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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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CONTEMPT OF COURT IN INDIA: A CONSTITUTIONAL CONUNDRUM

AUTHORED BY - PRINGLE SINGH

Abstract

In light of the recent Prashant Bhushan case on contempt of Court, the constitutionality of the same has yet again been contested. Like sedition laws, contempt laws are seen as archaic colonial laws which are outdated and against democratic values. This paper seeks to analyse the provision for criminal contempt, especially scandalizing of court. It would be wrong to hold the entire legislation invalid. However, the basic structure principles of arbitrariness and reasonableness have been applied to analyse the constitutionality of holding scandalizing of court as liable for criminal punishment. Issues regarding the role of intention, the proximate harm deemed to be caused and the legislative limits of criminal contempt provision have been discussed. Doctrinal method of research, through study of cases and the Constitution have been utilised to reach the conclusion. This will not take into consideration the politics involved, and is strictly a legal analysis.

Keywords: Contempt, Criminal Contempt, Scandalizing of Courts, Constitutionality.

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Introduction

The principle of Equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, as the varying needs of different classes of persons often require separate treatment. It would be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go.[1] The principle does not take away from the State the power of classifying persons for legitimate purposes.[2] If a law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the change of denial of equal protection on the ground that it has no application to other persons.[3] The reasoning behind the provisions for contempt may be described by one of the early judgments passed in this

[1] Pannalal Bansilal Pitti v. State of A.P, (1996) AIR SC 1023.
[2] Anukul Chandra Pradhan v. Union of India, (1997) 6 SCC 1.
[3] Sasadhar Chakravarty v. Union of India, (1997) AIR SC 336.

respect. "And whenever men's allegiance to the law is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice and in my opinion calls out for a more rapid and immediate redress than any obstruction whatsoever…”.[4] To perform their duty effectively, the Courts must have the power to enforce their orders and punish calculated acts of contempt aimed to undermine their authority.[5] The contempt jurisdiction is to uphold the majesty and dignity of the courts as majesty and image of the courts cannot be allowed to be disdained.[6] However, not all provisions of the Contempt of Courts Act, maybe constitutional.

Contempt of court, a legal doctrine designed to uphold the dignity and authority of the judiciary, has been a subject of considerable debate and scrutiny. This research paper delves into the intricacies of contempt of court law in India, examining its historical evolution, the current legal framework, and its impact on fundamental rights, particularly freedom of speech and expression. It aims to critically analyze the delicate balance between protecting the judiciary's independence and upholding the principles of open justice and public scrutiny.

Historical Evolution of Contempt of Court

The concept of contempt of court has its roots in English common law, where it was developed to protect the administration of justice from interference. In India, the colonial era saw the enactment of the Contempt of Courts Act, 1926, which laid the foundation for the current legal framework. The post-independence period witnessed significant developments, including the incorporation of contempt powers within the Constitution and subsequent amendments to the Contempt of Courts Act.

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The Contempt of Courts Act, 1971

The Contempt of Courts Act, 1971, provides the primary legal framework for contempt of court in India. It defines two types of contempt: civil contempt and criminal contempt.

- **Civil contempt:** Disobedience of any judgment, decree, or order of a court.
- **Criminal contempt:** Acts or omissions that tend to interfere with the administration of justice or lower the authority of a court.

The Act also outlines the procedures for initiating and adjudicating contempt proceedings.

[4] Wilmot in Rex v. Almon (1765) Wilmot's Notes, 243.
[5] Gilbert Ahnee v. Director of Public Prosecutions, (1999) 2 AC 294.
[6] Vishram Singh Raghubanshi v. State of U.P., (2011) AIR SC 2275.

Arbitrariness and Criminal Contempt

The state is bound to protect every human being from inequality.[7] It may be noted that the right to equality has been declared by the Supreme Court as the basic feature of the Constitution[8] emphasised by the Preamble to the Constitution of India.[9]

Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity. The expression arbitrarily means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.[10] An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness.

The terminology used in Section 2 (c)(i) is “scandalizes or tends to scandalize”. The Act itself does not provides the definition for “scandalize”. A pleading is said to be `scandalous' if it alleges anything unbecoming the dignity of the court to hear or is contrary to good manners or which charges a crime immaterial to the issue. But the statement of a scandalous fact that is material to the issue is not a scandalous pleading.[11] Various precedents have settled that any statute which contains terminology which fails to determine the limits of its liability is to be held invalid.[12] A law which lacks determinative value of its limitations and definitions for its prohibition is void. “It is insisted or emphasized that laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning..."[13] The terminology used in the sub-section is vague in nature and fails to determine the limits or the scope of the liability it serves to impose.

