

**PARLIAMENT OF INDIA
RAJYA SABHA**

**DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON
PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE
TWELFTH REPORT
ON
THE CONTEMPT OF COURTS (AMENDMENT) BILL, 2004**

**(PRESENTED TO THE RAJYA SABHA ON 29TH AUGUST, 2005)
(LAID ON THE TABLE OF THE LOK SABHA ON 29TH AUGUST, 2005)**

**RAJYA SABHA SECRETARIAT
NEW DELHI
AUGUST, 2005/BHADRA, 1927(SAKA)**

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COMPOSITION OF THE COMMITTEE (2005-06)

1. Shri E.M. Sudarsana Natchiappan ? *Chairman*

RAJYA SABHA

2. Dr. Radhakant Nayak
3. Shri Raashid Alvi
4. Shri Balavant*alias* Bal Apte
5. Shri Ram Nath Kovind
6. Shri Tariq Anwar
7. Shri Ram Jethmalani
8. Dr. P.C. Alexander
9. Vacant
10. Vacant

LOK SABHA

11. Dr. Shafiqur Rahman Barq
12. Kumari Mamata Banerjee
13. Shri Chhattar Singh Darbar
14. Shri N.Y. Hanumanthappa
15. Shri S.K. Kharventhan
16. Shri Shailendra Kumar
17. Prof. Vijay Kumar Malhotra
18. Shri A.K. Moorthy
19. Shri Ram Chandra Paswan

20. Shri Dahyabhai Vallabhbhai Patel
21. Shri Brajesh Pathak
22. Shri Shriniwas Patil
23. Shri Harin Pathak
24. Shri Varkala Radhakrishnan
25. Smt. M.S.K. Bhavani Rajenthiran
26. Shri Vishvendra Singh
27. Shri Bhupendrasinh Solanki
28. Vacant
29. Vacant
30. Vacant
31. Vacant

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Smt. Sunita Sekaran, Under Secretary
Shri Vinoy Kumar Pathak, Committee Officer

INTRODUCTION

1. I, The Chairman of the Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee, present is Twelfth Report relating to the Contempt of Courts (Amendment) Bill^{*}, 2004. The Bill seeks to amend the Contempt of Courts Act, 1971.

2. In pursuance of the rules relating to the Department Related Parliamentary Standing Committees, Hon'ble Chairman, Rajya Sabha referred^{**} the Bill, as introduced in the Lok Sabha on the 18th December, 2004 and pending therein, to the Committee on the 14th December, 2004, for examination and report.

3. The Committee decided to issue Press Communique to solicit view/suggestions from interested individuals/organisations/institutions on various provisions of the Bill.

4. In response to the Press Communique 23 memoranda containing the suggestions were received by the Committee.

5. The Committee considered the Bill and heard the presentation by the Secretary, Department of Justice, Ministry of Law and Justice on the 22nd January, 2005.

6. The Committee heard oral evidence of 5 (list at Annexure 'B') eminent legal luminaries to have better appreciation of the subject.

7. While considering the Bill, the Committee took note of the following documents/information placed before it:-

- (i) Background note on the Bill;
- (ii) The Contempt of Courts Act, 1971;

- (iii) The Report of the National Commission to Review the working of the Constitution;
 - (iv) Legislative Department's comments on the views/suggestions contained in the -written memoranda received from various organisations/institution/individuals/experts on the provisions of the Bill; and
 - (v) Comments of the Department of Justice on the views/suggestions tendered before the Committee.
8. The Committee held 5 meetings to dispose of the Bill.
9. The Committee adopted the Report in its meeting held on the 23rd August, 2005.
10. For the facility of reference and convenience, the observation and recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi;
August 23, 2005

E. M. SUDARSANA NATCHIAPPAN
Chairman
Committee on Personnel, Public Grievances,
Law and Justice

REPORT

CONTEMPT OF COURT – DEFINITION: -

WHAT IS CONTEMPT?

1. Contempt may be defined as any act which derogates the dignity and authority of courts. Oswald, in his celebrated treatise-“Contempt of Court” says that ‘Contempt of Court is so manifold in its aspects that it is difficult to lay down any exact definition of the offence’. The word has been defined in the Chamber’s Twentieth Century Dictionary as scorn, disgrace (law), disregard of the rule, or an offence against the dignity of a court (with, of, for). Thus, any act which significantly derogates the dignity and authority of the court or which tends to impede or frustrate the administration of Justice, may be Contempt of Court.

