, a procedural rule similar to that of Art. 449 (1) paragraph 2, is to be found as part of procedural rules in other countries rather than part of the substantive law. In those same countries, such a rule is followed by another rule, on how the court should record the facts constituting the offence of contempt of court with the statement made by the offender as well as the finding and sentence. This is not provided either in the criminal code or criminal procedure code of Ethiopia. Such a recording is of practical importance.

As we can see from the reading of Art 449 (1) (a) (b) and Para. 2 of the same article, the court punishes the contemnor summarily for contempt on the main proceeding i.e on the same file as ancillary to the main proceeding. As to the writer, such procedure is objectionable because:

72. Federal first instance court Vs Belachew Zemedkun (Fed. FI. Court ...1993, civil case No 166/93

- i. It negates the essence of contempt of court as an independent criminal offence as provided in the criminals code. One may raise who is expected to bring charges? Is the court expected to refer it to the police? Here the contention of the writer is even with out referring the charge the court can record the fact of the offence, statement made by the offender as well as the finding and the sentence in a separate file.

Therefore, without offering any argument as to whether such a rule should be in the criminal code or in the criminal procedure code, it is the position of the writer that some rule effecting system of recording contempt proceedings separately be introduced. This contention is not merely based on foreign practice but is due to the policy of the criminal code which considers contempt of court as a criminal offence and due to practical necessity as illustrated above.

B. Practical Problems Faced By Ethiopian Courts by Not Having Similar Provision like That of Art. 480 And 481 or Civil Procedure Code in The Criminal Procedure Code

No where either in the criminal procedure code or criminal code is summary judgment power given to criminal divisions in Ethiopia except that of art 449 (1) of the criminal code. The only provision that gives summary power to criminal division is Art 449 (1) of the criminal code. Even then the criminal division can punish summarily only where the contemnor “insults, holds up to ridicule, threatens or disturbs” the court⁷³. Also the summary power can be exercised only when the offence is committed while the court is engaged in judicial inquiry, proceeding or hearing. This means if the contemnor is not captured on the spot while committing the said offence, he is not summarily punishable. Not only that but if a person refuses to aid justice, gives false statement to court or gives testimony, opinion or translation etc. the criminal division does not have the power to punish summarily unless resort is made to the Civil procedure Code Arts 480 and 481.

The question is whether a criminal division court could make use of the civil procedure code which is meant for the civil division court.

Some argue that the civil procedure code provisions can not be used by a criminal division as the criminal division court is provided with the criminal procedure code⁷⁴. They rationalize that the criminal division does not need the summary punishment power at all for the simple reason that the court has a watch dog that happens to be the public prosecutor who can frame charges immediately as soon as he observes what is described under art. 480 and 481 of the

73. Criminal code of in Ethiopia, 2004 Art. 449 (1)

74. The writer as discussed with some judges who are working at different level of court

civil procedure code make is the summary contempt power unnecessary. They further argue that the reason that summary punishment power is included in the civil procedure code is to give power to civil divisions to enable them protect the proceeding from obstruction as there are no public prosecutor in civil proceeding. This argument seems to advance the theory those criminal (courts) divisions in Ethiopia do not have summary judgment power with the exception of art 449 (1) of the criminal code, and they have to follow the normal criminal procedure regulation in order to punish a contemnor of court.

In addition to the discussion above, referring foreign materials to see whether their criminal procedure code does or does not provide the summary punishment power to criminal courts and whether the summary power is limited only to civil courts is of vital importance. Accordingly, the writer has come across the experience of US and India. In the United states, both the Federal Rule of Criminal procedure and Federal Rule of Civil procedure authorize court to take contempt summary actions for specific incidents in the course of federal litigation⁷⁵. This shows that in the US courts both the criminal and civil jurisdictions are provided with the summary punishment power. On the other hand, Art 480 (1) of the criminal procedure code of India, when it outlines contempt power to courts, it makes it explicit that the jurisdiction is exercisable by “civil, criminal or even Revenue courts.”⁷⁶

From the rules of these two countries we can observe that in US, courts are provided with complete contempt power both in their criminal and civil procedure codes. In India, the criminal procedure code mentions a procedure for contempt, specifically those courts that are authorized to have the summary procedure for contempt.

