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MINISTRY OF

REPORT

OF

THE COMMITTEE

ON

CONTEMPT OF COURTS

February, 1963

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Report of the Committee on Contempt of Courts. ruary 1963.

ERRATA

At page 13, in the marginal note:-

(i) to paragraph 2, for "re.contempt", read "re: contempt"; and

i) to paragraph 3,1, for "re.contempt", read "re:contempt".

t page 17, in the marginal note to paragraph 6.1, or "re.contempt", read "re:contempt".

t page 19, in foot note 4, -

i) in line 3, for "preverseness", read "perverseness"; and

i) in line 5, for "preverting", read "perverting".

page 23, in paragraph 3.2, in line 4, for avourable", read "favourably".

page 25, in paragraph 3.4, in line 8, for ttcks", read "attacks".

....2

6. At page 30, -

(i) in lines 9-10, for "remote and and unkno read "remote and unknown"; and

(ii) for the existing foot note 1, read "Raje Kumar Garg V. Shafiq Ahmad Azad, A.I.R. 37, 42.".

7. At page 31, in the last line, before the figu brackets "(1961)", insert the figure "3.".

8. At page 32, in line 2, for "Justic", read "Ju

9. At page 41, in foot note 1, in line 1, for "ma read "matter".

10. At page 46, in the footnote, for "(1963)", re "(1953)".

11. At page 47, in the marginal note to paragraph for "th", read "the".

12. At page 57, in the marginal note to paragraph for "Purge' ", read "'Purge'".

3.1963.

CHAIRMAN
COMMITTEE ON CONTEMPT OF COURTS
New Delhi, the 28th February 1963.

Shri Asoke Kumar Sen,
Minister of Law,
Government of India,
New Delhi.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the Report of the Committee on Contempt of Courts.

2. The constitution of the Committee, its terms of reference, the procedure adopted by the Committee for discharging the functions entrusted to it are explained in the first Chapter of the Report. The law and the problems relating to contempt of courts were examined in detail at 7 meetings of the Committee and on the basis of the discussions a draft Report and a Bill to give effect to the proposed recommendations were prepared by Shri G. R. Rajagopaul and these were considered and finalised by the Committee at its meetings held on the 16th, 18th and 22nd February, 1963.

3. The Committee desires to express its appreciation of the services rendered by the Member-Secretary, Shri H. C. Daga, in the preparation of an exhaustive summary of the case-law on the subject, both Indian and English, and by Shri R. V. S. Peri Sastri, Assistant Draftsman, in the preparation of the Report.

Yours sincerely,
H. N. SANYAL.

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CHAPTER I

Introductory

Genesis of the Committee and terms of reference.

On the 1st April, 1960, Shri Bibhuti Bhushan Das Gupta introduced in the Lok Sabha a Bill to consolidate and amend the law relating to contempt of courts. On an examination of this Bill, Government appears to have felt that the law relating to contempt of courts is uncertain, undefined and unsatisfactory and that in the light of the constitutional changes which have taken place in the country, it would be advisable to have the entire law on the subject scrutinised by a special Committee set up for the purpose. In pursuance of that decision the Ministry of Law by its Order No. F.49/61-Adm. I dated 29th July, 1961, set up a Committee consisting of the following persons:—

Chairman

1. Shri H. N. Sanyal, **Additional Solicitor-General of India.

Members

2. Dr. W. S. Barlingay* Member of Parliament.
3. Shri G. R. Rajagopaul, Special Secretary and Member, Law Commission, Legislative Department, Ministry of Law.
4. Shri L. M. Nadkarni,* Joint Secretary, Ministry of Home Affairs.

Member-Secretary

5. Shri H. C. Daga, Joint Secretary and Legal Adviser, Department of Legal Affairs, Ministry of Law.

This Committee was required—

(i) to examine the law relating to contempt of courts generally, and in particular, the law relating to the procedure for the punishment thereof;

(ii) to suggest amendments therein with a view to clarifying and reforming the law wherever necessary; and

(iii) to make recommendations for codification of the law in the light of the examination made.

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*In April, 1962, Dr. Barlingay ceased to be a Member of Parliament, but Government decided that he may continue to be a Member of the Committee.

**Now Solicitor-General of India.

Procedure adopted by the Committee for examination of the law.

2.1. At our first meeting held on the 29th August, 1961, we discussed the general line of approach to the questions referred and took preliminary decisions. We also decided to address the public in general and, in particular, the State Governments, High Courts, Bar Councils, High Court Bar Associations, Universities and the Indian Law Institute for suggestions in this behalf.

2.2. Apart from eliciting the views and opinions of all the persons and bodies referred to above we undertook a comprehensive survey of the leading decisions on the subject, both Indian and English, and also a general survey of the position obtaining at present in the various countries of the world. Further, we made a detailed study of the origin and the application of the law relating to contempt of courts. Above all, we focussed our attention upon the implications of the provisions of the Constitution relating to contempt of courts and the great importance given to freedom of speech and the consequent need for harmonising the interests of the individual with the interests of administration of justice within the framework of our Republican Constitution envisaging a democratic set up.

Nature of our task.

3. We realised as we proceeded with our work that the task before us was by no means easy. We had to devise a set of rules which would steer clear of the Scylla of the contempt of judicial authority and the Charybdis of undue restraints on the individual's freedom. In this task, we derived considerable assistance from the opinions received by us and we are indeed very grateful to all those who responded to our request. It is somewhat unfortunate that judicial decisions in this branch of the law have not that clarity and definiteness which judicial decisions relating to some of the other branches of law have. In case after case, there is invariably a broad and sweeping assertion of an unlimited power in the courts to punish for contempt. At the same time, this assertion of what may perhaps be termed an omnipotent power is tempered by the statement that the power would be exercised sparingly and only in exceptional cases. Against this background, delimitation of this power becomes somewhat difficult. It may be that a person reading this Report may accuse us of having been somewhat over-cautious in our approach to this branch of the law, but neither the present state of the law nor the comprehensiveness of the examination involved—perhaps we are the first Committee whose terms of reference have covered such a wide field—would justify the adoption of any other line of approach; for we would certainly not wish to recommend anything which may tend to undermine the confidence of the public in the administration of justice—a confidence which is so essential for the preservation of our liberty.

CHAPTER II

Historical

Contempt of court in indigenous systems.

1. The existing law relating to contempt of courts is essentially of English origin. The indigenous legal systems of India, based as they were on the concept of a law above the sovereign and his courts, and functioning as they did, in times when means of communication were slow and publication on anything but a small scale well nigh impossible, neither possessed nor needed anything like the elaborate system of contempt law such as we have now. Doubtless, courts or assemblies (*sabhas*) were protected from being scandalised. Kautilya lays down thus:—

> "Defamation of one's own nation or village shall be punished with the first amercement; that of one's own caste or assembly with the middle-most; and that of Gods or temples with the highest amercement."[1]

The King and the King's council stood on a higher footing than the caste, village or assembly. Thus,

> "any person who insults the King, betrays the King's council, makes evil attempts against the King.... ..... shall have his tongue cut off."[2]

While it was an offence to scandalise or defame the King or the King's council or the other courts or assemblies, there does not appear to have been in vogue any special procedure for the trial of these offences. Not only that, the law seems to have insisted upon the judges also maintaining decorum and adherence to the code of judicial conduct requisite for keeping administration of justice unsullied. If the judge misbehaved or offended against the dignity of the law, he was as much liable to punishment, nay, liable to a higher degree of punishment than the ordinary individual defaming the judge or the assembly or the court. Citing Kautilya again:—

> "When a judge threatens, browbeats, sends out or unjustly silences anyone of the disputants in his court, he shall first of all be punished with the first amercement. If he defames or abuses any of them, punishment shall be double."[3]

In short, the scheme envisaged must have been one in which any violation of the sanctity of the administration of

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1. Shama Sastri's translation of Kautilya's Artha Sastra, 5th edn. p. 219.
2. Shama Sastri op. cit. p. 257.
3. Shama Sastri op. cit. p. 252 (*See* also Kane, History of Dharma Sastra, Vol. III, p. 255.

justice, either by those who administer it or by those for whose benefit it is administered, was visited with a penalty, the penalty being the highest where the offence is by those who administer the law.

Origin of present system of contempt law.

2. The study of the scheme of contempt law in indigenous systems, fascinating though it may be, is not of much use for our present purpose. On the one hand, we do not have a complete picture of the position in those systems to facilitate comparison. On the other hand, the present system has its origin elsewhere, *i.e.*, in English law.

Haphazard introduction of English law of contempt into India.

3.1. The English law of contempt which itself had a haphazard growth came to be introduced in our country in a yet more haphazard manner. Power to punish for contempt being an attribute of a court of record, the setting up of such courts by the British in India necessarily meant the introduction of English law of contempt in some measure. This is how English law of contempt came to be introduced in India, first. One of the earlier courts of record, if not the earliest, expressly created as such seems to be the Court of the Mayor and Corporation of Madras established under the East India Company's Charter of 1687. But since appeal lay from this court to the Admiralty Court established under the Royal Charter of 1683 as also to the Governor-in-Council, we may be justified in treating these latter-mentioned courts also as courts of record. Later, we have the Mayor's courts established under the Charter of 1726 and re-constituted under the Charter of 1753 which were courts of record and as incidental to that status possessed the power to punish for contempt. In Calcutta, the Mayor's court was succeeded by the Supreme Court established under a Charter granted in 1774 in pursuance of the Regulating Act of 1773. In Madras and Bombay the Mayor's courts continued till 1797 when they were superseded by Recorder's Courts established under 37 Geo. III, c.142. The Recorder's Court at Madras was abolished by the Government of India Act, 1800, and a Supreme Court established in its place by Charter in 1801. In Bombay, likewise a Supreme Court was established in place of the Recorder's Court by a Charter granted under a statute of 1823 (4 Geo. IV, c.71). The Recorder's Court and the Supreme Court had the same powers for punishing for contempt, as the superior courts of England. The Supreme Courts were in turn succeeded by the High Courts under the High Courts Act, 1861.

3.2. In the case of some of the old provinces of India there were no High Courts but only chief courts or courts of judicial commissioners, functioning as the highest courts in those provinces. For a long time, it was far from clear whether the chief courts and courts of judicial commissioners had the same powers in relation to contempt as the High Courts. It was also equally unsettled whether the jurisdiction of the High Courts in contempt etxended also to contempt of courts subordinate to them. The subordinate

courts, not being courts of record, obviously did not possess any inherent powers to punish for contempt as well. At the same time, there was no general provision for the punishment of contempt of these courts. The Indian Penal Code which was passed in 1861 made only certain acts which would be punishable as contempt as specific offences.

3.3. The absence of clear-cut provisions in regard to the contempt jurisdiction of the Chief Courts and courts of judicial commissioners, the uncertainty about the power of High Courts to punish for contempt of courts subordinate to them, the limited character of the statutory provisions relating to punishment of contempt of subordinate courts, were brought to the forefront in an accentuated form during the turn of the last century and the beginning of the present century which witnessed revolutionary activities in the political and other fields. A particularly bad instance in which a Calcutta newspaper made unwarranted and prejudicial comments on certain proceedings pending in the court of a magistrate at Khulna was brought to the notice of the Provincial Government of Assam and Bengal in 1907-08. Expert legal opinion taken in that connection indicated that the power of punishment by summary process for contempt of courts was confined to the three High Courts of Calcutta, Madras and Bombay and was only exercisable by those courts in respect of offences committed within that portion of their territorial jurisdiction where the common law of England was in force.

Attempts to remove the lacunae—1911-1914 Bill.

4. In 1908-09, Lord Minto's Government consulted all the Provincial Governments as to whether legislation should be undertaken—

(i) to enable High Courts other than Chartered High Courts to protect themselves in respect of contempts of courts, and

(ii) to empower all High Courts to give a reasonable measure of protection to courts subordinate to them in respect of contempts and improper comments on pending cases.

On the whole, the weight of opinion received was in favour of legislation on the lines indicated. But by the time these opinions came to be considered in 1911, the Press Act of 1910 was already on the Statute Book and the Government felt that it was neither necessary nor opportune to proceed with the contemplated contempt legislation. However, to deal effectively with the situation, if it became acute, a Bill was prepared in 1911, penalising contempt of authority of courts of justice or of persons empowered by law to record evidence on oath and the publication of false or inaccurate reports of pending judicial proceedings or of comments touching persons concerned in them calculated to cause prejudice in the public mind in regard to such proceedings. This Bill, as revised in the light of the comments received,

adopted the simple device of making certain amendments in the Indian Penal Code and certain consequential amendments in the Code of Criminal Procedure. It sought to introduce two new sections after section 228 of the Indian Penal Code. The first of these sections was intended to render punishable the bringing into contempt of—

(a) any court of justice, or

(b) any person empowered by law to record or direct the recording of evidence on oath, when exercising such powers.

By an explanation to this section, it was sought to be made clear that honest criticism, *i.e.*, comments made in good faith which are in substance true would not amount to contempt. The second section was intended to penalise the publication of false or misleading reports of pending judicial proceedings calculated to cause prejudice in the public mind. The Bill was introduced in the Legislative Council on the 18th March, 1914. But the consideration of the Bill was postponed on account of the outbreak of the First World War. It was taken up again after the end of the war in 1921 and the then Law Member, Sir Tej Bahadur Sapru, reiterated an opinion given by him earlier that—

> "an amendment to the Indian Penal Code which would give power to subordinate courts to punish contempts amounting to what is known as 'scandalising the court' is undesirable.....for the reason that subordinate courts are not.....by their legal framing or traditions qualified to exercise such extraordinary jurisdiction."

He added that—

> "in the event of the Government finding it impossible to drop the measure, the power to initiate proceedings for contempts of inferior courts should be vested in the High Courts alone and that such proceedings might be started upon a reference by an inferior court or on an application made by the local government or by any party to a suit or case regarding which objectionable comments are published by a newspaper."

The 1926 Act.

5. After further consideration, Government finally abandoned the 1914 Bill and decided in favour of introducing legislation on the lines of Sir Tej Bahadur Sapru's suggestions. Such, in short, was the genesis of the Bill, which after important modifications came to be enacted as the Contempt of Courts Act, 1926. The Bill as originally drafted purported to define 'contempt of court' and while assuming a power in the High Court (including chief courts and the courts of judicial commissioners) to punish for contempt of itself, sought to confer a like power on the High Court in respect of contempt of courts subordinate to it. It also sought to define the extent of the punishment which may be awarded in contempt cases. The Bill also included provisions relating to taking cognizance of offences by way of

contempt and the procedure to be followed in respect of such offences.

5.2. The Bill was referred to a Select Committee which re-drafted it, omitting or restricting the provisions of the Bill as indicated below:—

(a) the definition of 'contempt of court' was omitted on the ground that the case law on the subject would form an adequate guide;

(b) the provisions regulating the taking cognizance of offences and procedure and the powers of courts in respect thereto were omitted on the ground that the procedure then followed by the High Courts in respect of such offences was adequate, and the procedure of High Courts in respect of contempts of themselves was made applicable to offences committed against subordinate courts;

(c) courts of judicial commissioners were excluded on the ground that such courts should not have power to punish for contempt;

(d) the provisions empowering the chief courts to punish for contempt were limited to contempts of themselves;

(e) simple imprisonment was prescribed and the amount of fine was limited to Rs. 2,000;

(f) cases of contempt against subordinate courts provided for under the ordinary law were excluded from the purview of High Courts;

(g) provision was added recognising the practice in relation to acceptance of apologies.

