

Polity Class 17

1st August, 2023 at 9:00 AM

REVISION OF THE PREVIOUS CLASS(09:15 AM):

Contempt of court:

- It refers to disrespecting/disreputing the court and reducing its reputation.
- This power has been provided to the supreme court and the high court in India in Articles 129 and 215 respectively.
- In case of contempt of the lower court, the concerned high court is supposed to take the required action.
- The objective behind providing contempt powers to the court is to insulate the institution of the judiciary from unfair criticism and to prevent the erosion of judicial legitimacy.

There are two types of contempt mentioned under the Contempt of courts act, of 1971 :

Criminal contempt -

- It is an act that tries to scandalize or lower the authority of the court or interferes with judicial proceedings or the administration of justice.
- Criminal contempt is punishable by imprisonment or a fine or both.

Civil Contempt:

- It refers to willful disobedience of a decree or an order of the court or denial of an undertaking provided to the court.

According to the act, a few defenses have been provided with respect to contempt of court:

- Fair criticism of judicial order.
- Innocent publication and distribution of matters related to proceedings of the court.
- If the court is convinced that the expression was truthful and in the public interest.

Q. What do you understand by contempt of court? Elaborate with the help of provisions under the Contempt of courts act, 1971.

Q. Often criticism is made against the judiciary that it has been too sensitive with respect to the use of such powers. Do you agree with this view? Analyse while noting the rationale for retaining such a provision in the law.

ISSUES WITH RESPECT TO MISUSE OF CONTEMPT OF COURT (09:53 AM):

- The judiciary has been often accused of misusing this power to protect the reputation of individual judges.
- In a democracy, people often criticize the legislature and executive and therefore it is beyond explanation why they should not have the right to criticize the judiciary.

- Several times judiciary has not used these powers against the members of the executive or legislature or former judges but the same standards have not been followed in the case of the common man.
- Example-Prashant Bhushan case, Kunal Kamra case, and Spycatcher Case
- This law originated in colonial times to prevent the judicial system from getting discredited but the justification no longer holds true in 21st-century democracy where the authority is not commanded but built upon public acceptance.
- The institutional reputation of the courts is far too robust to be affected due to irresponsible comments made by individuals.
- This power has been used in a restricted manner by the courts in other democratic countries and the Indian courts may learn from the same.
- The definitions provided in the Contempt of court act are too vague and subjective and therefore prone to misuse.
- The use of these powers is also criticized on grounds of violating "principles of natural justice".

ARGUMENTS IN FAVOUR OF USING THE CONTEMPT POWERS BY THE COURTS(10:15 AM):

- The absence of contempt powers may lead to chaos and anarchy due to the non-implementation of judicial verdicts.
- A mere possibility of misuse of the law does not mean that the law should be done away with.
- The judiciary keeps a check over the executive and legislature and without this power, they may become uncontrollable.
- Certain individuals are habitual offenders of disreputing the courts and therefore strict provisions are required under the law to set the right kind of examples.

Defamation

- Defamation refers to making a false accusatory statement against an individual or specific group with the intention of harming one's reputation.
- Personal insults do not form a part of defamation.
- In fact, for an act to be called defamation it must be carried out in public.

The law provides two kinds of remedy in case of defamation in India:

Civil defamation:

- An individual may demand compensation depending upon the damage caused to his reputation
- The compensation would depend upon the stature or reputation of a person in society.

Criminal Defamation:

- If an act of defamation affects society at large, a criminal route may also be taken
- Section 499 of the Indian Penal Code(IPC) defines the offense of defamation.
- It is the provisions related to criminal defamation that have been a matter of debate and discussion.

ARGUMENTS IN FAVOUR OF DECRIMINALISING DEFAMATION(10:40 AM):

- As per many analysts, criminal defamation ends up imposing unreasonable restrictions on the freedom of speech and expression of an individual.
- Several people believe that criminal defamation provisions are misused by the state and powerful individuals to curb legitimate criticism of government agencies.
- Dissent is an essential feature of any democracy and it provides legitimate grounds to the state to curb this dissent.
- it goes against the global trend of decriminalizing defamation.
- In 2011, the International Covenant on Civil and political rights(ICCPR) called upon the member states to abolish criminal defamation as it intimidates the citizens and scarce them from exposing the wrongdoing of the powerful.

