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A STUDY ON CONSTITUTIONAL VALIDITY OF CONTEMPT OF COURT ACT,1971

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Abstract:

Contempt of court is a legal concept rooted in Ancient legal system. With time it evolved, and its objective became to protect the dignity and integrity of judiciary. It came into Indian context from English law. The article talks about evolution of the concept along with evolution of Contempt of Court Act, 1971. It also classified the Contempt between Civil and Criminal Contempt. The article explains the importance of the act and has a look at the arguments against the act. Constitutional validity of the act is also provided in the article. Constitution is the supreme law of the land, and no one is above the law. The object of this article is to ascertain whether Contempt of the Court Act, 1971 violates the constitutional law or not. The contempt law is violative of Article -14 and Article 19(1)(a) of the constitution of India.

Keywords:

Contempt of Court, Supreme Court, Freedom of Speech, Dignity of Court, Criminal Contempt, Civil Contempt, Constitutional validity.

Contempt of court is a legal concept that refers to behaviours that disrespect or obstruct the authority, dignity, or functioning of a court of law. It can occur both inside and outside the courtroom. “Any act done, or writing published which is calculated to bring a Court or Judge into disrepute or lower his authority or to interfere with the due course of justice or the Lawful process of the Court is contempt of Court.”

Direct contempt involves disruptive behaviour within the courtroom, such as being disrespectful to the judge or refusing to comply with court orders. Indirect contempt occurs outside the courtroom and typically involves disobeying court orders or interfering with the administration of justice. Consequences for contempt can include fines, imprisonment, or remedial actions to address the behaviour. The specific laws and procedures regarding

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contempt of court vary between jurisdictions. It has always remained one of the most debated topics in legal history and it is still debatable.

Justice is the most important essential for a society. From ancient time to modern times, in different forms of government or diversity in people, Justice is the base for every society and its elements to prevail. Its importance is realized by great thinkers and philosophers in their writings.

In ancient times, King had the sole responsibility for justice to his subjects for justice. People of realm use to directly approach the king, if they felt any injustice. But as the population grew and size of society expanded, it became impossible for the king to solve all problems personally. Therefore, King started appointing persons to do this job on his behalf and with this, the Institution of Courts came into existence. If the king neither be questioned nor scandalized for their method of justice, then Courts also have no ground to be questioned.

The concept of Contempt of Court was first acquired implications in theological conations. They were subject of Ecclesiastical Courts of Middle Ages when ethics and laws are treated to be at par. The Origin of this concept can be found in early Common Law of England. The concept of contempt of court emerged to protect the authority, dignity, and effectiveness of the courts. One of the earliest recorded instances of contempt of court is found in the 14th-century legal treatise called “Mirror of Justices” (Speculum Justiciariorum) written by Andrew Horne. It outlined the offense of “scandalizing the court,” which involved making false or scandalous statements about judges or their decisions with the intent to undermine the authority of the court.

Origin in India:

In India, the concept originated from English Law. In England, Superior Courts exercised the power to punish for offences of Scandalizing courts and Disruption in justice. The first Indian statute on the law of contempt i.e., the Contempt of Courts Act was passed in 1926. It was enacted to define and limit the powers of certain courts in punishing contempt of courts. When the Contempt of Courts Act, 1926 was in existence in British India, various Indian States also had their corresponding enactment. These States were Hyderabad, Madhya Bharat, Mysore, Rajasthan, Travancore-Cochin and State enactments of the Indian States and the Contempt of Courts Act, 1926 were replaced by the Contempt of Courts Act, 1952. The right of the Indian

High Courts to punish for contempt, was in the first instance recognized by the Judicial Committee of the Privy Council which observed that the offence of the contempt of court and the powers of the High Courts to punish it are the same in such courts as in the Supreme Court in England.

After Independence, this act was revisited by Indian Lawmakers and was passed as '**Contempt of Court Act, 1952**' with some changes. But still, it did not define 'Contempt of Court' in absolute terms. So, this act was studied again and with several changes '**Contempt of Court, 1971**' Act was passed, which is still use in present.

Objects of Contempt of Court Act, 1971

1. The purpose of the law of contempt is to protect the machinery or object of justice and the interests of the public.
2. It is a mechanism to prevent interference in the course of justice
3. To maintain the authority of the law,

The object of contempt proceedings is not to protect judges personally from criticism but to protect the public by preserving the authority of the court and the administration of justice from unjustifiable attack.

Meaning of Contempt of Court

Sec-2 of the contempt of Court Act, 1971 defines contempt of court. It means disobedience or disrespect to the court order or decree, Judgement, direction etc.