Working of the 1926 Act.

6.1. Looking in retrospect, the 1926 Act may well be regarded as a step in the right direction. The greatest service of the Act was that it imposed specific limits as to the punishment which may be awarded in contempt cases.[1] The intention, no doubt, was to make these limits applicable irrespective of whether the contempt was that of the High Court itself or of a court subordinate to it. But in view of the interpretation placed upon the Act[2] that the power of punishment provided in section 3 related only to contempt of subordinate courts, the Act was amended in 1937 to make it clear that the limits applied in all cases.

6.2. Except as to the question of punishment that may be imposed, the 1926 Act was not as thorough-going as it could

1. In the words of Jenkins C.J. in *Legal Remembrancer V. Matilal Ghose and others*, I.L.R. 41 Cal. 173, 222, the power to punish for contempt well merited the description that it is arbitrary, unlimited and uncontrolled because "there is no limit to the imprisonment that may be inflicted or the fine that may be imposed save the court's unfettered discretion....."

2. See for example *Harkishen Lal V. The Crown*, I.L.R. 18 Lah. 69.

nave been even with regard to the limited matters dealt with in that Act. The Act did not contain any provision with regard to contempt of courts subordinate to courts other than High Courts, that is, the courts subordinate to chief courts and judicial commissioner's courts. It was equally silent with regard to the powers of contempt of courts of judicial commissioners. If subordinate courts or superior courts in one area required protection, it was obvious that the courts in other areas also required a like protection. The Act also did not deal with the extra territorial jurisdiction of High Courts in matters of contempt.[1]

6.3. Notwithstanding the fact that the Act of 1926 only touched the fringes of the subject, the Press Laws Enquiry Committee, which was mainly concerned with the working of the Press laws, inclined to the view in its Report presented in 1948 that the law of contempt was not used to punish newspapers unjustly, and therefore felt that no case had been made out for a change in the law. The framers of the Constitution, while conferring in express terms contempt jurisdiction on the superior courts, namely the Supreme Court and the High Courts, included contempt of the Supreme Court and other courts as topics for legislation in the Union and Concurrent Lists. At the same time they subjected the fundamental right of freedom of speech and expression to reasonable restrictions imposed by law in regard to contempt—a matter to which we shall have occasion hereafter to refer in greater detail.

6.4. Incidentally, one of the defects of the Contempt of Courts Act, 1926, was removed in 1950 by the passing of the Judicial Commissioners' Courts (Declaration as High Courts) Act, 1950. The Constitution did not make any provision with regard to contempt power of courts of judicial commissioners. By reason of this Act, read with article 241 (2) of the Constitution, the provisions of Chapter V of Part VI of the Constitution became applicable, subject to certain exceptions and modifications (not relevant for the present purpose) in relation to courts of judicial commissioners. Thus the courts of judicial commissioners became courts of record with the same power as the High Courts in relation to contempt matters.

The Act of 1952.

7. It is against this background of the working of the 1926 Act that we have to judge the Contempt of Courts Act, 1952, which repealed and replaced the 1926 Act. The 1952 Act, while largely re-enacting the provisions contained in the 1926 Act, made two important changes. By defining the expression 'High Court' to include courts of judicial commissioners the Act made it clear that those courts had power to punish contempts of subordinate courts also. Secondly, the Act made it clear that the High Court (including the

1. See—*In the case of B.G. Horniman*, I.L.R. 1944 Bom. 333, which held that the High Court of a State had no power to arrest for contempt of itself a person outside its jurisdiction.

court of a judicial commissioner) would have jurisdiction to inquire into and try a contempt of itself or of any court subordinate to it, irrespective of whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction and irrespective of whether the person alleged to be guilty of the contempt is within or outside such limits.

Need for examination of the law of contempt and major problems of reform.

8.1. The 1952 Act is sound as far as it goes. While its provisions may be retained, its scope requires to be widened considerably. The policy of the legislature has so far been to leave the formulation of the law of contempt to the courts. The only safeguards provided in the law are that the power to punish for contempt (subject to the limited exception as to contempt in the face of the court for which provision is made in the Indian Penal Code) is vested in the superior courts and limits are set to the punishment which may be awarded by the courts. Before the Constitution came into force there was no statutory provision for appeals from decisions of High Courts in contempt cases though the Privy Council after some initial reluctance[1] finally asserted its jurisdiction to hear appeals in contempt cases.[2] The High Courts and the Supreme Court have interpreted the provisions as to appeals contained in the Constitution as sufficiently wide to permit appeals in such cases from High Courts to the Supreme Court.

8.2. We have now been asked to examine the law relating to contempts generally with a view to clarifying and reforming it wherever necessary. The jurisdiction to punish for contempt touches upon two important fundamental rights of the citizen which are of vital concern to him, *viz.*, the right to personal liberty and freedom of expression—rights which are of vital importance in any democratic system. We should therefore approach the problem of contempt of court untramelled by whatever may have been the position in the past or whatever may be the position in other countries in order to ensure that our law of contempt harmonises well with the needs of a modern democratic system. Though a charge of contempt is as serious as a criminal charge, the trial is not in accordance with those safeguards that the ordinary procedure for the trial of a criminal offence requires, but is by way of summary proceedings. What constitutes contempt of court has to be ascertained from case law which is voluminous and not always consistent.[3] Even then, the citizen may

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1. *Surendranath Banerjea* V. *The Chief Justice and Judges of the High Court of Bengal*, 10 I.A. 171.

2. *Ambard* V. *Attorney-General of Trinidad* and Tobago, 1936 A.C. 322 *Debi Prasad Sarma* V. *K.E.*, 70 I.A. 216.

3. In *M.Y. Shareef and another* V. *The Hon'ble Judges of the High Court of Nagpur*. (1955) 1S. C. R. 757, the Supreme Court observed at p. 766—"In this case the learned Judges (of the High Court) themselves had to wade through a large volume of English and Indian case-law before they could hold that the act of the appellants constituted contempt....."

not know where he stands because contempts may take new forms and shapes in the ever-changing complicated world of today. The High Courts as courts of record assert that the power to punish for contempt is inherent in them and consequently they are the final authorities to define what constitutes contempt. In the absence of an appeal as a matter of course the necessary corrective is not always available in respect of such decisions. Very often the contemner escapes the sentence by tendering an abject apology and such cases do not in any way tend to clarify the law. For it is quite conceivable that a Judge who hears a contempt case may hold that there is no contempt in which event a defence of unqualified apology is meaningless as that would amount to an admission of guilt. It may be mentioned in passing that it is not unusual for an alleged contemner to tender an unqualified apology because if he tried to submit a qualified apology or an apology in the alternative even when justified by the circumstances of the case, more often than not he may have to pay for it heavily. In fact, there is a possibility of such a defence being regarded as an act of contumacy.[1] Further, a person in contempt cannot be heard in prosecution of his own appeal until he purges his contempt. The few cases that have gone up in appeal either to the Privy Council in the olden days or to the Supreme Court under our Constitution reveal that the High Court may not always be free from errors in this branch of the law.

8.3. Comments on matters which may or may not come before the court but which are agitating the public mind may constitute contempt although the editor or publisher of the newspaper in which the comments have appeared may have acted in perfect good faith. In a vast country like India, the law of contempt in relation to pending and imminent proceedings may work hardship in many cases. Further, should there be any contempt if proceedings are merely imminent? If the answer is in the affirmative, would it be possible to say when proceedings may be regarded as imminent? Would it not be better that punishment is meted out only in those cases where the evil consequences of contempt are extremely serious and the degree of imminence extremely high? A criticism is often made that Judges do not always appreciate the distinction between attacks on them which are of a defamatory character and attacks which interfere with the administration of justice.[2]

8.4. The power to punish for contempt has often been described as arbitrary, unlimited and uncontrolled. In the circumstances, would it be sufficient or proper to leave

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1. An extreme instance of such a situation is to be found in *M.Y. Shareef and another* V. *The Hon'ble Judges of the High Court of Nagpur*, referred to *ante*.

2. See in this connection *Debi Prasad Sharma* V. *K.E.*, 70 I.A. 216 *Bathina Ramakrishna Reddy* V. *The State of Madras*, (1952) S.C.R. 425.

the whole matter to be regulated by the courts themselves as hithertofore on the basis that, as courts have invariably stated that this power should be used very sparingly and only in extreme cases and always with reference to the interests of the administration of justice, it is not necessary to fetter their discretion in any way?

8.5. The problem has been receiving the attention of the legislature both in India and elsewhere also. We have already referred in Chapter I to a Bill on the subject introduced in the Lok Sabha by a Private Member. The history of the law relating to the 1952 Act reveals the care and anxiety with which this subject has had to be approached from time to time. The Press Commission, reporting in 1954, had occasion to consider this subject[1] once again, and that body had before it several representations to the effect that the law of contempt, particularly in its application to newspapers, was much too vague and required to be crystalised; that the law could be stretched to any limits making it impossible for an honest writer to comment on judicial procedure or even on the merits of judicial decisions; that contempt should be precisely and rigorously defined and so on. The Commission, however, did not recommend any change either in the procedure or practice of the contempt of court jurisdiction exercised by the High Courts. In this connection it may be pertinent to observe that that body had been appointed to inquire generally into the state of the Press in India and its present and future lines of development, and the law of contempt came to be examined by it only as an incidental matter. And in coming to that conclusion the Commission was largely influenced by the observations made by courts from time to time that this power should be sparingly used and with great caution.

8.6. On the other hand, in England, a Committee[2] appointed by the International Commission of Jurists (British Section) headed by Lord Shawcross found that the law of contempt was unsatisfactory in quite a few important respects and the recommendations of that Committee, made in 1959, have already been made the basis for the Administration of Justice Act, 1960. One may recall in this connection a Resolution passed as early as in 1906 by the House of Commons that the jurisdiction of Judges in dealing with contempt of court is practically arbitrary and unlimited and calls for the action of Parliament with a view to its definition and limitation.

9. These and similar other difficulties must have weighed with the Government in coming to the conclusion that the

Conclusion.

1. Report of the Press Commission, (1954) Part I, pp. 408—418.

2. Referred to in this Report as the Shawcross Committee.

law of contempt should be subjected to a comprehensive examination by a special Committee, and unlike the Press Commission, our sole task is to examine this law with a view to its clarification and reform wherever necessary, and this we proceed to do in detail in the succeeding Chapters.

CHAPTER III

Constitutional provisions relating to contempt.

Introduction.

1. Before considering the lines on which the law of contempt may be clarified or reformed, it is necessary to bear in mind clearly the implications of the provisions of our Constitution relating to contempt of courts.

Constitutional provisions re-contempt of courts.

2. The following are the provisions of the Constitution having a bearing on contempt of courts:—[1]

(i) articles 19(1)(a) and 19(2);

(ii) article 129 and entry 77 of List I of the Seventh Schedule;

(iii) article 215 and entry 14 of List III of the Seventh Schedule;

(iv) article 142(2).

Article 19(1)(a) guarantees to all citizens the right to freedom of speech and expression and article 19(2) provides *inter alia* that this right is subject to any law imposing reasonable restrictions in relation to contempt of court. Articles 129, 142(2) and entry 77 of List I of the Seventh Schedule pertain to contempt of the Supreme Court, while article 215 pertains to contempt of High Courts. Entry 14 of List III of the Seventh Schedule covers contempt of courts other than the Supreme Court.

Doubts as to legislative competency re. contempt

3.1. The question which arises out of the various constitutional provisions is as to how far the legislature is competent to deal with the subject of contempt of courts and as to what are the limitations of the legislature in this matter. The question is of fundamental importance as there are some dicta indicating that in view of the constitutional provisions the legislature is not competent to define contempt in so far as the superior courts are concerned. Two of the State Governments—Uttar Pradesh and Mysore—have expressed views doubting the competence of Parliament to legislate in respect of the substantive law of contempt. In *State* V. *Padma Kant Malviya*,[2] Desai J. observed that contempt was not defined in the Contempt of Courts Act, 1926, "not because it was difficult, or not necessary, to define it but because the legislature

1. Articles 105(2) and 194(2) which afford complete immunity to members of the legislature in respect of anything said therein are not being referred to in this context.

2. A.I.R. 1954 All. 523, 529.

had no power to define it, a court of record having the exclusive power to define and determine what amounts to contempt."

3.2. The doubts in regard to legislative competency seem to have arisen mainly by reason of the fact that the Constitution has, by articles 129 and 215, expressly declared the Supreme Court and High Courts to be Courts of Record possessing all the powers of such courts including the power to punish for contempt of themselves, while at the same time, enumerating without any qualifications contempt of the Supreme Court in entry 77 of List I and contempt of courts other than the Supreme Court in entry 14 of List III of the Seventh Schedule.

Construction of the relevant provisions reveals that doubts are not well founded.

4.1. The crux of the problem, in our opinion, lies in the construction to be placed on the twenty-three words occurring in articles 129 and 215:—

> "a Court of Record, and shall have all the powers of such a court including the power to punish for contempt of itself.".

During the Constituent Assembly debates, in relation to the present article 129, Dr. Ambedkar explained that the words "court of record" were used to define the status of the court and as to the additional words he observed thus:—

> "As a matter of fact, once you make a court a court of record by statute, the power to punish for contempt necessarily follows from that position. But, it was felt that in England this power is largely derived from Common law and as we have no such thing as Common law in this country, we felt it better to state the whole position in the statute itself."[1].

The Orissa High Court explained the purport of these words by stating that it has been done in order to put an end to any possible argument regarding the nature of the powers of a High Court in this respect.[2]

4.2. In other words, articles 129 and 215 are intended to ensure to the Supreme Court and the High Courts the power to punish for contempt which English courts of record possess. The elaborate wording of the article was necessitated by reason of the absence of any such thing as Common law in our country at any rate in those parts of India outside the old presidency towns. Constituent Assembly or legislative debates may not be relied on as an aid for construction but it is quite legitimate to use

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1. Constituent Assembly debates, Vol. VIII, pp. 378-383 (382).

2. *Bijoyananda Patnaik* V. *Balkrushna Kar*, I.L.R. 1953 Cuttack 283, 293.

them as evidence of the circumstances prevailing at the time of the passing of a statute. So viewed, the elaborate phraseology of articles 129 and 215 would reveal itself more as the consequence of a practical difficulty in using more concise and less misleading language to describe the powers of the courts rather than as an attempt to freeze for all times to come the substantive law of contempt. The wide and unqualified language of entry 77 of List I and entry 14 of List III of the Seventh Schedule shows that the Legislature has full power to legislate with respect to contempt of court subject only to the qualification that the Legislature cannot take away the power of the Supreme Court or the High Court to punish for contempt or vest that power in some other court, example, a magistrate's court. Further, the provisions of article 142(2) to the effect that the Supreme Court shall have 'all and every power' to make any order for the investigation or punishment of any contempt of itself, "subject to the provisions of any law made in this behalf by Parliament" clearly assume that Parliament has full power to legislate in relation to contempt of the Supreme Court. In other words, even if article 129 were interpreted as 'conferring' on the Supreme Court the power to punish for contempt of itself, another article, namely, article 142(2) expressly makes 'all and every power' of the court to make any order for the punishment of any such contempt subject to any law made in this behalf by Parliament. Further, legislation in relation to contempt, as contemplated and saved by article 19(2), must necessarily be in relation to the substantive law of contempt and such legislation would not be possible in relation to the Supreme Court and High Courts if articles 129 and 215 were construed to prohibit it.[1] It would, therefore, seem to us to be sufficiently clear that having regard to the relevant provisions, Parliament has the power to legislate in relation to the substantive law of contempt of the Supreme Court and High Courts. In this conclusion, we are fortified by the provisions of the Contempt of Courts Act, 1952, which expanded the ambit of the authority of these superior courts and at the same time limited the punishment which may be awarded by courts in contempt cases. Those provisions doubtless pertain to the substantive aspects of the contempt law and were noticed by the Supreme Court in Sukhdev Singh's case[2] without any doubts being cast about their constitutional validity.