The question in Ethiopia is since arts. 480 and 481 of civil procedure code do not make mention of the criminal division court like Art 480 (1) of the Indian Criminal procedure code, does it mean the court has to rely on the prosecutor to punish contemptuous act that arise in the course of criminal procedure or does it have another alternatives?

Many argue that in the absence of specific provisions, the criminal court has to be satisfied with contempt summary power under Art 449 (1) of the criminal code and no more⁷⁷. For other contempt, the court has to rely on the public prosecutor. From the above facts one can understand that Art 480 and 481 of the Civil procedure code do not clearly provide summary contempt power to criminal division of courts in Ethiopia like that of Indian Criminal Procedure code.

75. USCS section. 401, and waner ilsen, Federal rule of civil procedure revised edition _ st paul, min. west publishing co.(0944) P. 70

76. P. Raman the Iyer, code of criminal procedure Vol. 3, 4th Edition (1965).

77. Ibid

4.3 Impacts of Summary Contempt Proceeding

We have seen in chapter two of this paper that the US courts consider summary contempt power as an exception to the procedural requirements of the constitution. It is an exception, it said, because necessity dictates the departure. The most important factor that dictates the departure from the procedural requirement of the constitution is expediency and desirability of maintaining public respect for the judicial office. This does not mean however that summary contempt power exists only for the protection of judges, it also protect right of every citizen to an administration of justice which is free from influence or intimidation by improper conduct of any sort. To this end, respect for courts, which are ordained to administer the laws which are necessary to the good order of the society(is as necessary as respect for the laws themselves. As one writer put it, courts being the official governmental decision making organ through which the wisdom and reason of society are applied the conflicts of men, no government can afford a substitute for judicial power unless it wants to embarrass the administration of justice⁷⁸.

As has been seen, in US the departure from the ordinary course of law is prompted by the desire that the administration of justice be carried on as a process of orderly government. The trace of this departure from the ordinary course of the law in Ethiopia can be seen under Art 449 (1) para. 2 of the criminal code of 2004, and Art 480 and 481 of the civil procedure code of 1965.

Although the summary contempt power is needed for the fact that it is expeditious and desirable to maintaining public respect for the judicial office, the writer is of the opinion of what? to some impacts of summary contempt power. First, the summary contempt power violates the due process of law.. The due process of law is understood by Anglo American concept to include:

1. The right to notice, hearing, and opportunity to defend and to “confront” one’s accuser and those giving adverse evidence.
2. The right to be judged by the impartial tribunal
3. The right to be protected by principle.... No punishment without law.
4. The right to be protected against laws which are either discriminatory or so unreasonably vague as to be capable of discriminatory application⁷⁹.

78. Ibid

79. Paul clapham, Ethiopian construction development, Vol. Ioxford university press Addis Ababa (1967) P.16

Article 449 (1) of criminal code and art 481 and Art 480 of the civil procedure code; provide summary punishment power to a court and a presiding judge respectively. This summary procedure does not afford the due process guaranteed as patterned on the Anglo American Concept. From this one may argue that being adjudicated through a fair trial in a fair tribunal is a basic requirement of due process. These articles empower court and judges to act in a situation where they cant be Fair. This is because, the judges are often the subject of contempt, and where they are insulted by a contemnor as human beings it may be hard for them to avoid bias completely. If judges are biased, fairness can not expected from them and has impact on the manner and the extent of punishment to be inflicted⁸⁰. In summary proceeding a judge act as prosecutor, witness, judge and sentences. Truly, a judge who assumes all these power can not be expected to be impartial especially when he himself is the subject to frailty, anger and even vengeance. A judge with such personality traits, if he assumes summary power and naturally robs the individual of due process, of the right to be tried by impartial judge.

One may raise protection of the contemnor is made by appellate review but appellate review can not be an adequate substitute for procedural protections in a summary contempt adjudication. First, the accuracy of the judge's perceptions can not be tested. Second, appellate courts tend to be primarily concerned with receiving a detail statement of the facts constituting the contempt. They may not require, and the trial court judgment is not likely to contain an explicit statement of the legal standard for obstruction or means rea applied by the trial judge. Third, whether conduct constitutes contempt may depend on such elusive factors as the contemnor's tone of voice or his physical gestures.

