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FUNDAMENTAL RIGHTS AND CONTEMPT POWER OF COURTS AND LEGISLATURE *

Introduction

On a common understanding contempt means disgrace, scorn or disobedience. In law, it is an offence against dignity of a court or legislative body.[1]The basic philosophy behind contempt power is the authority to deal with any act or omission which obstructs or impedes the performance of important functions.[2] To ensure this, judiciary as well as legislature is vested with contempt powers. The origin, growth, and the use of the contempt power of legislature and court are somewhat in the same manner. It seems that contempt power imposes restrictions on different fundamental rights. The article looks into the conflict between fundamental rights and contempt powers of both courts and the legislature and judicial approach to such conflict.

Indian Constitution and Contempt of Courts Acts

The contempt power of court imposes restriction on freedom of speech, expression and conducts which interfere with administration of justice. Thus the Contempt of Courts Act which imposes restriction on fundamental rights must be constitutionally valid. The constitutional validity of Contempt of Courts Act, 1926, 1952 and 1971 was challenged in different cases. Firstly the matter was considered by the by the Allahabad High Court in *Lakhan Singh v Balbir Singh*[3]. In this case, based on the U.S. principle laid down in *Bridges v California,*[4] it was argued that the restriction on freedom of speech and expression on the ground of contempt of court could be treated as reasonable only if there is clear and present danger to administration of justice. It was also contended that as the principle was not incorporated in the 1926 and 1952 Contempt of Courts Acts, both the Acts were unreasonable and violative of fundamental rights guaranteed

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[1] JUSTICE TEK CHAND, THE LAW OF CONTEMPT OF COURT AND OF LEGISLATURE 2 (4d ed. 1997).
[2] J.A.G. GRIFFITH & MICHAEL RYLE, PARLIAMENT, FUNCTIONS, PRACTICE AND PROCEDURES 92 (1989).
[3] AIR 1953 All. 342.
[4] 86 L Ed 192 (1941)

under Part 111 of the Indian Constitution. Court rejected the argument and reached the conclusion that the U. S. principle, 'clear and present danger to administration of justice', is not applicable in India and the restrictions contained in the Act are reasonable and thus cannot be treated as violative of fundamental rights.

In *Legal Remembrancer, Bihar v Bibhuti Das Gupta and others,*[5] the Patna High Court also looked into the Constitutional validity of Contempt of Courts Act, 1952. The main ground for challenging the constitutional validity was that the Contempt of Courts Act did not contain definition for contempt of court. It was also contended that as the Act did not define contempt of court, it is not possible to look into whether the restrictions are reasonable or not. The contention was rejected on the ground that though the statute did not define contempt of court, through judicial decisions the meaning of contempt of court has got well settled and lack of definition for contempt of court will not make the Act unconstitutional[6].

In *State v The Editor, Printer and Publisher of Mathrubhumi and others*[7], the constitutional validity of Contempt of Courts Act, 1952 was challenged mainly on the ground that the Act imposes restriction regarding publication not only on pending judicial proceedings but also on imminent judicial proceedings. It was argued that the imposition of restriction with respect to publication regarding imminent judicial proceeding should be treated as violation of Art. 19(1)(a). However, the restriction was found to be reasonable taking into consideration the importance of fair administration of justice.

Later in *E.M.Sankaran Namboodiripad v T. Narayanan Nambiar*[8], the matter was considered by the Supreme Court. In this case the constitutional validity of the Contempt of Courts Act as such was not challenged; but it was argued that the law of contempt must be read without encroaching upon the guaranteed freedom of speech and expression contained in Art.19(1)(a) of the Constitution. Answering the contention, the Supreme Court reached the conclusion that reasonable restriction could be imposed on freedom of speech and expression to prevent contempt of court, indirectly indicating that the restrictions under the contempt of Court Act 1952 are reasonable. The constitutional validity of summary procedure for punishing the contemnor contained in the Contempt of Courts Act was challenged in *Sher Singh v Raghu Pati Kapur.*[9] It was argued that contempt of court is a criminal offence and providing a separate procedure for contempt is an unreasonable classification and thus violative Art. 14 of the Constitution. However,