II DEVELOPMENT OF THE LAW OF CONTEMPT IN INDIA

1926 ACT :-

2.1. The law relating to Contempt of Court has developed over the centuries as a means whereby the courts may act to prevent or punish a conduct which tends to obstruct, prejudice or abuse the administration of Justice, either in relation to a particular case or generally.

2.2. The rules embodied in the law of contempt of court are intended to uphold and ensure the effective administration of justice. As Lord Simon said in *A-G v. Times Newspapers Ltd.*, they are the means by which the law vindicates the public interest in due administration of justice. The law does not exist, as the phrase 'contempt of court' might misleadingly suggest, to protect the personal dignity of the judiciary, nor does it exist to protect private rights of the parties or the litigants. Lord President Clyde commented in *Johnson v. Grant* :

“The phrase ‘contempt of court’ does not in the least describe the true nature of the class of offence with which we are here concerned. The offence consists in interfering with the administration of the law; in impeding and perverting the course of justice.. It is not the dignity of the Court which is offended - a petty and misleading view of the issues involved - it is the fundamental supremacy of the law which is challenged.”

3. The present day conception of contempt of court is derived from the English Law. In India, the codified law on this subject was first enacted in 1926 as Act No. 12 of 1926. Though the Act could be regarded as a step in the right direction, yet it suffered from certain limitations. The Act imposed specific limits as to the punishment which could be awarded in contempt cases. The intention, no doubt, was to make these limits applicable, irrespective of whether the contempt was that of a High Court itself or of a Court-subordinate to it. The Act, however, did not contain any provision with regard to contempt of courts, subordinate to courts other than High Courts, that is, the Courts subordinate to chief courts and Judicial Commissioners' courts. It was equally silent with regard to powers of contempt of court of Judicial Commissioners. The Act also did not deal with the extra-territorial jurisdiction of High Courts in matters of contempt.

4. In recent years, the Law of Contempt has been liberalized in both U.K. and the U.S.A. In U.K. the statute has been amended on the recommendation of the Phillimore Committee to provide for truth as a defence to a charge of contempt by scandalizing. In the U.S.A., the courts have evolved a more liberal standard of 'clear and present danger' to the administration of justice. Recently, the New York Times characterized the judgement of the U.S. Supreme Court on the recounting of Florida votes in the recent Presidential elections as 'corrupt' and one, which 'stole the election'. But no action was initiated for contempt because there was no clear and present danger to the administration of Justice.

ACT NO. 32 OF 1952 : -

5. After achievement of independence, the Contempt of Courts Act of 1952 was enacted in India. The Act repealed and replaced the 1926 Act. The Act of 1952 made two important changes, by defining the expression 'High Court' to include Courts of Judicial Commissioners, making it clear that those courts had power to punish contempt of Subordinate Courts also. Secondly, the Act made it clear that the High Courts (including the Court of Judicial Commissioners) would have jurisdiction to inquire into and try a contempt of itself or of any court Subordinate to it, irrespective of whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and irrespective of whether the person alleged to be guilty of the contempt is within or outside such limits. But this Act also did not give any definite or clear definition of the term 'contempt'. This omission on the part of the legislative body was deliberate and the reason behind it was to maintain the elastic character of the law, to enable it to cover a wide field for its application by the courts.

5.1. It has been well said that the law of contempt is of ancient origin, yet of fundamental contemporary importance. Traditionally, contempts are classified as being either criminal or civil. They all share the common characteristic of constituting interference with the due administration of justice, either in a particular case, or more generally as a continuing process.

5.2. One aspect of contempt deserves special mention, which ultimately restricts the constitutional freedom of free speech. The preservation of free speech is also of the highest importance in a democracy. The needs of fair administration of justice have to be reconciled with the citizens freedom of speech and expression.

5.3. The pre-independence law of contempt was derived from the English Law which, however, was coloured by the ancient institution of Monarchy and the courts being the Royal Courts of Justice. After the advent of the Constitution, the prevalent law of contempt was increasingly perceived as an anachronism.