Contempt of Court can be divided into two types. They are

- Civil Contempt
- Criminal Contempt

Civil Contempt

Section 2 (b) of Contempt of Courts Act, 1971, Civil contempt was defined as —willful disobedience to any judgment, decree, direction, order, writ or other process of a Court or willful breach of an undertaking given to a Court².

² Dr. Kailash Rai, 'Legal Ethics Accountancy for Lawyers and Bench-Bar Relations' (6th edn 2020, Central Law Agency) 165

Defenses in Civil Contempt

1. Disobedience or breach was not willful
2. The order has been passed without jurisdiction
3. Order disobeyed is vague or ambiguous
4. Order involves more than one reasonable interpretation
5. Compliance with the order is impossible
6. No knowledge of order

Criminal Contempt

Under Section 2(c) of the Contempt of Courts Act of 1971, criminal contempt has been defined as the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which:

1. Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court, or
2. Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or
3. Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

The definition of Criminal Contempt is wide enough to include any act of person which would tend to interfere with the administration of justice, or which would lower the authority of the court. Doctrine mens rea is not applicable and is not an essential ingredient of the Criminal Contempt.

Defences in Criminal Contempt

Section 3 to 7 of the contempt of Court Act 1971, provides for defenses to the person charged with criminal contempt are as follows:

- I. Innocent publication and distribution of matter (Section 4)
- II. Fair and accurate report of judicial proceeding not contempt (Section 4)
- III. Fair criticism of judicial act not contempt (Section 5)
- IV. Bona fide Complaint against presiding officers of subordinate courts (Section 6)
- V. Publication of information relating to proceeding in chambers or in camera not contempt except in certain cases (Section 7).

Entry 77 of list I (union list) and entry 14 of list III (concurrent list) of 7th schedule of the

constitution include the subject, contempt of court. If any person did the contempt of court, then he is held liable for imprisonment up to 6 months and fine up to 2000/-rupees or both.

Constitution validity of Contempt Law

The law of contempt of court is administered by two acts in India: The Contempt of Courts Act, 1971 and The Constitution of India. The Contempt of Courts Act, 1971 defines the various forms of contempt and the punishments for the same. It also lays down the processes for admitting and overseeing contempt proceedings. The Constitution of India also provides for the power of the Supreme Court and High Courts to punish contempt of court. Contempt law is applicable to everyone who is there in society. It means judges, advocates, parties, corporations, company, Government. The Indian Constitution gives exclusive power to the Parliament to make laws regarding matters mentioned in List I and the power to make laws with respect to subjects in List III is shared by both Parliament and State legislatures. In cases of conflict, the law made by Parliament prevails. However, Article 254(2) provides an exception to this rule, stating that a law made by the State legislature may prevail if it has received the President's assent and contains provisions not repugnant to existing laws made by Parliament. Contempt of court falls under Entry 77 of List I and Entry 14 of List III of the Constitution's seventh schedule, which grants the legislature the competence to legislate on the subject. However, the Supreme Court and High Courts must retain the power to punish for contempt, and this power cannot be transferred to any other court. Articles 129 and 215 of the Constitution emphasize the need for effective powers in the Supreme Court and High Courts in the constitutional provisions' purpose³.

The existing law relating to contempt of court is considered reasonable and therefore does not violate the fundamental right to freedom of speech and expression guaranteed by Article 19(1) (2) of the Constitution. According to Clause 10 of Article 366, existing law includes any law, ordinance, order, bye-law, rule, or regulation passed or made before the Constitution's commencement. The parliament has exclusive power to make laws with respect to any of the matters or subjects enumerated in List-1 (Union list) of the Seventh schedule of the constitution. Parliament and the State Legislature both have the power to make laws with respect to any of the subject enumerated in List-111 (concurrent List) of the Seventh schedule of the constitution, but in the case of conflict between the law made by the State Legislature

³ M.P. Jain, 'Out Lines of Indian Legal and Constitutional History' (5th edn 2019, Lexis Nexis) 258

shall, to the extent of the repugnancy, be void. However, Article 254(2) creates an exception to this general rule. It provides that where a law made by the state legislature with respect to one of the matters enumerated in the concurrent list containing any provisions repugnant to the provisions of an earlier law made by parliament or an existing law with respect to that matter, then the law so made by the state legislature shall, if it has been reserved for the consideration of the president and has received assent, prevail in that with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the State legislature the residuary power has been vested in parliament.

Entry 77 of list I and Entry 14 of list-III of the Seventh schedule of the constitution include the subject, contempt of court. Based on these provisions, the Sanyal Committee has derived the conclusion that the legislature is fully competent to legislate with respect to contempt of court subject only to the qualification that the legislature cannot take away the power of the supreme court or the high court to punish for contempt or vest that power in some other court. Besides, the Sanyal Committee has observed that Article 142(2) makes every power of the Supreme Court to make any order for the punishment of its contempt subject to any law made in this behalf by parliament and therefore parliament has full power to legislate in relation to contempt of the supreme court⁴.

