

CHAPTER VII

SUMMARY OF OBSERVATIONS AND RECOMMENDATIONS

General

- (i) Law, as a social reality, exists at various constantly transforming levels. As such, solving problems created by the law is not just an analytical juristic problem but requires an examination of the manner in which laws are used, abused and manipulated.
- (ii) The contempt jurisdiction itself has proved to be an instrument for the protection of the courts as an institution, an instrument of oppression, used by the courts *and others* as a vehicle to embarrass the judiciary and a means to continue to harass private opponents.
That the contempt jurisdiction has been used in this way is not peculiar to India. It has also been politically and socially transformed for various purposes in England and America as well.
- (iii) Although the law of contempt was a subject of reformatory legislation as late as 1971, there is a case for re-examining the law of contempt because all the earlier attempts at reform have not been wholly satisfactory.
- (iv) The Contempt of Courts Act, 1971 has had a very limited impact. The contempt jurisdiction is virtually being used in the same way as it was before. The courts have not given full effect to the changes made in the Act.
- (v) The press is a private group. It cannot be raised to the status of a public institution possessing special powers of investigation.

There is, however, a public interest in ensuring that some of the functions which the press performs are effectively performed. But, this should be done on the basis that the rights of the press are no greater than those of any other body.

If the press wants increased powers, it must agree to subject itself to an effective system of public accountability in order to ensure fairness of conduct and equality of use and access.

- (vi) The judiciary is a public institution which, it will be assumed, needs to be protected, subject to certain rights of the public which are discussed below.
- (vii) No one should be found guilty of contempt in respect of any kind of publication unless it is shown they had intent to commit contempt or did not act on good faith.

This shall apply *mutatis mutandis* also in respect of the liability of directors of a company owning a newspaper or publishing house provided that the director can also show lack of knowledge of the news item.

- (viii) The courts should not just look at the clear and present danger or actual interference but also at the tendency of a publication to interfere in the court's work ; any publication must constitute substantial interference with the conduct of a trial or the administration of justice.

Section 13 of the Contempt of Courts Act, 1971 permits the courts to take note of the concept of 'substantial interference' only at the sentencing stage when considering the sentence of imprisonment.

The right to information about court proceedings

- (ix) It is in the public interest that court proceedings should be open to the public and there should, as far as possible, be as few restrictions on reporting on court proceedings as possible.

Any restrictions that are imposed must be statutory exceptions.

The court should have limited powers to hold proceedings *in camera* if it is virtually impossible to conduct proceedings in public.

In this context, it is submitted that the *Blitz*, case (1967) was wrongly decided.

- (x) There should be no restrictions on the publication of pleadings. This is subject to the general principles which should govern public comment in respect of pending matters.

The right to participate in respect of matters and issues before the courts

- (xi) The public has a right to participate in respect of issues and matters pending before the courts.
- (xii) The press or any other person, can seek to persuade litigants to alter their litigational aims or strategy. But such pressure should not amount to intimidation. Intimidation is not just limited to the threat of unlawful or illegal acts.
- (xiii) The press, and any other person, has a right to comment on issues and matters before the courts as long as they do not *foreclose* the determination of issues by the courts.

The right to free speech irrespective of pending proceedings

- (xiv) The existence of pending proceedings cannot stifle the rights of an individual to exercise his ordinary everyday right to free speech. Even if a person knew of the existence of proceedings it shall be a defence to show that the impugned comments incidentally touched on the pending proceedings and were made in good faith and with no intent to commit contempt.

The fact that the court is seized of a matter cannot 'gag' the general public.

Right to evaluate and criticise the work of courts

- (xv) There should be an investigative process to examine all allegations of corruption, bias and gross incompetence against the judges.

This investigative process should be located in the respective High Courts for the High Courts and the subordinate judiciary and for the Supreme Court in the Supreme Court itself.
- (xvi) The investigative process should be secret and heard *in camera* and it shall be a contempt to either publicise such allegations or publicise the proceedings of such an investigation.
- (xvii) It shall also be contempt to invoke these investigative proceedings if it is felt that such allegations were not made in good faith.
- (xviii) The rest of the jurisdiction to punish for scandalizing the court should be abolished and made an offence as part of the ordinary law of the land to be tried by the ordinary process.

A separate defence of justification and fair comment should be permitted provided that it is shown that these pleas are made in the public interest.

- (xix) A plea of justification will not be permitted in respect of such allegations which are a part of the investigative process described earlier.
- (xx) Justification cannot be used as a plea in contempt in respect of pending cases. A contempt proceeding cannot be allowed to become the examination or re-examination of the issues at a trial.
- (xxi) A journalist would be able to make a limited plea of confidentiality in respect of refusing to answer questions. This plea has to be balanced against the public interest in respect of the working of the judiciary and other institutions. Equally, there is also a public interest in maintaining the value of confidence in a society.

It follows that journalists should normally not have the right to violate the confidences of others unless the public interest is clearly established.

In this context the observations made in (v) *supra* should be borne in mind.

- (xxii) Several aspects of the Contempt of Courts Act, 1971 need attention :
 - (a) The concept of 'publication' in section 2(c) is not clear and can mean any kind of 'publication' or 'publications' to the general public.
 'Private conversation' should not be deemed to be contempt. Some element of publication in a public forum or public place or to the general public or a public institution should be introduced.
 - (b) 'Good faith' in section 6 should mean acting without 'due care and attention'.
 - (c) The law relating to *in camera* proceedings in section 7 should be amended so that specific, statutory exceptions apart, the court can only limit public attendance of proceedings where it is impossible to conduct the trial.
 - (d) The concept of a 'qualified apology' in section 12 should be clarified so that judges are clear that a person may plead his case on merits and apologise in the alternative.
 - (e) Section 13 should be amended so that a person would not be found guilty of contempt unless there is a substantial interference with the administration of justice.

- (f) Section 15 should be amended so as to make it abundantly clear that the High Courts have power to commence proceedings *suo motu* in all cases.

This is without prejudice to any other changes that might have to be made in the Act to incorporate the other suggestions made above.

- (xxiii) The question as to whether any reforming legislation can be introduced which will affect the powers granted to the Supreme Court and High Courts under articles 129 and 215 of the Constitution respectively, should be referred to the Supreme Court in its advisory jurisdiction.
- (xxiv) Research should be conducted on how the press actually deals with news about courts.