Since summary punishment doesn't provided the regular procedure, the defendant is not given the right to notice, hearing and opportunity to defend him. In one case the appellate court, while reversing the decision of the lower court, has reasoned that punishing summarily the appellant based on a mere testimony of the witness without giving the right to defend and cross examine is improper⁸¹. In the case the lower court convicted the contemnor for the latter presented false document to the court. The act was not committed flagrantly while the court is engaging its duty. The court convicted the contemnor on the mere testimony of the witness.

More over, a law which is vague is subject to be applied unfairly. This means if the concept in a certain law is vague even though the principle of restrictive interpretation is there, it becomes open for interpretation and considered by different courts differently. For instance,

80. interview with Ato Jima mau regional high court judge

81. Tsege Vs . R(Fed,High Court . . . 1992, civil, APP No. 2098/ 92

Art 480 of civil procedure code does not limit the extent of fine to be imposed up on the contemnor. It doesn't have standard through which the discretion of the judge could be controlled. As a result it exposes the judge to impose the fine arbitrarily on one hand, and loose of confidence, as the limit of their discretionary power is not stated, on the other. A case show that the first instance court said the defendant has disobeyed the court order and shows the courts disrepute,. Hence, he is guilty under Art 480 of civil procedure code and punishable with 250 birr⁸². Here, the judge has no ground to impose such mount because the law does not provide the upper and lower limit of fine to be imposed. This in turn begs the arbitrariness of the judges. This is because a fine that seems reasonable by one judge could be considered as excessive by another, where as a third judge may take it as a light punishment.

Further more, concept like improper conduct under Art 480 is a vague one and unless interpreted strictly it robs the right of persons arbitrarily by judges as the improper conduct to one court may be tolerated and perceived as normal conduct in another court.

Contemnors are suffering from contempt conviction at lower courts with out any overriding purpose of summary contempt. They are jailed or ordered to pay fine summarily with out having an opportunity to address their claims to the trail court in the first instance.

4.4 The Practice of Courts in Contempt Judgments Under Ethiopian Law

Under this sub topic, the writer would like to demonstrate what acts constitute contempt in practice and the reasoning of courts in convicting the contemnor. The cases that the writer discusses are cases decided under Art 480 Civil procedure Code and Art 443 of the old penal Code.

The writer would like to note to the reader that couldn't find cases decided for contempt under Art. 449of the new criminal code of 2004. However, there is no as such substantial difference between contempt of court. Under Art 443 of the old Penal code and the new criminal code in substance except the change of article form Art 443 to 449.

Federal first Instance Ct. Vs Belachew Zemedkun⁸³

This is the case where in the court convicted Ato Belachew Zemedkun and ordered him to pay 250 birr for contempt of court pursuant to Art. 480 of the civil procedure code. The alleged contemptuous act occurred in the court's presence. As to the court, the contemptuous act was failure to obey court order and court disrepute.

82. Ato Tjima Vs. sited at foot not 80

83. Federal first instance court Vs. Belachew Zmdkun (F.F)..I.Ct. ... 1993 , civil case No. 166/93

The fact of the case is that two foreign national came to Ethiopia to adopt a child and assigned Ato Belachew, a lawyer, as an advocate to help them in fulfilling the required formality. While the court ordered the advocator to produce a document, the latter said that “the production of such document seems unnecessary.” The court in convicting with contempt held that Ato Belachew has disobeyed court order and shows the court disrepute. Hence, he is guilty under Art 480 of Civil Procedure code and punishable with fine of 250 birr.

The writer disagrees with the decision of the court because it is not in line with art 480. under this article an act to be considered as contempt, it should be improper conduct that prevented judges form performing their duties. For instance, if the contemnor insults, threatens, or disturbs the court one may say the court is prevented form discharging its duties. Therefore, the spirit of the law the decision of the court is not justified as it is not decided in accordance with the law. The source of such problem emanate form the interpretational problem presented by the court. The court interprets it in such a way every act amounts to contempt hence in the opinion of the writer, failure to produce a document does not amount to improper conduct. Instead of punishing him in contempt, the court can pass a judgment for failure of producing a document (as it is for the benefit of the party).