5.4. The reflection of the new liberty of the citizens found its reflection in a Constitution Bench judgment in *B. R. Reddy vs. State of Madras* reported in AIR 1952 SC 149. The public dissatisfaction with the rule that truth is not a defence to a charge of contempt attracted the attention of the Judges. Of course, the facts of the case were rather gross. The accused was the publisher and the Managing Editor of a newspaper. In an Article he had attacked the integrity of a City Magistrate, who was described as a bribe taker and being in the habit of harassing litigants in various ways. He was said to have a broker through whom he negotiated the bribes. Even some specific instances were cited. However, when charged with contempt, he made no attempt, either to establish the truth of what he had stated or even to show that he had made the statement after due care and caution. He admitted that he had acted on pure hearsay.

5.5. Mr. Justice Mukherjee had this to say – “If the allegations were true, obviously it would be to the benefit of the public to bring these matters into light. But if they were false, they cannot but undermine the confidence of the public in the administration of justice and bring judiciary into disrepute. The appellant, though he took sole responsibility regarding publication of the article, was not in a position to substantiate, by evidence, any of the allegations made therein. He admitted that the statement was based on hearsay. Rumours may have reached him from various sources, but before he published the article, it was incumbent upon him, as a reasonable man, to attempt to verify the informations he received and ascertain, as far as he could, whether the facts

were true or mere concocted lies. He does not appear to have made any endeavour in this direction. As the appellant did not act with reasonable care and caution, he cannot be said to have acted bona fide, even if good faith can be held to be a defence at all in a proceeding for contempt".

5.6. It is obvious that the Constitution Bench did assume that truth was a complete defence, though mere belief in truth was not expressly accepted as a defence. The court did not decide this because the facts disclosed absence of good faith.

5.7. It is true that later decisions have stuck to the traditional pre-constitution view. Eminent text book writers like Mr. Seervai have criticised these later judgments as erroneous and per incuriam.

5.8. It must be borne in mind, however, that a powerful judgment of the High Court of Australia had ruled decades ago that truth and bona fide belief in truth are doubtless valid defences to a charge of contempt. This view of the law taken by the highest courts in Australia has worked well and no damage has been caused to the administration of justice in that country. (R. vs. Nicholls - 12 C.L.R. page 280).

CONSTITUTIONAL PROVISIONS RELATING TO CONTEMPT

6. The following are the provisions of the Constitution having bearing on Contempt of Court : -

- (i) article 19(1)(a) and 19(2);
- (ii) article 129 and entry 77 of List-I of the Seventh Schedule; and
- (iii) article 215 and entry 14 of List-III of the Seventh Schedule.

6.1. Article 19(1)(a) guarantees to all citizens the right to freedom of speech and expression. Article 19(2) provides, *inter-alia*, that the right guaranteed by article 19(1)(a) is subject to any law imposing reasonable restrictions in relation to contempt of court. Article 129 and entry 77 of list I of the Seventh Schedule pertain to Contempt of the Supreme Court. Article 129 reads as under : -

“The Supreme Court shall be a court of record and shall have all the powers of such court, including the power to punish for contempt of itself”.

6.2. Similarly, article 215 provides that every High Court shall be a court of record and shall have all the powers of such a court, including the power to punish for contempt of itself. Entry 14 of List-III of the Seventh Schedule covers contempt of courts, other than the Supreme Court.

Courts of Record

6.3. It may not be out of context to mention that during the Constituent Assembly Debates, in relation to the present Article 129, Dr. Ambedkar explained that the words ‘Court of record’ were used to define the status of the court and as to the additional words he observed thus :

“As a matter of fact, once you make a court of record by statute, the power to punish for contempt necessarily follows from that position. But, it was felt that in England, this power is largely derived from the Common Law, and as we have no such thing as Common Law in this country, we felt it better to state the whole position in the statute itself” (Constituent Assembly Debates Volume VIII, PP. 378-383(302).