[5] AIR 1954 Pat. 203.
[6] Somewhat the same argument was raised and the same conclusion was reached by the Kerala High Court also in K.P.Noordeen v A.K.Gopalan, AIR 1968 Ker. 301**.**
[7] AIR 1955 Ori. 36.
[8] 1970 (2) SCC 325.
[9] AIR1968 P&H 217.

the Punjab and Haryana High Court rejecting the argument and adopted the view that contempt of court is an offence of a class by itself and the separate procedure provided for it was in the public interest and thus could not be treated as an unreasonable[10].

Thus though the Contempt of Courts Act, 1926 and 1952 were found constitutionally valid, the main criticisms against the Act was two folded. The first was that the contempt of Courts Act did not contain definition for contempt of court. The second was that contempt proceedings could be taken not only for interference with pending judicial proceedings but also for interference with imminent judicial proceedings.

Both these criticisms were mended in the Contempt of Courts Act, 1971. Sec. 2 of the Act classifies contempts under civil and criminal heads and defines both. Similarly under the present Act, to attract contempt of court by interference with fair trial, it is necessary that the proceeding must be pending.[11] Thus, a publication of any matter, even if it interferes with administration of justice, will not amount to contempt of court under the present Act, if the proceeding is only imminent.[12] However, the constitutional validity of the Contempt of Courts Act, 1971 was also challenged *Rama Dayal Markarha* v *State of M.P.*[13] and the Court reached the conclusion that the restrictions contained in the Contempt of Courts Act are only reasonable.

Though the Parliament's power to regulate the contempt jurisdiction of all courts including Supreme Court is recognized under Entry 77 of List- 1, Seventh Schedule, and Entry 14 of the

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[10] *Id*. at 230.

[11] S. 3 (2) reads-: Notwithstanding anything to the contrary contained in this Act or any other law for time being in force, the publication of any such matter as is mentioned in sub – section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court.

[12] S. 3 of Contempt of Courts Act 1971 reads- **Innocent publication and distribution of matter not contempt**.-

(1) A person shall not be guilty of contempt of Court on the ground that he has published (whether by words spoken or written, or by signs, or by visible representations, or otherwise) any matter which interferes or tends to interfere with, or obstruct or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at that time of publication if at that time he had no reasonable ground for believing that the proceeding was pending.

Explanation :- For the purpose of this section, a judicial proceeding –

(a) is said to be pending –

(A) in the case of civil proceeding, when it is instituted by the filing of a plaint or otherwise;

(B) in the case of a criminal proceeding under the Code of Criminal Procedure or any other law –

(i) where it relates to the commission of n offence, when charge - sheet or chellan is filed, or when the court issues summons or warrant, as the case may be, against the accused, and

(ii) in any other case, when the court take cognizance of the matter to which the proceeding relates, and

in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired;

(b) which has been heard and finally decided shall not be deemed to be pending merely by reason off the fact that proceeding for the execution of the decree, order or sentence passed therein are pending.

[13] AIR 1978 SC 921.

Concurrent List, and the Parliament has enacted the Contempt of Courts Act, 1971 in pursuance of powers under the above Entries, whether the contempt power of Supreme Court and High Courts under Art. 129 and 215 could be regulated by the Contempt of Courts Act, 1971 is an ambiguous question even now. The generally accepted view in this regard is that when a contempt proceeding is initiated under Art.129 or 215, the Contempt of Courts Act is not applicable as constitutionally vested powers cannot be regulated by statute[14].

