Restrictions on freedom of speech are warranted in light of rights of accused persons and that judges are subconsciously influenced by statements made outside the court, especially in the media. Such restrictions, present in Indian law, when contravened amounts to contempt of court. According to the Explanation to section 3 of the Contempt of Court Act, 1971, any prejudicial statements made prior to filing the charge sheet will not be treated contempt of court i.e. such statements are not 'imminent'. However, the Supreme Court in A.K. Gopalan v. Noordeen has held such statements made subsequent to the arrest of a person, itself, will amount to contempt of court. This is the common law position on the meaning of 'imminent' to proceedings for the purpose of discerning whether it amounts to contempt of court. It is the argument of the author that the Supreme Court in Sahara India Real Estate Corp. Ltd. & Ors. v. SEBI has accepted the common law position thereby extending the period covered by section 3. Thus, statements made subsequent to the period in section 3 will amount to contempt under the Act while those prior in time will be contempt under Articles 129 and 215 of the Constitution.

I. Introduction

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I. INTRODUCTION

This article deals with freedom of speech and with common law contempt as decided in A.K Gopalan v. Noordeen,1 [Hereinafter, “A.K. Gopalan”] which has been followed in Sahara India Real Estate Corp. Ltd. & Ors. v. SEBI2 recently and where specific reference has been made to contempt of court in relation to criminal proceedings which are ‘imminent’. Approval of that case and reference to ‘imminent’ proceedings would mean that the Supreme Court considers that the common law contempt continues from the date of arrest up to the date of filing of the charge sheet etc. as stated in the Explanation to section 3 of the Contempt of Courts Act, 1971 though that period is not covered by the said Explanation. In other words, according to the Supreme Court in Sahara, prejudicial publications from the date of arrest up to the period mentioned in the Explanation to section 3 would also be contempt according to the common law contempt principles as laid down in A.K. Gopalan.

II. MEDIA FREEDOMS IN THE US AND INDIA: APPRECIATING THE DIFFERENCE

Article 19(1)(a) deals with the freedom of speech and expression and Article 19(2) deals with the power vested in the State to make laws imposing reasonable restriction on the said right for the purpose of the objects mentioned in Article 19(2). It has been decided by the Supreme Court that, though there is no express provision in the Constitution relating to the freedom of the press, the fundamental right of the media in respect of the freedom of speech and expression is part of the right contained in Article 19(1)(a). It has also been laid down by the Supreme Court in several cases, starting with Express Newspapers v. Union of India3 that the freedom of speech of the media is not unbridled but is subject to the same restrictions that can be imposed by law on other persons or bodies.

2 Sahara India Real Estate Corp. Ltd. v. SEBI, 2012 (8) SCALE 541.
3 Express Newspapers v. Union of India, AIR 1958 SC 578.
Of course, in the US, the First Amendment provides a right in absolute terms, and there is no provision in the US Constitution for imposition of reasonable restrictions. Even so, the US Supreme Court has evolved the principle of "real and present danger". Justice Holmes stated in Schenck v. United States⁴ as follows:⁵

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.

Such a right of free speech which is almost in the nature of an absolute freedom in the US does not exist in our country. Our Constitution clearly provides in Article 19(2) that the right to freedom of speech under Article 19(1)(a) can be subjected to reasonable restrictions that may be imposed by law. The difference between the American Law and Indian Law in regard to freedom of speech has been pointed out by the Supreme Court in Babu Lal Parate v. State of Maharashtra,⁶ Reliance Petrochemicals Ltd. v. Proprietors of Indian Express⁷ and other cases.

### III. Three Common Law Principles Relating to Administration of Criminal Justice in India

What are the basic principles of common law applicable to our criminal justice system which are intended to protect a suspect or accused? There are three rights of a suspect or accused which have been part of the common law in India, from times long before the commencement of the Constitution. These common law rights continue by virtue of the provisions of Article 13(3)(a) of the Constitution unless they are inconsistent with or in derogation of the rights created in the Constitution. That Article, in clause (a) defines law and in clause (b) it defines 'laws in force'. These definitions being inclusive, the pre-existing common law principles with regard to administration of criminal justice must be deemed to continue as long as they are not inconsistent with or in derogation of the fundamental rights as stated in Article 13.

Before referring to the said three principles, it will be necessary to state that apart from the above said common law rights, there are constitutional guarantees under Article 21 and Article 22. Article 21 provides that no person shall be deprived

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4 Schenck v. United States, (1919) 249 US 47.
5 Id, at 52.
7 Reliance Petrochemicals Ltd. v. Proprietors of Indian Express, 1988 (4) SCC 592.
of his life or personal liberty except according to procedure established by law. The Supreme Court has held that the right to bail and the right to a fair trial are also part of Article 21. So far as the right of a person for a "fair and impartial trial" is concerned, the Supreme Court has held that it is part of the right to life and liberty under Article 21 of the Constitution (K Anbazhogan v. Superintendent of Police and Zahira Habibulla H. Sheikh v. State of Gujarat). Similarly, the Supreme Court has held that the right to bail is also the part of the right to life and liberty under Article 21 (Supreme Court Legal Aid Committee representing under trial Prisoners v. Union of India, and Akhtari Bai v. State of Madhya Pradesh). Clause (1) of Article 22 provides that an accused should be informed, as soon as he is arrested, of the grounds of such arrest and that the person shall not be denied the right to consult or to be defended by a legal practitioner of his choice. Clause (2) of Article 22 provides that any person arrested shall be produced before a magistrate within 24 hours of his arrest. These are constitutional rights.

Now, coming to the "common law rights" of the suspect or accused, they are contained in three basic principles in our criminal justice system.

A. Principle (1)

The first principle is that a suspect or accused is presumed to be innocent unless the contrary is proved. In the well-known case of Woolmington v. DPP, Viscount Sankey stated that "... throughout the web of English criminal law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt." In Nisar Ali v. State of Uttar Pradesh, it was held that it is a "... cardinal principle of criminal jurisprudence as to the presumed innocence of an accused is otherwise proved ... and that it is the duty of the prosecution to prove the prisoner’s guilt" and reliance was placed on the decision in Woolmington. In Dahyabhai Chhaganbhai Thakkar v. State of Gujarat, the Court stated that "[i]t is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and therefore the burden

10 Supreme Court Legal Aid Committee representing under trial Prisoners v. Union of India, (1994) 6 SCC 731.
12 Woolmington v. DPP, 1935 AC 462.
13 Id. at 481.
lies on the prosecution to prove the guilt of the accused beyond reasonable doubt." As long back as 1895, in Coffin v. United States, the Supreme Court of the United States traced the 'venerable history' of the presumption of innocence from Deuteronomy through Roman Law to English Law and the common law of the United States.