[\[2\]](#)REPORT OF THE SANYAL COMMITTEE

7. After the Constitution came into being, articles 129 and 215 expressly declared the Supreme Court and High Courts to be Courts of Record, possessing all the powers of such courts, including the power to punish for contempt of themselves, at the same time enumerating, without any qualifications, Contempt of the Supreme Court in entry 77 of List – I and Contempt of Courts other than the Supreme Court, in entry 14 of List III of the Seventh Schedule. It was felt to have the entire law on the subject observing that the law relating to Contempt of Courts till then was uncertain, undefined and unsatisfactory and that in the light of the constitutional changes, many changes had taken place in the country. Government, accordingly, set-up a committee in 1961, headed by Shri H.N. Sanyal, Additional Solicitor-General of India.

7.1. The Committee was required :-

- (i) to examine the law relating to contempt of courts generally, and in particular the law relating to the procedure for punishment thereof;
- (ii) to suggest amendments therein with a view to clarifying and reforming the law wherever necessary; and
- (iii) to make recommendations for codification of the law in the light of the examination made.

7.2. Sanyal Committee went into almost every aspect and examined various judgements of the High Courts and the Supreme Court and also of Foreign Courts, on the Subject. The recommendations which the Committee made, took due note of the importance given to freedom of speech in the Constitution and of the need for safeguarding the status and dignity of courts and the interests of administration of justice. The recommendations of that Committee were generally accepted by Government, after considering the views expressed on those recommendations by the State Governments, Union Territory Administrations, the Supreme Court, the High Courts and the Judicial Commissioners. Based on those recommendations, Government brought the Contempt of Courts Bill to replace and repeal the Act of 1952. The Objects and Reasons of the Bill read as under :-

“It is generally felt that the existing law relating to Contempt of Courts is somewhat uncertain, undefined and unsatisfactory. The jurisdiction to punish for contempt touches upon two important fundamental rights of the citizens, namely, the right to personal liberty and the right to freedom of expression. It was, therefore, considered advisable to have the entire law on the subject scrutinized by a special committee. The Contempt of Courts Act, 1971 (70 of 1971) is the product of the Report of that Committee.”

8. The Act of 1971 effected significant changes in procedure as well as in application of the enactment. ‘Contempt of Court’ has been segregated into ‘Civil’ and ‘Criminal’ contempt with their respective definitions, which the old Act did not contain. Though the old Act could not be held ineffective in the absence of the definition of the term ‘Contempt’, this Act modified the definition of ‘Contempt’ to a considerable extent.

8.1. Instances of publishing and distributing any matter, interfering or tending to interfere with or obstructing or tending to obstruct the course of justice during pendency of the proceedings, if there are reasonable grounds for believing that the proceedings were pending; fair and accurate reporting of a judicial proceedings; fair criticism on merits of any case which has been heard and finally decided, complaint or statement made in good faith against the presiding officer; fair and accurate report of judicial proceedings held in chambers or in camera, have been excluded from the definition.

NEED FOR PLEADING TRUTH AS DEFENCE

A. *Some Judicial Decisions.*

9. Defence of truthfulness or factual correctness has not been recognized in the law of contempt. There are hardly any English or Indian cases in which such defence has been admitted by the Judiciary. In *Perspective Publication (P) Ltd. v. State of Maharashtra*, (1971 Cr LJ 268 SC : Air 1971 SC 221), it was held that the words, 'even if good faith can be held to be a defence at all in a proceeding for contempt' show that the Supreme Court did not lay down affirmatively that good faith can be set up as a defence in contempt proceedings. H.M. Seervai, celebrated authority on the Constitution of India, has opined that as justification is a complete defence to an action for libel, it should be complete defence to a petition for 'Contempt of Court'. But it has not received unanimous judicial support in India, England, U.S.A. Canada and Australia.

9.1. In AIR 1935 All 38 Tushar Kanti Ghosh, Editor (wire), AIR 1935 CAL 419 (FB), an attempt was made by the contemner to call evidence to prove his allegations, but the court refused to call the witnesses and held:

“there can be no justification of Contempt of Court. Even assuming that the writer of a manifesto believes all he states therein to be true, if anything in the manifesto amounts to contempt of court, the writer is not permitted to lead evidence to establish the truth of his allegations”.

