



Contempt of Court: The Interpretative Practice in East Gojjam Courts, Ethiopia

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ABSTRACT

Administration of justice by courts requires a smooth and undistracted courtroom management. Parties to a case and any other individual in a courtroom are expected to comply with basic court demeanor standards. The concept of contempt of court is employed to represent violation of those courtroom standards set by the law. Contempt of court is criminally punishable under the Ethiopian Revised Criminal Code and Civil Procedure Code. Apart from the issue on how to make a balance between the right to free speech on the one hand and the right to protect the administration of justice on the other, contempt cases give rise to a natural justice objection against summary proceedings. This research aimed to examine the Ethiopian law on contempt of court vis a vis the practice of five purposively selected woreda courts in East Gojjam zone in relation to crime of contempt of court. The researcher employed a qualitative and non-doctrinal research approach. Judges, public prosecutors and attorneys were participants of the research. Contempt of court is found to virtually defy a precise definition because of the infinite number of ways in which the administration of justice can be prejudiced or abused. Courts use a summary procedure in which the contemnor may be convicted and sentenced for the contempt as it occurs. Despite its importance in regulating court room manners, the law on contempt of court is found to have impact upon the constitutional rights of the accused. Detailed courtroom management manual and mechanisms for respecting the right to be heard of the accused shall be crafted to limit discretionary powers of courts and protect due process rights of persons accused with contempt of court.

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Introduction

Administration of justice by courts requires a smooth and undistracted court room management. Parties to a case and any other individual in a court room are expected to comply with basic court demeanor standards. The concept of “Contempt of court” is employed to represent violation of those court room standards set by the law. Contempt of court is a behavior that opposes or defies justice and dignity of the court. Black’s Law Fourth Edition adopted a definition of contempt of court as:

“Any act which is calculated to embarrass, hinder, or obstruct court in administration of justice, or which is calculated to lessen its authority or its dignity.”

There are two types of crime of contempt of court; civil contempt and criminal contempt. Civil Contempt means willful disobedience to any judgment, order, or other process of a court. Criminal contempt embraces the traditional situations of court room disobediences and disturbances. Contempt of court may also be classified as contempt in the face of the court (in facie curiae contempt) and contempt not in the face of the court (ex facie curiae contempt). The first type includes any disrespectful words and acts in or in the precinct of the court while judges are conducting judicial proceeding.

On the other hand the latter covers those cases in which individuals forward and publish opinions that may impact the judicial proceeding.

In Ethiopia, a contempt of court concept recognized by the law is a criminal contempt. The Revised Criminal Code considers any act of insult, ridiculing, threat or disturbing the Court or a judge in the discharge of his duty, whether committed in open court or not, as contempt of court.

While one may think that Art.449/1/a offers an exhaustive list of crime of contempt, sub Article (b) of the same provision creates a worth-considering space for judges to include other conducts of parties and audiences as crime of contempt. The provision embraces any other manner which disturbs the activities of the Court as contempt. The mighty prerogative to decide on whether a particular manner disturbed the court is left for the court itself. The crime of contempt, in most cases, consists acts of commission. But there are instances in which acts of omission may also tantamount to crime of contempt. For instance, when a person fails to switch of his phone while entering court room and his phone rings in the middle of a proceeding. Sub. Art. (b) of Art. 449/1 is particularly important to deal with acts of omission.

As it is clear from Criminal Code, the disobedience of court orders is not an element of Art. 449 of the Revise

Criminal Code. Instead disobedience of court orders (subpoena powers) falls under the broader category of crimes against judicial proceeding. Particularly, Art. 448 of the Revised Criminal Code punishes a person who refuses to appear, fails to produce evidence, and refuses to answer questions or to obey orders. Refusal to accept orders from a judge may also happen in court room. Disobedience to order of a judge in a bench is known as constructive contempt or consequential contempt. This actually amounts to a passive civil contempt and may amount to contempt of court as per Art. 449/1/b of the Revised Criminal Code.

The Civil Procedure Code also gives civil bench judges authority to summarily punish any person who is guilty of improper conduct in the course of any proceedings. Art. 480 and 481 of the code are the relevant provisions. Though these provisions neither cite “contempt of court” provision of the Penal Code nor mention the crime, the concept of contempt may be inferred from the general purpose of the provisions.

When we come to the application of these provisions, some of contempt cases as illustrated by the Federal Judges Code of Conduct include smoking cigarettes, chewing gums, audio or video recording of the court session without authorization from the court and sleeping.

In a contempt case, the presided judge may punish contemnor with imprisonment or fine summarily. This gives rise to a natural justice objection against the contempt summary. For the sake of the principle of natural justice, one shall not be judge on his own case. However one who raises the natural justice objection, against the power of a judge to decide on a contempt case in which the judge is the accuser, may face a difficulty to give natural justice friendly alternative. Finding mechanisms to limit the unlimited discretion of judges in deciding a case as contempt is believed to be the proper way of mitigating possible arbitrariness. In fact it is claimed that judges in the common law are deemed to have wider power to declare someone in contempt than judges in the civil law.

Some practices show that there is a gap in understanding the concept of contempt of court. The dearth of understanding is not limited to laymen; instead many judges, public prosecutors as well as attorneys understood contempt by usage. However, it is constitutionally underlined principle that judicial power should be guided merely by law and evidence. This study assessed the understanding of East Gojjam Woreda judges about the law of contempt of court.

Contempt was described by Joseph Moscovitz, in an often quoted article in the Columbia Law Review, as “the Proteus” of the legal world, assuming an almost infinite diversity of forms it may take. There are a number of cases, in which the validity of contempt order by courts becomes doubtful and questionable. In one case, an individual was accused and punished of contempt for expressing her complains on a judge to appropriate administrative body. In another case, a judge ordered arrest of an individual who was driving a motorbike on a road adjacent to the court and punished him on contempt of court with a justification that the noise of the bike disturbed the court. A judgment debtor who execute part of a judgment and informed to the court that he has no a means to execute the remaining was punished for contempt. We may also hear that yawning and showing approval or disapproval of a proceeding may be taken as contempt. These and other similar experiences triggered a speculative fear of courts among majority of our society and court room anxiety of a party which is potentially detrimental to the party’s position in a case.