B. Principle (2)

The second principle is that it is for the prosecution to prove the guilt of the accused beyond reasonable doubt. However, as far as this principle is concerned, it has been treated only as a procedural rule, and in some statutes reverse burden of proof has been placed on the accused after the prosecution establishes some prima facie facts.

C. Principle (3)

The third principle is quite important and is part of the procedure for a fair trial under Article 21. The criminal court has to decide cases on the basis of material produced by the prosecution and not on the basis of any external or indirect pressure. This principle is one of the cornerstones in the administration of our criminal justice system. In India, the suspect and accused have a basic right that the judge, who is deciding his application for bail or about his guilt, decides the same only on the basis of the evidence that is produced by the prosecution before him and not on the basis of any other material.

In a famous statement, Wills J. observed in Rex v. Parke that "... it is possible very effectually to poison the fountain of justice before it begins to flow. It is not possible to do so when the stream has ceased" [Emphasis supplied]. The same judge observed that the criminal court must decide upon the guilt of the accused only on the basis of material produced before it and on no other material. While referring to the statements of outsiders intended to or having a tendency to prejudice the mind of the court, the learned judge said that such persons must be punished, because their tendency and sometimes their object is to deprive the court of the power ... to administer justice duly, impartially

16 Id, at 364.
17 Coffin v. United States, (1895) 156 US 432.
18 Rex v. Parke, (1903) 2 KB 432.
19 Id, at 438.
and with reference solely to the facts judicially brought before it. Their tendency is to reduce the courts ... to impotence, so far as the effectual elimination of prejudice and pre-possessions is concerned. [Emphasis supplied]

Frankfurter J. in *Pennekamp v. Florida*\(^{21}\) observed as follows:\(^ {22}\)

... [A] Free Press may readily become a powerful instrument of injustice. It should not and may not attempt to influence judges or juries before they have made up their mind on pending controversies. Such a restriction, which merely bars the operation of extraneous influence specifically directed to a concrete case, in no wise curtails the fullest discussion of public issues generally. ... The distinctive circumstances of a particular case determine whether the law is *fairly administered* in that case, through a disinterested judgment on the basis of what has been formally presented inside the courtroom on explicit considerations, instead of being subjected to extraneous factors, psychologically calculated to disturb the exercise of an impartial and equitable judgment. [Emphasis supplied]

Leading writers have also elaborated the third principle. In *Wigmore on Evidence*,\(^ {23}\) it was stated that the presumption of innocence and the duty of the prosecution to prove the guilt of the accused are intimately connected with the right to have a decision by the judge uninfluenced by anything other than the material produced by the prosecution. The learned author states:\(^ {24}\)

In a criminal case, the term (presumption of evidence) does convey a special and perhaps useful hint over and above the other form of the rule about the burden of proof, in that it cautions the jury to put away from their minds all the suspicion that arises from the arrest, the indictment, and the arraignment, and to reach their conclusion solely from the legal evidence adduced. In other words, the rule about the burden of proof requires the prosecution by evidence to convince the jury of the accused's guilt; while the presumption of innocence, too, requires this, but conveys for the jury a special and additional caution (which is perhaps only as implied corollary to the other) to consider, in the material for their belief, *nothing but the evidence*, i.e., no surmises based on the present situation of the accused. This caution is indeed particularly needed in criminal cases. [Emphasis supplied]

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22 Id, at 365.
According to the author, the court should not take into consideration the fact that the police considered necessary to arrest the person or that the police considered it necessary to charge the person. The case has to be decided only on the basis of the evidence produced by the prosecution. That would therefore also mean that no extraneous influence can be brought upon the court by anything said in the media and that nothing should be done to adversely affect the freedom of the witnesses to speak the truth. As pointed out in Taylor v. Kentucky25 these three principles run into each other and form a single principle in the administration of the criminal justice system.

**IV. Media Influences on Judges and the Third Principle**

Frankfurter J. stated in Pennekamp v. Florida that26

However, judges are also human, and we know better than did our forbears how powerful is the pull of the unconscious and how treacherous the rational process......And since judges however stalwart, are human, the delicate task of administering justice ought not to be made difficult by irresponsible print. ... To deny that bludgeoning or poisonous comments has power to influence, or at least to disturb, the task of judging, is to play make-believe and to assume that men in gowns are angels. ... If men, including judges and journalists, were angels, there would be no problems of contempt of court. Angelic judges would be undisturbed by extraneous influences, and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to judges. The power to punish for contempt of court is a safeguard not for judges as persons, but for the function which they exercise. It is a condition of that function -- indispensable for a free society -- that, in a particular controversy pending before a court and awaiting judgment, human beings, however strong, should not be torn from their moorings of impartiality by the undertow of extraneous influence. In securing freedom of speech, the Constitution hardly meant to create the right to influence judges or juries. That is no more freedom of speech than stuffing a ballot box is an exercise of the right to vote. [Emphasis supplied]

The observation that right to freedom of speech was not granted by the Constitution to include a right to influence judges and juries is important.


The above judgment in *Pennekamp* has been adverted to by the Supreme Court in *In Re: Arundhati Roy*\(^{27}\) and in *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express.*\(^{28}\) In the latter case, the Supreme Court also referred to the judgment of the House of Lords in *Attorney General v. BBC,*\(^{29}\) where in Lord Scarman observed that 'administration of justice' should not at all be hampered with. The view of Lord Denning in the Court of Appeal that professionally trained judges are not easily influenced by publications was rejected. Lord Dilhorne stated as follows:\(^{30}\)

> It is sometimes asserted that no Judge will be influenced in his Judgment by anything said by the media and consequently that the need to prevent the publication of matter prejudicial to the hearing of a case only exists where the decision rests with laymen. This claim to judicial superiority over human frailty is one that I find some difficulty in accepting. Every holder of a Judicial Office does his utmost not to let his mind be affected by what he has seen or heard or read outside the Court and he will not knowingly let himself be influenced in any way by the media, nor in my view will any layman experienced in the discharge of Judicial duties. Nevertheless, it should, I think, be recognized that a man may not be able to put that which he has seen, heard or read entirely out of his mind and that he may be subconsciously affected by it. It is the law, and it remains the law until it is changed by Parliament, that the publications of matter likely to prejudice the hearing of a case before a court of law will constitute contempt of court punishable by fine or imprisonment or both. [Emphasis supplied]

From the aforesaid judgments and literature, it is accepted that judges are not superhuman and any publication prejudicing the trial may subconsciously affect them in the decision making process. That is why the third principle is most important one.