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1. In *Bijoyananda Patnaik* V. *Balkrushna Kar*, I.L.R. 1953 Cutt. 283, (293) the Orissa High Court came to the conclusion that article 19 does not curtail the right of the High Court to deal with contempt of court. The High Court in that case was considering whether there was any existing law curtailing that power within the meaning of article 19(2), and it is therefore not clear whether the court would have come to the same conclusion if there was some express provision of law on the subject.

2. 1954 S.C.R. 454.

Theory that a court of record has the sole and exclusive power to determine what amounts to contempt untenable.

5. In view of the interpretation we have placed on the provisions of the Constitution relating to the competency of Parliament to legislate on contempt matters, it may not be quite necessary to consider the theory that a court of record has not only the inherent power to punish for contempt of itself but has also the sole and exclusive power to define and determine what amounts to contempt. Inasmuch as the theory has received some amount of judicial support, it becomes necessary to deal with it.[1] In the first place, the expression 'court of record' is not defined in the Constitution. Its connotation, whatever that may be, will necessarily have to be subject to the provisions of the Constitution. If, as pointed out earlier, the provisions of the Constitution lend themselves to the interpretation that Parliament is competent to legislate, the mere use of the expression 'court of record' cannot have the effect of detracting from that conclusion. For our present purposes, it is, however, not necessary to go so far; for it is well recognised in English law, from which we have derived the concept of 'court of record', that all the powers of a court of record including the power to punish for contempt can be the subject-matter of legislation and that the right of a court of record to determine what amounts to contempt of itself is subject to legislative provisions to the contrary; the most recent legislation of this type being the Administration of Justice Act, 1960. It may also be mentioned that the English concept of 'court of record' does not preclude the possibility of the decisions in contempt matters of a court of record being considered and reversed, if the appellate court so thinks fit in appeal.[2] The theory that a court of record is the final judge of what amounts to contempt of itself runs counter to the principle underlying the English law of contempt as expounded in *Almon's case*[3], *viz.*, that the power "of committing for contempt was the emanation of the Royal authority, for any contempt of the court would be a contempt of the Sovereign". Logically, if a superior court is the final arbiter of what amounts to contempt of itself, that would mean that the Sovereign himself is precluded from determining what amounts to contempt of himself. Looking at the matter from the point of view of the position as it obtains in India, the theory would mean that there might be as many systems of law of contempt in the country as there are High Courts plus one, for the Supreme Court is also a court of record.

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1. See the observations of Desai J. in *State* V. *Padma Kant Malviya* cited *ante*. While Desai J. attributed the want of a definition of contempt to the lack of legislative power, Mukerji J. on the other hand thought that the action of the legislature in not defining contempt was based on great wisdom. *Zikar* V. *The State*, I.L.R. (1952) Nag. 130; citing *Brass Crosby's case* [(1771) 3 Wils, K.B. 188] in support.

2. See the decision of the Privy Council in *Ambard* V. *Attorney General for Trinidad* (1936) A.C. 322; *McLeod* V. *St. Aubyn*, 1899 A.C. 549. Section 13 of the Administration of Justice Act, 1960.

3. *R.V. Almon*, (1765) Wilm. 243, 254.

it might also mean that the provisions of article 141 of the Constitution which provide that the law laid down by the Supreme Court shall be binding on all the courts within the territory of India would be subject to an exception in relation to the law of contempt. It might further mean that the present practice of the Supreme Court of entertaining appeals in contempt cases under article 136, for example, by special leave, is erroneous.[1] These are conclusions which would be rather startling. We are, therefore, inclined to assert that the theory that the superior courts are the final arbiters for determining what amounts to contempt is really the result of legislative reluctance born perhaps of wisdom as stated in some cases to define contempt or regulate the law of contempt. Thus, it is clear that, judged by any test, it is constitutionally permissible for Parliament to legislate in relation to the substantive law of contempt qua the Supreme Court and the High Courts.

Limitations on Parliament's power to legislate re. contempt

6.1. Having come to the conclusion that Parliament is competent to legislate in relation to contempt, the next question that arises is as to the limitations, if any, to which this power of Parliament is subject. The paramount limitation, in our opinion, is that the power of the Supreme Court and the High Courts to punish for contempt having been recognised in express words, by the articles of the Constitution, it cannot be abrogated, nullified or transferred to some other body, save by an amendment of the Constitution. As Their Lordships of the Supreme Court observed in *Sukhdev Singh's case* "In any case, so far as contempt of a High Court, as distinct from one of a subordinate court, the Constitution vests these rights in every High Court. So no Act of the Legislature could take away that jurisdiction and confer afresh by virtue of its own authority."[2]

6.2. Secondly, the provisions of the Constitution are clearly based on the assumption that there should be an effective power in the Supreme Court and each of the High Courts for dealing with cases of contempt. This is no doubt based upon the reason that such power is essential for sustaining the status and dignity of these courts and for vindicating the administration of justice. The power of Parliament to legislate in relation to the law of contempt of these courts, would, therefore, have to be exercised in such a way that the purpose of the constitutional provisions is not defeated. In short, Parliament's power to legislate as to contempt ought not to be so exercised as to stultify the status and dignity of these courts. It may regulate *bona fide* the law of contempt for the purpose of removing

1. In *Sukhdev Singh's case*, (1954) S.C.R. 454, 460, the Supreme Court points out that the Privy Council in *Ambard's case* (cited *ante*) did not accept the extreme proposition that every court of record is the sole and exclusive judge of what amounts to a contempt.

2. (1954) S.C.R. 454, 463.

any undue fetters on the fundamental right of freedom of speech. But it must stop far short of impairing the status of the courts or the sanctity of the administration of justice. In our opinion, the two limitations we have just mentioned bring out fully the implications of articles 129 and 215 of the Constitution.

6.3. The third limitation on Parliament's power to legislate in relation to contempt is that enshrined in article 19(2). By virtue of this, legislation in relation to contempt imposing unreasonable restrictions on the right of citizens to freedom of speech and expression will be *pro tanto* unconstitutional.

Conclusion. 7. Our conclusion, therefore, is that Parliament is competent to legislate in relation to the law of contempt subject only to the three limitations we have mentioned and there is no basis for the theory that a court of record has the sole and exclusive power to define and determine what amounts to contempt of its authority.

CHAPTER IV

Definition and Classification.

Difficulties involved in defining contemp t.

In the law of contempt, difficulty and vagueness start at the definition stage itself. Contempt in its root sense signifies disrespect to that which is entitled to respect or regard, and the expression 'contempt of court' has been "a recognised phrase in English law from the 12th century."[1] If administration of justice has to be effective, respect for its administration has to be fostered and maintained and it is out of rules framed by courts in this behalf that the law of contempt has grown. From rudimentary rules devised for the limited purpose of securing obedience to the orders of courts, there evolved in the course of time elaborate and far-reaching doctrines and extraordinary procedures. Right till the present century, these doctrines and procedures were never subjected to legislative scrutiny with the result that the law of contempt had, as it were, a wild growth. Each new precedent was not declaratory but creative of the law. Each new type of attack on the administration of justice received a corresponding elaboration or extension of the contempt law. As Craies has said, "the ingenuity of the Judges and of those who are concerned to defeat or defy justice has rendered contempt almost protean in its character."[2] And even now, it may well be said the categories of contempt are not closed.[3] The result is that there are contempts and contempts, contempts ranging from mere disobedience to orders of the court and involving only a wrong of a private nature as between the parties to a suit at one end and contempts involving physical violence or large-scale blackmail or mudslinging by means of publication[4] on the Judge at the

1. Fox, History of Contempt of Court, 1927, p. 1.

2. Cited in Goodhart; Newspapers and Contempt of Court, 48 Harv. Law Rev. 885(886).

3. For example, see *Pratap Singh* V. *Gurbaksh Singh*, Cr. Appeal Nos. 128 and 129 of 1959 where the Supreme Court by a majority held that a disciplinary proceeding instituted while a case is pending under the authority of an executive instruction (as distinguished from a condition of service) which required a Government servant to exhaust all his executive remedies before resorting to a court of law would amount to contempt of court.

4. In the words of Blackstone, "Some of these contempts may arise in the face of the court; as by rude and contumelious behaviour; by obstinacy; preverseness or prevarication; by breach of the peace or any wilful disturbance whatever; others in the absence of the party; as by disobeying or treating with disrespect the king's writ or the rules or process of the court; by preverting such writ or process to the purposes of private malice, extortion or injustice; by speaking or writing contemptuously of the court, or judges acting in their judicial capacity; by printing false accounts (or even true ones without proper permission) of causes then pending in judgment and by anything, in short, that demonstrates a gross want of that regard and respect which, when once courts of justice are deprived of, their authority (so necessary for the good order of the kingdom) is entirely lost among the people. (Blackstone's commentaries Vol. IV, p. 285).

other end. In view of the haphazard development inherent in the process of development of law by judicial precedents, it is not possible to attempt neat and clear-cut classifications of the various branches of the law of contempt and, in view of the possibility of new types of contempt arising in future, it is not possible to demarcate the area of operation of the law of contempt. It is for these reasons that judges and jurists have not succeeded in formulating a comprehensive and complete definition of the concept of contempt of courts. The Shawcross Committee observed: "Not the least of the difficulties in this field (definition) is that contempt, being a growth of the common law, has no authoritative definition or limitation ..... it can be defined in the most general terms."[1] In the words of one of our own Judges,[2] "It is indeed difficult and almost impossible to frame a comprehensive and complete definition of contempt of court. The law of contempt covers the whole field of litigation itself. The real end of a judicial proceeding, civil or criminal, is to ascertain the true facts and dispense justice..... Anything that tends to curtail or impair the freedom of the limbs of the judicial proceeding must of necessity result in hampering the due administration of law and in interfering with the course of justice."

Civil and criminal contempts.

2.1. The expression "contempt of court" does not appear to have been defined by statute in any Anglo-American jurisdiction. Contempts are stated broadly to fall into two groups, *viz.*, civil contempts and criminal contempts. In considering the law relating to criminal contempts Lord Hardwicke's traditional definition is generally referred to, although by no means exhaustive. Lord Hardwicke observed: "There are 3 different sorts of contempts. One kind of contempt is scandalising the court itself. There may be likewise a contempt of this court in abusing parties who are concerned in causes here. There may also be a contempt of this court in prejudicing mankind against persons before the cause is heard."[3] In the Contempts of Court Bill, 1883, Lord Selbourne suggested the following classification:—

"(1) Contempts of the court itself, not consisting of any disobedience to its orders;

(i) by strangers; (ii) by parties.

(a) in the face of the court; punishable by fine and by imprisonment by a court of record, inferior as well as superior;

(b) outside the court, punishable by fine and imprisonment by superior courts of record only;

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1. Shawcross Committee Report, p. 4.

2. Niyogi J. in *Telhara Cotton Ginning Co. Ltd.* V.*Kashinath*, I.L.R. 1940 Nag. 69 at pp. 71, 72.

3. Re Read and Huggonson (1742) 2 Atk 469 (470—471).

(2) disobedience to the orders of the court; confined to parties, punishable by imprisonment and not by a fine."

Broadly speaking, the classification follows the method of dividing contempt into criminal and civil contempts. The Shawcross Committee adopted the same classification on the grounds of convenience.[1] Broadly speaking, civil contempts are contempts which involve a private injury occasioned by disobedience to the judgment, order or other process of the court. On the other hand, criminal contempts are right from their inception in the nature of offences. In *Legal Remembrancer* V. *Matilal Ghose*,[2] Mukerji J. observed thus: "A criminal contempt is conduct that is directed against the dignity and authority of the court. A civil contempt is failure to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein. Consequently, in the case of a civil contempt, the proceeding for its punishment is at the instance of the party interested and is civil in its character; in the case of a criminal contempt, the proceeding is for punishment of an act committed against the majesty of the law, and, as the primary purpose of the punishment is the vindication of the public authority, the proceedings conform as nearly as possible to proceedings in criminal cases. It is conceivable that the dividing line between the acts constituting criminal and those constituting civil contempts may become indistinct in those cases where the two gradually merge into each other."

2.2. Notwithstanding the existence of a broad distinction between civil and criminal contempts, a large number of cases has shown that the dividing line between the two is almost imperceptible. For instance, in *Dulal Chandra* V. *Sukumar*,[3] the following observations occur:—

"The line between civil and criminal contempt can be broad as well as thin. Where the contempt consists in mere failure to comply with or carry out an order of a court made for the benefit of a private party, it is plainly civil contempt and it has been said that when the party, in whose interest the order was made, moves the court for action to be taken in contempt against the contemner with a view to an enforcement of his right, the proceeding is only a form of execution. In such a case, there is no criminality in the disobedience, and the contempt, such as it is, is not criminal. If, however, the contemner adds defiance of the court to disobedience of the order and conducts himself in a manner which amounts to obstruction or interference with the course of justice, the contempt committed by him is of a mixed

1. Shawcross Committee Report, p. 4.
2. I.L.R. 41 Cal. 173. (252).
3. A.I.R. 1958 Cal. 474, (476, 477).

character, partaking as between him and his opponent of the nature of a civil contempt and as between him and the court or the State, of the nature of a criminal contempt. In cases of this type, no clear distinction between civil and criminal contempt can be drawn and the contempt committed cannot be broadly classed as either civil or criminal contempt..... To put the matter in other words, a contempt is merely a civil wrong where there has been disobedience of an order made for the benefit of a particular party, but where it has consisted in setting the authority of the courts at nought and has had a tendency to invade the efficacy of the machinery maintained by the State for the administration of justice, it is a public wrong and consequently criminal in nature."

2.3. In other words, the question whether a contempt is civil or criminal is not to be judged with reference to the penalty which may be inflicted but with reference to the cause for which the penalty has been inflicted. Even with regard to the broad details of the distinction between civil and criminal contempts, one cannot claim any degree of finality if the decisions of the Supreme Court of the United States of America are to be a guide. For instance, in the United Mine Workers' case[1] the court held that the same conduct may amount to both civil and criminal contempt, and the same acts may justify a court in resorting to coercive and punitive measures which may be imposed in a single proceeding. In spite of the difficulties present in formulating a clear-cut distinction between civil and criminal contempts we may observe that in so far as civil contempts pure and simple are concerned they do not attract any considerations affecting the fundamental right of freedom of speech. It is obvious that courts should be clothed with adequate powers to enforce their orders, and the statutory provisions for the purpose (including appeals) now to be found in the existing law of procedure (the Code of Civil Procedure, 1908) do not appear to call for any detailed examination. The law relating to civil contempt ought to be essentially of a non-controversial character and no problems have been posed before us giving rise to any controversy. In the circumstances we proceed to consider whether, in place of a comprehensive definition of contempt of court, it is sufficient, were it possible to do so, to define criminal contempt as that is the subject on which controversies have been raging so far.

Definition of criminal contempt.