There is no uniform bench manual to be applied by all federal and regional courts in Ethiopia to shape these practices.

Hence regional states adopt their own regional bench manual applicable to all tiers of court in a region. These bench manuals are important in guiding the proceedings and regulating court room conduct of judges, parties and audiences.

The broader prerogative in holding a person liable of contempt has a negative repercussion against consistent application of laws and respect for rule of law. The law’s approach to punish any act which may disturb the proceeding absorbs overwhelming cases in to the framework of contempt. The rationale behind punishing a person manifesting inappropriate behavior before the court of law shall be made clear to reduce arbitrariness. Whether the interest of justice and judicial administration or the dignity of the judge guides contempt cases is obfuscated.

Arguably the major source of distrust against contempt proceedings is the power of courts to decide the case summarily. Fundamental rights are recognized under the Federal and Amhara Regional State Constitution including freedom of expression, the right to know details of charge, the right to defend and the right to be presumed innocence may be overlooked by a contempt proceeding. Examining East Gojjam Woreda courts’ experience in interpreting the law of contempt harmoniously with fundamental rights was one focus area of this research.

In fact, one has freedom of expression as long as he doesn’t intrude into other interests such as reputation, security and public order. Courts may punish anyone who goes beyond this limit to disturb a trial or proceeding. But the issue remains to float on how to make a balance between the right to free speech and the right to protect the administration of justice. This study provided a practical insight on how East Gojjam Woreda courts’s experience in this regard.

2. The Ethiopian Law on Contempt of Court

2.1. Contempt of Court under the FDRE Criminal Code

Article 449 of the Revised Criminal Code and Articles 480 and 481 of the 1965 Civil Procedure Code are the relevant provisions of the Ethiopian law that deals with contempt of court. In this section, Art. 449 of the Revised Criminal Code will be examined.

Article 449 of the Revised FDRE Criminal Code:

1. *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 the activities of the Court, is punishable with simple imprisonment not exceeding one year, or fine not exceeding three thousand Birr*

The Court may deal with the crime summarily

2. *Where the crime is not 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).*

As we can see from the aforementioned provision of the Criminal Code, contempt of court is not directly defined. However, the law tried to give clue on conducts which may constitute contempt of court. Three scenarios of contempt are regulated by this provision of the Criminal Code. These are:

- ✓ An open court contempt;
- ✓ A contempt outside a courtroom; and
- ✓ Aggravated contempt.

The provision encompasses two elements that shall exist cumulatively, in all the above scenarios, in order the conduct to constitute crime of contempt of court.

The first element is the material element of the crime, manners and conducts committed/omitted in the course of a judicial inquiry, proceeding or hearing.

The second important element of the crime is the mens rea that the act/omission is committed with intention to ridicule or threaten the judge or to disturb the activities of the court.

i. The Actus Reus

With regard to the material element of the crime, the provision has expressly prohibited some acts. This expressly enlisted conducts are insult, holding up to ridicule, threat, disturbance and attack or violence. Article 583 of the Criminal Code provided insult as an independent offence but when it targets a court or judge, it amounts to contempt of court. However, save for some obvious insulting words, it is subject to the judge's understanding whether or not a particular word is insulting. A word which is not normally insulting may be considered by the judge as insulting subjective to the tone and gesture of the speaker. Another proscribed act is to ridicule the judge. To ridicule means to mock or to derision the judge in a disrespectful manner. Characterizing a particular act or word as mockery is equally, if not more, difficult like insult.

While one may think that Art.449/1/a offers an exhaustive list of crime of contempt. Sub Article (b) of the same provision creates a worth-considering space for judges to include other conducts of parties and audiences as crime of contempt. The provision embraces any other manner which disturbs the activities of the Court as contempt. The mighty prerogative to decide on whether a particular manner disturbs the court is left for the court itself.

The crime of contempt, in most cases, consists acts of commission. But there are instances in which acts of omission may also tantamount to crime of contempt. For instance, when a person fails to switch of his phone while entering court room and his phone rings in the middle of a proceeding. Sub. Art. (b) of Art. 449/1 is particularly important to deal with acts of omission.

As per Article 449 of the Criminal Code, contempt may be committed both inside and outside the courtroom. Both contempt are typologies of in facie curie contempt of court. What matter is not the place of commission of the act instead the disturbance that the act may result. However, it is not clear whether the acts provided under Art. 449/1/a of the Criminal Code (insulting, ridiculing or threatening) are relevant to a contempt outside a courtroom (Art. 449/2). Because if the judge who is outside the courtroom and not in a proceeding is insulted or threatened, the case does not actually meet the requirement of contempt of court which is a proceeding shall be underway. Instead, acts which may not directly target the judge but disturbs a proceeding (Art. 449/1/b) are relevant to this scenario. For instance, making noises, quarreling at a vicinity of a court and other similar acts may fall under Art. 449/2 as manners disturbing activities of a court.

In relation to the third scenario of contempt (aggravated contempt) as provided under Art. 449/3, one of the acts under Art. 449/1/a and 449/1/b shall be committed with violence or coercion as defined under Art. 441 of the Criminal Code. Art. 441 of the code punishes use of threats, coercion or violence against a public servant, preventing a public servant from performing his task, forcing him to perform such an act, striking a public servant or his assistants with or without causing physical injury or impairment of health. If one of these acts is

committed during judicial inquiry, proceeding or hearing, Art. 441 shall be applicable instead of Art. 449 of the Criminal Code.

An act is punishable as contempt if it is only committed in the course of judicial inquiry, hearing or proceeding. All activities in the court will not necessarily be judicial by the mere fact that a judge is involved, and in order to be judicial the act must relate in some way to the administration of justice or the ascertainment of any right or liability thereof. However, what judicial inquiry, hearing and proceeding may include is not clear and it is susceptible to abuse. In common law legal system the requirement is presented as contempt "in the face of the court."

ii. The Mens Rea

As expressed through the maxim *actus reus non facit reum nisi mens sit rea*, an act does not make a defendant guilty without a guilty mind. Art. 449 of the Criminal Code does not require a specific mens rea as an element to the crime of contempt of court. As stipulated under Art. 59/2 of the code, crimes committed by negligence are liable to punishment only if the law so expressly provides. When a provision of the code in the special part does not distinctly refer to intention or negligence, since the punishment of negligence requires an express inclusion of 'negligence', this provision imply criminal intention as the only form of mens rea requirement for the particular crime under the provision. Art. 449 of the code does not specifically provide that the improper and contemptuous conduct may be punishable even if the act is committed by negligence. Therefore, contempt of court is punishable if the act is committed or the omission is occurred with an intention (direct or indirect) to disturb proper conduct of a court proceeding.