This leads to the knotty question regarding the conflict between fundamental rights and contempt proceeding initiated by the High Courts and Supreme Court as courts of record under Art. 129 and 215. The question in this regard is whether the contempt proceeding initiated by the High Courts or the Supreme Court under Art. 129 or 215 could be challenged as violative of any of the fundamental rights guaranteed under part 111 of the Constitution. The question was raised in *re: Vinay Chandra Misra.*[15] In this case it was argued that the contempt proceeding initiated under Art. 129 could be challenged on the ground of unreasonableness by invoking fundamental rights under Art. 19(1) even when a proceeding is initiated under Art. 129. Rejecting this argument and answering the question superficially the Supreme Court observed that the Court could not see any conflict between the provisions of Articles 129 and Art. 19(1)(a) and Art. 19(1)(g) read with Art. 19(2) and 19(6) respectively.[16] The matter was again considered in *Dr.D.C.Saxena v Chief Justice of India.*[17] The issue in this case was regarding the application of Art. 19(1)(a) when contempt proceeding was initiated by the Supreme Court under Art. 129. However, the contention was treated as irrelevant as the contempt proceeding was initiated under Art. 129.[18] It was held that the Supreme Court as a court of record has independent contempt power under Art. 129 and the same is not subject to Art. 19(1)(a).[19] Thus it was opined that where a proceeding is initiated under Art. 129, Art. 19(1)(a) has no relevance.[20] The same line of approach was applied in *Bar Council of India v High Court of Kerala,*[21]were it was held that the power under Art. 129 and 215 are independent of Art. 19(1)(a).[22]

[14] See Dr. A.P. Rajeesh, *Contempt of Court and Constitution of India*, 7 JILT 72 (2012)
[15] (1995) 2 SCC 584. In this case the constitutional validity of the contempt proceeding was challenged not only under Art. 19(1)(a) but also under 19(1)(g) for the reason that the contemnor was a lawyer by profession. It was argued that the contempt proceeding and the punishment interfere with freedom of profession under 19(1)(g) for it adversely affected the right of lawyer to practice.
[16] *Id.* at 625.
[17] (1996) 5 SCC 216.
[18] *Id*. at 254.
[19] *Id*.
[20] The general impression created by the judgment is that the power to punish for contempt of court under Art. 129 and 215 is not subject to Art. 19(1) (a). http://www.legalserviceindia.com/article/l255-Contempt-of-Court.html, (last updated on Dec 01, 2014).
[21] 2004 (2) KLT 485 (SC).
[22] *Id*. at 491.

The application of Art. 21 in a contempt proceeding initiated under Art. 129 was considered by the Supreme Court *Laila David v State of Maharashtra and others.*[23] In this case the contempt proceeding was initiated by the Supreme Court. A Bench Consisting of Arijit Pasayat and A.K.Ganguly, JJ, failed to reach a consensus regarding application of Sec. 14 of the Contempt of Courts Act in a proceeding initiated under Art. 129. On this point, Arijit Pasayat J reached the conclusion that as the contemnors stated in the open court that they stood by what they said and did in the Court, there was no need to comply with the procedures of Sec.14.[24] Disagreeing with Arijit Pasayat J, Justice Ganguly observed that the safeguards statutorily engrafted under Sec. 14 are basically reiterating the fundamental guarantee given under Art. 21 of the Constitution.[25] The procedure under Sec. 14 was treated as procedure established by law and the Court being guardian of fundamental rights, cannot do anything by which the right is taken away or even abridged.[26] As there was no consensus among the two judges regarding the application of Sec. 14, in a contempt proceeding under Art. 129, the matter was referred to another Bench.[27] The Bench observed that although Sec. 14 of the 1971 Act lays down the procedure to be followed in cases of criminal contempt in the face of the court, it does not preclude the court from taking recourse to summary proceedings when a deliberate and wilful contumacious incident takes place in front of their eyes and the public at large.[28] Thus it was laid down that it is not necessary for the Court to follow the procedure contained in the Contempt of Courts Act. When the procedure contained in Sec. 14 of the Act was treated as the fundamental guarantee given under Art. 21 of the Constitution need not be followed in a proceeding initiated under Art. 129, the indication of the decision is that Art. 21 of the Indian Constitution is not applicable to contempt proceeding initiated by the Supreme Court under Art. 129 of the Constitution. However, it is not clear how such a statutory procedure, 'which was treated as procedure established by law' could be neglected by the Supreme Court if proceeding is initiated under Art. 129.