9.2. In Advocate General V Seshagiri Rao, (AIR 1966 AP 167 : 1966 Cri LJ 647) it was held that :-

“It is not permissible to a contemner to establish the truth of his allegations as the arraignment of the justice of the judges excites in the minds of the people a general dissatisfaction with all judicial determinations and indisposes their mind to obey them and that is very dangerous obstruction to the course of justice. In our view, the contemner does not occupy the position of a defendant in a libel action who could plead justification.

9.3. Similarly, in Kadir M.G. Vs K.N. Jaitley, (AIR 1945 ALL 67 P. 68) the court held : -

“every attempt to justify must constitute a view offence of contempt committed in the very face of the court,”

9.4. In another case, namely State vs. Editors of Eastern Times and Projatantra, (AIR 1952 Orissa 318 P. 34) the court held:-

“The place of justification which is a good defence in an ordinary action for libel, cannot be applicable in an action for contempt.”

9.5. An identical view was taken by the court in Md. Vamin Vs. O.P. Bensal, 1982 Cr LJ 322 (Raj) when it held : -

“A defence of truth or justification is not available to the publisher of a newspaper in proceedings for the Contempt of Court.”

B. *View of the National Commission to Review the working of the Constitution on Contempt of Court – for introduction of truth as defence.*

10. Keeping in view the judicial decisions not allowing truth as defence to a charge of contempt of court under the existing provisions of the 1971 Act, the National Commission to Review the Working of the Constitution (NCRWC) recommended introduction of ‘truth’ as defence in matters of Contempt of Court, by way of amendment to the Constitution of India. The Commission considered that a mere legislation by the Parliament by amending the Contempt of Courts Act; 1971 alone may not suffice, because the power of the Supreme Court and the High Courts to punish for contempt is recognised in the constitution.

10.1. The Commission submitted its Report to Government in 2002, making the following recommendations with regard to Law of Contempt:

A proviso be added to article 19(2) of the Constitution as under : -

“Provided that, in matters of contempt, it shall be open to the court to permit a defence of justification by truth on satisfaction as to the bona fides of the plea and it being in public interest.”

10.2. The Commission, while giving justification on the above recommendation, observed as follows :

“Judicial decisions have been interpreted to mean that the law as it now stands, even truth cannot be pleaded as a defence to a charge of contempt of court. This is not a satisfactory state of law. Article 19(1)(a) of the Constitution guarantees to all citizens the right to freedom of speech and expression. Article 19(2) of the Constitution saves reasonable restrictions on the exercise of freedom. Therefore, article 19(2) of the Constitution will not save any law in relation to contempt of court, if it impinges upon the right to freedom of speech and expression, unless the restrictions are reasonable and are in public interest. If the restrictions that operate upon such rights are unreasonable, they will stand annulled by the operation of article 19(1)(a) of the Constitution. A total embargo on truth as justification may be termed as unreasonable restriction. It would, indeed be ironical if, in spite of the emblems hanging prominently in the court halls, manifesting the motto of ‘Satyameva Jayate’, in the High Courts and ‘Yatho dharmam sthatho jayate’ in the Supreme Court, the courts could rule out the defence of justification by truth. The Commission is of the view that the law in this area requires an appropriate change.”

C. *View of the Secretary, Department of Justice.*

11. The Secretary, Department of Justice, while deposing before the Committee, stated that the existing provisions of the Contempt of Courts Act, 1971 had been

incorporated in various judicial decisions to the effect that truth could not be pleaded as a defence to a charge of contempt of Court. Therefore, the existing provisions contained in the said Act were found to be not entirely satisfactory. Section 13 of the Contempt of Courts Act, 1971 already provided certain circumstances under which contempt was not punishable. It was, therefore, proposed to substitute the said section by this limited amendment. He also apprised the Committee of the report submitted by the National Commission to Review Working of the Constitution (NCRWC) to Government, recommending that it shall be open to the Court to permit a defence of justification by truth upon satisfaction as to the bona fides of the plea and it being in public interest. Further, the Commission had said that a mere legislation by Parliament by amending the Contempt of Courts Act, 1971 might not suffice because the power of the Supreme Court and the High Courts to punish their contempt was recognized in the Constitution. On this question, the then Attorney General of India had opined that an amendment to the Constitution would be lengthy and a time-consuming process. If the Act was suitably amended to provide the defence of truth in a contempt action, the same would introduce fairness in procedure and meet the requirement of article 21. It was unlikely that the Supreme Court and the High Courts would act in disregard of a statutory provision which might, in essence, subserve the requirement of fairness and reasonableness. Thus, he had stated that there was no need to embark upon the exercise of amending the Constitution. The Contempt of Courts Act could be appropriately amended and a provision might be made to provide that in matters of contempt, justification by truth shall be permitted by courts.