2.2. Types of Contempt Excluded from the Criminal Code

As it is clear from Criminal Code, civil contempt or disobedience of court orders is not contempt of court under Art. 449 of the Revised Criminal Code. Instead, disobedience of court orders (subpoena powers) falls under the broader category of crimes against judicial proceedings. Particularly, Art. 448 of the Revised Criminal Code punishes a person who refuses to appear, fails to produce evidence, and refuses to answer questions or to obey orders. Refusal to accept orders from a judge may also happen in court room. Disobedience to order of a judge in a bench is known as constructive contempt or consequential contempt. This actually amounts to a passive civil contempt and it can meet the requirements of contempt of court as per Art. 449/1/b of the Revised Criminal Code.

As per the Criminal Code, *ex-facie curiae* contempt (contempt by publication) is not also strictly a contempt of court case. Publication and dissemination of facts and opinions as to pending case in order to influence the administration of justice falls under Art. 450 and 451 of the Criminal Code that prohibit breach of secrecy of proceeding and publication of forbidden reports of proceedings and other specific legislations on media.

2.3. The Contemnor and the Victim

Article 449 of the Criminal Code clearly provided that the offender may be anyone by using the phrase "who so ever". Hence, the contemnor may be parties to civil case, the accused, the prosecutor, the police, the audiences or any other individual within or outside the courtroom. In relation to the identity of the victim, the Criminal Code stipulates that to be punishable with contempt, the act must be committed against the court or the judge. However, even if the act of ridiculing, insulting, threatening or violence is committed against a person in the courtroom other than the judge, it may disturb the proper working of the court and be punishable as contempt of court.

2.4. The Punishment

Sub Article 1 and 2 of Art. 449 make a difference as to the extent of punishment on contempt in open court and outside court room. If the contempt is committed in an open court, it is punishable with a simple imprisonment up to one year or three thousand Birr fine. When the contempt is committed outside the courtroom, it is punishable with simple imprisonment not exceeding six months or fine not exceeding one thousand Birr. One can see that the punishment for contempt in an open court is graver than act of contempt outside the courtroom since contempt in an open court is an indication of manifest disregard and disrespect to the judge and the court. When the contempt is accompanied by violence, the punishment imposed under Art. 441 may extend to rigorous imprisonment not exceeding five years. It is contentious that the sentencing manual shall be applied for the assessment of the punishments. Having the judge himself as a contending party and being in the middle of another court proceeding, it is practically inconvenient to take the crime levels and punishment ranks into consideration to impose punishments provided for contempt of court. Art. 27 of the revised sentencing manual allows judges to impose punishments without following the rules of the manual in case the crime cannot fit into the rules of the manual or if the court found that using the manual to the case would refute the objective of the Criminal Code. However, the court which imposed punishment outside the sentencing manual is required to report the case to concerned regional supreme court and federal supreme court. This requirement creates an inconvenience comparable with an inconvenience that would be experienced to set a punishment for contempt by adhering the manual.

Finally, in place of the above punishments or apart from them, the judge confronted with contemptuous act may take some instant corrective measures. Warning, reprimand or, in appropriate cases, removal of the offender from court, may suffice to restore order and allow the case to proceed.

2.5. The procedure for contempt of court cases

Contempt of court (Article 449) and refusal to aid justice (Article 448/4) are the only crimes with in the Criminal Code which are summarily punishable. The summary contempt power of court involves the procedure in which the contemnor will be punished without affording him a procedural guarantee available in ordinary proceedings.

The court can punish without formal written accusation and other procedural safeguards. Particularly during in facie curiae contempt of court, there is no summons or indictment, nor is it mandatory for any written account of the accusation to be furnished to the contemnor. It also deny the accused to seek legal advice or representation. The judge acting as prosecutor, witness and a judge is also repugnant to the very principle of natural justice. As such, summary proceeding on contempt of court may affect the right to fair trial of accused. Proponents of the summary power of the court argue that since the judge deemed to see everything that constituted the contemptuous behavior, the judge's knowledge is so complete that there is virtually no possibility that the hearing would shed any more light on the matter. Besides, in case of a contemptuous act committed in the face of the court, immediate action is necessary to quell disruption, violence, disrespect, or to allow trial or proceeding to continue.

2.6. Contempt of Court under the Civil Procedure Code

Art. 480 of the Civil Procedure Code is the relevant provision that deal with contemptuous acts in a course of civil case proceedings. Though this provision neither cite "contempt of court" provision of the Penal Code (Art. 443) nor it used the

terminology "contempt", the concept of contemptuous acts before a court of law is duly regulated.

Art. 480 of the Civil Procedure Code:

Any president of a court or presiding judge may take such action as may be necessary to ensure order in court and the 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.

As can be understood from the provision, the code doesn't define what conducts are improper in a course of court proceedings. The revised Criminal Code better illustrates what sort of conducts may be characterized as contemptuous. The Civil Procedure Code also allows the judge to take any measure as punishment. By using the phrase "such action as may be necessary", the Civil Procedure Code grants the presiding judge a very wide discretion to take any measure what he thinks fit to counter the behavior of the delinquent. The judge may give the defiant person a reprimand, or order him to leave the court-room or take any other measure as the case may be. The provision specifically provided that the judge may impose fine as a punishment, with no indication as to the exact amount. However, this doesn't mean the judge can't impose other penalties and restore the order of the court-room with all relevant measures.

The fact that the code doesn't provide a limitation on the power of the judge to determine what conducts may entail punishment and what could be the punishment exacerbates the uncertainty of the concept which is already equivocal. In relation to this, a problem to both the Criminal Code and the Civil Procedure Code's provisions on contempt of court is the fact that the provisions do not include a mechanism that may restrain possible abuse by judges. For instance, comments about the general working of the court made in good faith in the public interest and in temperate language and a comment on the merits of a decision of the court made without impugning the integrity or impartiality of the judge should have been given protection against incriminating on contempt.