Arguments in favor of retaining criminal provisions related to defamation:

- In the Subramanian Swamy vs. Union of India case, a two-judge bench of the supreme court upheld the constitutional validity of defamation provisions.
- The court held that the term was clear and unambiguous, therefore limiting its misuse.
- It also recognized the importance of freedom of speech and expression in a democracy but pointed out that it is subject to reasonable restrictions.
- The court stated that Section 499 of IPC does not amount to excessive restrictions and that society is a collection of individuals and what affects an individual affects the society as a whole.
- Therefore it is valid to treat defamation as a criminal offense.
- The court stated that reputation that is equivalent to dignity should also be protected as it is a part of Article 21 and freedom of speech and expression should not be provided so much room that the dignity of an individual is under threat.
- The court relied upon the concept of fraternity and fundamental duties according to which every individual is expected to respect the dignity of others.
- Therefore criminal defamation is not against the idea of freedom of speech and expression.
- This law has been in the Indian law books for more than 70 years and it has neither diluted India's vibrant democracy nor abridged free speech.
- Therefore concerns related to its misuse are unfounded.

- Attempts should be made to sensitize the executive and lower judiciary to prevent the misuse of this law.
- Nearly providing monetary compensation is not enough at times and only a criminal provision can undo the harm caused due to an act of defamation.

Q. A massive debate has been raised in the country with respect to decriminalizing defamation. Critically analyze the idea of removing criminal provisions related to defamation under the IPC.

SEDITION(11:16 AM):

- Tilak went to jail thrice under sedition charges and Gandhi ji went to jail twice under sedition charges.
- In *Kedarnath vs. the state of Bihar*, the court upheld the validity of sedition law but narrowed down its meaning to include only such acts that cause disorder and affect the sovereignty and integrity of India.
- Therefore only grave occurrences due to the exercise of free speech may be charged with sedition.
- In *Sanskar Marathe vs the State of Maharashtra*, the court held that mere strong criticism of the government does not amount to sedition.
- It held that freedom of speech and expression can not be encroached upon in the name of sedition if there is no insight meant to violence.

The meaning of the term "security of the state":

- Freedom of speech and expression should not be exercised in such a manner that it affects and threatens the foundation of or tends to overthrow the state.
- There is no doubt that freedom of speech and expression is important in a democracy but without securing the state, even the protection of freedom of speech and expression would become impossible.
- Yet at the same time, this term should be interpreted in the narrowest possible manner

Public order:

- The maintenance of public order is of utmost importance and freedom of speech and expression must not be exercised in such a manner that it affects general peace and tranquility in society.
- For example, Section 295A and Section 153A of the IPC punish those acts where a deliberate attempt is made to outrage the religious feelings of a class or section of people or to promote enmity between different groups on the basis of religion, caste, etc.

Q. What do you understand by freedom of speech and expression? Does it cover hate speech as well? Why do films in India stand on slightly a different plane from other forms of expression? Discuss

Friendly relations with a foreign country:

- The idea behind the inclusion of this ground is the vicious agenda against foreign states having friendly relations with India may cause significant embarrassment to the country and affect India's relationship with such a state.
- Therefore indulging in such an exercise may be restricted according to Article 19(2).

Sovereignty and Integrity of India:

- Freedom of speech and expression can not be used to affect India's sovereignty and integrity as it is of utmost importance.
- Certain laws have been enacted to restrict freedom of speech and expression on this ground.
- For example under UAPA, 1967, the Government may impose restrictions on groups and activities that are a threat to India's sovereignty and integrity.

Incitement to an offense:

- Freedom of speech and expression should not be used to incite an offense as defined in the IPC.
- Therefore hatching a criminal conspiracy and abetting a crime have also been made an offense under Indian criminal law.

THE TOPIC FOR NEXT CLASS WILL BE CONTINUATION OF THE SAME TOPIC - Grounds of Sedition