11.1. Reacting to the apprehensions of some members of the Committee whether the proposed amendment in the Contempt of Courts Act, 1971 would be recognized by the judiciary, the Secretary replied that Attorney General had gone into the long history of the Indian Judiciary and his entire premise was built on the fact that the higher judiciary- the Supreme Court and the High Courts, are known for their fairness and reasonableness. Secondly, two major safeguards, one that the 'truth' has to be said in public interest and two it has to be bona fide truth, will prevent a person from saying anything recklessly and

misleading the courts and will definitely hold a contemner liable for contempt of court.

D. *The Contempt of Courts (Amendment) bill, 2004.*

12. Having regard to the above considerations, Government introduced the Contempt of Courts (Amendment) Bill, 2004 in Lok Sabha. On 1st December, 2004. Statement of Objects and Reasons appended to the Bill states as under :-

“The existing provisions of the Contempt of Courts Act, 1971 have been interpreted in various judicial decisions to the effect that truth cannot be pleaded as a defence to a charge of contempt of court.

The National Commission to Review the Working of the Constitution has also, in its report, *inter alia*, recommended that in matters of contempt, it shall be open to the Court to permit a defence of justification by truth.

Government has been advised that amendments to the Contempt of Courts Act, 1971, to provide for the above provision, would introduce fairness in procedure and meet the requirements of article 21 of the Constitution.

Section 13 of the Contempt of Courts Act, 1971 provides certain circumstances under which contempt is not punishable. It is, therefore, proposed to substitute the said section, by an amendment.

The Contempt of Courts (Amendment) Bill, 2003 was introduced in the Lok Sabha on the 8th May, 2003 and the same was referred to the Department Related Parliamentary Standing Committee on Home Affairs for examination and report. The Committee considered the said Bill in its meeting held on the 2nd September, 2003. However, with the dissolution of the 13th Lok Sabha, the Bill lapsed. This Bill has been re-introduced with modifications of a drafting nature.”

VIEWS/SUGGESTIONS OF EXPERTS-ON THE BILL

13. The Committee received several memoranda containing suggestions on various provisions of the Bill. To be enlightened further on the issues involved, the Committee heard the views of the Chairman, Executive Committee, Bar Council of India, the

Chairman, Press Council of India, Justice (Retd) Shri R.K. Mahajan, Shri Shanti Bhushan and Shri Prasant Bhushan, Advocates in the Supreme Court of India.

13.1. The suggestions put forward on the Bill and the views expressed by the witnesses during the course of their deposition are summarised below:

- (i) accused should be given reasonable opportunity to defend himself according to law, to respect the bona fides of the plea in course of natural Justice;
- (ii) a proviso should be inserted to section 13 of the Principal Act to the effect that for any critical, analytical, objective and fair comment on the court proceedings made by the media, based on the reasonably believable sources, the media persons shall not attract contempt proceedings;
- (iii) there should be inserted a proviso to section 13 of the Principal Act, namely:-

‘that any comments made by any person and published, regarding the conduct of a presiding judge of a court, which does not interfere with the official functioning of the Court and which is a true fact, found on reasonable ascertainment, shall not attract contempt proceedings.’
- (iv) cases of contempt should not be tried by courts but by an independent commission of concerned district;
- (v) the words ‘bona fide’ and ‘in public interest’ would be deleted from the proposed amendment to section 13 of the Principal Act;
- (vi) Contempt of Courts Act should be amended to remove words, ‘scandalizing the court or lowering the authority of the court’ from the definition of criminal contempt and further make it clear that unless it is established that the publication, even though incorrect, is not in good faith and is malafide, will not constitute contempt of court;
- (vii) it is desirable to include a provision that a contempt should be heard by a different judge;