There is a difference between the Civil Procedure Code and the Criminal Code in relation to the scope of the place where the conduct of contempt may take place. According to the Civil Procedure Code, a judge in a civil proceeding may punish a person who is guilty of improper conduct if the conduct took place is in the courtroom. This means where the conduct is not committed in open court but while the judge is carrying out his duties, it is not punishable under Art. 480 of the Civil Procedure Code. As it is clearly indicated by the Amharic version of the code, the person who is guilty of the improper conduct shall be in the proceeding. It is important to remind that by virtue of Art. 449/2 of the Criminal Code, a contemptuous act is punishable even if the conduct is not committed in open court but while the judge is carrying out his duties.

Unlike the Criminal Code provision on contempt of court, Art. 480 of the Civil Procedure Code expressly specified who could be held guilty of improper conducts in a court proceeding. Accordingly, a party to a case, pleaders (attorneys) or any other person (courtroom officials or audiences) may be held guilty of improper conducts and be subject to any measure that the judge considers appropriate to the situation.

After all, the two bodies of laws intersect on the procedure to punish contemptuous acts and on the aim of punishing improper courtroom conducts. Both the Criminal Code and the Civil Procedure Code also give judges authority to summarily punish any person who is guilty of contempt or improper conduct respectively. The purpose of punishing those guilty of

contempt or improper conduct is shared to be ensuring order in court and proper administration of justice.

2.7. A Cassation Decision on Contempt of Court

The Federal Supreme Court Cassation Bench has entertained a case on contempt of court once. On File No. 92459 the court examined a case from Federal First Instance Court (FFIC). The applicant to the Cassation Bench was attorney to a defendant of a civil suit in FFIC. While a judge was reading judgment, the attorney's cellphone rang and this triggered exchange of words with a plaintiff to the case. The judge ordered the attorney to stop the unauthorized conversation but in response the attorney replied that the court shall address him properly. The court took these three consecutive acts as contempt under Art. 481 Civil Procedure Code and the attorney's knowledge of the law of contempt, held the accused criminally liable as per Art. 449/1/a of the Criminal Code. Thereby, the court sentenced the attorney with five days of imprisonment. The attorney appealed to the Federal High Court only the decision of FFIC to be confirmed. Therefore, an application to the Cassation was filed accordingly. The Cassation bench also reaffirmed the decisions of the lower courts with a justification that the conducts clearly prohibited by the Civil Procedure Code as well as the Criminal Code. The FFIC was in a judicial proceeding by the fact that the judge was reading judgment. Ringing cellphone is a notorious scenario of contempt of court. Engaging into unauthorized and personal quarrel with one's opponent also clearly disturbs the activities of the court. But, the courts harshly took the attorney's response that "the court shall address him properly" as contempt. Unless the response was made with threatening tone, the attorney's statement does not actually hold a disrespect and disturbing content.

2.8. The Trend of Contempt of Court in Terrorism Cases

Politicians and journalists who are accused under Anti-terrorism proclamation have been subjects of attention for the past few years due to their involvement and scenes they created in court rooms. It is now not uncommon to hear news like courts punished accused politicians for contemptuous acts. On the one hand, the courts justify that the measures are taken to protect the dignity of the court and uphold public confidence on the independence and authority of the courts. On the other hand, oppositions allege that courts are abusing their authority to trigger fear on the public and silence dissenting voices and voices that question independence and viability of the judiciary. To give a general picture on the trending scenario of contempt of court in terrorism cases, let's have an overview over the following case.

In January 2018, three Ethiopian politicians were sentenced to six months in prison for contempt of court after they sang a protest song during proceedings. They vocally objected to the court's decision to reject a defense request compelling senior government officials to testify as witnesses. The ruling from the court on the impossibility of summoning the government officials to testify angered the defendants and they shouted, "we will not appear again, give a verdict on our case here and now, let it end with us, let us be martyrs so that our children can live". Considering this act as a contempt of court, the court imposed six months of imprisonment on the accused persons.

This case is an illustration for critics on the possibility that criticizing the political subversion of the judicial process by the ruling regime may be regarded as contempt of court. With another expression, putting the court's independence in question may amount to contempt of the court. Expressing doubts and concerns about the fairness of a judicial system and its incapability to order the executive organ high profile officials to

appear before the court is being treated as a contempt. The exercise of one's constitutional right to free expression to comment on the court's procedural failure is being considered as contempt of court. This closes the door to make heard one's voice to complain about denial of due process and justice.

3. Contempt of Court in East Gojjam Zone Woreda Courts

3.1 Meaning and Elements of the Crime of Contempt of Court

3.1.1 Defining Contempt of Court

Despite presence of general understanding about contempt of court, there is no similar way of defining contempt by respondents to the research. Any act which may disturb the proper working of a judge who is actively engaged in a task that is directly related to his responsibility is one of the definitions given by respondents for contempt of court. On the other hand, some other respondents defined contempt as any act of one of the parties which may disrupt the proceeding while the judge is the course of holding a proceeding. In this particular case, proceeding is defined to include only if the judge is hearing parties and witnesses. It include the proceeding beginning from hearing the admission or denial of the defendant (first hearing) to the session of imposing the final decision. It shall not include when the judges are writing a judgment.

3.1.2 The Actus Reus

Some acts which are mentioned to be contempt include, but not limited to, using camera without the authorization of the judge; making heard of disturbing voices, insults. Arguments is seen to develop into emotions and finally, offensive words which may be regarded by the court as contempt. It may also include an insult, threat or violence outside a courtroom in relation to a particular case. Contempt may not always be offensive words but it may also include any sign or conduct of any person offensive to the judge. The judges responded that the society knows this by common sense. Even if a particular person failed to do so, the police officers and coordinator may keep the order.

Other examples indicated by the respondents include interrupting a party who is asking a cross-examination. In this respect, judges reiterates that criminally accused persons are seen to make unwarranted interventions when the public prosecutor is asking a cross-examination to defense witnesses. Since there is an assumption that this kind of conduct is triggered by ignorance of the law, judges are seen to be reluctant to punish the accused persons with contempt of court. Judges also experienced a contemptuous act of individuals entering into the courtroom without authorization and disobeying an order to leave the courtroom showing a disgrace to the judge.