The attitude adopted by the Court in this regard is unsatisfactory. Fundamental rights have a sacred position in Indian Constitution. Supreme Court and High Courts are bound to uphold and protect the fundamental rights. It is true that reasonable restriction can be imposed on this freedom to prevent an equally important right free and fair administration of justice. But in all such cases the restrictions must be reasonable. The present approach of the Supreme Court has destroyed the very basis of balance between fundamental rights and contempt power of courts of

[23] (2009) 4 SCC 578. In this case when a matter was taken up by the Supreme Court for hearing, the contemnors started shouting and used offensive intemperate and abusive language against judges and one among the contemnors even dared to throw chappel at the judge.
[24] *Id.* at 579 -580. The contemnor was punished to undergo three months simple imprisonment. *Id*.
[25] *Id.* at 584.
[26] *Id*.
[27] Leila David (6) v State of Maharashtra and others, (2009) 10 SCC 337.
[28] *Id*. at 345.

record. No reasons were pointed out for adopting the approach that why contempt proceeding initiated under Art. 129 can't be challenged on the ground of violation of fundamental rights. The only inference which we could reach in this regard is that the Supreme Court doesn't want its contempt powers be regulated by law including the fundamental right guaranteed under part 111 of the Constitution.

Contempt Power of Legislature

Coming to the contempt power of Legislature, though the term 'Parliamentary Privilege' is used to express powers privileges and immunities of the House, the right of the House to have absolute control of its internal proceedings may be considered as its privilege and right to punish one for contempt may be more properly be described as its power.[29] This penal contempt power was enjoyed by the British Parliament for centuries. It was further settled that, in exercising its penal powers the House does not rely on courts but has its own penal jurisdiction.[30]

Originally the principal privileges, which include, freedom of speech in debate, freedom from arrest, and freedom of access to Queen 'whenever occasion shall require', were claimed by the Speaker from the Sovereign at the beginning of each Parliament and the Sovereign sanctioned these freedoms subject to some conditions.[31] The position continued till these freedoms without any restrictions were finally established by the Bill of Rights enacted in 1689.[32]

The origin of the punitive power of the Parliament lies in the mediaeval concept of parliament as primarily a court of justice, the High Court of Parliament.[33] Though this power was treated as "keystone of parliamentary privileges", the power to commit an offender to prison for contempt of Parliament has fallen into disuse.[34] In spite of the fact that Parliament had not invoked its contempt power to commit a person to prison for over a century, and for over a century there is no instance of conflict between House and judiciary, there is a long history of conflict between contempt power of legislature and role of courts in English law.[35]

The conflict between individual freedom and contempt power of Parliament is projected as conflict between Parliament and judiciary for the individual freedom against contempt power of

[29] Parliamentary Privilege, http://www. aph. gov. au/ senate/ pubs/ briefs/ brief11. htm. (Last updated on Dec. 08, 2012).

[30] The power of the House to punish for its own breach of privilege and contempt is treated as the 'keystone' of Parliamentary privilege. C. KASHYAP, PARLIAMENTARY PROCEDURE 1561(2003).

[31] GRIFFITH, *supra* note 2.

[32] Article 9 of Bill of Rights 1688 provides -: *Freedom of speech*- That the freedom of speech and debates and proceedings in Parliament ought not be impeached or questioned in any court or place out of Parliament. See *Prebble v Television New Zealand* Ltd., [1994] 3 All ER 407, 413.

[33] ERSKINE MAY, PARLIAMENTARY PRACTICE 82 (21d ed.1989).

[34] It seems that the last person to commit by order of the Hose for contempt was Bradlaugh in 1880. Excerpted in MAY, *supra* note 33, at 618.

[35] In British Railway Board v Pickin (1974)1 All ER 609, it was observed that for a century or more both Parliament and the courts have been careful not to act so as to cause a conflict between them. *Id* at 618.