- (viii) there should be a code of conduct and policing system for judges, so as to ensure that the safeguards of contempt of court may be exercised, keeping in view the judiciary as an institution and not for judges as persons;
- (ix) there is no need for the proposed amendment as it aims at protecting the ministers and other officials of Government from their disobedience;
- (x) the law of contempt should be subjected to the rights and freedom guaranteed to the citizens under the constitution of India;
- (xi) the suggestion of the National Commission to Review the Working of the Constitution for insertion of a proviso to article 19(2) of the Constitution be given effect to;
- (xii) the words 'the court may permit' occurring in the proposed sub-clause (b) of section 13 of the Principal Act should be deleted; and
- (xiii) no proceedings should be initiated for contempt of court against members and office bearers of the Bar Councils and the Bar Associations of respective Courts, unless the committee of a minimum of 75 members, comprising two judges sitting or retired, two office bearers of the Bar and one public representative, prima facie, comes to the conclusion that a contempt is made out.

13.2. The views/suggestions received from experts were forwarded to the Ministry of Law and Justice for comments. The views/suggestions in brief and the comments of the Ministry are given in the Annexure 'C'.

13.3. After taking into consideration the views expressed by the witnesses and suggestions received on the proposed amendment to the Principal Act, the Committee finds it necessary to address the following issues arising out of the proposed amendment, which have been dealt with in the succeeding paras:-

- (a) whether an amendment to the Constitution will be necessary to give effect to the element of truth as defence in contempt proceedings or a statutory provision, as proposed, will fulfil the requirement; and
- (b) if truth is allowed to be pleaded in defence in contempt proceedings through the proposed legislation, will it be likely to be struck down or ignored by the higher judiciary?

14. As regards the necessity for amendment of the Constitution, the Committee notes that the Attorney General of India, when being consulted by Government on the question whether amendment of the Constitution would be necessary to give effect to the proposed amendment, introducing an element of truth as defence in contempt proceedings, opined as under:-

“The reason why the NCRWC recommended amendment of the Constitution was because of the inherent powers of contempt vested with the Supreme Court and the High Courts under Articles 129 and 215 of the Constitution which are independent of the Contempt of Courts Act, 1971 [hereinafter referred to as “the Act]. The Supreme Court has taken the view in *Pritamlal v.HC of Madhya Pradesh*, [(1993) 1 Suppl SCC 529] that its power of contempt cannot be restricted and trammled by any ordinary legislation, including the provisions of the Contempt of Courts Act. [see also (1981) 1SCC 723]. The High Courts and the Supreme Court have exercised contempt powers despite the limitation of one year prescribed by the Contempt of Courts Act.

Amendment of the Constitution will be a lengthy and time-consuming process. If the Act is suitably amended to provide the defence of truth in a contempt action, the same would introduce fairness in procedure and meet the requirement of Article 21. It is unlikely that the Supreme Court and the High Courts will act in disregard of a statutory provision which, in essence, sub-serves the requirement of fairness and reasonableness.

After considering all the aspect, I am of the view that there is no need to embark upon the exercise of amending the Constitution. The Contempt of Courts

Act may be appropriately amended and a provision may be enacted to provide that in matters of contempt, it shall be open the Court to permit a defence of justification by truth on satisfaction as to the *bona fides* of the plea and it being in public interest.”

14.1. The Ministry of Law and Justice (Department of Justice), in its background note submitted to the Committee, informed that the Department was also in agreement with the above view that even though desirable, an amendment to the Constitution of India would be a lengthy and complicated process. The proposed defence of ‘truth’ in matters of contempt can be provided in the Contempt of Courts Act, 1971.

14.2. The Committee observes that the National Commission to Review the Working of the constitution had emphatically recommended for amendment to the Constitution for introduction of justification by truth in defence in contempt proceedings. The Commission took this view, considering the inherent powers derived by the Supreme Court and High Courts from articles 129 and 215, respectively, of the Constitution. These articles empower the Supreme Court and High Courts to initiate proceedings for contempt of themselves. However, the then Attorney General of India, on being consulted by Government on this issue, rendered his advice in favour of amending the Contempt of Courts Act, 1971, instead of amending the Constitution for this purpose. As clarified by the Secretary, Department of Justice during the course of his deposition before the Committee, the opinion of the Attorney General was based on the fact that the Supreme Court and High Courts maintain the well established precedent of fairness and reasonableness and also that the defence of truth being introduced through the proposed legislation provides two safeguards for the courts, namely, the truth has to be bona fide and it has to be in the public interest. These two key elements would prevent a person from saying anything recklessly against the judiciary or from misleading the courts. Thus, the higher judiciary would not come in the way of the proposed amendment.

