



CONTEMPT LAW, STATE AND SOCIETY (1990) By T. Bhattacharya.
University Book House, Jaipur. Pp. 276. Price Rs. 250.

THE BOOK under review deals with one of the most important subjects on which hardly any good book is available to the readers. It adopts a simple style and discusses at length judicial decisions and the law of contempt. Divided into six chapters, it contains an appendix which includes conclusions and recommendations of the Sanyal Committee.

Judiciary is the most important pillar of any civilised society and an indispensable organ of administration in a modern set up. Every government, whether socialist, capitalist, *etc.*, needs an independent judiciary for dispensation of justice and administration of the rule of law. In fact, an independent, honest and strong judiciary is the backbone of a successful democracy as well as the guardian and protector of the individual's interests and rights against a powerful and mighty bureaucracy.

In a democracy governed by the rule of law, just and fair trial, freedom of speech and expression are most valuable assets available to every citizen. However, freedom of speech must be exercised within reasonable limits as envisaged under the constitution. It must neither hinder nor put a stumbling block in the smooth, fair, impartial trial and administration of justice. For instance, if the comments, utterances made by an individual or a group of individuals against the authority and administration of law are of such a nature as to hinder or put an obstacle in the way of a fair and impartial trial, it cannot be tolerated and allowed by the courts to go unpunished. Such an act will amount to contempt of court and is punishable in law, since it may directly or indirectly affect administration of justice and lower the reputation and prestige of the judiciary in the eye of the public. Accordingly, the law empowers the courts to mete out punishment for such utterances and writings which are technically known as contempt of court.

The object of contempt proceedings, against those who put an obstacle in the functioning of courts, is to ensure a fair trial and prevent the bringing into disrepute of the authority and administration of justice.

After introducing the subject in chapter 1 of the book, the author discusses the law of contempt of court in a historical perspective in the next chapter. A reference to the law of contempt in UK, Australia, USA and the Continent also finds a place here, enhancing its utility. Interesting instances have been cited, where mere absence of the party to the dispute on the date fixed for hearing was considered as an insult to the court and the judge. Contempt proceedings were then instituted by the court against the defaulting party. But in modern times it will not go so far. At the most, it may be a ground for dismissal of a suit for want of appearance.

Indian law of contempt has been discussed from the time of Kautilya to



date. It is important to note that the judge's right to punish for contempt is not arbitrary and absolute. In case he acts contrary to law, he is not immune and is also subjected to sanction for wrongfully punishing a man for contempt. Thus a judge like any other individual may also be held guilty of contempt, if found violating the norms of judicial administration.

In chapter 3 the author has tried to explain the nature and definition of contempt of court, which has a very wide connotation. The legislature, of late, has been given a statutory definition of contempt of court in section 2 of the Contempt of Courts Act 1971, which says, "Contempt of Court means civil contempt or criminal contempt."

Chapter 4 is an important section of the book in which the author has tried to examine the extent and limit within which the freedom of press, embodied in the freedom of speech and expression, can go unpunished in public interest. In this context a balance between the public interest of free and fair criticism of the working of the administration of justice and the authority of judiciary to ensure the due administration of justice is to be maintained, keeping in view the provision of 'reasonableness' as contained in clause (2) of article 19 of the Constitution.

Chapter 5 gives an account of various cases relating to the contempt of court decided by the judiciary from time to time. The cases discussed in this chapter clearly indicate that any one who attempts to interfere in the administration of justice is answerable and liable under the law. For instance, the state functionaries, such as district magistrates, secretary of the government departments, ministers of the Union and State Governments, and even judges may be guilty of contempt, if found interfering in the administration of justice directly or indirectly or making derogatory remarks against the functionaries entrusted with the discharge of administration of justice or against the system or working of the judicial system or judges in general or in particular. Some of the epoch making cases should have been thoroughly examined.

An important case on the subject is that of *E.M.S. Namoodiripad v. T.N. Nambiar*,¹ in which the appellant, then Chief Minister of the State of Kerala made various critical remarks against the judiciary at a press conference held in November 1967. He referred to the judiciary as an instrument of class oppression, and accused judges of being guided and dominated by class hatred, class interests and class prejudices instinctively favouring the rich against the poor and of often acting against their conscience. He further said that, as part of the ruling class, the judiciary works against workers, peasants and other sections of the working classes and the law and system of judiciary essentially serve the exploiting classes.²

The appellant argued that the statement was protected by article 19(1) (a) as it was merely an expression of his belief in the Marx-Engels philosophy

1. A.I.R. 1970 S.C. 2015.

2. *Id.* at 2020.



and, further, it was fair commentary on the state of the judicial system in the country. The court rejected the argument and said that, while it is intended that there should be freedom of speech and expression, it is also intended that in the exercise of this right, contempt of court shall not be committed. Such remarks are a direct attack on the judicial system and amount to contempt of court. Chief Justice Hidayatullah, speaking on behalf of the court, said:

No doubt the Courts, while upholding the laws and enforcing them do give support to the state but they do not do so out of any impure motives. They do not range themselves on the side of the exploiting classes and indeed resist them when the law does not warrant an encroachment. To charge the judiciary as an instrument of oppression, the Judges as guided and dominated by class hatred, class interests and class prejudices instinctively favouring the rich against the poor is to draw a very distorted and poor picture of the judiciary. It is clear that it is an attack upon Judges which is calculated to raise in the minds of the people a general dissatisfaction with and distrust of all judicial decisions. It weakens the authority of law and law courts.³

*C.K. Daphtary v. O.P. Gupta*⁴ demonstrated the limits to which the judiciary may be criticised. The defendant, a former judge whose suit for wrongful dismissal was denied by the Supreme Court, published and circulated a pamphlet criticising the adverse decision delivered by a senior justice of the court, using such terms as dishonest judgment, open dishonesty, deliberately and dishonestly and utter dishonesty. The pamphlet alleged that the justice had cleverly asked a junior justice to deliver the judgment and that the latter had toed the line and written that which the senior justice had told him to write. The defendant was convicted on a finding that the remarks made against the justice in the pamphlet were wholly unjustified.⁵

The defendant had argued that even a scurrilous attack on a judge does not affect the administration of justice, and even if such an attack were to have an adverse effect, it must be balanced against the harm that could ensue if such criticism were stopped. The court, in refuting this contention, said, "this sort of attack in a country like ours has the inevitable effect of undermining the confidence of the public in the judiciary. If confidence in the judiciary goes due administration of justice definitely suffers."⁶

Though the printing of the book is not commendable and the price is also on the higher side, on the whole it is a good work.

*K.D. Gaur**

3. *Id.* at 2024.

4. A.I.R. 1971 S.C. 1132.

5. *Id.* at 1145.

6. *Id.* at 1144. See also, *R.C. Cooper v. Union of India*, A.I.R. 1970 S.C. 1318, *Jagdish Prasad Saxena v. State of Madhya Bharat*, A.I.R. 1961 S.C. 1070.

* LL.M. (Alld.), Ph.D. (Lond.), F.R.A.S. (Lond.). Professor and Head, Department of Law, Utkal University, Bhubaneswar, Orissa.