Parliament was tried to be exercised through courts. The origin of this conflict is from the claim of the House to be the exclusive judge of their own privilege, while admitting that they cannot by simple action create a new privilege.[36] Parliament claimed absolute and exclusive judge of its own privileges, and that its judgments were not examinable by any other body or subject to any appeal. The courts on the other hand regarded the *lex parliamenti* not as a particular law but as part of the law of the land and therefore within judicial notice.[37]In this conflict, during the seventeenth century, the Parliament got an upper hand and it was recognized that law of the Parliament as a particular law is distinct from the common law.[38]

However, there were opposite views also. The opposite view suggested that *lex parliamenti* is part of common law and known to the courts and decision on all matters of the Parliament could be called in courts.[39] However, even in this approach it was accepted that if the proceeding has started and ended within the House, the Court could not look into the legality of the conduct of the House.[40]

Thus it seems that, to a considerable extent, the courts have recognized the need for an exclusive parliamentary jurisdiction, as a necessary bulwark of dignity and efficiency of the House. It was further admitted that when the matter is a proceeding of the House beginning and ending within its own walls, it is treated as an internal concern of the House and obviously outside the jurisdiction of the courts.

Contempt power of Legislature and Fundamental Rights - Indian position

In India, the parliamentary privileges and the corollary contempt powers are based on the British system and all the conflicts of opinions that prevailed in the British system regarding

[36] S. A. de Smith, *Parliamentary Privilege and the Bill of Rights,* 21 Mod L R 465, 483 (1958).
[37] May, *supra* note 33, at 145.
[38] *Id*. A number of judicial decisions approved this line of argument. See Bernardson v Soame, 6 State Tr 1063, 1110; Similarly the Earl of Shaftesbury was committed to prison for 'high contempt' against the Lords. An attempt was made to release the Earl of Shaftesbury from imprisonment on a writ of habeas corpus. The Court of Kings Bench observed that they could not question the judgment of the Lords, as superior court, on a committal order for contempt. *Id* at 1149, excerpted in May, *supra* note 33, at 146. C J Grey in another instance observed that judges cannot judge of the laws and privileges of the House because the judges had no knowledge of these laws and privileges. 19 State Tr 1149.
[39] Thus in 1664, Bridgeman CJ decided that it is not necessary that the decisions of House of Commons regarding its privilege should be accepted by the courts as conclusive. Further the court made a distinction between claim of the House to exclusive jurisdiction between matters of privilege arising *ab intra* and privileges in which persons outside are concerned. See May, *Parliamentary Practice* at 147(cited in note 5). Similarly in the case of Sir William Williams, 13 State Tr (ns) 774 – 775, Speaker of the House signed a paper by the order of the House which had libeled James 11. His defense that the court has no jurisdiction to deal with the matter as the paper was published by the order of the House was rejected and fine was imposed. Similarly in Jay v Topham, 12 State Tr 821-824, a judgment was given by the King's Bench against Sergent at arms of the Commons for having taken the plaintiff into custody for an offence committed in breach of privilege of House. The House roundly condemned the verdict, examined the judges and committed them for breach of privilege of the House. The controversy continued in Ashby v White and others, 2 Ld Raymond 938. In this case three judges decided in favor of plaintiff who had complained that the returning officers for Aylusbury had fraudulently and maliciously refused his vote. Similar controversy arose in Stockdale v Hansard, 3 State Tr (ns) 723 ff.
[40] See Bradlaugh v Gosset,(1884)12 QBD 271.

parliamentary privileges and contempt power of the Parliament has percolated to Indian law also. This is because when the Constitution was adopted, though powers, privileges and immunities were recognized in the Constitution itself, except with respect to the specific situations mentioned under Art. 105(1)[41] and (2)[42] regarding the immunities of the Members of the Parliament, all other matters regarding powers, privileges and immunities of the Members and Committees of the Parliament are governed by Art. 105(3).[43] Similarly though Art. 194(1)[44] and 194(2)[45] deal with specific situations of immunities of the Members of the State Legislatures, main powers, privileges and immunities of the State Legislatures and Committees thereof are governed by Art. 194(3).[46] Art. 105(3) and 194(3) are transitory provisions which provides that until law is enacted by the Parliament or the State Legislatures defining its powers privileges and immunities, the same shall be those of the House of Commons of the Parliament of United Kingdom, and of its Members and Committees, at the commencement of Indian Constitution. However, no law was enacted by the Parliament or the State Legislatures defining their powers, privileges and immunities and the same is even now governed by powers privileges and immunities available to the House of Commons of the Parliament of United Kingdom at the time of commencement of the Indian Constitution.[47] Thus all controversies prevailed in English law regarding powers, privileges and immunities of the House of Commons were brought to Indian law also.