As the researcher understand from the interview with judges, most contempt cases are to be committed inside the courtroom. Some judges believe that disturbing acts outside the courtroom are not punishable with contempt of court. This is restricted interpretation of the *in facie curiae* contempt of court. Other respondents have different perspective with a recognition that a contempt outside the courtroom is also prevalent. In this regard, police officers are given with responsibility to keep order and make sure that the noise outside courtroom doesn't disturb the proper management of courtroom proceedings. Despite this fact, outside noises usually disturb proceedings distorting the concentration of the judges and hearing parties arguments. When this outside disturbances are found to be seriously affecting the court's work, judges may consider it as contempt. A respondent judge shared his experience that outside courtroom contempt may extends to tampering witnesses from outside through a window. The prevalence of precinct contempt of court is the result of lack of sufficient space in compounds of

courts to have waiting halls with sufficient distance from courtrooms. Since the clients waiting room is not with reasonable distance from the courtrooms, judges complained that they, sometimes required to interrupt proceedings to restore order with due appreciation to what the police is doing to mitigate this problem.

One judge has manifested an odd interpretation of a contempt outside court room. The judge interpreted a contempt of court outside courtroom as a disturbance and other noises when the judge take a file to his home and examining the content. According to the respondent's perspective, the judge may punish those individuals who participated in such conducts by summoning to the court where he normally works. According to this respondent, the phrase of the Criminal Code provision Art. 449/2 which read as "Where the crime is not committed in open Court but while the judge is carrying out his duties" shall be interpreted to include while the judge is carrying out his duties outside the courtroom, in his home or other places. However, this kind of interpretation is not backed by deeper understanding of the provision which puts the contemptuous act rather than the judge's engagement outside the courtroom.

In relation to the identity of the contemptuous person, any person may be punished including courtroom assistants (secretary) if they resist or unwilling to act as per the judge's orders. In fact, most contemptuous acts are committed by parties to the case.

3.1.3 The Mens Rea

When we come to the mental element that is required for constitution of the crime, courts are punishing individuals who are found to commit a contempt by negligence. However, a mere failure to make mobile phone silent may not be punishable. Judges only punish intentional contempt unless the accused shows grave negligence in avoiding facts that may disturb the proper administration of justice by the court.

However, the difficulty in selective punishment of intentional act is the problem of proving the intention of the accused to disturb the court room procedures. In relation to this some judges crafted a mechanism to identify whether an act is intentional or not. For instance, if a particular person committing a contemptuous act is advised not to do the same act but found to repeat the act, this may be an indication of his intention to distract the judge's work. However, whether an act is intentional or negligent shall be decided on case by case basis. The circumstances of the case shall be taken into account seriously before deciding it is intentional disregard to courtroom order. This means a presiding judge may not punish a mobile ringing unless he expressly told the audiences and the parties to silent or switch their mobile phone but one of them failed to do so. Intention can be drawn from the fact that the person can be considered as doing the act intentionally if he cannot correct his conduct after a warning. The judge shall not punish all ordinary acts unless it show the purposeful disregard by the accused. If the conduct take place twice, it shall be punishable as it show a real disregard to the dignity of the court.

In fact, respondent judges informed the researcher that the courts have posted, on visible place in the compound, that what kinds of conducts are prohibited in a courtroom. There are some enlisted prohibited acts including holding a weapon, chewing gum or chat, smoking cigarette and talking through telephone are expressly prohibited and this is posted in a place where visitors to the court may see. Though this kind of public awareness mechanism is a good initiative, it is not actually accessible for most of the clients of courts due to high level of perceived illiteracy in the community. Therefore, more accessible and

comprehensible way of creating awareness to the society shall be adopted

3.1.4 The Legal Element

With regard to the applicability of laws, there is a common understanding that both the criminal and Civil Procedure Code are applicable side to side. Particularly judges indicated to the federal supreme court's court-room management manual to have a relevance in deciding whether an act is contemptuous or not. However, none of the respondents have access to the manual in question. While some judges believe that the Civil Procedure Code, Article 480 is the only relevant provision for possible contemptuous acts in civil benches, others claimed that the civil bench may also refer the Criminal Code to punish contemptuous acts committed in the civil bench. In this regard, the Civil Procedure Code is open to interpretation as it allows the judge presiding the case to take any necessary action as he may deem appropriate including fine.

It is also argued that Art. 481 of the Civil Procedure Code is more relevant to contemptuous acts than Art. 480 of the code. However, when one corresponds the provisions of the former penal law included referred under Art. 481 of the Civil Procedure Code, it will be elucidated that the provision does not actually regulate the strictest sense of contempt of court. Art. 481 of the Civil Procedure Code doesn't refer to the contempt of court provision of the former penal law. The civil procedure Art. 481 doesn't refer the contempt provision of the penal law. In fact, judges shall apply the Criminal Code to interpret whether a particular act in civil bench is contemptuous or not.

There is also a different perspective with regard to scope of the Criminal Code provision on contempt of court. For instance, one respondent argue that violence as contempt under Art. 449/3 shall be broadly interpreted to include a threat to harm person, property of relative of the judge. It shall not be limited to harming the person or property of the judge alone. This may be done in person, through other person, through telephone, sign or other mechanisms.

3.2 The Purpose of Punishing the Act of Contempt of Court

All respondents agree that the purpose of contempt law is to make the judge be able to lead the court proceedings properly. Instead of the judge, the protected body in the law of contempt is the court. However, an attack on the judge may disrupt the court proceeding and in the end, the court may lose the required demeanor. In fact, there is an indication that judges may abuse the contempt law for their own personal affair. Though the purpose of the law is to protect the dignity of the court, it is argued that judges may interpret and unduly utilize the law to vanguard their excessive personal dignity quest beyond the acceptable standard that protecting the judge's dignity is protecting the court's dignity.

Since contempt does not show the dangerous disposition of the accused person, segregation and rehabilitation does not meet the purpose of punishing the contemnor. Though the honor and respect for the law and court is being highly degraded through time with failure and resistant to execute court orders decisions, reactions of the judges to contemptuous acts shall be as smooth as possible. Deterrence shall be the main purpose at the end of punishing contemptuous acts. The contemnor shall only be punished to take a lesson about the proper conducts in and outside courtrooms while the judge is holding a proceeding. The purpose of punishing contemptuous act is to deter the offender and give lesson on how to behave before a court of law. According to the respondents, most of the parties accused of contemptuous acts are laymen and the judges shall not expect deeper knowledge of law and due obedience to courtroom manner and conducts.

