FOREWORD

The investigative study done by Dr. Rajeev Dhavan on "Contempt of Court and the Press in India" shows the industry, learning, and original thinking, apart from intensive research that have gone into its preparation. The Press Council of India had requested the Indian Law Institute to get the question of impact of the law of contempt on freedom of the press in our country examined thoroughly so that the Council could make appropriate suggestions for promoting such amendatory legislation as may be considered necessary to remove certain anomalies and also to liberalise the law of contempt. These matters had been debated recently in the United Kingdom resulting in the enactment of the Contempt of Courts Act 1981. There has been much criticism in the press of the provisions of that law. It is, however, recognised that there has been widening of the perimeters of press freedom to some extent vis-a-vis judicial decisions and proceedings.

In India the main hurdle to which attention has been drawn by Dr. Dhavan, is the provisions contained in Articles 129 and 215 of the Constitution, which read with entries 77 in List I and 14 in List III lay down the limits for exercise of legislative powers by Parliament. The present Contempt of Courts Act was enacted in 1971. It has been in force for more than a decade. So far there has been no serious challenge to its constitutionality. If any drastic changes have to be made the suggestion of Dr. Dhavan may have to be seriously considered, that there should be a Presidential reference to the Supreme Court to pronounce its advisory jurisdiction on the scope and ambit of the above provisions.

An excellent attempt has been made by Dr. Dhavan to balance the rights of the public and the press against the need to protect the courts as institutions. Apparently he has dealt with this topic keeping in view the following principal points :

"(*i*) The right to information about court proceedings.

(*ii*) The right to participate in respect of matters and issues before the courts.

(*iii*) The right to free speech irrespective of pending proceedings.

(*iv*) The right to evaluate and criticise the working of the courts."

Dr. Dhavan has been at pains to point out that the press is a private group and it cannot be raised to the status of a public institution like the courts. There is, however, public interest in ensuring that some of the functions which the press performs, can be more effectively performed. He has laid emphasis on the intention to commit contempt or absence of good faith for finding a person guilty of contempt. He has also suggested that the punishment for scandalising the courts should be abolished.

The Press Council has taken a firm view that truth or bona fide belief that the subject matter of publication is true should constitute a defence provided it is not accompanied by publicity which is excessive. A proper safeguard is regarded to be necessary. That purpose has been sought to be achieved by suggesting a proviso to be added to section 12 of the Act that where the contemner pleads truth or bona fide belief in truth as a defence and the court finds that the defence is false the contemner should receive additional punishment. This is meant as a deterrent to those who may be tempted to falsely or maliciously make allegations which may ultimately be found to be concocted and baseless. An important provision which is also to be found in the English Act of 1981 has been suggested for preventing courts from compelling the disclosure of the source of information unless it be established that it is necessary in the interest of justice or national security or for prevention of disorder or crime. As regards the abolition of punishment for scandalising the court or the administration of justice, the conditions obtaining in our country must not be overlooked. Once the door is laid open to level all kinds of allegations which may even be prompted by disgruntled litigants to malign the judges, there will be serious danger not only of blackmail but also of irresponsible character assassination which will bring the judiciary and the judicial system into contempt and ridicule. It is not expedient to draw inspiration from the position in the United States of America or even the United Kingdom for the simple reason that the law of torts is very highly developed in those countries and is frequently resorted to. Moreover the damages which are awarded in case of defamation are so heavy that people are mortally afraid of making false allegations. It is not so in our country. The tortuous course which a suit for defamation generally follows and the years that it is likely to take before it is finally decided by the highest court are well known with the result that everyone is greatly discouraged from launching such proceedings. In this connection serious thought should be given to the observations made by the Supreme Court in *Ram Dayal* v. *The State of Madhya Pradesh*, A.I.R. 1978 S.C. 921 at 928.

It can be hopefully said that the study by Dr. Dhavan which is being published in collaboration with the Press Council by the Indian Law Institute will provide a fruitful and rewarding material for further research and discussion, and that full advantage will be taken of the wealth of knowledge and learning that is to be found in it.

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