3.1. In the Contempt of Courts Bill which ultimately became the Contempt of Courts Act, 1926, the definition ran thus:—

"Whoever, by words either spoken or written or by signs or by visible representation or otherwise, interferes with or obstructs or attempts to interfere with

1. 330 U.S. 258 (1947)—a case involving a labour dispute with far reaching consequences.

or obstruct the administration of justice in, or brings or attempts to bring into contempt, or lowers or attempts to lower the authority of, a court..... is said to commit contempt of court."

This definition was, however, deleted by the Select Committee which considered the Bill. One of the members of the Select Committee, the late Sir Hari Singh Gour, strongly advocated the need for defining the expression on the ground that courts may, without a definition, at times, violate the principle that the "object of the discipline enforced by the court in cases of contempt of court is not to vindicate the dignity of the court or the person of the judge but to prevent undue interference with the administration of justice". He pointed out that the assumption of the Select Committee in deleting the definition, namely that the case-law on the subject will form an adequate guide, is open to question. For, "in order to afford such guide, the courts will have to roam over a vast mass of case-law and thus act under the uncertainty of the meaning of contempt of court which it is for the public to understand in order that they may know what to avoid and how to avoid it and for the judges to administer it, within the limits of the law". On the other hand, in the debates on the Bill, several members spoke about the futility of defining satisfactorily the expression 'contempt' and one member went to the extent of remarking that the only country which has a definition of the word is China and that our law-givers in India have wisely decided not to follow that celestial empire. Pandit Motilal Nehru characterised the attempt to define the term 'contempt of court' as 'an attempt to achieve the impossible'. Pandit Motilal Nehru, N. C. Kelkar and Rangaswamy Iyengar strongly urged the view that the power to punish for contempt should be confined only to the three presidency High Courts and that it should not be extended further as the whole law of contempt of court, in so far as it was not covered by the ordinary criminal law, was based on a legal fiction. Incidentally, they also favoured acceptance of an apology before conviction and sentence.

3.2. Notwithstanding the wisdom of our earlier legislators in refraining from incorporating a definition in our law, at one stage of our deliberations we were inclined to consider favourable a definition of criminal contempt somewhat on the following lines:—

"Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise,—

(a) interferes or attempts to interfere with, or obstructs or attempts to obstruct, the administration of justice; or

(b) scandalises or attempts to scandalise, or lowers or attempts to lower the authority of, a court of justice; or

(c) publishes or makes false or misleading reports of, or comments on, pending proceedings or any stage thereof;

is said to commit contempt of court."[1]

In support of such a definition we addressed to ourselves the following arguments. As contempt of court savours of a criminal offence it is highly desirable to state in clear terms the ingredients of such an offence if it were possible to do so. Not only that, the jusrisdiction to punish for contempt affects and abridges two of the most valuable fundamental rights, namely, the right to personal liberty and the right to freedom of speech and expression and it is both necessary and proper that the offence should be clearly defined. The absence of a definition has debarred persons from expressing themselves fully either on matters requiring judicial or legislative reform. Even if the definition happens to be in broad terms, it could very well act as a guide for the public and the courts. While giving some indication as to what are the common heads of contempt, it may also serve to demarcate to the public at least certain areas within which they can act without the fear of being hauled up for contempt. For it may be suggested that most of the common contempts in our country are born out of ignorance and a definition may serve to remove that ignorance.

3.3. On the other hand, we can easily anticipate the criticisms against such a general definition. As a definition it is too vague and general for the purpose intended. It does not demarcate or delimit with any degree of precision the scope of what is defined. It only seeks to repeat the statements made so often in the voluminous case-law on the subject and will neither arrest the 'wild growth' as alleged in the law of contempt nor the creation of new types of contempts. A definition might have been called for if it were possible to eliminate any specific category of cases from the concept of contempt, but at the outset we wish to observe that we would certainly not favour a definition which may have the effect of placing undue fetters on the courts thereby rendering them powerless to deal with great evils threatening or likely to threaten the administration of justice. We cannot afford to embolden the licentious to trample upon or overthrow an institution which has all along been regarded as the best guardian of civil liberties. If judges "should be libelled by traducers so that people lost faith in them, the whole administration

1. Compare the definitions in the Mysore Contempt of Courts Regulation, 1930 and the Indore Contempt of Courts Regulation, 1930—the latter of which is neither accurate nor exhaustive.

of justice would suffer".[1] With this warning before us we considered whether it would be possible to delimit the concept of contempt by excluding therefrom any specified categories, for in such a contingency a definition in modification of the existing law would be fully justified.

3.4. For instance, contempt by scandalising the court is one of the most controversial branches of the law relating to contempt and for various reasons this branch of the law has proved to be the most vulnerable to criticism. In *Mc Leod* V. *St. Aubyn*,[2] *Lord Morris* observed that committal for contempt by scandalising the court itself has become obsolete in England because courts are satisfied to leave to public opinion attcks or comments derogatory or scandalous to them. If that were so, this head of contempt could well have been omitted from the law. But in the very next year a rather atrocious type of a scandalising attack came up before the Queen's Bench.[3] In *Devi Prasad* V. *Emperor*[4] it was again observed that cases of contempt which consist of scandalising the court itself have become definitely rare, but the offence had not become obsolete. In our country, a considerable percentage of the cases of contempt which have come up on appeal before our Supreme Court during the last decade are all cases of scandalising the court. In the words of Mukherjea J.[5] the "scandalising might manifest itself in various ways but in substance it is an attack on individual Judges or the court as a whole with or without reference to particular cases casting unwarranted and defamatory aspersions upon the character and ability of the Judges. Such conduct is punished as contempt for this reason that it tends to create distrust in the popular mind and impair the confidence of people in the court which are of prime importance to the litigants in the protection of their rights and liberties. An idea of the manifold ways in which scandalising the court may manifest itself can be obtained from the judgment of Jagannadha Das C.J., as he then was, in *State* V. *Editors and Publishers of Eastern Times*[6] in which the learned C.J. considered in a comprehensive manner the case-law on the subject and summarised practically all the important cases.

3.5. A matter to be taken into account in considering the law relating to contempt by scandalising is the need for drawing a clear-cut distinction between comment or criticism affecting judges in their representative capacity on

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1. Denning : The Road to Justice, (1955), p. 73.
2. (1899) A.C. 549-(561).
3. Reg. V. Gray (1900) 2, Q.B. 36.
4. Lord Atkin in 70 I.A. 216 (223).
5. *Brahma Prakash Sharma* V. *State of Uttar Pradesh*, 1953 S.C.R. 1169, 1177.
6. I.L.R. 1952 Cutt. 1.

the one hand and those affecting them in their personal capacity. Personal attacks against the Judges should be susceptible to punishment in the same way as attacks upon any other individual. But there would hardly be any justification for treating such attacks as standing on a higher footing than attacks against ordinary individuals. Redress in respect of such attacks has necessarily to be left to the general law of defamation. This position *viz.*, that mere personal attacks on Judges will not amount to contempt is so well established by a long line of decisions that it is hardly necessary to re-state it in so many words. If it is feared that there may still be cases where a judicial personage is galled by public criticism against himself to such a degree that he is led to mistake the criticism as directed against the administration of justice, and instead of pursuing the remedies available to him as an individual he may resort to his powers to punish for contempt, the answer is that such cases would be exceptional and the remedy therefor should be found elsewhere rather than in a definition.

3.6. In the United States of America, in balancing the rights of freedom of speech and the interests involved in the administration of justice, the doctrine of clear and present danger[1] has been applied in the sphere of contempt also.[2] This has resulted in disablement of trial Judges from dealing with interferences by the press with the trial process. In a highly publicised trial it is not uncommon to find in that country prejudicial influences outside the court room being brought to bear on the jury with such force that the conclusion is inescapable that these defendants were pre-judged as guilty and the trial was but a legal gesture to register a verdict already dictated by the press and the public opinion which it generated.[3] We would certainly not favour the introduction of any such doctrine into India in modification of the existing law of contempt; for, although our trials are mostly without the aid of jury, witnesses may more easily be influenced here than in the United Kingdom or perhaps America, and writings, in the press may have the effect of deterring them from giving evidence which in the interests of justice should be given.[4]

Conclusion. 4. In the end we feel that it is not desirable in the interests of proper administration of justice that any modification should be made in the general concept of contempt.

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1. *Charles J. Schenck* V. *U.S.A.* 249 U.S. 47.

2. *Harry Bridges* V. *State of California*, 314 U.S. 252.

3. *Sheppard* V. *Florida*, 341 U.S. 50, 51; See also 1961 Modern Law Review, 248, where it is observed—"There is much dissatisfaction in the United States with existing efforts to resolve the conflict between a free press and an impartial trial. Prejudicial publicity constitutes a serious threat to an accused's right to an impartial jury trial."

4. See the observations of Stephen J. in *Legal Remembrancer* V. *Matilal Ghose*, I.L.R. 41 Cal. 173 at p. 232.

as now well-understood. Contempt cannot be defined except by enumerating the heads under which it may be classified—heads which can never be exhaustive—and a definition merely incorporating such heads under which criminal contempt, or even contempt as a whole is generally classified, would be useless as a definition and is totally unnecessary. An inclusive definition would be wholly unsatisfactory. Anything more precise is impossible. On the other hand, this does not mean that the law of contempt is not in need of reform and in the succeeding Chapters we proceed to consider under suitable heads in what respects the law relating to contempt may be usefully amended.

CHAPTER V

Contempt in relation to pending proceedings.

Introduction-Basic considerations.

1.1. The proposition that a court or parties to a legal proceeding and their witnesses should not be subjected to any undue influence, intimidation, coercion or any other kind of pressure from extraneous sources does not admit of any dispute. In this context it may be observed that the printed word produces a far larger impression in the public mind than the spoken word and it is of the utmost importance that nothing is published in the press which is calculated or has a tendency to interfere with the free and fair administration of justice. The fear that witnesses may be influenced by what is said in the press is perhaps present in a greater degree in India than in a few other western countries. Any restriction imposed on the publication of comments on a matter pending in a court which is likely to interfere with the course of justice, would necessarily be in the public interest and would be a reasonable restriction on the right of freedom of speech and expression guaranteed by article 19 of the Constitution.

1.2. Administration of justice by an impartial and independent judiciary is the basis of our system of jurisprudence and indeed the jurisprudence of all civilised countries. The method of administering justice prevalent in our courts is that the conclusion to be reached in a case will be induced only by the evidence and arguments advanced in open court and not by outside influence, whether in the course of a private talk or through the press.[1] As observed by an American Judge,[2]—

> "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

1. Cf. the observations of Agarwala J. in *Lakhan Singh* V. *Balbir Singh* A.I.R. 1953 All. 342, 343.

2. Frankfurter J. in *Pennekamp* V. *Florida*, (1946) 90 D. Ed. 1295 at p. 1313.

awaiting judgment, human beings, however strong, should not be torn from their moorings of impartiality by the undertow of extraneous influence."

1.3. It has long been recognised both in England and India that trial should be by the court alone and that the life, liberty, reputation and property of the subject should not be unjustly imperilled by the so-called "trial by newspapers". As pointed out by Lord Denning[1], the so-called trial by newspapers consisting of independent investigation by newspapers and the publication of evidence inadmissible in a court of law and comments relating to pending trials is the most striking abuse in some countries abroad of the freedom of the press. The basis for the view that trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented is that such action on the part of a newspaper tends to interfere with the course of justice whether the investigation tends to prejudice the accused or the prosecution.[2]

Implications of the basic considerations in practice, in India.

2.1. Having made these general observations, we pass on to consider their application in actual practice.[3]

2.2. In a vast country like India, questions of public and general importance, be they social, economic or political, may become the subject-matter of discussion and dispute all over the country. The public press is generally the medium through which questions relating to reform of the law or society or the administration of justice or problems connected with a pending legislation are raised. At the same time such questions may well form the subject-matter of litigation in law courts in some corner of the country or the other. In a democracy where the party system prevails the law of contempt should not be so strained as to materially affect the freedom of speech. In this connection courts have been called upon, particularly in cases of alleged defamation, to reconcile the right of free speech and the public advantage that a knave should be exposed and the right of an individual suitor to have his case fairly tried; and this they have done by refusing an unlimited extension of either right.[4]

2.3. We realise that were the law to say, as it seems to do, that every publication of an article which is likely to

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1. Denning : Road to Justice, 1955, pp. 67, 68.

2. *Saibal Kumar Gupta* V. *B.K. Sen*, 1961 S.C.A. 692, 703.

3. In the Soviet Union, it would appear that contempt of court as understood in English and Indian law and in certain other similar systems, is unknown. There are, however, a few provisions in the Procedural Criminal Code dealing with disturbance of order in courts or failure to obey the instructions of the presiding officer during proceedings in a court room.

4. For example, *R.V. Blumenfeld*, (1912), T.L.R. 308; *State* V. *editors of Matrubhumi and Kushak*, A.I.R. 1954 Orissa 149.

prejudice the fair trial of any proceeding which might be pending in some court or the other in any part of the vast sub-continent of India would amount to contempt, the criticism that it imposes an extremely unreasonable restriction on the freedom of speech and expression would be fully justified. In fact, the inequity of such a proposition of law was realised in an Allahabad case[1] where the following remarks occur:—

> "..... a speech made in a remote and and unknown corner of India in the Madras State or in a college class on economics on the subject of zamindari might make the speaker guilty of contempt of court in U.P. or any other State if it was found that a case involving the *ultra vires* nature of the abolition of the Zamindari Act was pending in some court of U.P. or in other State in India.
>
> To expect that every citizen of India should make comments on such matters at the risk of being hauled up and found guilty of contempt and sentenced thereunder if per chance it is found that some case is going on in some Court of law in a big country like India on the merits of which the subject-matter of his writing or speech might have a bearing or reflection might be considered to mean an unreasonable restriction on the fundamental right of freedom of speech."

There is considerable force in these observations. A law which requires a person anywhere in India to be aware of what is going on in all the courts in the country or which requires a person before he makes a statement to launch upon an inquiry as to whether any case with respect to the subject-matter of his comment is pending in any court in India would completely stifle his right to freedom of speech. Further, where a particular question has assumed general importance or has become a matter of public concern, a citizen might consider it not only his right but also his duty to express himself in a hypothetical fashion on the respective merits of the general controversy and of other matters connected therewith.

2.4. In *E. V. Ramaswami* V. *Jawaharlal Nehru*,[2] during the pendency of a case relating to certain objectionable speeches made by the accused, the respondent, who is the Prime Minister of India, made a public speech in the city where the accused was being tried in which he condemned in strong terms the agitation launched by members of the

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1. *Rajendra Kumar Garg* V. *Shafiq Ahmad Azad*, A.I.R. 1957 All. 37, 42.

2. A.I.R. 1958, Mad. 558.

party to which the accused belonged, and it was contended that the respondent was guilty of contempt of court. The court held that knowledge of the pendency of the proceedings in court is an essential prerequisite for holding a person guilty of contempt and no man can be presumed to be aware of proceedings in court to which he is not a party.

Want of knowledge as a defence.

3.1. In these circumstances, to say that want of knowledge of a pending proceeding would not exonerate a person from contempt in respect of a publication which has a tendency or which is likely to interfere with the course of justice as has been suggested in *State* V. *Bishwanath Mahapatra*[1] or *Smt. Padmavati Devi* V. *R. K. Karanjia*[2] would, in our opinion, be an unreasonable restriction on the right of freedom of speech and expression.