Tsege Vs R (Federal High Court) ⁸⁴

The case is an appeal form the order of the first instance court which ordered the appellant to pay one thousand birr as punishment for contempt of court as per Art 443 (1) of Penal Code. The alleged contemptuous act is the presentation of false document by the appellant. When the appellate court is reversing the decision of the lower court it held that the Penal code Art 443 (1) will be applicable when the act amounts to insult, holding up to ridicule or the act in any manner disturb, interfere with the proper administration of justice. But, presenting the false document itself doesn't make the act to fall under Art 443 (1) since the act itself doesn't disturb the court and the judge in the carrying out of his duty and therefore, the act shall not amount contempt of court that fall under Art 443 (1) of the Penal Code.

The decision of the appellate court state every act of discourtesy to court doesn't amount to contempt that fall under Art 443 (1). It said, in order to be contemptuous it has to disturb or interfere with the administration of justice in any manner hinders the judge to properly carryout his judicial function. Therefore, the analysis of the appellate court is reasonable and well founded since the decision is limited to the requirements of the law.

Mohammed Vs R. (Federal High Court) ⁸⁵

This is an appeal to the High Court against the decision of the first instance court which sentenced the appellant to one month imprisonment for contempt of court pursuant to Art 443 (1) of penal Code. The alleged contemptuous act was entering in to the court room with out being granted permission and requests the judge to present his petition and the appellant was held to be in contempt for disrespect of the court and the judge and also disturbance of judicial proceeding.

The appellate court in reversing the lower court decision held “ When a person request the court to present his claim convicting such person with contempt without letting him finish what he wants to address is not proper. Any citizens has the right to address his issues to the court and denying such right goes against the very purpose for which courts are established. Therefore, such act cant be said to be contemptuous and as a result the lower court’s decision was reversed.

The above decision of the appellate court considers whether or not the act can be called contempt of court not on the analysis of Art 443 (1) requirement but merely on a persons right to address their issue to courts. Therefore, as to the writer, it is better to analyze the case in line with Art 443 (1) of Penal Code requirement.

Article 443 (1) state the act constituting contempt must be directed to the judge or the court and further requires either the court or the judge to be in the course of judicial inquiry, proceeding or hearing.

In the case at hand the act is directed to the judge while he is in the court room however, what we can understand from the case is that the judge was in his way to leave the court room. As to the writer, reasoning of the appellate court should have been in light of Art 443 (1) of the Penal Code.

Conclusion and Recommendation

Conclusion

Offence against administration of justice is any conduct by threat or force which obstructs, impedes or endeavors to obstruct or impede the performance of judges. It is a general term which contains different offences like offence in judicial proceeding, perjury and cognate offences, and offences against execution of sentence. Among the offences in judicial proceeding, one is contempt of court.

If courts are able to administer law and order, and render justice properly i.e with out interference it follows that there should be a power given to these institutions which will enable them to punish affronts directed to the institution they represent generally and maintain the respect due to the court or the administration of justice.

In order to properly carry out the judicial duty that is vested on the courts by the supreme law of the land (constitution) the need to punish acts that have the effect of hindering proper administration of justice is necessary and the rules embodied in the law of contempt of court are intended to up hold and ensure the effective administration of justice.

Contempt of court is an act that is calculated to lessen the authority or dignity of the court by embarrassing, hindering or obstructing the court in the administration of justice. Contempt of court as a legal doctrine is a widely used concept in common law. In this jurisdiction the notion of contempt of court is a general one embracing various offences against the administration of justice, interfering with judicial proceedings, perjury, refusal to a lawful court order, and the like. Contempt of court in the aforementioned jurisdiction is classified in to criminal contempt and civil contempt division and direct indirect distinction.

Criminal contempt refers to those acts that are directed against the dignity and authority of the court or a judge acting judicially. The sanction for criminal contemnor is purely punitive in nature i.e he may be find, jailed or both as punishment for his act. Whereas civil contempt refers to the failing to do something ordered to be done by court in a civil action for the benefit of an opposing party. The sanction for civil contemnor are coercive and remedial in nature i.e coercive sanction, to force compliance with a court order, and compensatory sanction, to compensate person injured by the contumacious conduct.