The question regarding contempt powers of the Legislature and the permissible extent of judicial intervention when the contempt powers of Legislature conflicts with fundamental rights of

[41] Art. 105 (1) reads-: Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

[42] Art. 105 (2) reads-: No member of the Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceeding.

[43] Art. 105 (3) reads-: In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by the Parliament by law, and, until so defined, [shall be those of that House and of its Members and committees immediately before the coming into force of Sec. 26 of Constitution forty - fourth Amendment Act, 1978.]

[44] Art. 194 (1) reads-: Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

[45] Art. 194 (2) reads-: No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceeding.

[46] Art. 194 (3) reads-: In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, [shall be those of that House and of its Members and committees immediately before the coming into force of Sec.26 of Constitution forty - fourth Amendment Act, 1978.]

[47] The Constitution was amended by Forty - Fourth Amendment, and reference to House of Commons of Parliament of United Kingdom was removed and instead powers, privileges and immunities of Legislatures immediately before the commencement of the Amendment was incorporated. However the amendment had not made any change in the position of law except avoiding reference to House of Commons of Parliament of United Kingdom.

individuals came for the consideration of the Supreme Court in *M.S.M.Sharma v Dr. Shree Krishna Sinha and others.*[48] In this case the contention of the petitioner, the editor of 'Search Light' newspaper was that under Art. 19, he had a right to publish a true and faithful report of the publicly heard and seen proceedings of a legislature including portions of speeches directed to be expunged along with a note stating that the part has been expunged.[49] On the other hand, based on Art. 194, the respondent claimed that, proceedings in the House were not in the ordinary course of business meant to be published at all especially the expunged portions. Such a publication was to be treated as a clear breach of privilege of the Legislative Assembly by meting out suitable punishments.[50] It was further argued that the powers, privileges and immunities enjoyed by the House in India would prevail over the freedom of speech and expression conferred to citizens under Art. 19(1)(a).[51] The Supreme Court observed that excluding certain specific privileges and immunities which were directly derived from Art. 194(1) and 194(2) of the Indian Constitution, all the remaining powers, privileges and immunities of the Legislature and the Members are governed by Art. 194(3). It was further observed that the State of Bihar had not made any law with respect to the powers, privileges and immunities of the House of Legislature as enumerated in Entry 39 of List 11 of Seventh Schedule to the Constitution just as the Parliament has not made any law with respect to the matters enumerated in Entry 74 of List 1 of that Schedule. In this circumstance it was held that the Legislative Assembly of Bihar had all the powers, privileges and immunities available to the House of Commons, at the date of the commencement of the Indian Constitution.[52] The Court further reached the conclusion that as the House of Commons of the British Parliament was holding the power to prohibit any publication of report of the proceedings that took place within the House at the time of commencement of the Indian Constitution, the same power could be claimed by the Bihar Legislative Assembly also[53]. Such a conclusion was reached by the Court because no law was made by the Bihar State Legislature in this regard.

The next question was regarding the application of fundamental right under Art. 19(1) (a) over Art. 194(3). It was argued that when there was a conflict between Art. 194(3) and Art. 19(1)(a), Art. 194(3) must give way to Art. 19(1)(a).[54]It was contended that, if the Parliament and the State Legislatures make law as envisaged under Art. 105(3) and 194(3), under Entry 74 of List 1 and Entry 32 of List 11 respectively, such an enactment would be treated as law within the meaning of Art. 13 of the Indian Constitution and to the extent the law repugnant with

[48] AIR 1959 SC 395.
[49] *Id*. at 400.
[50] *Id*.
[51] *Id*. at 402.
[52] M.S.M.Sharma v Dr. Shree Krishna Sinha and others, AIR 1959 SC 395, 403.
[53] *Id*.
[54] *Id.* at 408.

fundamental rights under Part 111 of Indian Constitution would have been void.[55] In such circumstance there is no meaning in reaching a conclusion that the powers, privileges and immunities of Parliament and State Legislatures under Art. 105(3) and 194(3) exercised by the Parliament and State Legislatures in the absence of such a law could not be challenged as violative of Art. 19(1)(a)[56].

