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Scandalising the Courts: A Ground for Contempt

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Why in News

The Karnataka High Court has issued notice to the Union government on a **PIL petition**, challenging the **constitutional validity of a provision of the Contempt of Courts Act, 1971**, that makes “**scandalising or tends to scandalising courts**” as a ground for contempt.

Public Interest Litigation (PIL) stands for a legal action taken by a public spirited person in order to protect public interest (any act for the benefit of the public).

Key Points

- **Grounds for Contempt:**

- **Contempt** is the **power of the court to protect its own majesty and respect**. The power is **regulated but not restricted in the Contempt of Courts Act, 1971**.
 - The expression ‘contempt of court’ has **not been defined by the Constitution**.
 - However, **Article 129** of the Constitution conferred on the **Supreme Court** the power to punish contempt of itself. **Article 215** conferred a corresponding power on the **High Courts**.
- The **Contempt of Courts Act, 1971** defines both **civil and criminal contempt**.
 - **Civil contempt [Section 2(b)]** refers to **wilful disobedience to any judgment of the court**.
 - **Criminal contempt** can be invoked if an act:
 - Tends to **scandalise or lower the authority** of the court [**Section 2 (c)(i)**]; or
 - Tends to **interfere with the due course of any judicial proceeding** [**Section 2 (c)(ii)**]; or
 - **Obstruct the administration of justice** [**Section 2 (c)(iii)**].
 - Section 5 of the Act provides that **“fair criticism” or “fair comment”** on the merits of a finally decided case **would not amount to contempt**. But the **determination of what is “fair” is left to the interpretation of judges**.
 - The Act was **amended in 2006** to include the **defence of truth** under Section 13 of the original legislation. Implying that the court must permit justification by truth as a valid defence if it is satisfied that it is in the public interest.

- **Arguments of the Petitioners:**

- **Section 2(c)(i)** of the Act **violates the right to free speech and expression** guaranteed under **Article 19(1)(a)** and **does not amount to a reasonable restriction under Article 19(2)**.
- Though the petitioners have not **challenged the constitutional validity of Section 2(c) (ii) and Section 2(c)(iii) of the Act**, they have contended that **rules and guidelines must be framed** defining the process that superior courts must employ while taking criminal contempt action, keeping in mind principles of natural justice and fairness.
- In the **contempt jurisdiction**, the petitioners have contended, the **judges may often be seen to be acting in their own cause**, thus **violating the principles of natural justice** and **adversely affecting the public confidence** they seek to preserve through the proceeding.

- **Issues that Get Highlighted:**

- **Subjectivity:**

- The word **‘scandalising’ is subjective** and depends on the perception of the concerned person. As long as the words ‘scandalising the court’ are present (in the statute book), it will be **susceptible to arbitrary exercise of power.**
- One of the disturbing trends is the **propensity of the court to treat personal attacks on their character as contempt.**

It is often forgotten that the law of contempt is **not meant for protecting the judges, but it is for the protection of the institution of the judiciary.**

- **Violation of Freedom of Expression:**

- A **strong judiciary in a democratic republic** is the bulwark of masses of this country. It **must work towards** fulfilling the goals set out in the constitution - to secure social economic and political justice for the masses and to uphold their fundamental rights.
- If the **judiciary is not functioning keeping in mind these objectives, an individual should have the freedom to point out the same** and it cannot be said to be criminal contempt. Freedom of expression is a fundamental right.

- **United Kingdom’s Decision to abolish ‘scandalising the judiciary’ as a form of contempt of court:**

- **India’s contempt of court law is derived from British law, but in 2013, the United Kingdom abolished ‘scandalising the judiciary’ as a form of contempt of court on the grounds that this went against freedom of expression while retaining other forms of contempt** like behaviour causing disruption or interference with court proceedings.
- **One of the reasons** why the UK repealed scandalising judiciary as a ground for contempt is **to allow constructive criticism.**

- **Does not recognise one of the basic principles of natural justice, i.e., no man shall be a judge in his own cause.**

Thus, in contempt proceedings, the court arrogates to itself the powers of a judge, jury and executioner which often leads to perverse outcomes.

Way Forward

- **Freedom of speech** is the most fundamental of the fundamental rights and the restrictions thereupon have to be minimal. The **law of contempt of court can impose only such restrictions as are needed to sustain the legitimacy of the judicial institutions.** The law need not protect the judges. It has to protect only the judiciary.

- A contempt notice issued without proper scrutiny could cause great hardship to people who are engaged in public life. Freedom must be the rule and the restriction must be an exception.
- In contemporary times, it is more important that **courts are seen to be concerned about accountability**, that allegations are scotched by impartial probes rather than threats of contempt action, and processes are transparent.

Source: TH