The direct, indirect distinction is generally based up on the immediacy and location of the contemptuous. Those contempt committed in the presence of the court while it is engaged in session are called direct contempt because they occurs directly in front of the judge. Those acts not committed in the presence of the court are called indirect contempt as they occurs outside the judge's immediate realm and evidence must be presented to the judge to prove the contempt.

The notion of contempt in civil law legal system is not a widely developed concept. However, the absence of a general doctrine of contempt of court in continental legal system (eg. French Law) doesn't mean that conduct which at common law is punishable as criminal contempt will never attract a penal sanction under French law. It would constitute an offence under one or more provisions of the French criminal code or code of criminal procedure code. In Ethiopia the concept of contempt of court as a legal doctrine is articulated and immersed under Art. 449 of the criminal code of 2004, and Art. 480 and 481 of the civil procedure Code of 1965.

In the 2004 Criminal code, acts that constitute contempt of court are insult, holding up to ridicule, threat, or disturbance directed to the court or the judges while they are engaged in judicial inquiry, proceeding or hearing. The 1965 Civil procedure code limits contempt to court with in the court there it doesn't fix how big the court applying; and the act that amount to contempt is not clear enough to determine. But, it doesn't limit or add anything to Art. 449 of Criminal Code.

Contempt of court is as criminal act result in the interfere of the administration of justice in Ethiopia, criminal intention is required to establish the offence. It must shown be that the accused knew that the court was at the time in the course of a judicial inquiry, proceeding or hearing and having this knowledge he intentionally did one or all the acts enumerated under Art. 449 of Criminal Code.

Under Ethiopian law, there is no division known as civil contempt and criminal contempt because the purpose of civil contempt is punitive as opposed to remedial in common law. However, contempt can be committed in the face of the court when the court is in session and it can also be committed outside of the court presence. Although the Article doesn't maintain the distinction as direct contempt and indirect contempt like common law system, in substance it means the same thing.

The consequences attached to the direct contempt and indirect contempt are different i.e. the proceeding and gravity of punishment especially the nature of the proceeding in those contempt committed in the presence of the court they are tried summarily i.e. with out according the contemnor even the minimum procedural guarantee of notice and hearing.

Summary contempt power is a power which courts adjudges and punishes a contemnor summarily, with out any prior notice, written charge, pleas, issues or trial. There are two schools of thought on this power. Some think that as the consequences of contempt convictions could be serious and grave, criminal contempt should be tried as ordinary crimes with due procedure of the law. The other school argues that the defensive need asserted by courts to protect the trial form obstructive interference justifies the summary contempt power.

Acts constituting contempt and empower courts with summary power in Ethiopia are stated under Art. 449 (1)of criminal code, and Art 480 and 481 of the Civil procedure code. Insulting, holding up to ridicule, threatening or disturbing court in the course of proceeding empower the court to punish summarily under Art. 449 (1) of the criminal code. Under art 480 of Civil procedure code, the presiding judge summarily punishes a person who is guilty of improper conduct in court proceeding so as to affect order in court and administration of justice where as Art. 481 of the Civil procedure code empowers courts to punish summarily certain offences in flagrant cases like refuse to aid justice, false statement by a party in proceeding and false testimony, opinion or translating.

The policy reason under Art. 449 (1) of criminal code and Art. 480 of the Civil procedure code show that the need for summary contempt power emanated from the necessity that courts in Ethiopia have power for absolute and immediate need for removing interruptions to their proceedings. If courts are not provided with this power, it is more likely that some litigants could defy their orders, disrepute court order and hence rob confidence of society in judiciary. On the other hand, Art 481 of the civil procedure code arm the judiciary with the necessary preventive power by punishing those who are in the process of violation of the criminal code Art 448, 452, 453 and with necessary power to punish those who just violated the said provisions of criminal code immediately with out resort to the ordinary criminal procedure.

Courts are practically caught in punishing persons for acts which can not amount in the spirit of the law. Such cases include malpractices are failing to remove their hat on the entering the court room, putting their hands in pocket wearing style, sitting style etc. while attending the court.