3.2. There is also a passing observation in the decision of the Supreme Court in *Saibal Kumar Gupta* V. *B. K. Sen*[3] that if the conduct of a particular party amounts to contempt of court usually lack of knowledge of pending proceedings may not be available to him by way of defence.

3.3. We have not recommended a definition of the expression 'contempt of court' not only because of the futility of an imprecise definition but also because in the public interest there should be sufficient elasticity in the application of this concept so as to safeguard the fair and free administration of justice. Looked at from this point of view we would not like to recommend any change in the law so as to make the intention or the good faith of an alleged contemner material in the disposal of a charge of contempt against him. In considering whether a person is guilty of contempt it is not his intention which is really material but the effect of the publication on the course of justice. We may also observe in passing that in such cases the intention of the writer may not always be innocent. But so far as knowledge of pending proceedings is concerned, we think that a change in the law is called for. In our opinion, want of knowledge of a pending proceeding should afford a complete defence to a person accused of contempt of court. This should, however, be made subject to certain qualifications. As it would be easier and more convenient for the accused rather than for the prosecution to prove want of knowledge, the burden of proving this fact should be placed on the defence. There must be evidence to show that the accused had acted as a man of ordinary prudence, that is to say, that at the time of publication he should be able to prove that he had no reasonable grounds for believing that any proceedings were pending. In this respect we are in complete agreement with the change in the law

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1. I. L. R. 1955, Cutt. 323.
2. A. I. R. 1963, Madh. Pra. 61.
(1961) S.C.A. 692, 703.

made in the U.K. by sub-section (1) of section 11 of the Administration of Justic Act, 1960, and we recommend its adoption subject to certain verbal changes.

Meaning of pending proceeding.

4. A proceeding is said to be pending until all its stages, including appeals, are over, and where no appeal is filed until the period of limitation for such appeal has expired. At the same time it may also be made clear that where a case has reached the stage of execution it shall no longer be deemed to be pending and we recommend accordingly.

CHAPTER VI

Contempt in relation to imminent proceedings.

Justifiability of the law of contempt in relation to imminent proceedings.

1.1. *Prima facie*, to extend the rule for the punishment of contempt to cases which are only imminent would be to unduly hamper the freedom of speech of the citizen and courts owe a duty to the public that fundamental rights are not encroached upon by the courts themselves.[1] As stated in the previous Chapter, cases may often arise in which a knave has to be exposed or the conduct of public men criticised, and the law of contempt should not be allowed to operate in such a manner as to stifle all legitimate criticism.[2] Again, it may be that in respect of an offence arrests are being delayed or investigations are proceeding about which the public are unaware or after arrest it has been decided to drop all further proceedings. A whole host of other similar circumstances can easily be imagined. At the same time the offence or its political implications or the circumstances connected with its investigation may be of such a nature as to greatly agitate the public mind. The aftermath of a riot or an agitation may well be the initiation of proceedings against the ring leaders. Does that mean that the public should remain silent in the meantime? There may be matters of public importance like a general strike, a railway accident and so on, necessitating a public inquiry of a general nature while at the same time legal proceedings in relation to some aspect of the matter are under contemplation or are imminent. In respect of ordinary civil matters there appears to be even less justification for the extension of the rule relating to imminent proceedings because no one other than a party to the proceedings is seldom likely to be aware of the imminence of any such proceeding.

1.2. The reason for extending punishment to imminent proceedings has been the fear expressed by Wills J. 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."[3] The same Judge has observed that such acts are punished "because their tendency and some times their object is to deprive the court of the power... to administer justice duly,

1. *Sankaranarayana Panicker* V. *Ummi Omana*, I.L.R. 1961, 2 Ker. 198, (203).

2. *The State* V. *Editors etc. of Matrubhumi and Krushak*, A.I.R. 1954 Orissa 149, 159; *Dwarka Prasad Agarwal* V. *Krishna Chandra*, A.I.R. 1953, All. 600.

3. *Rex* V. *Parke*, (1903) 2 K.B. 432(438).

impartially and with reference solely to the facts judicially brought before it. Their tendency is to reduce the courts ..... to impotence, so far as effectual elimination of prejudice and pre-possession is concerned."[1]

1.3. Ours is a vast country. When, as stated before, people in one part of the country are not likely to be aware of proceedings pending in another part of the country, much less would they be in a position to know of proceedings which are only imminent. Our trials are held by trained men and mostly without the aid of jury and ordinarily such persons are not likely to be influenced by what is stated outside the court. Our procedure for the investigation of offences is such that it is difficult to say at what point of time a case may be said to be imminent. The difficulty is all the greater in respect of civil cases. It is for these reasons that our courts in some of the earlier decisions doubted the wisdom of extending the rule relating to imminent proceedings to Indian conditions.[2]

1.4. We have given very anxious consideration to this question. A free press and an independent judiciary are absolutely necessary in a free society. Freedom of the press, however, is not an end in itself but a means to an end, and the scope and nature of the constitutional protection of freedom of speech should be viewed in this light. The independence of the judiciary is no less a means to an end in a free society and the proper functioning of an independent judiciary puts the freedom of the press in its proper perspective. 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. The only attraction to those who take to the profession of journalism is 'the privileges and opportunities of public service' that it affords,[3] and any extension of the rule relating to contempt should not readily result in the deprivation of this privilege and opportunity.

1.5. 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 subjected to any extraneous influence. If immediately after an occurrence and before the police complete their investigation, publications are made in newspapers concerning the truth or falsehood of one version or the other, such publication is bound to react on the minds of witnesses and of the jurors also, if any; and if such publications emanate from persons exercising high influence in public life, they may even overawe the magistracy.[4] Therefore, it would not be wise to completely

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1. *Rex V. Parke*, (1903) 2 K.B. 436, 437

2. *Emperor* V. *J. Chowdhury*, A.I.R. 1947, Cal. 414; *Dwarka Prasad Agarwal* V. *Krishna Chandra* cited *ante*.

3. In re. *Subramanyan*, A.I.R. 1943 Lah. 329 (343).

4. *The State* V. *Editor, Matrubhumi*, I.L.R. 1955 Cuttack, 204.

do away with the rule relating to contempt in its application to imminent proceedings.

Precise statement of the law and reform.

2. The conclusion we have arrived at raises the immediate question whether it is possible to state the law relating to imminent proceedings in precise terms and how far it can be clarified or modified. Courts have, by and large, tried to exercise their powers in this respect in such a way that the law of contempt does not seriously interfere with the freedom of speech because they have themselves realised that it is extremely difficult to draw the line between cases where proceedings may be said to be imminent and cases where they may not be. For instance, the mere filing of a first information report may not be conclusive that proceedings are imminent although stern logic may demand that the line should be drawn at this point. Even where an arrest has taken place it may not always be that it is followed up by a judicial proceeding. The only guidance that we obtain from decided cases is that the question will depend upon the facts of each case.[1] Are we to leave the law in this unsatisfactory and imprecise state, particularly as fundamental rights are involved?

Civil cases.

3. We tried to evolve a suitable definition of the circumstances in which a proceeding may be said to be imminent, but found the task extremely difficult, as it must necessarily be so. In respect of civil matters there appears to be hardly any justification for the application of this rule. Apart from the fact that no test is even remotely available to indicate at what point of time a civil proceeding may be said to be imminent, not much harm would be done if the rule is abrogated altogether in its application to civil cases because civil cases are ordinarily of less interest to the general public than are criminal cases and it is also more difficult to persuade a court that a publication will have a tendency to interfere with the course of justice in such circumstances. We therefore recommend accordingly.

Criminal cases.

4. In respect of criminal matters, however, a slightly different approach is necessary. As in the case of pending proceedings, if a person is able to prove that he has no reasonable grounds for believing that the proceeding is imminent, it should completely absolve him from any liability for contempt of court. Perhaps such a defence is already available to an alleged contemner, but we would prefer to give it statutory expression particularly as under English law, from which our law of contempt is derived,

1. See the decision of the Supreme Court in *Surendra Mohanty* V. *State of Orissa*, Cr. App. No. 107 of 56 dt. 23-1-61. *In Smt. Padmavati Devi* V. *R.K.Kranjia*, A.I.R. 1963 Madh. Pra. 61, it appears to be suggested that the law should extend its protection, in the case of cognisable cases, where the first information report is made because in the Court's view the interest of justice would be better served by giving protection as along as the investigation has not ended. This proposition appears to be very widely stated. For example, the First Information Report may contain no names.

lack of knowledge would not excuse a contempt though it may have a bearing on the punishment to be inflicted. We would also like to go a little further and provide for certain additional safeguards. It has been observed in several cases that once a person is arrested it would be legitimate to infer that proceedings are imminent.[1] But in actual fact that result may not invariably follow. We have already said that it should be a valid defence for an alleged contemner to prove that he had no reasonable grounds for believing that a proceeding was imminent. To this we would like to add that where no arrest has been made a presumption should be drawn in favour of an alleged contemner that no proceedings are imminent.[2]

1. In fact, the cases relied on are cases where arrests have been taken place.

2. *R. V. Odhams Press Limited*, (1957) 1 Q. B. 73; the law in England has already been modified in this regard by the Administration of Justice Act 1960.

CHAPTER VII

Contempt in relation to innocent dissemination.

Law of contempt in relation to innocent dissemination.

1. There is in India a large market for publications printed abroad; and cases may arise (although they have not arisen so far) in which a person in charge of the distribution in India of a foreign publication finds himself liable to punishment for contempt on the ground that the foreign publication distributed through his agency contained offending matter in relation to certain pending proceedings although he might have been absolutely unaware of its contents. In such cases the distributor is punished vicariously because the real offenders are outside the jurisdiction.[1]

The law harsh.

2. *Mens rea* is not, nor is it our intention that it should be, an essential ingredient of the offence of contempt. But is not the law harsh when it says that an innocent distributor who had no reasonable grounds for believing that a publication he had distributed contained matter prejudicial to a pending trial is liable to punishment? No such distributor can be expected to read every page of every publication he is distributing—a duty which would be intolerable. In this view of the matter, every street vendor who goes about selling newspapers in the streets would be equally liable.

Proposed modification.

3.1. We therefore recommend that, as in the case of pending proceedings, it should be a complete defence to a charge of contempt for a distributor to prove that he had no reasonable grounds for believing that the publication he had distributed contained offending matter.[2] To a possible objection that this may tend to reduce the control of courts over foreign publications, the answer is that in the case of trials which attract world-wide interest the burden would be heavy for the distributor to discharge.

3.2. We may also observe that such a defence would hardly be of any avail in the case of editors, printers or publishers of newspapers because they hold out before the world that they are the editors, printers or publishers of the newspapers concerned and are responsible for the contents of the said papers. Under section 7 of the Press and Registration of Books Act, 1867, the printer or publisher

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1. See the decision in *R. V. Griffiths and others ex parte Attorney-General* (1957) 2 Q.B. 192.

2. This recommendation is in accordance with the change in the law made in the U.K. by section 11(2) of the Administration of Justice Act, 1960.

is deemed to be the printer or publisher of every portion of the newspaper and therefore the defence of innocent publication is not likely to be of much avail in their cases.[1] In the case of managing directors of news agencies and others similarly placed the question for determination would be—what are the functions of such persons; in what way are they connected with the dissemination of the particular offending news item and so on. Before holding them liable there must be enough evidence to fix on them the specific responsibility for dissemination of the news published.[2] Our recommendation would in no way be inconsistent with this position.

Conclusion.

4. We therefore recommend that it may be made clear that an innocent distributor of a newspaper or other publication, that is to say, a person who had no reasonable grounds for believing (an expression which by itself would connote that reasonable care had been taken in that regard) that a publication distributed by him contained any offending matter, shall not be guilty of contempt of court.

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1. See *R.K. Garg* V. *S.A. Azad*, A.I.R. 1957 All. 37, 43.

2. *State* V. *the Editors and publishers of Eastern Times and Prajatantra* I.L.R. 1952 Cutt. 1.

CHAPTER VIII

Contempt in relation to proceedings in Chambers or in Camera

Contempt in violation of secrecy.

1. A type of contempt which does not neatly fit into the traditional classification of contempt by way of scandalising the court and contempt in relation to pending proceedings is contempt by publication of information relating to judicial proceedings in violation of secrecy.[1] The general principle in regard to publication of information relating to judicial proceedings is well-settled, namely, that all judicial proceedings must be open to the public and the administration of justice must take place in open court. The reason is the public have a general interest in the administration of justice. The concomitant result is that the publication of judicial proceedings and information relating thereto cannot be forbidden. While the general principle is that justice should be administered in public and the publication of judicial proceedings should not be forbidden, this principle is subject to exceptions based upon a yet more fundamental principle that the paramount object of courts of justice must be to ensure that justice is done. In order to attain this paramount object, it may become necessary in some cases to exclude the public and enjoin secrecy as to the proceedings and any violation of such secrecy would *pro tanto* amount to contempt of court.

Cases in which secrecy may be enjoined to be confined to defined limits.

2. The question whether a court has any inherent power to exclude the public and enjoin secrecy as to any proceedings is not free from doubt. In an early English case[2] which involved the trial for treason of several persons on similar facts, the court issued an order that the proceedings should not be reported until the trial of all the persons had been concluded on the ground that such reports may prejudice the subsequent trials. In violation of the order, a newspaper published an account of one of the trials while the other trials were taking place. The newspaper editor was fined £500 for contempt. It has been doubted whether this case is still good law for a criminal trial must be held in public and subject to the few statutory exceptions, a judge has no power to forbid the publication of a fair and impartial account of the trial. As Viscount Haldane has observed:—

> ".....the power of an ordinary court of justice to hear in private cannot rest merely on the discretion

1. See in this connection Arthur L. Goodhart : Newspapers and Contempt of Court in English Law, 48, Harvard Law Review, 885, at pp. 904-906.

2. *Rex* V. *Clement*, (4 B & Ald. 218).

of the judge or on his individual view that it is desirable for the sake of public decency or morality that the hearing should take place in private. If there is any exception to the broad principle which requires the administration of justice to take place in open court, that exception must be based on the application of some other and over-riding principle which defines the object of exception and does not leave its limits to the individual discretion of the judge."[1]

We are in full agreement with this view and we are of the opinion that the cases where secrecy can be enjoined with regard to judicial proceedings should be confined within clearly defined limits.

Categories of cases in which secrecy may be enjoined.

3.1. The cases where secrecy may be enjoined have been dealt with at length by Viscount Haldane in the case already referred to. The most obvious category of cases requiring secrecy are those provided for expressly by the Legislature itself. We have several provisions of this type in India. In the sphere of family law, we have section 53, Divorce Act, 1869; section 33, Special Marriage Act, 1954; section 22, Hindu Marriage Act, 1955, which incidentally is more elaborate and contains an express provision for the punishment of offenders; section 36 of the Children Act, 1960, which prohibits on pain of punishment the publication of any particulars calculated to lead to the identification of a delinquent child.

3.2. A second category of cases in which secrecy is desirable and may be enjoined is that pertaining to matters of national security. For example, in the Official Secrets Act, 1923, we have a provision authorising the court to exclude the public from any proceeding under the Act in the interests of the safety of the State. A similar provision is to be found in the Defence of India Act, 1962, enacted to meet the present emergency. In our opinion the practice adopted by these statutes of stating expressly when proceedings may be held in camera or in what manner secrecy is to be enjoined is a commendable one inasmuch as it is conducive to clarity.

