

RESOLUTION ADOPTED IN THE SEMINAR ON LAW OF CONTEMPT OF COURT

ORGANISED ON 22ND SEPTEMBER 2001 AT THE CONSTITUTIONAL CLUB

BY THE COMMITTEE ON JUDICIAL ACCOUNTABILITY

AND

JANHASTAKSHEP

It is resolved that the law of Contempt of Court in India as currently interpreted by the Superior Courts in India is highly antiquated and is acting as a serious impediment to the Freedom of Speech in India. It is significantly deterring a free and frank discussion and analysis of the Courts and judiciary in India, It is having the effect of rendering the judiciary beyond public criticism and thus rendering it totally unaccountable. With the impeachment system having practically failed and there being no other system of enforcing accountability of the judiciary, the discouragement of public discussion and criticism of the judiciary is bound to have and is having a deleterious effect on the functioning of our democracy.

The power assumed by the judiciary (and later conferred on them by the Contempt of Courts Act 1971) of deciding whether a particular criticism of themselves amounts to “scandalizing the court or lowering the authority of the court”, is the very negation of the notion of Justice in which no person can sit in judgement over his own cause. This power has been misused by the Courts to go so far as to hold that no motives can be ascribed to judges or Courts and that even the truth of an imputation cannot be pleaded in defence in a charge of Contempt! The issue of whether truth can be a defence in a charge of contempt was referred for reconsideration to a Constitution bench many years ago, but the Supreme Court has not found the time to deal with it.

Gagging the people from freely criticizing the Judiciary and examining the motives of Judges cannot be the method of inculcating respect for the judiciary. Respect cannot be forced and must be earned by its actions, which must be transparent and open to criticism, however trenchant. The Civil and Criminal law of defamation provide sufficient safeguards to protect the reputation of honest judges against scurrilous attacks.

It has therefore become imperative for people of the Country to demand that Parliament amends the Contempt of Courts Act and makes it clear that no criticism of the Court howsoever severe and no imputation against a judge or the judiciary will constitute Contempt of Courts, unless it is shown that the imputation was baseless and malafide. In any case such a charge must not be heard and tried by the very judges against whom the criticism or imputation is made. This house therefore calls upon Parliament to make suitable amendments to the Contempt of Courts Act 1971, to incorporate the above features.