Recommendation

Although summary contempt is valuable and necessary procedure to prevent obstruction of justice from rude litigants there are some impacts emanated form the summary contempt proceeding under Ethiopian law of contempt and hence recommended as follows:

- If one begins with premise that to maintain public order and administration of justice is an overriding necessity for summary punishment, the extent to which a contemnor should benefit form procedural safeguards are likely to be best a secondary concern and also the claim that judges personal observation of alleging contumacious behavior obviates the need to notice and hearing Therefore, courts should make careful consideration whether the necessity for summary action actually exist before punishing the contemnor.
- The other problem discussed in the paper is that article 480 or the civil procedure code does not limit the amount of fine except saying that the presiding judge can impose fine. In this regard in what extent is not clear. This may expose judges in to arbitral decision or the application of this article may differ from judge to judge. Therefore, the law must provide the minimum and maximum amount of fine.
- Article 481 the civil procedure codes are applied in criminal substantive laws in practice. The purpose of civil procedure code is to administer the civil matters which are provided under civil code how it could be apply in criminal code is another controversial issue. Therefore, criminal procedure code shall incorporate provision which can be disinterred the criminal acts provided under criminal code in case of contempt of court.
- The summary punishment shall not be inconsistence with the individual rights which is guaranteed in the constitution of the Federal Democratic republic of Ethiopia
- As I have tried to discuss earlier, courts sometimes divert form the law in practice. Article 449 (1) clearly provide that a person can be punishable in case of contempt of

courts when his criminal act is committed in the course a judicial inquiry proceeding or hearing but in practice court is penalize some individual while they are criticizing the court action in publication. Such act is difficult to see how such conduct can properly be considered contempt of court or it punishable in another provision of the law so this must be clearly set in the law. Because such acts no way obstructs the administration of justice

- A fair tribunal is a basic requirement of due process of law. Courts to act in a situation where they cant be fair, because as judges are often the subject of contempt, they couldn't be free from bias. If judges are biased, fairness can not be expected from them. In such case the constitutional right of the accused may be violated. Therefore, the power to summarily punish must be consistence with the constitutional and should be guided by professional code of conduct.
- The power of courts to punish for contempt also conflicts with freedom of speech. The rights are recognized as one of the fundamental right guaranteed by the constitution. Litigants, advocates and other concerned bodies who are a party to a case have the right to provide detail litigation concerning the case. But in some cases courts punish the advocates while they are trying to inform the court the details of the litigation. This is clearly in consistence with the freedom of speech that guaranteed by the constitution. Therefore, the law in this regard should be clear what amount of speech is punishable or not and the court is give an opportunity for contemnor to have a say on the conviction before imposing sanction.

BIBLIOGRAPHY

A Table of Law

Civil procedure code of Ethiopia, 1965. decree no, 52, Neg.Gaze. year 25th extra ordinary issue No. 3 Addis Ababa.

Federal crimes proclamation, 1953, proclamation No. 138, Neg.Gaze. year 13th No 2

The criminal code of Ethiopia, the Federal democratic republic of Ethiopia, proclamation. No 414/2004 Addis Ababa 9th may 2005.

The penal code of Ethiopia, 1957, proclamation No. 158, Neg.Gaze. year 16th external ordinary issue No. 1

Proclamation of constitution, federal democratic republic of Ethiopia, 1st year NO. 1

B. Table of Case

Tsge Vs R (federal high court. . . . 1992, civil, appeal No 2098/ 92) .

Belachew Zemedkun (Federal first and instance court1993, civil case No 166/93)

Moahammed Vs R, (Fed high court 1993, criminal, Appeal No. 264/93

C. Other Bibliography

Asefa Ali, Power of the judges under “contempt of court” research paper November 1998 (unpublished).

American Jurisprudence/Rocherr, New Yourk, the law year cooperative publishing / Vol. 2

Corups Juris secundum /Breekln New yourk the Amoncal law book co.) .

Fisher. S, Ethiopian Criminal procedure, Addis Ababa University press (1963).

Gravun .P an Introduction to Ethiopia Penal law, (Addis Ababa Faculty of law (1965).

Interview

Interview with Ato Tujima Mare regional high court judge and

Interview with three prosecutor and two judges at woreda court

Internet

<http://www19th> circuit court state it US /rules/ rules 13. htm.

<http://www.cpaitacl> howaii.gov/hrscurrent/Vol.14

[HYPERLINK <http://www.appealeinfordia.com//index.htm>