**V. HUMAN RIGHTS AND FUNDAMENTAL RIGHTS**

From the judgments of the Supreme Court referred to below, it will be noticed that out of the above three principles which are fundamental to the criminal justice system, the *first principle* of presumption of innocence is treated as a *human right*. The *second principle* of burden of proof is only treated as a procedural right. The *third principle*, namely that the judge deciding the guilt of the suspect or the accused


\(^{28}\) *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express*, 1988 (4) SCC 592.


\(^{30}\) Id, at 335.
should base his decision only on the material produced by the prosecution and on no other material, has been treated not only as a human right, but also as part of the principle of fair trial which is included in the fundamental right under Article 21. The following decisions and literature, deal with the three common law principles.

The first principle of presumption of innocence is a part of the human rights jurisprudence, present in Article 11 of the Universal Declaration of Human Rights and Article 14(2) of the International Covenant on Civil and Political Rights, to both of which India is a party. In Narendra Singh v. State of Madhya Pradesh a two judge bench of the Supreme Court observed that the presumption of innocence is a human right. In Ranjithsing Brahmadeenting Sharma v. State of Maharashtra, Sinha J. concurred with the observations made in the abovementioned decision. The same learned judge, again stated in a subsequent case, Krishna Janardhan Bhat v. Dattaraya G. Hegde reasserted these conclusions and referred to Article 6(2) of the European Convention on Human Rights. He observed that although India is not bound by the same, the principle underlying the same (of balancing the rights of the accused and society’s interests) is at the heart of Indian criminal jurisprudence. Finally, in Noor Aga v. State of Punjab, the same learned judge while dealing with sections 35, 54 and 53-A of the Narcotics Drugs and Psychotropic Substance Act, 1985 observed that the presumption of innocence is a human right and is not a part of Article 21. Thus the first principle relating to presumption of innocence is treated as a human right.

31 G.A. Res. 217, U.N. GAOR, 3rd Sess., U.N. Doc. A/810 (1948). Article 11 reads: “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence”.


35 Id, at ¶ 35


37 Convention for the Protection of Human Rights and Fundamental Freedoms 213 U.N.T.S. 222, entered into force 3 September, 1953. Article 6(2) reads: “Everyone charged with a criminal offence shall be innocent until proven guilty according to law”.


40 Id, at ¶ 44.
The second principle that the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt, is treated only as a procedural right. In fact there are several special statutes in which a reverse burden has been placed as a matter of procedure on the accused, once certain preliminary facts are established by the prosecution. The second principle is therefore not treated as part of human rights.

The third principle that the guilt of the accused should be decided by the court only by the material produced by the prosecution and nothing else and that the court should not be influenced in its decision making process by anything else stated by any person or the media, is treated not only as a human right but also as part of the right to fair trial which is part of the fundamental right under Article 21. No trial in a criminal case can be said to be fair under Article 21, if the procedure for conducting the trial permits the judge to take into consideration any extraneous material, other than the actual evidence relied upon by the prosecution. In the context of the third principle, it is necessary to point out that in Amarinder Singh v. Parkash Singh Badal, it was held that the right to fair trial will be affected unless the trial is uninfluenced by extraneous considerations (like political rivalry) and that is imperative for the dispensation of justice. Thus, the third principle is not only a human right but is also part of the fundamental right under Article 21 for a fair trial.

VI. THE LAW ON CONTEMPT IN INDIA

A. The Position before the Constitution

The Contempt of Courts Act, 1926 and the Contempt of Courts Act, 1952 did not contain any definition of contempt. The High Courts and Supreme Court applied the general common law principles relating to the law of contempt but the quantum of punishment that the said Courts could impose was restricted by those Acts. The power of contempt is contained in Articles 129 and 215 of the Constitution of India and the High Courts and the Supreme Court as ’Courts of Record’ could decide as to what is contempt according to the common law principles of contempt both in respect of civil and criminal contempt.

It has been held by the Courts in India that the English common law of contempt did not specifically state that prejudicial statements could be treated as amounting to contempt of court, if such statements are made at the stage when criminal proceedings are ‘imminent’. In some cases, no doubt, the English courts

impliedly 'leaned' towards such a view, but the courts did not expressly say so in their judgments. On this aspect, Indian common law has deviated from English common law. Indian courts have expressly held that prejudicial statements made at the stage when criminal proceedings are 'imminent' could be treated as contempt.

This modification of the English common law by the Indian Courts has been explained in detail by a Full Bench of the Calcutta High Court in Emperor v. J Choudhury. In that case, Biswas J. pointed out that the question whether there may be contempt of court when proceedings are imminent was not definitely ruled by the courts in England, referred to the English cases decided in 1903 and 1927 and then said that in India at least two full benches had pronounced upon the question and referred to the Full Bench judgments of the Madras and Lahore High Courts. In the Full Bench of the Madras High Court in Tuljaram Rao v. Sir James Taylor, Sir Lionel Leach C.J. stated that "to comment on a case which is about to come before the court with knowledge of the fact is in our opinion just as much a contempt as comment on a case actually launched". After referring to the decision in Rex v. Parke and Rex v. Daily Mirror, it was pointed out that the question of imminence of the criminal proceeding was not expressly mentioned in the English judgments. The learned Chief Justice observed:

The question whether there can be contempt of court and proceedings are imminent but not yet launched was discussed in Rex v Daily Mirror; but as the question did not call for a decision, no decision was given. Lord Hewart CJ however quoted the passage which was just been cited from the judgment of Wills J and as there was no indication of disapproval, it may, we think, be taken that the leaning was in the same direction. [Emphasis supplied]

Again, in Re Subramanyam, Editor, Tribune and Ors., Harries C.J. clearly stated, after referring to the observations of Sir Lionel Leach C.J. of the Madras High Court that it was sufficient for the person to know that proceedings are imminent, and that they need not actually be pending.