3.3. The third category of cases requiring secrecy is that pertaining to litigation as to a secret process where the effect of publicity would be to destroy the very foundation on which the subject matter rests. In this category of cases, it may well be that justice cannot be done if it is to be done in public.

Chamber proceedings and practice.

4. There is, however, another category of cases, namely, those relating to matters heard in chambers which calls for

1. *Scott* V. *Scott*, (1913) A.C. 417, 435.

some special consideration. In respect of chamber proceedings we have two decisions of the Bombay High Court[1] where it is said that it is a rule of practice in the Bombay High Court that no report of chamber proceedings shall be published without the leave of the judge, and it is added that this rule is based on sound commonsense. Further, this rule of practice is stated to be absolute in the case of wards and lunatics because in such cases the court is regarded as sitting primarily to guard the interests of the wards or lunatics and the jurisdiction of the court in this behalf is essentially parental and administrative, the disposal of controverted questions being regarded as only an incident in the exercise of the jurisdiction.'These are arguments derived from English authorities[2] and so far as our country is concerned it is doubtful whether these arguments are tenable in view of the fact that the Guardians and Wards Act, 1890, and the Lunacy Act, 1912, do not contain any provision relating to the hearing of matters under those Acts in chambers or in camera. It would also not be correct to say that the disposal of controverted questions would only be incidental to such proceedings in most cases. If the High Courts as successors to the old Supreme Courts can be regarded as rightly entitled under their respective Letters Patent to make Chamber Rules and enjoin secrecy, the anomalous situation would result of the same matter being regarded as requiring secrecy if it falls within the purview of the original jurisdiction of the High Court, and as not requiring any secrecy if it falls within any other jurisdiction or within the purview of the mofussil courts. Nor can we subscribe to the view, notwithstanding the observations of the Bombay High Court in the two cases referred to above, that all chamber proceedings, whether they pertain to wards and lunatics or otherwise, are, or should be, covered by the rule of secrecy. A casual examination of the chamber rules will show the variety of applications, interlocutory and otherwise, which may be heard and disposed of in chambers and it is indeed difficult to imagine the slightest obligation of secrecy in regard to most, if not all, of them. Even if there be any such obligation, in the interests of proper administration of justice, it should, in our opinion, be dispensed with.

Conclusion.

5.1. In the result we recommend that under the head of secrecy, cases of contempt should be confined to the following categories, namely,—

(a) where the publication is contrary to the provisions of any enactment; or

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1. In the matter of the Guardians and Wards Act, 1890, and in the matter of Nirmalgowri, I.L.R. 50 Bom. 275 (283); *J.L. Mehta* V. *Bai Pushpabhai* I.L.R. 1942 Bom. 151 (155, 156).

2. Even in England, the rule cannot be said to have been laid down in an exhaustive manner. As pointed out in In re de Beaugeu's application, (1949) I Ch. 230, 235—there may well be cases in which permission of the Judge is not refused for any such publication.

(b) where the court, having statutory power to do so, expressly prohibits the publication; or

(c) where for reasons connected with public order or the security of the State, the court sits in chambers or in camera; or

(d) where the matter relates to a secret process.

5.2. In all such cases it is assumed that contempt proceedings will be initiated only if the law in question does not prescribe any punishment for the contravention. At the same time we would like it to be made clear that no contempt proceeding in respect of the publication of the text of or a fair and accurate summary of the whole or any part of an order made by a court sitting in chambers shall be competent unless the court has expressly prohibited the same in exercise of powers conferred by any enactment for the time being in force.

CHAPTER IX

Defences.

Defences.

1. We have so far dealt with the changes that may be made in the substantive law of contempt. In our opinion, it would be convenient and would also be advantageous to the public if the law we are recommending were also to set out the defences which are ordinarily available under the existing law to a charge of contempt, and these we now proceed to consider.

Fair and accurate reports of judicial proceedings.

2.1. In our country, even before the advent of the British, the practice had been to administer justice publicly and openly. Indeed, the concept of administration of justice in the *Sabha* under the ancient Hindu judicial system involved freedom for the learned members present in the *Sabha* to express any opinion on the matters being heard in the *Sabha*. The English system which is the one now in vogue does not go so far, but one of the cardinal principles of the system is that justice should be administered in public. The principle underlying the administration of justice in public is that the public have a great interest in knowing what occurs in a court of justice.[1] It follows as a logical corollary that there should be no fetters on the publication of proceedings of courts for such publication would have the effect of, to use the language of Lord Halsbury[2] "merely enlarging the area of the court, and communicating to all that which all had the right to know".

2.2. There would be no difficulty in cases where the entire proceedings in relation to a case are reported *verbatim*, but bearing in mind the limitations of publishers, such a report is well-nigh impossible. If the choice is between reporting completely or not reporting at all, the result would be to shut out from the public at large what transpires in courts of justice and this would be most undesirable, apart from any questions relating to freedom of speech and expression. A compromise has therefore to be effected, and indeed such a compromise has been accepted and acted upon by the courts that so long as the reports are fair and accurate, no prejudice to the parties is likely to arise; at the same time, there would be considerable benefit to the public at large. Accordingly, it has been held in a number of cases, both English and Indian, that fair and accurate reports of judicial proceedings would not amount to contempt of court. The leading authorities on the subject have been

1. See *Davidson* V. *Duncan* (1857), 26, L.J. Q.B. 104, 106.
2. *Macdougall* V. *Knight*, (1889) 14 A.C. 194, at p. 200.

considered by Madholkar J. in *Wasudeoraoji* V. *A. D. Mani*[1] and he has summed up the effect of the decisions in the following words:—

> "It is implicit in all these decisions that the publication in newspapers of reports of proceedings before a court of law must be true and accurate and that it must be without malice. This is made amply clear by the decision of the court of appeal in Kimber V. The Press Association Ltd.,[2] which expressly deals with publication of proceedings in a pending case.".

2.3. The basis of the right to publish fair and accurate reports of judicial proceedings being the fact that judicial proceedings are conducted publicly, it goes without saying that this right does not extend to publication of proceedings not held publicly. We are of the opinion that it would be conducive to clarity if a specific provision is made embodying the settled law in relation to publication of reports of judicial proceedings, namely, that publication of fair and accurate reports of judicial proceedings will not amount to contempt of court.

Fair criticism of judicial acts and decisions.

3 1. While comments on judicial proceedings which are pending may have an adverse influence on such proceedings, the same cannot be said with regard to comments or reflections on a judicial proceeding after it has been finally disposed of. Once this stage is reached, the judge, 'in Bentham's phrase, 'is given over to criticism' and public interest demands that no undue fetters should be placed upon the right of individuals to reflect on the conduct of the judge or the parties in the proceeding or to comment upon the decisions in the proceedings. In the words of Professor Laski,[3] "the examination of what he (the judge) has done, the analysis of his reasoning, the weighing of his results, the discussion of his conduct, are essential to the formation of the opinion, which, in a democratic state, ultimately determines the trend of legislation.....Without scrutiny of this kind, the dangers of judicial conservatism..... would be immeasurable". Apart from anything else, such criticism would act as a necessary corrective to the judiciary.

3.2. The right to criticise judicial conduct and judicial decisions in relation to proceedings which are no longer pending cannot, however, be of an absolute character. Without any limitations, it may result in encouragement of scandalous attacks but when kept within proper bounds, it is bound to serve a very useful purpose. Judges themselves have shown a remarkable appreciation of this position. In

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1. A.I.R. 1951 Nag. 26.
2. (1893) 1 Q.B. 65.
3. Laski: Procedure for constructive contempt in England, 41 Harv. Law Rev., 1031.

Ambard V. *Attorney-General for Trinidad*,[1] Lord Atkin observed:—

> "The path of criticism is a public way. The wrong-headed are permitted to err therein. Provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though out-spoken, comments of ordinary men".

This proposition has been endorsed by our Supreme Court on more than one occasion. In the *Brahma Prakash* case,[2] Mukherjea J., while endorsing the proposition made it very clear that a "reflection on the conduct or character of a judge in reference to the discharge of his judicial duties would not be contempt, if such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice. It is not by stifling criticism that confidence in courts can be created." A similar view has been expressed by S. K. Das, J., in *State of Madhya Pradesh* V. *Revashankar*.[3] We are of the opinion that it will be a great assurance to the public if this position is specifically stated in the proposed law. We accordingly recommend that it may be provided specifically in the proposed law that a person shall not be guilty of contempt for publishing any fair comment on the merits of any case which has been heard and finally decided or on the conduct of any judge if it be for the public good.

Complaints against judicial officers to persons in lawful authority.

4.1. The object of the law of contempt is not to provide a cloak for judicial authorities to cover up their inefficiency or to stifle criticism made in good faith against such officers. The ordinary right of making or publishing fair comments on the merits of any case which is no longer pending or on the conduct of any judge in relation to any such case may not be adequate protection for a person who desires in good faith to expose a judicial officer with a view to enabling a superior authority to take the necessary action. In the case of the subordinate judiciary, the law of contempt ought not to stand in the way of a complaint against them being made

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1. 1936 A.C. 322, 335.

2. (1953) S.C.R. 1169, at p. 1178.

3. (1959) S.C.R. 1367, 1381. In *King* V. *Nicholls*, (1911) 12. C.L.R. 280, 286 Griffith C.J. observed that if any judge were to make a public utterance of such a character as to be likely to impair the confidence of the public, or of suitors or of any class of suitors in the impartiality of the court in any matter likely to be brought before it, any public comment on such an utterance, if it were a fair comment, would, so far from being a contempt of court, be for the public benefit and would be entitled to similar protection to that which comment upon matters of public interest is entitled under the law of libel.

in good faith to the appropriate superior authorities. If the position were otherwise, it would be tantamount to putting a premium on corrupt or inefficient judges. We are happy to note that the position has been made clear to some extent by the Supreme Court in the *Brahma Prakash's* case.[1] Referring to a complaint against a Revenue Officer to the effect that he hears two cases simultaneously and allows the Court Reader to do the work for him, their Lordships observed: "If true, it is a patent illegality and is precisely a matter which should be brought to the notice of the District Magistrate who is the administrative head of these officers." Referring to certain other complaints in general terms, namely that certain specified judicial officers do not state facts correctly when they pass orders and that they are discourteous to the litigant public, the Supreme Court observed that they do not by any means amount to scandalising the court and added that such complaints are frequently heard in respect of many subordinate courts and if any person had a genuine grievance it cannot be said that in ventilating his grievance he has exceeded the limits of fair criticism.

4.2. That case, however, emphasises that much will depend upon the facts and circumstances of each case. For example, in that decision the Supreme Court was largely influenced by the fact that very little publicity was given to the offending resolutions of the Bar Association. The Supreme Court also points out that it may be that the pleas of justification or privilege may not be available to the defendant in a contempt proceeding. The question of publication also in the technical sense in which it is relevant in a libel action may be inappropriate to the law of contempt.

4.3. In these circumstances, and having regard to the fact that in the public interest some machinery should be available for bringing inefficient and corrupt officers to book, we are of the opinion that it would be advisable to state clearly and expressly in the law that a complaint against a judicial officer made to the appropriate superior authority shall not amount to contempt. The appropriate authority, in our opinion, may well be the Chief Justice of the High Court concerned to which all judicial officers in the State are subordinate. Such a course would avoid unnecessary publicity; would not in any way affect the administration of justice; at the same time would provide an adequate and a convenient remedy for members of the public having legitimate grievances against a member of the judiciary, a remedy which is so essential for the proper administration of justice.

Other defences.

5. Incidentally, by way of abundant caution we suggest that it may be made clear in the law, particularly in the absence of a definition of contempt of court, that the provisions now recommended for adoption in the law are not to be construed as in any way enlarging the scope of contempt as otherwise understood or as affecting any other defences which may be open to an alleged contemner.

1. (1963) S.C.R. 1169, 1181.

CHAPTER X

Practice and Procedure.

Introduction.

1. The procedural law relating to contempt of superior courts has been subjected to some criticism. The gravamen of the charge is that in the case of a contempt of court which is very much akin to an offence, the person accused of contempt does not get the same protection as is available to a person accused of an offence. The summary procedure adopted in relation to criminal contempts committed in the face of the court involves, it is pointed out, the accuser being a judge in his own cause. It is also stated that the procedure varies from one court to another and is far from being certain.

Present procedure and need for stating clearly th main principles.

2.1. We have carefully examined the procedure followed by various courts at present. There is a general recognition that the person charged with contempt should be appraised of the charge against him as early as possible and should also be given an opportunity of defending himself against the charge. The Supreme Court has also stated in *Sukhdev Singh's* case[1] that a judge who has been personally attacked should not, as far as possible, hear a contempt matter which to that extent concerns him personally.

2.2. The Constitution having guaranteed to the citizen the rights of freedom of speech and personal liberty, the aim of the law should be to ensure that these rights are adequately safeguarded and it is from this point of view that one should examine the present question. In our opinion, it is both necessary and desirable that the main principles of the law of procedure relating to contempts should be expressly stated in the law. This is necessary not only in the interests of uniformity and certainty but more so in the interests of administration of justice. No doubt, as stated before, the procedure and practice relating to contempt cases has to some extent already become crystallised but, as in the case of the substantive law relating to contempt, it is stated that there is reserved unto the courts an undefined degree of discretion and elasticity to be utilised by them as occasion demands it. While such discretion and elasticity may to some extent be justified in regard to the substantive law on the ground that the categories of contempt cannot be regarded as closed, there does not seem to be the same justification for not stating clearly, the broad outlines of the procedural law, and in the following paragraphs, we propose to deal with the broad principles of procedure which may be given clear cut statutory form.

1. 1954 S.C.R. 454.

Summary procedure.

3.1. The basic question in relation to contempt procedure is how far the summary procedure of dealing with contempt matters is justified. Summary procedure in relation to contempt cases is not certainly of immemorial origin, as Wilmot, J. claimed in his undelivered judgment in *R. V. Almon.*[1] The summary procedure had its origin in the practice of the *Star Chamber*[2] and it became established only during the 18th century. It may not be out of place to mention in this connection that in a number of continental systems, the summary procedure has no place at all even in regard to what we characterise as contempts in the face of the court. Under these systems, the judge merely orders the court bailiff to take the offender in charge and afterwards ordinary criminal proceedings are started.[3] Livingstone in his ideal Penal Code advocated a similar system. In regard to the French Legal system, it has been observed thus by David and deVries:

> "The courts also lack much of the powers they have in Anglo-American jurisdictions because the Anglo-American concept of contempt of court is non-existent in France."[4]

3.2. In our opinion, neither early English history nor the continental practice affords sufficient justification for doing away with the summary procedure. It may be that the course of justice and its general administration is of such an order in our country and in other Anglo-American jurisdictions that it may not require any special protection in the form of summary powers in courts to deal with contempt cases. On the other hand, it may be said that the existence of such powers in courts may be rightly regarded as in some measure contributing to the maintenance of that high order. Be that as it may, there does not seem to be much justification for acting on theoretical considerations or for effecting radical changes which may have undesirable consequences. This view is justified by the position obtaining in those legal systems derived from the British in which the question has been considered by experts recently with reference specifically to the summary procedure.[5] It may also be added that notwithstanding the pronounced apathy displayed in the United States of America to the summary procedure, American Legislatures and courts have stopped short of taking away the summary

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1. (1765) Wilm. 243.

2. Holdsworth : History of English Law, Vol. III, p. 392; Fox: History of Contempt of Court (1927) ; Report of the Shawcross Committee, p. 27.

