THE PRESS AND THE COURTS

IT IS common knowledge that in a democracy, there is freedom to write, to criticise, to comment and to analyse views expressed and actions taken by various organs of the state. The "organs of the state", in this context, include the legislature, the executive and the judiciary. But this right has not been regarded as an absolute right. Different countries, at different times, have recognised the possibility of restraints and restrictions on this right, to the extent permitted by the Constitution of the country. Such restrictions operate to the extent mentioned above, whether the criticism is of the legislature, the executive or the judiciary. This is where a conflict arises between the citizens (particularly, the media) on the one hand and the organ of the state on the other hand. The resolution of such conflicts is always a delicate matter. The burden ultimately travels down to the shoulders of the judiciary, for the simple reason that in a democracy, the enforcement of the law and the adjudication of disputes arising under the law will ordinarily reach the courts in some form or other and at some time or other.

As mentioned above, the conflict may arise between citizens on the one hand and an organ of the state, on the other hand. The delicacy of the controversy so arising becomes all the more marked where the organ of the state with which the conflict arises is the judiciary itself. By and large, such controversies are categorised as falling under the law of contempt of court. But this law itself has certain peculiarities. It is not a law exhaustively codified, even though, in practice, courts turn to the Contempt of Courts Act 1971, while dealing with such controversies. That apart, the law itself as enunciated in the Act, speaks in general terms—a feature common to many legislative enactments. Concepts like fair comment, honest criticism, substantial truth and the like, well known in legal parlance, continue to raise difficult problems in concrete cases. The citizen may think that he must criticise the court whose judgment, in his view, is wrong. The editor of a newspaper, acting honestly in order to ventilate a grievance, may write harsh words about a court judgment. Even a legal commentator or scholar, thoroughly dissatisfied with an erroneous or incoherent judgment, may voice strong criticism of the judicial decision. None of them can be said to have any motive of personal gain or any back ground of personal ill-will. And yet, each one of them must go through the law relating to contempt of court in a meticulous manner. In particular, each one of them may have to take care that the facts are not misrepresented and that the comment is not expressed in intemperate language.

In a case involving the daily "*Aajkaal*", the Calcutta High Court[1] has held that while the press has the right to criticise a judgment, yet, in doing so, it (*i*) must summarise the judgment fairly and accurately, and (*ii*) must

1. ***In re, Daily Aajkaal,*** **1990 Cri. L.J. 228 (February).**

not distort the facts or law. If the press twists the law enunciated in the judgment or distorts the facts, then the press is not doing a service to the people. Rather, it is doing dis-service to the people. "The judiciary will be judged by the people by what the judiciary does, but if the Press gives distorted version of Court's proceedings and invites people to judge the judiciary on the basis of such distorted versions of judicial proceedings, in such a case the Press cannot take shelter under Article 19(1)(*a*) of the Constitution which guarantees freedom of speech and expression. In exercise of the right of freedom of speech and expression, nobody can be allowed to interfere with the due course of justice or to lower [the] prestige or the authority of the Court."[1a]

The case arose out of an alleged incident which aroused considerable amount of public interest. Archana, a girl, filed a complaint of inhuman torture by the police while she was in police custody as a MISA detenu. The complaint was quashed by the High Court on a writ petition filed by the accused. Against this judgment of a single Judge, a writ appeal was preferred. During the course of hearing of the stay petition before the High Court, certain articles published in the above mentioned Bengali daily were produced and thereupon proceedings for contempt of court were started on the ground that the matter published fell within the definition of criminal contempt in section 2(*c*)(*iii*), Contempt of Courts Act 1971. The articles told the readers that because of long delay, the main proceedings (for torture) were quashed. The article was headed: "Let the High Court save itself from ignominy." It said in the last paragraph:

> Let the Indian judicial system and the Calcutta High Court prove that a person like Archana Guha has the right to seek justice as against the inhuman torture effected into [upon] Smt. Archana Guha by Shri Ramu Guha Neogi, an officer of the Calcutta police and in the event, it fails to prove the same, everybody would lose faith on the administration of justice and nobody would like to have decisions or judgments of this Court even by spending 2 paise.[2]

Dealing with the contempt petition, the High Court pointed out that in the main case (relating to torture) disposed of by the single Judge, the criminal proceedings were quashed on a number of grounds and special notice had been taken, in that judgment, of the following facts:

(*i*) That Archana Guha had not made any complaint of torture when she was produced before the Advisory Board or the Magistrate during her detention under the Maintenance of Internal Securities Act.

(*ii*) The complaint was actually made more than three years after her release from detention.

(*iii*) It was not clear whether the weakness in her lower limbs was caused by any alleged torture in police custody or was the after-effect of

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1*a*. *Id.* at 232.

2. *Id.* at 233.

an operation which she had to undergo. The High Court (in the contempt case) pointed out that the newspaper article did not mention these facts and gave a distorted picture. The readers had been informed that merely because of the long delay the criminal proceedings were quashed. The judgment was criticised and condemned either unread or if it was read, a very distorted version was given in the articles.

In the view of the High Court, the articles were either thoroughly irresponsible or mischievous, or both. None of the articles can be defended as fair comment made in temperate language about a court case. In fact, thd distorted version of the judgment and the language employed in the articles "may have the effect of shaking the confidence of the people in the judiciary and thereby lower the dignity and majesty of the law."[3] But the High Court ultimately dropped proceedings on this reasoning:

> The other aspect of the matter, however, has a bearing in the matter in issue and ought to be dealt with at this juncture. It is now well-settled principle of law—both in this country as well as in the United Kingdom and United States of America that there should be an imminent danger and interference with the administration of justice. In our view, however, reading the articles in its entirety and considering the submissions as contained in the affidavits that the intent was not to bring the judiciary into disrepute, on the contrary, an expectation has been expressed of having justice from the High Court itself. Reading in between the lines of some portions of the articles one may, however, tend to conclude that there is likelihood of articles interfering with the pending proceeding, but by reason of the statements as above, and the submissions from the Bar that there was in fact no improper motive and considering the articles in its entirety on the facts of it, there exists some amount of doubt as regards the culpability of the editor or the contributories of the articles by reason wherefor the benefit should go in favour of the person against whom the rule of contempt was issued. As noted above, the power to punish for contempt ought to be exercised with care and caution and it is only in clear cases, this power should be invoked, but not otherwise.[4]

The case summarised above points to the need for some kind of legal orientation being needed for persons outside the legal profession. The media man or media woman can well spend a few hours in cultivating acquaintance with salient features of the law relevant to the journalistic process. It is fortunate that the High Court, in the above case, ultimately took a liberal view of the matter.

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3. *Ibid.*
4. *Id.* at 234.

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