43 Id, at ¶¶ 12-13.
45 Rex v. Daily Mirror, (1927) 1 KB 352.
47 In Re Subramanyam, Editor, Tribune and Ors., AIR (1943) Lah 329.
48 Id, at 335.
Thus the common law of contempt in India deviated from the English law before 1950. In most cases in India before 1950, it was held that criminal proceedings can be treated as ‘imminent’ from the time of arrest of a suspect. However, in some cases decided before 1950, there were observations that a criminal case may be treated as ‘imminent’ even from the time when a First Information Report [Hereinafter, “FIR”] was lodged with the police. The question whether there would be a violation of the fundamental right of free speech if such a restriction is imposed against publications made at the stage of FIR, did not arise before the commencement of the Constitution.

B. The Position after the Constitution till the 1971 Act

In light of Article 13(1) and Explanation I to Article 372 the laws in force prior to the commencement of the Constitution shall continue after commencement to the extent they are not inconsistent with Part III of the Constitution. Therefore, the common law of India as to whether publications in the media against a suspect made, after the time when criminal proceedings become ‘imminent’, would amount to contempt, continued to be in force after the commencement of the Constitution. However, there was some conflict of opinion among the High Courts as to whether a criminal proceeding could be said to be “imminent” from the date of filing of the FIR. Whether this Report made criminal proceedings imminent came to be decided in Surendra Mohanty v. State of Orissa decided on 23 September 1961, which is unreported but has been adverted to in A.K. Gopalan. It was held that criminal proceedings cannot be said to be imminent at the stage of the FIR, unless the person was arrested.

The other decision in this regard is A.K. Gopalan and requires a detailed examination. In that case, one Mr Karunakaran died on 11 September 1967 at Kuttoor during a bandh organised by the Communist Party in Kerala. On the same day, a FIR was lodged. The next day, the said report was transferred to another police station. On 20 September, Mr A.K. Gopalan made a statement that Mr Karunakaran died on account of the pre-planned goondaism of Congressmen at Kuttoor. He stated that a prominent Congress leader of Cannanore District had given instructions for the murder on the previous day and that the police had seized an unlicensed loaded gun and other weapons from the shop of a Congressman at the scene of occurrence. He asked whether it should not be inferred from all this that there was a pre-arranged plan to commit the murder. Three days later, Mr K.P. Noordeen was arrested along with his two brothers. On 24 September the Magistrate remanded the accused to police custody. In the issue of the newspaper daily Deshabhimani of which Mr P. Govinda Pillai was editor and
Mr M. Govindakutty was printer, the above statement of Mr A.K. Gopalan was reproduced. On 29 September 1967 all the three accused were produced before the Magistrate. On 1 November 1967 Mr Noordeen filed a contempt case in the Kerala High Court against Mr A.K Gopalan and the editor and printer.

The Kerala High Court held that all three of them were guilty of contempt of court. On appeal, two learned Judges of the Supreme Court held that the prejudicial statements made by Mr. A.K Gopalan were on 11 September while the arrest took place on 23 September and the publication in the newspaper by the editor and printer was on 25 September, which was subsequent to the date of arrest. On the basis of this distinction, Mr. A.K Gopalan who made the statement before the date of arrest was not guilty of contempt of Court while the editor and printer who made the publication after the date of arrest were found guilty of contempt of court. However, Mitter J. held that all three of them were guilty.

The statement of law in Surendra Mohanty that there will be no criminal contempt if prejudicial statements were made at the stage of the FIR and when a person was not arrested or when criminal proceedings were not “imminent” was approved by the Supreme Court in A.K. Gopalan. After referring to the right of the media to bring public scandals to the notice of the public, as stated in R v. Sayundranaragan and Walker, the Supreme Court observed that Mr A.K. Gopalan was not guilty of contempt as no arrest was made on the date of his statement. But so far as the editor and printer are concerned the court observed that the suspects were arrested on 23 September 1969 in a serious cognisable case. The Supreme Court made it clear that the right to free speech including the right to make prejudicial comments against the suspect cannot be advanced forward up to the stage when the charge sheet is filed under section 173 of Code of Criminal Procedure, [Hereinafter, “Cr.P.C.”] 1898 (which is akin to section 173 of the Cr.P.C., 1973 dealing with the date of the charge sheet).

The Court thus held that if prejudicial statements by the media would be contempt from the date when criminal proceedings become imminent or from the date of arrest of the suspect. It was further held that if, that date of imminence is moved forward up to the date of filing of the charge sheet under section 173 of Cr.P.C. 1973, and if prejudicial statements against the suspect are allowed to be made in the media, the right to a fair trial of the suspect under Article 21 would be adversely affected. It was held in A.K. Gopalan that if prejudicial statements
are made against the suspect after the date when criminal proceedings become imminent or from the date of arrest, such statements would be contempt and that such a law would not amount to any unreasonable restriction on the right of freedom of speech under Article 19(1)(a) of the Constitution.

The Supreme Court also laid down in A.K. Gopalan that the boundary is not the date of FIR when prejudicial statements could be treated as contempt but the boundary of free speech was the time when criminal proceedings are ‘imminent’ or when the suspect is arrested. Indeed, if a law allows prejudicial statements to be made by the media beyond the date when the proceedings become ‘imminent’ or after the arrest of suspect, then the right to fair trial under Article 21 would be affected because such a procedure cannot be treated as ‘reasonable, fair and just’ within the principles of laid down by the Supreme Court in Maneka Gandhi v. Union of India.51

This can be explained by an analogy. If a tree is cut, the effect of such an action is both on the tree as well as on the ecology and the environment. Likewise, prejudicial statements affect not only the persons against whom the allegations are made affecting their right to have a fair trial under Article 21 but they also affect the administration of criminal justice and must be treated as contempt of court under the law made under Article 19(2). The court expressly stated that it is not permissible to allow prejudicial statements to be made till the filing of the charge sheet under section 173 of the Cr.P.C. 1973.