There was substantial logic in this argument. However, rejecting this argument the Court observed that the provisions of Art. 105(3) and Art. 194(3) are constitutional laws and not ordinary laws made by the Parliament or the State Legislatures and that, therefore, they are as supreme as the Provisions of Part 111. [57]

The approach adopted by the Court in this regard is difficult to appreciate. Art. 105(3) and 194(3) are transitory provisions. The transitory provision will prevail till appropriate laws are made by the Parliament and the State Legislature fixing their powers, privileges and immunities. It is meaningless to say that until the Parliament or the State Legislatures enact laws under the relevant entries of List 1 and 11, the acts of Parliament or State Legislatures exercising its powers, privileges and immunities could not be challenged as violative of fundamental rights under Part 111 of the Indian Constitution, and once such law is enacted, the same could be treated as law within the meaning of Art. 13(2) of the Indian Constitution and to the extent of such repugnancy with part 111 of the Indian Constitution be void. If that is the situation, the better option for the Parliament and the State Legislatures would be not to enact laws dealing with powers, privileges and immunities of the Parliament and the State Legislators for the enactment of such a statute will invite judicial intervention and the courts could look into whether restrictions are reasonable or not. Yet another point to note in this regard was the approach of the Court regarding the argument of the petitioner that the conduct of the Privilege Committee amounted to the violation of his fundamental rights under Art. 21.[58] If the powers, privileges and immunities contained in Art. 194(3) could not be treated as law within the meaning of Art. 13(2) and the fundamental rights contained in Art. 19(1)(a) would not be applicable to a proceeding initiated under Art.

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[55] Art. 13 of Indian Constitution reads-: **Laws inconsistent with or in derogation of the fundamental rights. -** (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,-

(a) "law" includes any Ordinance, order, bye - law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

[56] Sharma v Sinha, AIR 1959 SC 395, 408.

[57] *Id.* at 410.

[58] *Id*. at 411.

194(3), applying the same rationale violation of Art. 21 would not have been possible. However with regard to Art. 21, a different rationale was followed by the Court and it was observed as follows:[59]

> If, therefore, the Legislative Assembly has the powers, privileges and immunities of the House of Commons and if the petitioner is eventually deprived of his personal liberty as the result of the proceedings before the Committee of Privileges, such deprivation will be in accordance with the procedure established by law and the petitioner cannot complain of the breach, actual or threatened, of his fundamental rights under Art. 21.

Thus the ultimate consequence of the decision was that, where a contempt proceeding was initiated by the House for alleged violation of the privileges, though the proceeding could not be challenged on the ground of violation of fundamental right under Art. 19(1)(a), it would be possible to challenge the proceeding under Art. 21 of Indian Constitution. However, the Court had not made any clarification as to why Art. 21 is applicable to a situation where Art. 19(1)(a) is not applicable.[60] It is to be noted in this regard that contempt proceeding initiated by the Supreme Court under Art. 129 could not be challenged even on the ground of violation of Art. 21. No reason was suggested for this differential treatment. However, Subbarao J adopted a strong dissenting opinion in this case. According to him clause (3) of Art. 194 was a transitory provision and ordinarily unless there was a clear intention to the contrary, the provision could not be given a higher sanctity compared to fundamental rights guaranteed under Art. 19(1).[61]

The controversy between the contempt powers of the Legislature and the power of courts regarding enforcement of fundamental rights came for much sharp consideration in *U.P. Assembly Case (special Reference No. 1 of 1964*).[62] Following the ratio laid down in *M.S.M. Sharma's case*, and accepting the transitory nature of Art. 194(3), the Court observed that powers privileges and immunities claimed by the House must be shown to have subsisted with the House of Commons at the commencement of the Indian Constitution.[63] In other words an enquiry is necessary in this regard to ascertain whether the power in question have subsisted in the House of Commons at the relevant time, which could be done only by the courts.