However, an important limitation on the legislative power is that it should not be so exercised as to stultify the status and dignity of the superior courts. Article 129 and 215 of the Constitution of India assume that there should be an effective power in the supreme Court and each of the High C courts for dealing with cases of contempt⁵. The power of Parliament to legislate in relation to the law of contempt of these Courts would, therefore, must be exercised in such a way that the purpose of the constitutional provisions is not defeated.

The Contempt of Courts Act is considered valid. It is not considered inconsistent within the law of contempt existing at the time its enactment. Section 22 of the Act makes it clear that the provision of this Act shall be in addition to and not in derogation of the provisions of any other law relating to contempt of Courts.

⁴ Dr. Durga Das Basu, 'Introduction to the Indian Constitution of India' (20th edn 2011 Lexis Nexis) 305

⁵ Dr. J.N.Pandey, 'The Constitution Law of India' (49th edn, 2012, Central Law Agency) 509

The Contempt law is not violative of Article 14

When a statute is challenged on the ground of violation of guarantee of equality under Article-14, first the policy underlying the statute and the object intended to be achieved by the statute should be ascertained, by the court and thereafter it is to be ascertained whether the classification is rational and founded on the intelligible differentia which distinguished persons or things that are grouped together from others that are left out of the group and whether the basis of differentia has any rational nexus or relation with the policy or objects sought to be achieved by the statute. If the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from other left out of the group and the differentia has a rational relation to the objects sought to be achieved by the statute in question, the classification will be reasonable. On this test the contempt law is reasonable and not violative of Article 14. The object of contempt law is not to provide protection to the judges personally but to protect the public confidence in the system of administration of justice. Its purpose is to uphold the majesty of law and administration of justice which is necessary for the existence of the orderly society. Because of this object the contempt proceedings have been classified as proceedings of a class by themselves which a procedure of their own. The punishment for contempt is awarded summarily by not only for the protection of judges personally but for the protection of public justice, it cannot be said that the procedure providing for the summary trial is violative of Article-14⁶.

The contempt law is not violative of Article- 19(1)(a)

The contempt law is not violative of the freedom of speech and expression guaranteed by Article 19(1)(a) of the constitution of India. In several cases, the supreme court has observed that freedom of speech and expression including the press is not absolute and restriction thereon may be imposed by the state-making law on any of the ground specified under Article 19(2). Contempt of Court is one of the grounds specified in clause (2) of Article 19 and, therefore, the restriction on freedom of speech and expression may be imposed, if it amounts to contempt of Court. Article 19(2) allows not only the enactment of law imposing restriction on the freedom of speech and expression to prevent the contempt of court but also protects the existing law in relation to contempt. The supreme court has made it clear that the existing law relating to contempt of court imposes reasonable restriction within the meaning of Article 19(2) and

⁶ Dr. Kailash Rai, 'Legal Ethics Accountancy for Lawyers and Bench-Bar Relations' (6th edn 2020, Central Law Agency) 210

therefore, it is not violative of the fundamental right to freedom of speech and expression guaranteed by Article 19(1)(a)⁷.

The words “Existing Law” has been defined under clause (10) of Article 366. It provides that means any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of this constitution by any legislature, authority or person having power to make such a law, ordinance, bye-law, rule or regulation. It, thus, refers only to statutory law and not case law. Because of it, an important issue is whether the words “Existing Law” the case law relating to contempt of court. The opening words of article 366 contain the saving phrase, “in this constitution unless the context otherwise required”. In the context of contempt of court, the ambit of the expression existing law should not be restricted to the statutory law only as the law relating to contempt of court in India is mainly case law based on the English common law as interpreted by the court. If the definition of the expression “Existing Law” has given in clause (10) of Article 366 is applied in constructing that expression occurring in Article 19(2), the power of the court of the record for punishing contempt law would become nugatory and the contempt law would become unworkable. The statutory law relating to contempt of court plays more important role than the statutory law in the interpretation and determination of issues as to the meaning and categories of contempt of court, contempt power of the superior of courts, nature of contempt of proceedings and quantum of punishment for contempt, etc. the makers of the constitution were aware of this fact. Prior to the constitution of India, the superior courts have been exercising the contempt power. When the makers of the constitution inserted Articles 129 and 215 recognizing the power of the Supreme Court and High Courts as courts of record to punish for contempt of Courts. This indicates that the law of contempt as contemplated by them was not the statutory law of contempt but also the case law relating to contempt of court. In such situation the context otherwise requires became operative and it may be concluded that in the context of contempt of court the phrase existing law in article 19(2) includes not only statutory law but the entire law of contempt as was recognised in India prior to the constitution of India based on English common law and decisions of the High Courts and Privy Council⁸.