C. The 1971 Act

Under the Contempt of Courts Act, 1971, section 2(c) defines criminal contempt and sub-clauses (ii) and (iii) refer to contempt which is committed by way of interference with the administration of justice. That naturally includes publications in the media which interfere or have a tendency to interfere with the administration of criminal justice of which the principle of fair trial is one which is protected by Article 21 of the Constitution. In the definition of criminal contempt in section 2(c), the Parliament has more or less crystallised the common law concepts of criminal contempt and has incorporated the same in that provision.

However, there is a change in the statutory protection granted to a suspect against prejudicial statements made in the media, which could amount to interference with the administration of criminal justice. The Explanation in section

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51 1978 (1) SCC 248.
3 treated as contempt only those prejudicial statements which are made in the media after the date of filing of charge sheet under section 173 of the Cr.P.C. 1973 or from the date when summons or warrants are issued or from the date the court takes cognisance of the matter. The Explanation is however silent in regard to the statements that may be made in the media at an earlier point of time, viz., when criminal proceedings are 'imminent' or when the person is arrested.

In other words, under the common law principles of contempt, as laid down by the Supreme Court in Surendra Mohanty and A.K. Gopalan, prejudicial statements would be contempt:

(i) when the criminal proceedings are 'imminent' or from the date of arrest; and

(ii) when a charge sheet have been filed against the suspect under section 173 of the Cr.P.C. 1973 or where summons or warrants have been issued or where the court has taken cognisance of the matter

The Explanation in section 3 covered only the period mentioned in clause (ii) above and did not cover the period in clause (i) above, though both periods are liable to be covered under the principles of common law of contempt as laid down by the Supreme Court in Surendra Mohanty and A.K. Gopalan by balancing the fundamental rights under Article 19(1)(a) and Article 21.

The protection given to the suspect or accused under the Explanation below section 3, it will be seen, is for the latter period covered by clause (ii) above and is perfectly necessary and justified. That has to continue and cannot be struck down on the ground that the Explanation does not grant protection for the earlier period covered by clause (i) above. Notwithstanding the fact that the Explanation does not cover the protection granted by the common law contempt for statements falling under clause (i) above as declared by the Supreme Court in the cases of Surendra Mohanty and A.K. Gopalan, the said protection contained in the common law in respect of statements falling under clause (i) continues, side by side along with the protection granted to statements referred to in clause (ii) which are covered by the Explanation to section 3 of the Contempt of Courts Act. That would mean that the common law protection against prejudicial statements mentioned in clause (i) above i.e. against the suspect, made in the media from the date when criminal proceedings become 'imminent' or when the suspect is arrested, continues side by side along with protection granted under the Explanation to section 3.
D. The Validity of the Explanation to Section 3, Contempt of Courts Act, 1971

As stated earlier, the Explanation to section 3 is valid to the extent of the protection it grants and cannot be nor need be struck down on the ground that it does not cover some other protection to the suspect available under the common law of contempt as decided by the Supreme Court in Surendra Mohanty and A.K. Gopalan, namely for statements made in the media falling under clause (i) above. The Explanation is not liable to be struck down under Article 21. The protection it gives to the accused from the various dates mentioned in the Explanation is part of Article 21 and that cannot be struck down. Nor is it necessary to read it down.

If it is to be considered that the silence in Explanation to section 3 with regard to the period before the dates mentioned in section 3 is to be treated as a deliberate law made by Parliament to exclude protection to the statements made before those dates, then, it follows that the omission is bad. But even so, the Explanation cannot be struck down in as much as it protects the right to fair trial under Article 21 after the periods mentioned in the said Explanation. All that can be said is that the omission of Parliament in not granting protection for the whole period, amounts to a deprivation of the protection of Article 21 and such a declaration can be granted, without striking down the Explanation.

Even assuming that Parliament added a proviso below the Explanation to section 3 in the following terms, namely; “Provided that the publications made after a criminal proceeding becomes imminent or after a suspect is arrested, but before the dates mentioned in the Explanation, shall not be treated as criminal contempt”, such a provision will be hit by Article 21. It will be invalid because it offends the right to a fair trial under Article 21 in favour of the suspect which exists as per A.K. Gopalan, from the date when criminal proceedings are imminent or when the suspect is arrested. Such a provision will certainly be void as amounting to a ‘deprivation’ of the rights of the suspect to life and liberty and to be protected against prejudicial statements by the media for the excluded period since they will be unreasonable, unfair and unjust according to Maneka Gandhi, read with the law declared in A.K. Gopalan.

VII. FIR, ARREST AND IMMINENCE

A. FIR and Imminence in light of Section 438, Cr.P.C. 1973

The right to seek bail apprehending arrest, (“anticipatory bail”) was introduced by section 438 of Cr.P.C. 1973, where bail might be sought by a person apprehending arrest in criminal proceedings. The question is whether when a
person has filed an application under section 438 in the Court of Sessions or the High Court seeking anticipatory bail, it could be said that criminal proceedings are pending and whether the High Court could under Article 215, prohibit publications in the media which may be prejudicial to the applicant, for a temporary period.

This question did not arise in 1969 in A.K Gopalan in as much as the very provision for anticipatory bail was introduced into the Code by legislation only in 1973. It may be noticed that for the purpose of making an application under section 438, it is not necessary that there should have been a FIR against the applicant. In fact the Supreme Court stated in Gurubaksh Singh v. Punjab that in exceptional cases, the court may limit the operation of the order to a short period until after the filing of an FIR in respect of the matter and directing the applicant to obtain bail order under sections 437 or 439 within a short period of the filing of the FIR.

There is no need to go into the question whether criminal proceedings are ‘imminent’ when an application under section 438 has been filed. When such an application is filed under section 438, indeed a criminal proceeding is “pending” in the criminal court. In Surendra Mohanty and Gopalan, it was held that a criminal proceeding cannot be said to be ‘imminent’ when a FIR has been filed with the police. Once it is accepted that an application under section 438 Cr.P.C. can be filed even before an FIR has been filed, then the statement of law made in Surendra Mohanty and A.K. Gopalan requires modification.

Therefore all that is necessary is to clarify the principles laid down in Surendra Mohanty and A.K. Gopalan in the following manner: A criminal proceeding cannot be said to be ‘imminent’ merely because a FIR is filed, unless the person has been arrested, or the person has filed an application under section 438, before an FIR has been filed.