3.3 The Punishment

Most contemptuous acts are to be committed by laymen. The power of judges are being restrained through time and the judges are lenient to punish each and every little seemingly contemptuous act. Most of the time an individual may enter to the courtroom in the course of active proceeding being handled by the judge. This is the result of lack of knowledge. So you can not be harsh on this kind of individuals. The judge shall rather inform the accused on his mis-conduct. Punishment shall be imposed on a person who is recidivist in contemptuous acts. But recidivism is unlikely and rare.

Respondents agree the presence of well-founded fear that seriously considering punishment of courtroom misconducts trigger series of complaints against the judge that may impact his public confidence in return. Judges who strictly ensure proper conducts in courtrooms are subjected to scrutiny and critiques. It may also be considered that repeated misconducts in the courtroom are a result of his inability to properly manage the courtroom. Therefore, the judges are lenient to punish contemptuous acts unless it is apparently deliberate misconduct. These facts have given an erroneous perception that contempt of court cases are being highly reduced through time. The tendency of imposing harsh punishments is reduced due to accountability of the judge to his decision is being firmly established. Higher courts also have the tendency to reduce penalties on appeal to discourage lower courts from imposing graver penalties on contempt cases.

In relation to the types of punishment that the judges may impose, it is underscored that judges shall focus on reprimand instead of primary punishments; i.e, imprisonment and fine. First, the judge shall give warning and tell the proper order of courtroom. Then you can punish him as per the appropriate law. In grave cases, the judge may also punish the contemnor as per Art. 441 of the Criminal Code which regulates violence and coercion against a public servant. The judge shall use the Contempt law only after the accused can not correct his conduct as per the direction of the judge. This is an important mechanism of averting undue courtroom anxiety of parties, witnesses and audiences of a case. In addition the judges indicated that the punishment shall be imposed with the purpose of deterring the offender. Factors which may be taken into account for imposing punishments on other types of crimes shall also be taken into account when judges impose punishments on a contemptuous person.

In this regard, it is emphasized that Art. 88/2 of the Criminal Code shall be duly considered in the imposition of punishment on a contempt of court case. In particular, his personal circumstances, standard of education and perceived level of understanding of law shall be considered. Public prosecutors and attorneys are presumed to have better knowledge of law which may put them in harsher punishment than lay man parties when they found to violate the courtroom order. In addition, in imposition of fine as punishment to the crime of contempt, the judges respond that they have experiences in considering the financial condition, the means, the family responsibilities of the contemnor besides other factors as required by Art. 90/2 of the Criminal Code.

Though there is no difference in relation to the punishments on a contempt in civil bench and criminal bench, one judge responded that the punishment in case of civil court contempt shall not include loss of liberty. But when one consider this assertion inline with the provision of the Civil Procedure Code relevant to contempt of court, it is clear that Art. 480 of the code authorized the presiding judge to take any measure which is necessary to restore courtroom order. The provision makes

illustration of what measures may be taken by the judge. The provision mentioned only fine as summary punishment. However, this does not restrain civil bench judges from applying the Criminal Code provision on contempt of court which has broader typology and harsher extent of punishments.

Another important issue is the application of the sentencing manual in imposition of punishments. As majority of the respondents agree, the manual shall be taken into account for both the fine and imprisonment punishments. The sentencing manual shall be equally applicable to any criminal case. Since contempt of court is not regulated by the manual, the judge is expected to determine the level of crime and rank of the punishment as guided by the manual for crimes which are not regulated. The range given by the Criminal Code is wide enough and it may be subjected to an abuse and the judge may show arbitrariness to retaliate a contemnor who targeted his honor or dignity. Therefore, it shall be duly established whether the crime is grave, medium or less grave as ranked by the manual for punishments.

Others argued that the sentencing manual shall not be applied since it is sufficient to properly apply Art. 88/2 and 90/2 of the Criminal Code to mitigate the judge's prerogative and shape the punishments in line with personal circumstances of the contemnor and level of guilty. In particular, one judge responded that since punishments on contempt cases is not harsh, there may not be a problem in imposing the punishments without indulging into complex analysis of the mitigating and extenuating circumstances as provided by the Criminal Code and the sentencing manual. The respondent also indicted that he has an experience in with a case in which the accused is punished without taking into account mitigating circumstances as per the sentencing manual. This kind of procedure is highly susceptible to abuse of the provision of the Criminal Code to the prejudice of the financial and liberty interests of the contemnor. A respondent remarked that the trend in application of the sentencing manual in less grave crimes and crimes which are punishable by summary is against what is required by the sentencing manual. First, the manual is not easily accessible to the judges. Second, there is also lack of positive attitude towards the manual as it is not easily comprehensible. Finally, there is no sufficient and uniform training to judges about the applicability of the manual in this kind of special criminal cases which may be decided summarily.

3.4 Summary Proceeding and Court Prerogatives on Contempt of Court

There is a consensus that contempt of court provisions of the law are broadly crafted to include infinite acts as contempt of court as subjectively interpreted by a presiding judge. For instance, one judge argue that he may even rightly punish a person who enter into the courtroom without authorization while he is merely reading a file or writing a judgment. However, this kind of broad interpretation of the crime would not serve the purpose of the law. It rather exacerbates clients' anxiety and fear of courts and judges. Of course, the phrase "any manner" as included under Art. 449/1/b of the Criminal Code is generous enough to allow the judge to use it and punish plethora of acts as contempt of court. It shall be underlined that the power of court to punish contemptuous acts is not a fear establishing mechanism. It is a mechanism to protect court order and deter others who witnessed a contemnor being punished. Nevertheless, if a judge rigorously uses the contempt law to encompass hardly contemptuous acts, it may create fear over the society and anxiety in a courtroom.