3. See Seagle ; Contempt of Court, Encyclopaedia of Social Sciences, Vol. V. pp. 301 to 307.

4. David and deVries : The French Legal System (1958) at p. 34.

5. As to England, see Report of the Shawcross Committee, p. 28. As to Canada, see the recent Criminal Code of Canada (2-3 Eliz. II, 1953-1954, c. 51) which, while making contempt of court a specific offence, does not supersede the inherent powers of courts to punish summarily (*vide* sections 9 and 108 of the Code).

powers of courts to deal with contempts in the face of the Court.[1]

4. From what we have stated, it is clear that it is not wise to modify in any manner the summary powers of courts to deal with contempts committed in their presence. We, therefore, feel that the court should, in cases of criminal contempt committed in its presence, be able to deal with the contempt forthwith or at any time convenient to it after informing the person charged with contempt orally of the charge against him and after giving him an opportunity to make his defence to the charge. Pending determination of the charge, the person charged with contempt may be detained in such custody as the court deems fit. Wherever the matter is not disposed of forthwith, we also feel that the person charged should be enlarged on bail pending determination on the execution of a bond for due appearance for such sum and with or without sureties as the court considers proper. We are happy to note that this is generally the practice. Procedure in cases of criminal contempt in face of court.

5. In the case of criminal contempt, not being contempt committed in the face of the court, we are of the opinion that it would lighten the burden of the court, without in any way interfering with the sanctity of the administration of justice, if action is taken on a motion by some other agency. Such a course of action would give considerable assurance to the individual charged and the public at large. Indeed, some High Courts have already made rules for the association of the Advocate-General in some categories of cases at least. Thus, in cases of contempt involving scandalising, under the rules of the Madhya Pradesh High Court, the matter has to be referred to the Advocate-General unless the case is a case of clear contempt. In the case of contempt of subordinate courts, the practice generally is for the subordinate court or a higher court to make a reference to the High Court. We, therefore, recommend that in every case of criminal contempt outside the court, action may be initiated only on a motion made by the Advocate-General or the Attorney-General or a person authorised by him, or on a reference made by a subordinate court. At the same time, we would like to make it clear in the law that the Attorney-General or the Advocate-General, as the case may be, may move the Court not only on his own motion but also at the instance of the Court concerned, so that this recommendation does not really involve any fetters on the superior courts. Procedure in cases of criminal contempt outside court.

6. It will also be proper to provide specifically for the well settled rules as to serving of notice personally on the person charged with contempt and as to acquainting him with the full details of the charge. The legislation may Service of notice etc.

1. See section 1 of the famous Federal Statute of 1831; see also the Clayton Act of 1914 and *Bridges* V. *California* (1941) 314 U.S. 252.

also embody the usual provisions as to attachment in case of attempts to avoid service and release in case of satisfactory explanation. The provisions we have recommended in this paragraph do not involve any change in the present position and are intended only for the sake of completeness and clarity.

Trial of contempt cases.

7.1. We now proceed to consider the rules as to trial of contempt cases. In the case of contempts committed in the face of the court, we have already pointed out that, as is the practice at present, the judge or judges before whom the contempt is committed should be at liberty to try the matter himself or themselves; at the same time we feel that it would be in the fitness of things that this general principle, taking the cue available in certain observations of our Supreme Court in *Sukhdev Singh's* case,[1] is subjected to a strict qualification, namely that wherever it is proper and practicable, the same judge should not try the matter. In this connection, we would observe that instead of leaving it to the judges themselves to decide whether a matter should or should not be tried by them (as has been the position hitherto), it would be better to leave it to the person charged to apply for a transfer if he so desires; for, if the party himself has no objection, the judge may not feel any embarassment in proceeding with the matter. At the same time, we fully appreciate that there may be cases where a transfer is physically impossible or inconvenient or improper. Accordingly, we recommend that in cases of criminal contempt in the face of the court, the judge may, if he thinks it practicable, proper and conducive to the proper administration of justice, allow the application for transfer and refer the matter to the Chief Justice for necessary directions.

7.2. In the case of contempt committed outside the court, we do not consider any specific provision for transfer necessary as our proposal is that such cases should be tried by a bench of not less than two judges and in forming the bench, the court will no doubt take all the circumstances into account. A mandatory provision for the trial of cases of contempt *ex facie* by benches may not be proper in all cases; but in the case of contempt outside the court, there is not present the same consideration and we feel that in view of the uncertainty of the substantive law of contempt and the consequent necessity for ensuring that no undue inroads are made into the fundamental right of freedom of speech, it is desirable to provide that cases of contempt outside the court should not be tried by single judges. The present procedure may not have given rise to much difficulty in actual practice, but as has been well said, justice must not only be done but should manifestly and undoubtedly be seen to have been done; hence our recommendation.

1. 1954 S.C.R. 454.

8. Contempt procedures are of a summary nature and promptness is the essence of such proceedings. Any delay should be fatal to such proceedings, though there may be exceptional cases when the delay may have to be overlooked but such cases should be very rare indeed.[1] From this point of view we considered whether it is either necessary or desirable to specify a period of limitation in respect of contempt proceedings. The period, if it is to be fixed by statute, will necessarily have to be very short and provision may also have to be made for condoning delay in suitable cases. We feel that on the whole instead of making any hard and fast rule on the subject the matter may continue to be governed by the discretion of the courts as hithertofore. Limitation.

9. In regard to the evidence to be presented before the court in the trial of contempt cases, we consider it unnecessary to make any specific provisions save that the court may take into account evidence on affidavits and call for such other evidence as it considers necessary. Evidence.

10.1. As to the punishment that may be awarded in contempt cases and the role of apology, we feel that the provisions of the Contempt of Courts Act, 1952 both as to punishment and apology have worked well and have not been adversely commented upon. Indeed courts have generally exercised the power to mete out punishment with circumspection and have refrained from awarding punishment in cases where there is no substantial interference with the administration of justice. We, however, feel that it would be salutary to incorporate a specific provision in the law which would make it clear that no court shall punish any one for contempt unless the contempt is of such a nature as substantially to interfere with the due course of justice.[2] So far as the role of apology and the quantum of punishment are concerned, there does not appear to be any great need for making changes in the existing provisions. However, as regards punishment for civil contempt we feel that in cases where fine is not an adequate punishment, the punishment of simple imprisonment to be awarded should consist in the detention in a civil prison of the person concerned for a term not exceeding the statutory period prescribed. In this connection it would be relevant to refer to the provisions of Order 21, rule 32 and connected rules and Order 39, rule 2 of the Code of Civil Procedure, 1908. Punishment, apology.

10.2. In regard to liability of corporations for contempt it was observed in *Narain Singh* V. *S. Hardayal Singh*[3]:—

> "It is well known that corporations are subject to punishment for contempt and officers, agents, and

1. See *the State* V. *Vinaya Kumar*, I.L.R. 1951 Nag. 803 ; *Government Pleader* V. *Mathai Manjooran*, I.L.R. 1959 Ker. 243.
2. See in this connection the observations of the Supreme Court in *Brahma Prakash* V. *State of Uttar Pradesh*, 1953 S.C.R. 1169, 1182.
3. A.I.R. 1958 Punjab 180 at pp. 182, 183.

others, who act for a corporation, and who knowingly violate or disobey an injunction against the corporation, are punishable for contempt even though the injunction is issued only against the corporation."

Order 21, rule 32(2) makes the position clear in this respect.[1] We would, however, recommend the express extension of the principles contained in this rule to breaches of undertakings given by corporations to courts of law. That is to say, wherever there is a breach of such an undertaking, the directors or other principal officers could be detained in a civil prison in the same manner as they may be detained for a contravention of Order 21, rule 32(2).

Judgment.

11. In view mainly of the provisions as to appeals, from orders for punishment in contempt cases which we propose to recommend in the next Chapter, we recommend that a provision may be made specifically to the effect that every such order shall state the facts constituting the contempt, the defence of the person charged, the substance of the evidence taken as well as the finding and the sentence.

Rules.

12. It is possible that the broad principles of procedure we have suggested require to be supplemented by rules. It will be conducive to uniformity if such rules are made by th Supreme Court. We therefore recommend the inclusion of a specific provision in the law authorising the Supreme Court to make rules for regulating the procedure of the superior courts to the extent necessary to supplement the provisions of the new law. At the same time we recommend that any rules relating to High Courts should be made by the Supreme Court only after consulting the High Courts.

1. Cf. Order 42, r. 31 of the Rules of the Supreme Court in England.

CHAPTER XI

Right of Appeal

Introduction.

1. The feature of the law of contempt which has given rise to considerable criticism relates to the non-appealability as of right of a sentence passed for criminal contempt. It is urged that much of the criticism against the large powers of the court to punish contemners will disappear if a right of appeal is provided. In an earlier Chapter, we have pointed out how Judges, like other human beings, are not infallible and inasmuch as any sentence of imprisonment for contempt involves a fundamental question of personal liberty, it is only proper that there should be provision for appeal as a matter of course. As the Shawcross Committee observed: "..... in every system of law of any civilized State, there is always a right of appeal against any sentence of imprisonment".[1] There is no justification whatsoever for making any exception to this universally recognised principle in the case of sentences for contempt.

Present position

2.1. The present state of the law relating to appeal in cases of criminal contempt appears to be more the result of accidents of legal history than a matter of policy. That this is so is clearly evident from the fact that in those cases of contempt for which specific provision is made in the Indian Penal Code and the Code of Criminal Procedure a right of appeal is provided for under section 486 of the Code of Criminal Procedure. In the case of contempt falling within the purview of inherent powers of the High Courts, no specific provision has been made in the Letters Patent of the High Courts and the only explanation for this seems to be that no such provision was made in England in regard to the English superior courts. Further, under the provisions of the Letters Patent, no appeal is ordinarily permissible where the order of the court is made in the exercise of the criminal jurisdiction. It has also been held that section 411A of the Code of Criminal Procedure does not afford any remedy by way of appeal in contempt cases.[2] The result has been that before the Constitution came into force, an appeal in contempt cases from the decision of a High Court could lie only in special cases to the Judicial Committee.[3] The Constitution did not alter this position very much for the effect of articles 134 and 136 of

1. P. 35 of the Report.

2. *Murray Gow Purdy* V. *Emperor*, A.I.R. 1947, Bom. 184.

3. The jurisdiction of the Judicial Committee was subsequently transferred to the Federal Court.

the Constitution is merely to substitute the Supreme Court for the Privy Council. In short, there is only a discretionary right of appeal available at present in cases of criminal contempt.

2.2. The discretionary right of appeal in contempt cases, so far as it goes, has served a very useful purpose, both in the direction of setting aside erroneous decisions as also in the direction of bringing about some degree of uniformity and certainty in regard to the principles of law relating to contempt. The Shawcross Committee has referred to eight reported cases in which convictions for criminal contempt were considered by the Judicial Committee of the Privy Council on merits, those being the only cases of the type which they could discover. They have pointed out that it is noteworthy that in every case except one (in which the fine was reduced), the appeal was allowed and the conviction quashed. The story of the cases which have come up on appeal before our Supreme Court is not very much different. In a considerable majority of the cases, the Supreme Court has found it necessary either to modify or reverse the decision of the High Court. Mention may be made in this connection of the following:—

(1) *Rizwan-ul-Hasan* V. *State of Uttar Pradesh*, 1953 S.C.R. 581.

(Judgment of High Court set aside).

(2) *Brahma Prakash* V. *State of Uttar Pradesh*, 1953 S.C.R. 1169.

(Judgment of High Court set aside).

(3) *Shareef* V. *Hon'ble Judges of the High Court of Nagpur*, (1955) 1 S.C.R. 757.

(Opportunity given to the High Court to accept the apology by contemners and on failure by the High Court, sentence of fine passed by the High Court set aside).

(4) *State of Madhya Pradesh* V. *Revashankar*, 1959 S.C.R. 1367.

[High Court's interpretation of section 3(2) of the Contempt of Courts Act, 1952, held erroneous].

(5) *S. S. Roy* V. *State of Orissa*, A.I.R. 1960 S. C. 190.

(Judgment of High Court set aside).

(6) *B. K. Kar* V. *Chief Justice and his companion Justices of the Orissa High Court*, A.I.R. 1961 S. C. 1367.

(Judgment of High Court set aside).

Need for right of appeal as a matter of course.

3.1. It may be said that the discretionary right of appeal as it exists at present is adequate as in most of the cases the High Court itself may grant the appropriate certificate under article 134 in fit cases and where the High Court refuses, the Supreme Court may intervene by granting special leave under article 136. There is no doubt some force in this argument and it is perhaps for this reason that in one or two of the suggestions received we have been told that it is not necessary to provide for appeals as a matter of right or that the right may be allowed only if the sentence exceeds a certain limit. But considering the uncertain state of the law and the fact that an appeal should be provided as a matter of course in all criminal cases, we are of the opinion that a right of appeal should be available in all cases and we accordingly recommend that against an order of a single Judge, punishing for contempt, the appeal should lie, in the High Court, to a Bench of Judges and against a similar order of a Bench of Judges of a High Court, the appeal should lie as of right to the Supreme Court.

3.2. The recommendation we have made in regard to allowing appeals in contempt matters as a matter of right will bring our law in line with the developments that have taken place in English law in recent years. We do not mean to suggest that we should give effect in our land to every change which has taken place in England. But there can be no doubt that if in the system from which our law is derived a change has been felt necessary, that would be a strong argument for reviewing the position in our law also with a view to finding out whether a parallel change is necessary or not. The reasons for which English law has been changed may be best stated in the words of the Shawcross Report[1]:—

> "First, there is the special difficulty of defining the law of contempt. We have indicated in ..... this Report the difficulty of defining the law of contempt in its application to particular instances. Further, where definition is not so difficult (as in the case of reports of proceedings in chambers), the fact that there is no right of appeal and the divergence of judicial views has sometimes meant that it cannot be said at all with any confidence what the law is; the result in any particular case must then depend on the view which the particular court before whom it comes chooses to take. This we consider to be a serious defect, but one which can be cured by granting a right of appeal. Secondly, an issue of fact does not usually arise in contempt cases—the question being whether what was done amounted to a contempt or not. Thirdly, that the danger to the administration of justice of the conduct complained of has often to be

1. P. 36 of the Report.

weighed against other matters of public concern such as the liberty of free discussion. Thus the issue of contempt is not only particularly suitable for determination by an appellate court, but it is particularly desirable that it should be so determined. Fourthly, particularly where an affront to a Judge is charged, the experience of the Privy Council appears to show that the right of appeal does rectify wrongs."

It would be clear from what has been stated earlier that these reasons apply with equal force in the case of our system also and it is for these reasons that we have made the recommendation that a provision should be made for appeal as of right in the case of contempt.

3.3. The Shawcross Committee in its Report[1] adverted to an alleged insuperable difficulty about an appeal in the case of a contempt committed *in facie* the court, namely, that if the case were disputed, it would involve the committing judge being a witness on appeal and pointed out that such a difficulty arises but rarely and that in the only case in which it arose—*Rainy's case*—the Privy Council was able to overcome it. Be that as it may, so far as our country is concerned, such a situation cannot possibly arise after the decision of the Supreme Court in the recent case of *B. K. Kar* V. *Chief Justice of Orissa*.[2] In this case the Supreme Court considered the question whether in cases of appeals in contempt cases the Chief Justice and Judges of the High Court which decided the case originally should be made parties. Madholkar J., holding that they ought not to be made parties, observed:—

> ".... Where judges of a High Court try a person for contempt and convict him they merely decide a matter and cannot be said to be interested in any way in the ultimate result in the sense in which a litigant is interested. The decision of judges given in a contempt matter is like any other decision of those judges, that is, in matters which come up before them by way of suit, petition, appeal or reference."