B. Why Arrest is Crucial for Contempt of Court

The reason why the date of arrest has been treated as starting point for preventing prejudicial statements in the media was properly explained in Hall v. Associated Newspapers Ltd. In that case, a person was arrested and thereafter certain publications were made in a newspaper prejudicial to him. The said person moved the High Court to punish the proprietors of the paper for contempt and to also prohibit them from making further publications. The High Court agreed that

the publication amounted to contempt and imposed a punishment of admonition. In that connection, the High Court of Scotland observed that from the moment of arrest, the person is brought ‘in a relation with the court’ and stated as follows:55

At the stage of arrest there is, just as at the stage of committal for further examination, a person accused of crime who, if the subsequent steps in the process are taken, may ultimately stand trial on the charge on which he has been arrested or other charges. In order to discover whether it would be legitimate to say that proceedings which bring into existence a relationship between the court and a person charged with crime have commenced at the moment of his arrest the question which must be answered is whether a person arrested is within the protection of the court. [Emphasis supplied]

The person arrested comes into a relationship with the court and under its protection for the following reasons, according to the said judgment56

At that stage the person concerned is vested with rights which he can invoke and which the court is under a duty to enforce. He must be informed of the charge on which the arrest has been made and must be brought before the court (a magistrate) not later than in course of the first lawful day after he has been arrested [section 321 (3) of the Criminal Procedure (Scotland) Act 1975]. This is the modern definition of the common law right of an arrested person to be carried “with all convenient speed before a magistrate ... to be dealt with according to law” (Hume, vol. ii, 80). Further a person arrested on any criminal charge becomes immediately entitled to have intimation sent to a solicitor that his assistance is required and informing him of the place to which such person is to be taken for examination. This is provided by section 19 (1) of the Criminal Procedure (Scotland) Act 1975 and section 19 (2) and (3) not only provide further rights in that regard but empower the sheriff or justice to delay examination on declaration for a defined period to allow time for the attendance of the solicitor.

VIII. Restrictions on Article 19(1)(a) Beyond Article 19(2)

It is contended for the media that the fundamental right of speech under Article 19(1)(a) can be restricted only by a law made under Article 19(2) for the purpose of punishing for contempt of court and therefore when there is no such law made by the legislature under Article 19(2) for protection of the fair trial of the suspect or accused under Article 21, prejudicial statements made after the date that

55 Id, at 247.
criminal proceedings become imminent or when the person is arrested, cannot be treated as contempt of court, for to do so would amount to restricting the freedom of speech. This contention cannot be accepted for two reasons.

First, that a restriction on freedom of speech of a person can arise not only out of a law made under Article 19(2) of the Constitution but also on account of a constitutional provision like Article 21. This aspect is no longer res integra as is clear from the recent judgment of the Constitution Bench of the Supreme Court in Raja Ram Pal v. Hon’ble Speaker, Lok Sabha. It was argued in that case that the fundamental right of the Member of Parliament under Article 19(1)(g) can be restricted only by a law made by the legislature under Article 19(6) and cannot be affected by the provisions of Article 105(3) of the Constitution which deal with privileges of Parliament. Holding that a restriction flowing from a constitutional provision need not be re-enacted by an ordinary law under Article 19(6), and rejecting the said contention, the Supreme Court observed as follows:

We are of the view that where there is a specific constitutional provision as may have the effect of curtailing these fundamental rights, if found applicable, there is no need for a law to be passed in terms of Article 19(6). For example, Article 102 relates to disqualifications provides that Members who are of unsound mind or who are un-discharged insolvents as declared by competent courts, are disqualified. These grounds are not mentioned in the Representation of People Act, 1951. Though these provisions would have the effect of curtailing the rights under Article 19(1)(g), we doubt that it can ever be contended that a specific law made in public interest is required. Similarly, if Article 105(3) provides for the power of expulsion (though not so expressly mentioned), it cannot be said that a specific law in public interest is required. Simply because Parliament is given the power to make law on this subject is no reason to say that a law has to be mandatorily passed, when the Constitution itself provides that all the necessary powers of the House of Commons vest until such a law is made. Thus, we find that Article 19(1)(g) cannot prevent the reading of power of expulsion under Article 105(3). [Emphasis supplied]

The above reasoning can be directly applied to the present situation. It is not necessary that Parliament should make a separate law under Article 19(2) protecting the right to fair trial of a suspect or accused, for the purpose of restricting the right under Article 19(1)(a). The constitutional protection in Article 21 which protects the rights of the person for a fair trial is, in law, a valid restriction operating on the right

57 Raja Ram Pal v. Hon’ble Speaker, Lok Sabha, 2007 SCC (3) 184.
58 Id, at ¶ 166.
to free speech under Article 19(1)(a), by virtue of force of its being a constitutional provision. No law need be made on the same lines under Article 19(2).

Second, that when there are two Articles of the Constitution providing different rights to different persons, in the event of a clash between these rights, the well-known principle of harmonious construction has to be applied. This has been done in several cases while restricting the scope of Article 19(1)(a) on the basis of other provisions in the Constitution itself. In M.S.M. Sharma v. Sri Krishna Sinha, and in the U.P. Assembly case (Special Reference No.1 of 1964) also known as Keshav Singh’s case, it was stated that the right of freedom of speech under Article 19(1)(a) stands restricted by Articles 105(3) or 194(3) of the Constitution relating to privileges of Parliament and State Legislatures, by the application of the principle of harmonious construction.

For the two reasons mentioned above, the contention that there is no law made under Article 19(2) to protect the suspect or accused from prejudicial statements for the purpose of ensuring a fair trial and that the provisions Article 21 cannot restrict the rights of free speech under Article 19(1)(a) is rejected.

IX. The Controversial History Behind the Explanation to Section 3

On 1 April 1960, a private member of Parliament moved a Bill in respect of the law of contempt to replace the Contempt of Courts Act, 1952. Thereafter, the Ministry of Law and Justice set up a committee on 29 July 1961, with Mr H.S. Sanyal, then Additional Solicitor General of India (later Solicitor General) for the said purpose [Hereinafter, “Sanyal Committee“]. The Committee gave its Report to the Government on 28 February 1963. In Chapter V, paragraphs 3.1 to 3.4, the Committee dealt with the definition of ‘contempt’. In another Chapter the Committee dealt with contempt in relation to pending proceedings. In Chapter VI, the Committee considered contempt in relation to ‘imminent proceedings’. After referring to the importance of the freedom of the press and the requirements of an independent judiciary, the Committee observed: “A judiciary cannot function properly if what the press does is calculated to disturb the judicial judgment in its duty and capacity to act solely on the basis of what is put before it”.