Unless the expression "any manner", under Art. 449/1/b is elaborated with illustrations, it is susceptible to interpretation of

the judge. Even if it is not as much as sub b, sub a of Art. 449/1 is also susceptible to undue interpretation as per the judge's understanding. Apart from a problem with the judge's power of interpretation, contempt of court has a peculiar feature of putting the judge who is interpreting the law as a victim and this may create a possibility of arbitrary and broad interpretation of conducts and manners as contempt of court. Expression of discontent with the judge's handling of the case, hearing of witnesses and examination of evidences may be expressed in the court room. This shall not be taken as contempt of court unless expressed with offensive manner threatening the dignity of the judge. Judges tend to use sub b of Art. 449/1 instead of sub a since it is open to interpretation and less susceptible to be challenged.

The respondents blamed the law of contempt for creating an established fear of court in the society. However, judges argued that this fear is resulted from lack of knowledge of what is allowed and what is prohibited in the courtroom. The judge may be regarded as arbitrary and is abusing power when there are series of complaints against his serious handling of courtroom order. Judges have fear of complaints. After the reform on the judicial organs and availability of complaint systems through Judicial Administration Committee, the judge began to fear complaints instead of parties fearing the judge.

The judges argue that beyond what is provided by the law of contempt that allows summary proceeding; practical necessities also require the judge to decide contempt cases in accelerated procedure. The circumstances of the case; shortage of time and the fact that the contempt case occurred in another case proceedings may not allow the accused to express his view freely and prevent the judge to order further investigation on the contempt. Another fact which is mentioned as favorable condition for a summary proceeding is the presence of all evidences at once at the same time. The summary power is said to be appropriate since all required evidence is available and the accused may also be given the chance to express his side of the story. As the accused may only defend on the basis of circumstances existing in the courtroom, he may call defense witnesses from the courtroom audiences, parties or witnesses. This makes the need to adjourn in the case inappropriate. This requires the judge to decide in that particular contempt case, on the contemnor, a punishment as per the appropriate provision of the law without referring the case of contempt to the prosecutor or police. Therefore, judges make the decision immediately at the point of occurrence of the contemptuous act.

Respondents are optimistic that the right of the accused may also be protected though the proceeding is handled in summary. Even if the judge is required to act as a prosecutor, a witness and a judge at the same time, the judge shall be trusted with this prerogative and he is expected to vanguard the constitutional due process rights of the accused as stipulated under Art. 10 of the FDRE Constitution. The judge is protector of human rights of the accused from his own prejudice. The charge shall be read to the accused, the reason, the facts, the witnesses shall be presented in a manner easily understandable by the accused person. It is also claimed that the accused person shall be given a chance to cross-examine witnesses that may be called by the judge to testify about the action/inaction of contempt. Generally, there is high confidence among the respondents that it is possible to accommodate due process rights including presumption of innocence and the right to be heard in a summary proceeding of contempt of court.

In fact, there is also one respondent who justify the appropriateness of summary proceeding from the perspective of possibility of tampering evidence if the court adjourns the case.

It is argued that the accused person may tamper witnesses who observed him committing the contemptuous act. This same respondent also questioned the need to allow the accused person cross-examination witnesses. Accordingly, a trust shall be put on the shoulder of the judge not to abuse evidences and impose punishments as retaliation.

There is also another intermediate approach on the extent of the accused person's rights in a contempt case. According to this approach, the chance to express his opinion shall be given to the accused short of hearing and examining witnesses.

To the extreme of supporting the judge's prerogative power, we found an approach which excludes hearing of witness in total. Supporters of this approach argue that the judge shall not hear witnesses for a contempt of court case. Since the facts are in the knowledge of the judge, the judge shall decide immediately without hearing witnesses. It is argued that contempt of court does not give a chance to defense as well. As the act is committed in the courtroom, nothing to defend as far as the judge thinks the act is a crime. It is also claimed that contempt case is prerogative of the judge and the judge may punish the accused whenever he is sure that the crime is committed. It is sufficient that the act is ascertained by the judge as a crime and the accused committed the crime. Therefore, the only chance of the contemnor is to appeal instead of challenging the conviction in front of the same judge who imposed the conviction.

With regard to a contempt committed outside courtroom, the judges who support the above approach have two different views. On the one hand, there are some who proposed that if the contemptuous act is committed outside the courtroom, the judge may not convict the accused without hearing witnesses and giving chance to defend. On the other hand, other respondents held that the judge is not obliged to hear witnesses and grant the accused a chance to defend.

The practice of hearing witnesses is dominantly in line with this last approach as the knowledge of the judge is being taken as sufficient evidence to make the judgment and the judge is not obliged to call upon the audiences to testify against the contemnor in order to corroborate the knowledge of the judge. However, it is an important evidence law principle that the judge's personal knowledge of commission of a crime doesn't suffice to conclude commission of a crime unless external evidences confirm the commission. The judge may witness a certain criminal conduct, preside the same case but he cannot merely rely on his knowledge to convict the accused person.

4. Conclusions and Recommendations

4.1 Conclusions

This study has shown that the application of Ethiopian law of contempt is not based on deeper understanding of the purpose of punishing a contemnor. The three core topics which are comprehensively dealt; the meaning of contempt, punishment and the prerogatives and summary power of judges in contempt cases reveal that there are a number of gaps and inconsistencies in application of the law of contempt of courts.

First of all, there is no uniform way of defining contempt by respondents to the research. There is diversity in perspectives of defining what acts may constitute contempt. This problem is partially attributable to lack of clear definition in the law and partially attributable to the judges' failure to understand the provisions on contempt of court in their fullest sense. For instance, there is a clear difference on how judges define "proceeding" as provided under Art. 449 of the Criminal Code. Some defined it as any tasks in which the judge engaged himself while he is in courtroom while others believe that it shall be defined to include only if the judge is hearing parties and

witnesses. With regard to the spectrum of acts that shall be encompassed under contempt, it is submitted that contempt may not always be offensive words but it may also include any sign or conduct of any person offensive to the judge.

Contempt in facie and ex facie curie have different treatments before the eyes of the respondent judge. Some judges believe that disturbing acts outside the courtroom are not punishable with contempt of court. While others argue that outside disturbances are found to be seriously affecting the court's work than courtroom mis-conducts and judges may consider those acts as contempt.