It is notable that the term reasonable restriction in Article 19(2) refers not only to the future law but also to the existing law. Consequently, the law relating to contempt of courts will be

⁷ Mahendra P. Singh, ‘V.N. Shukla’s Constitution of India’ (11th edn 2008, Eastern Book Company)124

⁸ Dr. J.N.Pandey, ‘The Constitution Law of India’ (49th edn 2012, Central Law Agency) 183-184

valid only to extent it imposes reasonable restriction on the freedom of speech and expression guaranteed by Article 19(1)(a). before the constitution, the entire law relating to defamation, contempt of court, etc. was excluded from the operation of Article 19(1)(a) but after this amendment, if the existing law or future law relating to the matters specified in clause (2) of article 19 contravenes the limits of reasonable restriction on the freedom of speech and expression, it will be void. It will be protected only when it imposes restriction on any of the grounds specified in Article 19(2). The restriction on the freedom of speech and expression on the ground of contempt of court must be reasonable, whether such restriction is imposed by the existing law or future law. The court has made it clear that the law of contempt as laid down by the British and Indian Courts imposes reasonable restriction on the freedom of speech and expression⁹. The law of contempt does not violate Article 21 of the Constitution of India. Article 21 provides that no person shall be deprived of his life or personal liberty except. According to the procedure established by law. It has been made clear by the court that existing procedure for contempt proceedings have statutory sanction. Section 3 of the contempt of court Act, 1952 or section 10 of the contempt of courts Act, 1971 and clause (38) of the letters patent make it clear that the procedure in contempt has statutory recognition consequently. It cannot be said that the contempt law is violative of Article 21¹⁰.

The procedure established by law in Article 21 includes the existing procedure recognised by the courts and the constitution. The summary procedure in contempt cases had been in vogue prior to the commencement of the constitution of India. This procedure has been recognised by the court. Besides, Article 225 of the constitution of India makes provision for its continuity. Besides, Article 372(1) of the constitution of India also makes provision for keeping intact the laws which were valid prior to the enforcement of the constitution. It provides that notwithstanding the repeal by the constitution or the enactments referred to in Article 395 but subject to the other provisions of this constitution, all the laws in force in the territory of India immediately before the commencement of this constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority. The expression law in force in Article 372(1) includes not only statutory law but also customary law or any matter of procedure which was prevalent in India and duly recognised by the Court, although it was not enacted by the legislature. The expression law in force, thus, includes summary procedure in contempt prevalent in India before commencement of the Constitution

⁹ M.P. Jain, 'Out Lines of Indian Legal and Constitutional History' (5th edn 2019 Lexis Nexis)136

¹⁰ Dr. Durga Das Basu, Introduction to the Indian Constitution of India, (20th edn 2011, Lexis Nexis)111

of India. Thus, the Contempt law is not violative of any of the Constitutional Provisions and it is, thus, constitutionally valid.

An issue is as to whether the contempt jurisdiction is based on some statutory provisions, or it is inherent jurisdiction available to them on account of being the court of record. The contempt law in India has been developed mainly based on English contempt law. In England a superior court of record has been exercising the power to indict a person for its contempt in a summary manner. This power is taken as a necessary attribute of a superior court of record. In India also, this practice has been followed. Now it is settled that the superior courts (Supreme Court & High Court) being court of record have inherent power to punish for the contempt of court.

Conclusion:

The constitutional validity of contempt of court is a confronting examine to resolve. Contempt of court is a significant legal violation in India. It refers to any action or behaviour that challenges, refuse to comply, or interferes with the authority or majesty of a court. The law of contempt is devised to maintain the honesty and purity of the judicial system and to ensure that the court's orders and judgments are admired. In India, the offence of contempt of court is committed when a person either violates a court order (civil contempt), or when a person says or does anything that scandalizes, prejudices, or interferes with judicial proceedings and the administration of justice (criminal contempt). Contempt of court can be punished with imprisonment or a fine, or both. Constitution is the supreme law of the land, and all the laws are subordinate to the Indian constitution. In case of contempt of Court only superior court have the jurisdiction to decide and punish the contemner. Article 19(1)(a) of the Constitution gives the right of freedom of speech and expression to all citizens. Articles 129 and 215 give the power of contempt of court to the higher judiciary, and this power limits the freedom granted by Article 19(1)(a). The law of contempt has a vague and wandering jurisdiction with uncertain boundaries. Such a law, regardless of public good, may unwittingly trample upon civil liberties. In a democracy, the people should have the right to criticize judges. The purpose of the contempt power should not be to uphold the majesty and dignity of the court but only to enable it to function. Therefore, contempt law is valid, and it should not violate the ant provision of Indian constitution, because no one law should not inconsistent with the provision of Indian constitution.