60 Keshav Singh v. Speaker, Legislative Assembly, AIR 1965 SC 745.
61 Sanyal Committee, at ¶ 1.2
The Committee stated that in all contempt proceedings what is sought to be ensured is that there is no unjustified interference with the court in the performance of its duties, and that parties to proceedings are not subject to any extraneous influence.\textsuperscript{62} The publication of reports regarding the investigation before the completion of the same in the eyes of the Committee was bound to cause such interference, thus making it of the opinion that it was unwise to "completely do away with the rule relating to contempt in its application to imminent proceedings".\textsuperscript{63}

The Committee then stated in that the mere filing of a FIR although the logical point to draw a line at, did not serve as conclusive proof of proceedings being imminent.\textsuperscript{64} The Committee went ahead to recognise the need for a different approach to criminal matters, i.e., where an arrest was yet to be made a presumption in favour of the alleged contemnor ought to be drawn that proceedings were not imminent.\textsuperscript{65} The Committee annexed a Draft Bill to their Report which in section 3(1)(a) stated as follows:

Section 3(1): A person shall not be guilty of contempt of court on the ground that he has published any matter calculated to interfere with the course of justice in connection with -

(a) any criminal proceeding pending or imminent at the time of publication, if at that time he has no reasonable grounds for believing that the proceeding was pending or, as the case may be, imminent,

(b) any civil proceeding ...........................................[Emphasis supplied]

Thus, the Sanyal Committee in its Report of 1963 took into consideration that there could be contempt of court if prejudicial statements are made when criminal proceedings are imminent. In the body of the Report, they however stated, as mentioned earlier, that statements made at the stage of FIR will not be contempt though statements made after arrest will be contempt. The above approach of the Sanyal Committee is consistent with what the Supreme Court decided six years later in \textit{A.K. Gopalan}. But the Contempt of Courts Act, 1971 is based on the Report of the Joint Committee of Parliament [Hereinafter, “Bhargava Committee”] (23 February 1970) which did not notice the Judgment in \textit{A.K. Gopalan}.

\begin{itemize}
\item \textsuperscript{62} \textit{Sanyal Committee}, at ¶ 1.2.5.
\item \textsuperscript{63} \textit{Sanyal Committee}, at ¶ 1.2.5; see also, \textit{The State v. Editor, Matrubhumi, ILR 1955 Cutt 204}.
\item \textsuperscript{64} \textit{Sanyal Committee}, at ¶ 2
\item \textsuperscript{65} \textit{Sanyal Committee}, at ¶¶ 4 and 8; see also, \textit{R v. Odhams Press Limited, (1957) 1 Q.B. 73}.
\end{itemize}
The Bhargava Committee was appointed in December 1968. It conducted 26 sittings and the last sitting was 5 October 1969, and submitted a six page report (omitting the dissenting part). It has been already noticed that on 15 September 1969 the judgment in A.K. Gopalan was rendered. It appears, however, that the Joint Committee which held its last meeting on 5 October 1969 did not notice the judgment of the Supreme Court dated 15 September 1969 which was delivered just 20 days before its last meeting. It therefore committed serious mistakes in its Report by permitting prejudicial statements in the media up to the date of the charge sheet under section 173 Cr.P.C. 1973 or from the date of issuing summons or warrant or from the date the court takes cognisance of the matter and deprived the benefit of the judgment of the Supreme Court in A.K. Gopalan to the suspect from the date when criminal proceedings become imminent or from the date of arrest.

For making these radical changes and departing from the recommendations of the Sanyal Committee, it gave two reasons namely, one that free speech will stand unduly restricted if allowed from the date of arrest or when criminal proceedings become imminent and; two, that the word 'imminent' was vague. The Committee appended a Draft Bill of 1968, to their Report dated 23 February 1970 which contained an Explanation below section 3 as follows:

Explanation:– For the purpose of this section, a judicial proceeding is said to be pending –

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

(B) in the case of a criminal proceeding under the Cr.P.C., 1898 or any other law –

a. where it relates to the commission of an offence, when the charge-sheet or challan is filed, or when the court issues summons or warrant, as the case maybe, against accused, and

b. In any other case, when the court takes cognizance of the matter to which the proceeding relates

So far as the first reason given by the Committee, namely that the word 'imminent' proposed by the Sanyal Committee was 'vague' is concerned, it may be noticed that the Supreme Court in A.K. Gopalan, while pointing out that criminal proceedings do not become imminent from the date of the FIR lodged with the Police, they do become imminent from the date of arrest of the suspect. The Supreme Court went a step further and stated expressly that the date when the criminal proceedings become "imminent" cannot be advanced forward to the date of filing

66 Bhargava Committee, at Clause III, ¶ 1.
of the charge sheet under section 173 of the Cr.P.C. Thus, the Supreme Court had clearly explained the meaning of the word 'imminent' and it cannot therefore be called vague. The Bhargava Committee was therefore incorrect in observing the word 'imminent' was vague.

So far as the second reason given by the Committee that treating prejudicial statements, if any, made by the media after the date of arrest and before the date of filing the charge-sheet would be an unreasonable restriction on the freedom of speech under Article 19(1)(a) is concerned, the Supreme Court had clearly decided in A.K. Gopalan that it would not be so and that on the other hand, if the rights of the suspect were not protected against prejudicial statements from the date when criminal proceedings become imminent or from the date of arrest, it would interfere with the right of the suspect for a fair trial, that is under Article 21. Therefore, even on the second aspect, the views of the Joint Committee are in the teeth of the principle of reasonableness evolved by the Supreme Court, while balancing Article 19(1)(a) and Article 21.

The Parliament was therefore wrong in not accepting the Sanyal Committee report and in adopting clause (B), sub-clauses (i) and (ii) of Explanation to section 3, as recommended by the Bhargava Committee, omitting the protection to the suspect for the period from the date when criminal proceedings become imminent or from the date of arrest, up to the date of filing of the charge sheet under section 173 of the Cr.P.C.