The mens rea is one of the necessary ingredients that constitute a crime. As tried to understand from responses to interview questions, courts are punishing individuals who are found to commit a contempt either by negligence or intention. It is underscored that judges only punish intentional contempt unless the accused shows grave negligence in avoiding facts that may disturb the proper administration of justice by the court. In order to enlighten court clients, courts have posted, on visible place in the compound, that what kinds of conducts are prohibited in a courtroom. Though this kind of public awareness mechanism is a good initiative, it is not actually accessible for most of the clients of courts due to high level of perceived illiteracy in the community. Therefore, more accessible and comprehensible way of creating awareness to the society shall be adopted

There is a general knowledge of the Criminal Code's and Civil Procedure Code's provisions on contempt of court among the legal professionals who were subject to the interview. In fact, the federal supreme court's courtroom management manual is also cited to have a relevance in deciding whether an act is contemptuous or not. There is also a misconception that Art. 481 of the Civil Procedure Code is more relevant to contemptuous acts than Art. 480 of the code.

With a total support to the fact that the purpose of contempt law is to make the judge be able to lead the court proceedings properly, respondents share a risk that judges may interpret and unduly utilize the law to vanguard their excessive personal dignity quest beyond the acceptable standard that protecting the judge's dignity is protecting the court's dignity. To this effect, it is submitted that judges shall ensure, as much as possible, that the contemnor shall only be punished to take a lesson about the proper conducts in and outside courtrooms while the judge is holding a proceeding. Nevertheless, trends show the presence of well-founded fear that seriously considering punishment of courtroom misconducts trigger series of complaints against the judge that may impact his public confidence in return. Therefore the judges are lenient to punish contemptuous acts unless it is apparently deliberate misconduct.

Applicability of the sentencing manual is another issue which faced diversity of opinions among the respondents. Some of the respondents submitted that the sentencing manual shall be equally applicable to any criminal case whether it pass through an ordinary or summary proceeding. Others opposed that there may not be a problem in imposing the punishments without indulging into complex analysis of the mitigating and extenuating circumstances as provided by the Criminal Code and the sentencing manual.

There is unanimity that the Criminal Code's and Civil Procedure Code's provisions on contempt of court are broadly crafted to include infinite acts as contempt of court as subjectively interpreted by a presiding judge. Unless the expression "any manner", under Art. 449/1/b is elaborated with illustrations, it is susceptible to interpretation of the judge. In fact, there is common support to the summary proceeding as the

judges argue that beyond what is provided by the law of contempt that allows summary proceeding; practical necessities also require the judge to decide contempt cases in accelerated procedure.

With regard possible encroachments on the procedural due process rights, respondents are optimistic that the right of the accused may also be protected though the proceeding is handled in summary. However, there is an extreme approach of supporting the judge's prerogative power to excludes hearing of the accused and the witnesses in total.

4.2 Recommendations

On the basis of the above findings, the researcher would like to recommend the following.

- ✓ The law maker shall amend the laws on contempt of law of contempt of law shall be amended in a way to enable laymen easily understand the gist of the crime of contempt of court and refrain themselves from conducts which may reasonably be considered by the judges contempt of court. The law shall specifically provide the actions that may be included in manners which are subject to punishments.
- ✓ The Federal Supreme Court shall adopt clear rule of courtroom management in order to regulate the possible scenarios of contempt of court. The manual shall be as specific as possible to mitigate the hitherto overwhelming prerogatives of judges.
- ✓ The correlation between the Civil Procedure Code and the Criminal Code shall also be clarified on a point whether the punishments in the Civil Procedure Code Art. 480 are exclusive of the punishments provided under Art. 449 of the Criminal Code. In addition, the purpose of Art. 449 of the Criminal Code in elaborating the acts which may be considered as contempt in civil benches shall be made clear by specific manual on courtroom management.
- ✓ The Federal Supreme Court shall craft a mechanism to ensure uniform applicability of the sentencing manual across the jurisdiction. To this effect, here shall be uniform training on the applicability of the sentencing manual on contempt cases and other summary proceeding in which the judge has little time to deliberate the ranks of punishment and level of guilty of the accused person.
- ✓ Courts shall create public awareness court clients in day to day basis on what behavior may be considered as a disgrace of court and judges. The types and extents of punishments shall also be communicated to the court clients through morning legal education which is already adopted by courts.
- ✓ The Zonal High Court and Debre Markos University School of Law shall, in collaboration, organize trainings on contempt of court. The trainings shall enlighten the judges and other stakeholders the potential vices in the application of the laws of contempt and how judges may restrain this unduly broad body of law.
- ✓ Judges shall ensure that contempt of court is interpreted in the narrowest sense possible as it has a repercussion on financial and personal liberty of the accused person. The acts that may be considered as contempt shall show direct nexus with the disturbances of courtroom proceedings and influence on proper performance of the judge. Due to low level of legal literacy and particular cultural underpinnings, judges shall expect some disturbing acts may be committed with ignorance

of law and facts. As provided by Art. 59/2 of the Criminal Code, crimes committed by negligence are liable to punishment only if the law so expressly provides by reason of their nature, gravity or the danger they constitute to society. Non-deliberate acts and acts which do not show high disregard to the court's honor but which found to violate courtroom proper manner including entering into courtroom without authorization and not silencing a mobile phone shall not be regarded as punishable. Though the judges decide to punish a contemnor who committed the crime by negligence, they shall consider their negligence having regard to his personal circumstances, including his age, experience, education and occupation.

- ✓ Judges shall also ensure that the due process constitutional rights including freedom of expression, presumption of innocence and the right to cross examine evidences brought for proving contempt are protected. The accused person shall also be allowed to express his opinion on what to be considered as extenuating circumstances.
- ✓ The zonal judicial administration committee shall follow up the public confidence on courts is not compromised by unwarranted application of the law of contempt by judges. The committee shall establish accessible, independent and transparent procedure to accept and decide on complaints.
- ✓ Attorneys and public prosecutors shall engage in scrutinizing the interpretation and application of the law of contempt by the judges. Public prosecutor have responsibilities to assure that the criminal law principles are duly interpreted. Therefore, their insightful comments on the judge's tendency to punish an accused person for contempt is an important mechanism to observe the judge's responsibility not to apply the law arbitrarily.
- ✓ Finally, courtrooms shall be built in a reasonable distances from awaiting clients. this helps the court to perform its functions properly and prevents the commission of contemptuous acts with a disturbance from outside the courtroom.

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