In this case also the ratio laid down by the majority in *M.S.M. Sharma's* case was accepted by the Supreme Court which led to a situation that until law was enacted, the contempt power of the House would be dealt by Art. 194(3) or 105(3) as the case may be and the same could not be

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[59] *Id*.

[60] The application of Art. 22 of the Indian Constitution in a proceeding under Art. 194 (3) was considered in a much earlier decision in Gunapati Keshvram Reddy v Nefisul Hasan and the State of U.P., AIR 1954 SC 636. This was an application under Art. 32 of the Constitution complaining that one Homi Dinshaw Mistry was taken into the custody of the Speaker of Uttar Pradesh Legislative Assembly to answer a charge of breach of privilege was not produced before a Magistrate within twenty four hours of his arrest. The Court found that it is a clear violation of Art. 22 (2) of the Indian Constitution. *Id*. at 637. Thus the fundamental rights under Art. 22 was made applicable even to a proceeding for contravention of breach of privilege of the House.

[61] Sharma v Sinha, AIR 1959 SC 395, 417.

[62] AIR 1965 SC 745.

[63] *Id.* at Para. 34.

alleged to be violative of fundamental rights guaranteed under Art. 19(1). Further accepting the ratio laid down in *M.S.M. Sharma's* case, the Court observed that, in dealing with the present dispute, the Court ought to proceed on the basis that the latter part of Art. 194(3) was not subject to Art.19(1)(a), but was subject to Art. 21 without suggesting any reason for such a differential treatment.[64]

Though the contempt power of Parliament was subsequently raised in a number of other cases and the difficulty of noncodification of contempt powers of Parliament and State Legislatures were brought to limelight by various High Courts and Supreme Court's decisions including *Yeswant Rao Meghawale v Madhya Pradesh Legislative Assembly and others*,[65] *Ambazhagan and others v The Secretary, The Tamil Nadu Legislative Assembly, Madras and others*[66] and *Raja Ram Pal v Hon'ble Speaker, Lok Sabha*[67] conflict between fundamental rights and contempt power of Legislature was not the direct issue. In all the cases the need for enacting appropriate laws dealing with contempt powers of Parliament and State Legislatures arose in some way or other way. But in spite of all difficulties and confusions in this area, neither the Parliament nor any of the State Legislatures has enacted laws dealing with its contempt powers. The reason seems to be quite simple. If laws were enacted by Parliament or the State Legislature, it will be treated as law within the meaning Art. 13 of the Indian Constitution and thus turns to be subject to the fundamental rights. Neither the Parliament nor the State Legislatures want its contempt powers be regulated by fundamental rights.

Conclusion

It seems that neither the Legislature nor the Judiciary want its contempt power be regulated by statutes. In order to ensure that the contempt power of Courts or record is not regulated by statute, the Supreme Court adopts the view that constitutionally vested powers cannot be regulated by statute, though there are specific constitutional provisions which empower the Parliament to make appropriate laws regulating the contempt powers of Supreme Court. Further the Supreme Court has reached the conclusion that the contempt proceedings under Art. 129 is no way affected by fundamental rights including Art. 21. No rationale is suggested by the Court for this approach. It seems that the only rationale in this regard is that the Supreme Court does not want its contempt power under Art. 129 be regulated even by fundamental rights. Similarly to ensure that the contempt power of Legislature is not regulated by fundamental rights, the Parliament and the State Legislatures abstain from enacting laws regulating their contempt powers. Thus the approach of judiciary as well as Legislature in this regard is same and both the

[64] *Id*.
[65] AIR 1967 M.P. 95.
[66] AIR 1988 Mad. 274.
[67] (2007) 3 SCC 184.

institutions want to see its contempt powers unregulated and unrestricted and not controlled by any fundamental rights. The situation leads to complexities and confusion regarding contempt powers of courts as well as Legislature.