X. COMMON LAW CONTEMPT IN THE CONSTITUTION

If the power of contempt for the period between the date when criminal proceedings become 'imminent' or from the date of arrest up to the date of the points of time mentioned in the Explanation is omitted and not covered by the Explanation to section 3 of the Contempt of Courts Act, 1971, the question arises whether such statements will still amount to contempt even after 1971.

The words 'contempt of court' in Article 129 and Article 215 of the Constitution are not defined but cover various classes of contempt which are part of the common law of contempt as understood before the commencement of the Constitution. For that matter, the ambit of the words 'contempt' in Articles 129 and 215 relating to contempt power of the Supreme Court and the High Court, which is constitutional, has been held to be wider than the power of criminal contempt relating to interference in the administration of justice contained in section 2(c) of the 1971 Act.
The said Articles 129 and 215 state that the Supreme Court and the High Courts are *Courts of Record* and shall have all the powers of such a Court including the power to punish for contempt of itself. The said power has been accepted as the inherent power of these Courts. The origin of the inherent powers of such courts to punish for contempt has been discussed in detail by the Supreme Court in *Sukhdev Singh v. Hon'ble C.J., S. Teja Singh*, superseded by *Delhi Judicial Service Association v. State of Gujarat*, and several other cases including *Supreme Court Bar Association v. Union of India*. In *Ram Autar Shukla v. Arvind Shukla*, the Supreme Court observed, in the context of power under Article 129 and section 2 (c) of the Act of 1971, as follows:

Law of contempt is only one of the many ways in which the due process of law is prevented from being perverted, hindered or thwarted to further the cause of justice. Due course of justice means not only any particular proceeding but a broad stream of administration of justice. Therefore, the words “due course of justice” used in Section 2(c) or section 13 of the Act are of wide import and are not limited to any particular judicial proceeding. It is much wider when the Supreme Court exercises *suo motu* power under Article 129 of the Constitution. Due process of law in blinkered by acts or conduct of the parties to the litigation or witnesses which generate tendency to impede or undermine the free flow of the unsullied stream of justice ... to thwart fair adjudication of dispute and its resultant end. If the act complained of substantially interferes with or tends to interfere with the broad stream of administration of justice it would be punishable under the Act. [Emphasis supplied]

Thus, as a matter of common law concept of contempt of court, the Supreme Court held in *A.K. Gopalan* (1969) long before the commencement of the 1971 Act, that prejudicial statements against the suspect, if made after the FIR will not be contempt but if they are made at a stage when criminal proceedings are ‘imminent’ or after the arrest of the suspect, then such statements would be contempt of court. That is the meaning contempt of court under common law as declared by the Supreme Court in 1969 and balancing the right of free speech under Article 19(1)(a) and the right to a fair trial under Article 21. The Supreme Court and the High Courts are therefore entitled under Articles 129 and 215 of the Constitution to commit a person for contempt if he made prejudicial statements once the criminal proceedings became imminent or when the person was arrested. That declaration

71  *Id*, at 137.
made by the Supreme Court in 1969 retroactively declares the common law of contempt as on the date of commencement of the Constitution in 1950.

In fact, when we come to the 1971 Act, we find that the common law concepts of contempt of court were more or less incorporated in the definition of contempt in section 2. Sub clause (c) therein refers to classes of contempt namely "publication of any matter or the doing of any other act whatsoever", which

(i) Prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
(ii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any manner.

That indeed rightly summarises the common law principles of criminal contempt as obtained before 1971.

The Supreme Court has held in *Ram Autar Shukla* that the meaning of the words 'contempt of court' in Articles 129 and 215 is wider than the above definition of criminal contempt in section 2(c). Therefore, before the commencement of 1971 Act, such statements similar to what is mentioned in section 2(c), were contempt and could be punished under Articles 129 and 215 of the Constitution, if such statements were made at any time after the criminal proceedings became imminent or the suspect was arrested, in view of *A.K. Gopalan*.

Therefore, the law declared in *A.K. Gopalan*, being the pre-existing law before the 1971 Act, covered the entire period from the date when criminal proceedings became imminent or when the person was arrested and that declaration of law by the Supreme Court continues to be effective from 1969 onwards when *A.K. Gopalan* was decided. The law that statements made within the period mentioned in *A.K. Gopalan*, define the scope of 'contempt of court' as defined in the Constitution under Articles 129 and 215 and that continues in spite of the limited protection granted in the Explanation to section 3 of the 1971 Act. The ambit and width of these words cannot be restricted or abrogated by any law made by Parliament. The power of contempt of the Supreme Court and High Courts which are saved under Articles 129 and 215 of the Constitution cannot be abridged by any ordinary law made by Parliament. In fact here, there is only an omission in the Explanation, to cover the earlier period and there is no positive provision taking away the contempt power of the said courts, as explained in *A.K. Gopalan* from the date when criminal proceedings become imminent or from the date of arrest.
In other words, the 1971 Act does not expressly say that prejudicial statements made at the time where criminal proceedings are imminent or when the person is arrested will not amount to criminal contempt. The Explanation to section 3 is only silent with regard to that period. If there was such an express provision, which took away any part of the content of common law ‘contempt of court’ in force at the commencement of the Constitution, as explained in A.K. Gopalan, such a law would be ultra vires of Article 21 and also of Article 129 and Article 215 of the Constitution.

In Supreme Court Bar Association, the Supreme Court referred to the inherent power of the superior courts of record to punish for contempt both inside and outside the court and in connection with proceedings before the inferior courts,72 and considered contempt to include any act adversely affecting the administration of justice.73 There is, therefore no doubt that publications made outside a court of record would be contempt and punished under the inherent power of these superior courts of record under Articles 129 and 215. The very purpose of the Constitution saving the inherent powers of the Supreme Court and High Courts was to see that that power was not taken away by ordinary law of the land. Law declared by the Supreme Court in A.K. Gopalan cannot therefore be taken away by any law like the Contempt of Courts Act 1971.

XI. CONCLUSION

Therefore prejudicial statements made after the periods referred to in the Explanation to section 3 will continue to be contempt under the law made by Parliament in 1971 while prejudicial statements made after the time when criminal proceedings become imminent or person is arrested, stand covered by the words “contempt of court” used in Article 129 and Article 215 of the Constitution, that being the common law contempt before 1971 as explained by the Supreme Court in A.K. Gopalan.

73 Id, at 429.

26