Once this position is established, it follows that the presence of the judges as witnesses is as much uncalled for in appeals in contempt cases as in appeals in other cases decided by them. We may also add that in view of the recommendations we have made as to procedure in contempt cases, all the material required by an appellate court would be available in writing and there would then be little need for the judges being summoned to appear as witnesses.

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1. P. 38 of the Report.

2. A.I.R. 1961 S.C. 1367.

4. In this connection we would also like to refer to the rule of practice observed by courts that a person in contempt cannot be heard in prosecution of his appeal until he purges himself of the contempt.[1] This rule, no doubt, is based on sound reasons but in the light of the discussions preceding it would not be difficult to conceive that it may work hardship in many cases. In our opinion the law should contain suitable provisions for meeting such a contingency. For this purpose we recommend that both the appellate court and the court from whose judgment the appeal is being preferred should have the power to stay execution of the sentence, to release the alleged contemner on bail and to hear the appeal or allow it to be heard notwithstanding the fact that the appellant has not purged himself of the contempt. Purge of contempt.

1. *Palaniappa Chetty* V. *Raman Chetty*, 1928 M.W.N. 462.

CHAPTER XII

Conclusion.

Summary of conclusions and recommendations.

1. Our main conclusions and recommendations may be summarised as follows:—

(1) Confidence in the administration of justice is essential for the preservation of our liberty and nothing should be done which may tend to undermine that confidence.

(2) At the same time, as the jurisdiction to punish for contempt trenches upon two important fundamental rights, namely, the right to personal liberty and freedom of speech and expression, rights which are of vital importance in any democratic system, the law of contempt of court should be viewed mainly from the stand point of these rights rather than on the basis of its origin or its present position in other countries.

(3) The Contempt of Courts Act, 1952, though sound so far as it goes, touches only the fringes of the subject. While its existing provisions should be continued, there is need for widening considerably the scope of the Act.

(4) Under the Constitution, Parliament is competent to legislate on contempt of courts subject only to the limitations that it cannot (i) abrogate, nullify or transfer to some other authority, the power of superior courts to punish for contempt, (ii) exercise its power so as to stultify the status and dignity of the superior courts, and (iii) impose any unreasonable restrictions on the fundamental right of the citizen to freedom of speech and expression.

(5) Contempt cannot be defined except by enumerating the heads under which it may be classified—heads which can never be exhaustive—and a definition merely incorporating such heads under which criminal contempt, or even contempt as a whole is generally classified, would be useless as a definition and is totally unnecessary.

(6) Delimitation of the concept of contempt by the exclusion of any particular head is not possible as none of the recognised heads has become obsolete. The assumption once made that contempt by scandalising has become obsolete has been proved to be erroneous.

(7) Want of knowledge of a pending proceeding, whether civil or criminal, should afford a complete defence to a person accused of contempt.

(8) The rule of contempt in relation to imminent proceedings may be abolished so far as civil cases are concerned. As regards criminal cases, want of knowledge should be a complete defence as in the case of pending proceedings. Further, where in respect of an offence, no arrest has taken place, a presumption should be drawn in favour of the alleged contemner, that proceedings are not imminent.

(9) A case which has reached the stage of execution shall not be deemed to be a pending case for the purpose of the law of contempt.

(10) An innocent distributor of a newspaper or other publication, that is to say, a person who had no reasonable grounds for believing that a publication distributed by him contained any offending matter, shall not be guilty of contempt of court.

(11) The burden of establishing any of the defences aforesaid shall be on the alleged contemner.

(12) No contempt proceeding in respect of the publication of the text or a fair and accurate summary of the whole or any part of an order made by a court sitting in chambers or *in camera* shall be competent unless the court has expressly prohibited the same in exercise of any power conferred by any enactment for the time being in force.

(13) Cases of contempt in violation of secrecy should be confined within clearly defined limits and secrecy may be enjoined with regard to judicial proceedings only in exceptional cases mentioned in paragraph 5.1 of Chapter VIII. Contempt proceedings in relation to cases of secrecy should be initiated only when no other punishment is prescribed.

(14) Some of the existing defences open to an alleged contemner may be given express statutory recognition. These are:—

(i) that a person shall not be guilty of contempt for publishing a fair and accurate report of a judicial proceeding or any stage thereof;

(ii) that a person shall not be guilty of contempt for publishing any fair comments on the merits of any case which has been heard and finally decided or on the conduct of any judge if it be for the public good, the question of public good being in each case a question of fact;

(iii) that a person shall not be guilty of contempt in respect of any statement made by him in

good faith concerning the presiding officer of any court subordinate to a High Court, say, to the Chief Justice of that High Court.

(15) As a matter of caution it may be provided that the provisions recommended for inclusion in the Bill shall not be construed as in any way enlarging the scope of contempt as otherwise understood or as affecting any other defence which may be open to an alleged contemner.

(16) The general rules of procedure applicable in contempt cases should be formulated clearly.

(17) In the case of contempts committed in the face of the court, the present summary powers of courts have to be continued and a simple procedure consisting of oral appraisal of the charge to the contemner, the giving of an opportunity to him to make his defence and provisions as to bail and custody, on the lines suggested in paragraph 4 of Chapter X may be adopted.[1]

(18) Applications for transfer of proceedings for contempt committed in the face of the court may be entertained by the judge in whose presence the contempt is committed and if he feels that in the interests of proper administration of justice the application should be allowed, and that it is practicable to do so, he should cause the matter to be placed before the Chief Justice for his directions.

(19) A criminal contempt (other than a contempt committed in the face of the court) should be heard only by a Bench of not less than two judges except in cases where the court consists of one judge, *e.g.*, court of the Judicial Commissioner. That contempt may be taken cognisance of only on a motion or on a reference made by some other agency. That is to say, in the case of the Supreme Court, the motion may be made by the Attorney-General or a person authorised by him, and, in the case of a High Court, by the Advocate-General or a person authorised by him. Such motion may be made either on the initiative of the Attorney-General or the Advocate-General, as the case may be, or at the instance of the court concerned. Where the contempt is that of a subordinate court, action may be taken on a reference made by that court.

(20) The motion or reference should specify the act constituting the contempt and the law should embody provisions as to service of notice of the pro-

1. For exact details see clause 14 in the Bill appended to this Report.

ceedings, and as to the defence of the person charged on the lines indicated in paragraph 6 of Chapter X.[1]

(21) A provision may be made that no court shall punish any one for contempt unless the contempt is of such a nature as substantially to interfere with the due course of justice.

(22) The provisions of the Contempt of Courts Act, 1952, as to punishment and apology may be continued but it may be made clear that in cases of civil contempt, where fine is not an adequate punishment, the punishment of simple imprisonment to be awarded should consist of detention in a civil prison for a term not exceeding the prescribed statutory period.

(23) It may also be provided that in cases where the person found guilty of contempt in respect of any undertaking given to a court is a corporation, the punishment may be enforced, with the leave of the court, by the detention in a civil prison of the directors or principal officers of the corporation.

(24) Every order of punishment for contempt shall state the facts constituting the contempt, the defence of the person charged, the substance of the evidence taken, if any, as well as the finding and the punishment awarded.

(25) Provision may be made for an appeal as of right from any order or decision of a High Court in the exercise of its jurisdiction to punish for contempt. The appeal should lie to a Bench of Judges of the High Court where the order or decision is of a single Judge. Where the order or decision is of a Bench the appeal should lie to the Supreme Court.

(26) The rule of practice as to 'purge' of contempt may work hardship in many cases and therefore both the appellate court and the court from whose judgment or order an appeal is being preferred should have the power to stay execution of the sentence, to release the alleged contemner on bail and to hear the appeal or allow it to be heard, notwithstanding the fact that the appellant has not purged himself of the contempt.

(27) The Supreme Court may, in the interests of uniformity, be conferred power to make rules to supplement where necessary the rules of procedure recommended by us. It may also be provided that the Supreme Court may make rules in relation to High Courts only after consulting the High Courts.

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1. For exact details see clauses 15 and 16 of the Bill.

Draft Bill

2. We have appended to this Report a draft Bill incorporating the recommendations which we have made in this Report. An endeavour has been made to set forth in clear-cut terms the implications of our recommendations in the Bill.

H. N. SANYAL,
Chairman.

W. S. BARLINGAY,
Member.

G. R. RAJAGOPAUL,
Member.

L. M. NADKARNI,
Member.

H. C. DAGA,
Member-Secretary.

NEW DELHI;
Dated the 28th February, 1963.

Appendix

THE CONTEMPT OF COURTS BILL, 1963.

A

BILL

to define and limit the powers of certain courts in punishing contempts of courts and to regulate their procedure in relation thereto.

Short title and extent.

1. (1) This Act may be called the Contempt of Courts Act, 1963.

(2) It extends to the whole of India:

Provided that it shall not apply to the State of Jammu and Kashmir except to the extent to which the provisions of this Act relate to contempt of the Supreme Court.

Definition.

2. In this Act, "High Court" means the High Court for a State, and includes the court of the Judicial Commissioner in a Union territory.

Innocent publication and distribution of matter not contempt.

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 had no reasonable grounds for believing that the proceeding was pending or, as the case may be, imminent;

(b) any civil proceeding pending at the time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

(2) Notwithstanding anything contained in any law for the time being in force, a person shall not be guilty of contempt of court on the ground that he has published any such matter as is mentioned in sub-section (1) in connection with any civil proceeding imminent at the time of publication, merely because the proceeding was imminent.

(3) A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned in sub-section (1), if at the time of distribution he had no reasonable grounds for believing that it contained any such matter as aforesaid or that it was likely to do so.

(4) The burden of proving any fact tending to establish a defence afforded by this section to any person in proceedings for contempt of court shall lie upon that person:

Provided that, where in respect of the commission of an offence no arrest has been made, it shall be presumed until the contrary is proved that a person accused of contempt of

court in relation thereto had no reasonable grounds for believing that any proceeding in respect thereof was imminent.

Explanation.—For the purposes of this section, a judicial proceeding—

(a) is said 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 of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending.

Fair and accurate report of judicial proceeding not contempt.

4. Subject to the provisions contained in section 7, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof.

Fair criticism of judicial act not contempt.

5. A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided or on the conduct of any judge if it be for the public good.

Explanation.—Whether the comment is or is not for the public good is a question of fact.

Complaint against presiding officers of subordinate courts when not contempt.

6. A person shall not be guilty of contempt of court in respect of any statement made by him in good faith concerning the presiding officer of any court subordinate to a High Court to the Chief Justice of that High Court.

Publication of information relating to proceedings in chambers or *in camera* not contempt except in certain cases.

7. (1) A person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding before any court sitting in chambers or *in camera*, except in the following cases, that is to say,

(a) where the publication is contrary to the provisions of any enactment for the time being in force;

(b) where the court, having power to do so, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published;

(c) where the court sits in chambers or *in camera* for reasons connected with public order or the security of the State during that part of the proceeding about which the information in question is published;

(d) where the information relates to a secret process, discovery or invention which is an issue in the proceedings.

(2) Without prejudice to the provisions contained in sub-section (1), a person shall not be guilty of contempt of court for publishing the text or a fair and accurate summary of the whole, or any part, of an order made by a court sitting in chambers or *in camera*, unless the court has expressly prohibited the publication thereof in exercise of any power conferred by any enactment for the time being in force.

Other defences not affected.

8. Nothing contained in this Act shall be construed as implying that any other defence which would have been a valid defence in an action for contempt of court has ceased to be available merely by reason of the provisions of this Act.

Act not to imply enlargement of scope of contempt.

9. Nothing contained in this Act shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this Act.

Power of High Court to punish contempts of subordinate courts.

10. Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

Power of High Court to try offences committed or offenders found outside jurisdiction.

11. A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits.

Limit of punishment for contempt of court.

12. (1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

Technical contempts not punishable.

13. Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature as substantially to interfere with the due course of justice.

Procedure where contempt is in the face of the Supreme Court or a High Court.

14. (1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day shall—

(a) cause him to be informed orally of the contempt with which he is charged;

(b) afford him an opportunity to make his defence to the charge;

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make such order for the punishment or discharge of such person as may be just.

(2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) Pending the determination of the charge, the Court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify:

Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed by him with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court.

Cognizance of criminal contempt in other cases.

15. (1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on a motion made by—

(a) the Advocate-General, whether on his own motion or at the instance of such Court, or

(b) any other person, with the consent in writing of the Advocate-General.

(2) In the case of any criminal contempt of a subordinate Court, the High Court may take action on a reference made to it by the subordinate Court or on a motion made by the Advocate-General.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation.—In this section, the expression "Advocate-General", means,—

(a) in relation to the Supreme Court, the Attorney-General, and

(b) in relation to the High Court, the Advocate-General of the State, and,

(c) in relation to the court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Procedure after cognizance.

16. (1) Notice of every proceeding under section 15 shall be served personally on the person charged, unless the Court for reasons to be recorded directs otherwise.

(2) The notice shall be accompanied—

(a) in the case of proceedings commenced on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded; and

(b) in the case of proceedings commenced on a reference by a subordinate Court, by a copy of the reference.

(3) The Court may, if it is satisfied that a person charged under section 15 is likely to abscond or keep out of the way to avoid service of the notice order the attachment of his property of such value or amount as it may deem reasonable.

(4) Every attachment under sub-section (3) shall be effected in the manner provided in the Code of Civil Procedure, 1908. for the attachment of property in execution of a decree for payment of money, and if, after such attachment, the person charged appears and shows to the satisaction of the Court that he did not abscond or keep out of the way to avoid service of the notice, the Court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit. 5 of 1908

(5) Any person charged with contempt under section 15 may file an affidavit in support of his defence, and the Court may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary, and pass such order as the justice of the case requires.

Judgment in contempt cases.

17. Every order for the punishment of a person charged with contempt of court shall state that facts constituting the contempt, the defence of the person charged and the substance of the evidence taken, if any, as well as the finding and the punishment.

Hearing of cases of criminal contempt to be by Ben

18. (1) Every case of criminal contempt under section 15 shall be heard and determined by a Bench of not less than two Judges.

(2) This section shall not apply to the Court of a Judicial Commissioner.

Appeals.

19. (1) An appeal shall lie as of right from any order or decision of a High Court in the exercise of its jurisdiction to punish for contempt—

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that,

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged himself of the contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by in sub-section (2).

(4) An appeal under sub-section (1) shall be filed—

(a) in the case of an appeal to a Bench of the High Court, within twenty days, and

(b) in the case of an appeal to the Supreme Court, within a period of sixty days;

from the date of the order appealed against.

Punishment how to be carried out in certain cases.

20. (1) Notwithstanding anything contained in section 12, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(2) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a corporation, the punishment may be enforced, with the leave of the court, by the detention in civil prison of the directors or principal officers of the corporation.

Power of Supreme Court to make rules.

21. (1) The Supreme Court may make rules, not inconsistent with the provisions of this Act, providing for any matter relating to the procedure of the Supreme Court and the High Courts.

(2) Any rules so made, in so far as they relates to the procedure of the High Courts, shall be made after consultation with the High Courts.

Repeal.

22. The Contempt of Courts Act, 1952, is hereby repealed.

GMGIPND—T.S. Wing—91 M of HA—(136)—19-7-1963—1,500.