

LAW OF CONTEMPT OF COURT. (2ND EDITION, 2010). By J.D. Kapoor. Universal Law Publishing Co. Pvt. Ltd., C-FF-1A, Dilkhush Industrial Estate, G.T. Karnal Road, Delhi-110033. Pp. xlviii+728. Price 850/-.

COURT OF justice is the bulwark of rule of law, an individual liberty in a civilized society. The foundation of judiciary is based on public trust and confidence in the justice administration system. The power of courts to punish for its contempt is intended to ensure this trust and confidence and independence of judiciary from external sources. The Constitution of India explicitly recognizes this fact in three of its important provisions, viz. articles 19(2), 129 and 215. Article 129 and 215 make the Supreme Court and High Courts, respectively, a court of record and the contempt power has been treated historically forming part of the concept of 'court of record'.¹ Moreover, article 19(1)(a) which confers right to freedom of speech and expression on all citizens, carves out few exceptions including contempt of court and defamation. The subject of law of contempt, therefore, is concerned with reconciling the two necessities which are most important for the existence and working of a free democratic society. The substantive and procedural aspects of law of contempt in India are complex due to the fact that their sources are not one² and, by its very nature, not amenable to be concretely defined and determined.

The contempt power of a court has direct bearing on two of the most important constitutional rights, namely right to freedom of speech and expression under article 19 and the right to life and personal liberty under article 21 of the Constitution.³ Limited or restricted power of the

1. See the speech of Dr. B.R. Ambedkar in the Constituent Assembly, VII CAD 382; see also *Ashani Kumar Ghose v. Arbinda Bose*, AIR 1953 SC 75; H.M. Seervai, III *Constitutional Law of India* 2619 (4th ed., 1996).

2. The inherent powers of the higher courts as held in *Supreme Court Bar Ass. v. Union of India*, AIR 1998 SC 1895; see the Contempt of Courts Act 1971, Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975 made by the Supreme Court in exercise of powers conferred under s. 23 of the Contempt of Courts Act, 1971 and the relevant rules made by different High Courts and several other procedural laws.

3. H.N. Sanyal Committee *Report on Contempt of Court* (1963). This report forms the basis of the Contempt of Courts Act, 1971.

court has a great impact on the independent working of the judiciary, which is essential for the survival of a free democratic society, on the authority and dignity of the judicial system. Any authoritative work, therefore, shall be evaluated on its merit to contribute meaning in this respect.

The author of the book under review,⁴ brings in together the author's expertise in this branch of law and experiences from the bench which the author acquired during his judicial career, while comprehensively elaborating and explaining different aspects of the law of contempt of court. The book makes an attempt to cover law of contempt comprehensively, in that he tries to include and gather at one place law scattered in several statutes, court proceeding rules and the provisions of the Constitution of India. One of the important features of the book is that it devotes about 259 pages in explaining and illustrating, with the help of decided cases, the "concept of contempt." The author has tried to achieve this objective by taking key words from the definition given in section 2,⁵ as sub-headings and illustrating each of them with a large number of judicial pronouncements. In this process, the book builds a gold mine of court cases on the subject for ready reference to its readers.

One of the headings, 'modern concepts' (of contempt),⁶ under the commentary on section 2, manifestly endeavors to analyze changing concept of contempt quoting from foreign authorities.⁷ The reviewer, however, does not agree with the views of the author in this matter. Thus, the author has stated,⁸ "that the society is more tolerant today of strong language and has lost the habit of respect. Judges like other figures of the establishment have had to become used to being addressed and criticized". Such an observation fails miserably to bear out anything. For example, being tolerant to something does not necessarily convey that one has lost respect for that thing. Moreover, this proposition has not been supported by cases. Yet, while stating test⁹ for determining the contempt of court by way of scandalizing,¹⁰ the book enumerates the same principles given

4. J.D. Kapoor, *Law of Contempt of Court* (10th ed., 2010).

5. The Contempt of Courts Act, 1971.

6. *Supra* note 4 at 146.

7. Borrie and Lowe on *The Law of Contempt* 343 (3rd ed., 1996); Hope J's observation in *A-G for New South Wales v. Munday* (1972) 2 NSWLR 882 at 908.

8. *Supra* note 4 at 146.

9. *Id.* at 149.

10. *Supra* note 5, s. 2(c)(i).

in old Indian cases.¹¹ The reader, therefore, who is looking for a serious academic analysis, would be disappointed with the book as far as the conceptual part of the subject is concerned.

The greatest controversy and public debate concerning the contempt power in recent years has been about 'truth' as a complete defense in contempt cases.¹² Such debate has resulted into the enactment of the Contempt of Courts (Amendment) Act, 2006¹³ which inserted section 13(b) in the principal Act. The book omits any discussion on the status, effect and importance of this clause. The present reviewer feels that the law on this point is still not settled as the apex court has pronounced that the contempt power of Supreme Court or the High Court (articles 129 and 215) is independent of law made under entry 77, list I¹⁴ (or entry 65, list II). The author, though unconvincingly, comments under section 8 on justification by truth and disapproves it.¹⁵

The great merit of the book is that it discusses in detail the laws and rules relating to contempt case proceedings. Many readers would find this extremely useful in that the substantive part of contempt law may be somewhat unsettled, procedures and rules to be followed in filing and trial of contempt cases have come to be settled. The Contempt of Courts Act, 1971 is most important in this regard. The book under review contains extensive commentaries on this aspect¹⁶ and laws/rules regulating appeal in contempt cases.¹⁷ In addition, the book, in the form of 35 appendices, compiles provisions of the central and different state statutes, Supreme Court and High Courts rules relevant to the law of contempt of court.

This book would be helpful to the readers. The style of the book adopted by the author has been determined by the nature of its subject,

11. *Brahma Prakash Sharma v. The State of U.P.*, AIR 1954 SC 10; *Perspective Publication (P) Ltd. v. State of Maharashtra* (1969) 2 SCR 779.

12. See *Court on its Own Motion v. M. K. Tayal*, 2007 (98) DRJ 41.

13. W.e.f. 17.3.2006.

14. *Supreme Court Bar Ass. v. Union of India*, *supra* note 2.

15. *Supra* note 4 at 302. Good analysis on the point can be found in the reports of The Third National Convention of the Campaign for Judicial Accountability and Reforms (CJAR) (2010).

16. See comments on s. 14 of the Contempt of Courts Act, 1971, *supra* note 4 at 367.

17. See comments on s. 16 of the Contempt of Courts Act, 1971, *supra* note 4 at 402.

which is extremely complex. The law on the subject has to be derived from vast volumes of judicial decisions. In this task, the author fairs fairly well and constructs primary data bank of information. The lawyers, professionals and researchers interested in the subject would find this book quite useful.

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