The thread of reasonableness runs through Chapter III of the Constitution of India. What is manifestly arbitrary is unreasonable and violative of Rule of Law, hence Article 14. This is especially to be addressed when it comes to statutes which prescribe criminal liability. By the nature of being a penal

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[7] National Human Rights Commission v. State of Arunachal Pradesh, (1996) AIR SC 164.
[8] Indra Sawhney v. Union of India, AIR. 200 SC 498.
[9] Raghunath Rao, Ganapath Rao v. Union of India, (1993) AIR SC 1267.
[10] Sharma Transport v. Government of A.P., (2002) 2 SCC 188.
[11] Millington v. Loring 50 LJQB 214.
[12] State of Bombay v. F N Balsara, (1951) SCR 682.
[13] Kartar Singh v. State of Punjab, (1994) 3 SCC 569.

provision itself, the sub-section ought to have used phrases more restrictive and well-defined to prevent inconsistency in application. There are several uncertainties arising from the offence of criminal contempt. These include, whether or not allegations of corruption must be proved factually for purposes of defence, whether intention is material, whether matters of public interest must be exempted and whether truth constitutes a valid defence, among many others.[14]

Contempt of Court and Fundamental Rights

The exercise of contempt powers inevitably impinges upon fundamental rights, particularly the freedom of speech and expression. This has led to a complex interplay between the judiciary's need to protect its authority and the public's right to criticize judicial actions. The Supreme Court has attempted to reconcile these competing interests by developing doctrines such as fair criticism and reasonable limits on free speech.

Critical Analysis of Contempt Law

The contempt of court law has been subjected to considerable criticism, primarily on the grounds that it is overly broad and susceptible to misuse. Critics argue that the law has been used to stifle legitimate criticism of the judiciary and to protect judges from scrutiny. There have been calls for reforms to narrow the scope of contempt, introduce clearer definitions, and provide more robust safeguards against its misuse.

Comparative Analysis

A comparative analysis of contempt laws in other jurisdictions can provide valuable insights into alternative approaches. Countries like the United Kingdom and the United States have adopted different models for balancing the judiciary's authority with freedom of speech. Examining these models can inform potential reforms in India.

Reasonability of Restriction

Freedom of Speech and Expression guaranteed by Article 19 (1)(a) has been the most cherished fundamental right and is one of the pillars of a democratic nation like India. Sub-section 2 of Article 19 provides for reasonable restriction. It has been established that contempt of court does fall under

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[14] Law Commission, Contempt of Court: Scandalizing the Court (Law Com No 335, 2012) para 47.

reasonable restrictions. However, criminal contempt specifically for scandalizing the court is an overreach of this restriction, surpassing as unreasonable in nature. One should be able to express one's ire against the judiciary without fear.[15] It has been established by law that any restriction under Article 19 (2) must be given the narrowest interpretation and any law that goes overboard it must be struck down.[16] There exists a distinction between mere defamation of any individual judge and contempt of court.[17]

The language of the sub-section allows for imposing criminal liability in cases where there isn't any contempt but mere criticism. Restrictions cannot be imposed upon mere possibilities of harm. There should be a proximate and direct nexus between the expression made and a harm caused against public interest.[18] "Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears.

"Administration of justice and Judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by their conscience and oath of their office, that is, to defend and uphold the Constitution and the laws without fear and favour."[19] "The law of contempt is not made for the protection of Judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate."[20] "Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself".[21]

The impugned sub-section also fails the proportionality test[22] as there exists no legislative aim other than the one which the colonial rule meant to effectuate for purposes of maintaining control over the

[15] C. K. Daphtary & Ors V. O. P. Gupta, (1971) AIR 1132.
[16] Shreya Singhal v. Union of India, (2015) 5 SCC 1.
[17] Brahma Prakash Sharma v. State of U.P., (1954) SCR 116.
[18] S. Rangaraian v. P Jagjivan Ram, (1989) 2 SCC 574.
[19] P.N. Dua vs. P. Shiv Shanker and Ors., (1988) 3 SCC 167.
[20] Craig v. Harney, (1947) 331 US 367.
[21] Regina v. Commissioner of Police of the Metropolis (1968) 2 All ER 319.
[22] K.S. Puttaswamy v. Union of lndia, (2019) 1 SCC 1.

cost of restricting the nationals. Further, there has been no balance struck between the restriction imposed and the freedom on which it has been imposed.

The impugned section is indeed a peculiar case where the judiciary is allowed to use its power in excess. Further, it is provided that a law must be so established that it is well-defined, with an established procedure which is just, fair and reasonable and further isn't violative of Articles 14 and 19. Failing to do so, such a law is to be held violative of personal liberty guaranteed under Article 21 and the Preamble of the Constitution of India.[23]

Conclusion

The focal point of contempt is not the personal vilification but the obstruction to administration of justice. A distinction must be made between a mere libel or defamation of a judge and what amounts to a Contempt of the court. The test in each case would be whether the impugned publication is a mere defamatory attack on the judge or whether it is calculated to interfere with the administration of justice or the proper administration of law by his part. It is only in the latter case that it will be punishable as contempt. The law of contempt of court need not be abolished. It is a necessary restriction upon freedom of speech. What is desired is that it should be re-defined to include only punishment of actual or threatened interference with the administration of justice. While it is true that it is impossible to envisage all the situations that arise where the contempt law could be invoked against an allegedly offending comment, a more precise test could have been evaluated. This research paper has explored the historical evolution, legal framework, and critical analysis of contempt of court law in India. It highlights the need for a nuanced approach that respects the judiciary's authority while upholding the principles of open justice and freedom of speech.

[23] Maneka Gandhi v. Union of India, (1990) 1 SCR 535.