14.3. The Committee at this stage wishes to confine its examination to the questions raised in Para 13 (3) (Supra) and does not find it necessary here to comment on insertion of the terms ‘bona fide’ and ‘public interest’, as the Committee has dealt these issues in

succeeding Paras. The Committee notes that a majority view has emerged in favour of the proposed amendment.

14.4. The Committee is of the view that the defence of truth being introduced by the proposed legislation is a right step, taken in the right direction, considering the sentiments and interest of the larger section of society. Nevertheless, apprehensions expressed by Members in the light of Supreme Court's decision in Pritam Lal's case can also not be overlooked, and thus amendment of the Constitution appears to be desirable in future. However, any decision in this regard may be taken by Government, seeing the experience of enforcement of the proposed legislation. The Committee hopes that the higher judiciary will give due regard to this statutory provision by maintaining the principles of fairness and reasonableness, they are known for.

14.5. Another issue, apart from those discussed above, relates to the question as to who will sit to decide Contempt of Court? will the same judge against whom allegations have been made sit in his own cause? This question has been addressed in the light of the views expressed by some members as well as the witnesses, that the whole exercise of introducing the defence of truth would be futile and meaningless if contempt is not heard by a different judge. The Committee observes that the courts are guided by their procedures which they follow in the facts and circumstances of each individual case, and it is the belief of the Committee that contemner would be getting full opportunity to make his defence and the principal of natural justice would not be violated in following such procedure.

15. The Committee, in its meeting held on the 28th July, 2005, took up clause-by-clause consideration of the Bill.

CLAUSE - 2

16. Clause-2 seeks to substitute the existing provisions of section 13 of the Contempt of Courts Act, 1971 (herein after referred to as the Principal Act). Section 13 of the Principal Act reads as under :-

“13 Notwithstanding anything contained in any law for the time being in force :-

- (a) No court shall impose a sentence under this Act for a Contempt of Court unless it is satisfied that contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of Justice;
- (b) The Court may permit, in any proceedings for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide”.

16.1. The Committee considered the proposed amendment in the light of the suggestions received and the views expressed by the witnesses. The Committee notes that there has been consensus for deletion of the words ‘public interest’ from clause (b) of Section 13. It has been argued that if these words are allowed to be part of the statute, there would be an additional burden on the contemner to prove or establish that the statement which he believes to be true is in public interest also. This will render the whole proposed legislative scheme redundant and defence given to an accused will be taken away.

16.2. The Department of Justice, when asked to comment on the suggestion for deletion of the words ‘public interest’, explained the following position:-

“Granting ‘truth’ as an absolute defence may lead to additional problems in certain circumstances. Judiciary may, then, be unduly criticized by different quarters claiming truth as defence. This will put undue pressure on the Judges and their verdict could be ridiculed upon in public and, thus it would cause undue interference in the administration of Justice.”

16.3. On another occasion, the Department of Legal Affairs, submitted the following reply on the above issue:

“Under the First exception to Section 499 of the Indian Penal Code (IPC), it is not defamation to impute anything which is true concerning any person, if it is for the **public good**. In other words, the right to disclose truth against anyone can be allowed only for the **public good**. Under the proposed Bill, the expression **public interest** has been used instead of **public good**. We do not find much difference between the import of both these words. The only difference between these provisions seems to be that under section 499 of IPC, one can take truth as a defence without any permission of the court. Under proposed clause 2 of the Bill, prior permission of the court for invoking truth as a valid defence will be required. This, however, aims at drawing a proper balance between the requirement to maintain the unhampered functioning of the judiciary and the publication of truth for the public cause. However, it is a matter of policy.”

17. The Committee does not find the contention of Government convincing. It is of the view that if the term ‘in public interest’ is retained in the proposed amendment, there would be an extreme restraint imposed on the contemner and unless he establishes truth in the public interest, court will not allow him to proceed further. Thus, the restriction or limitation imposed on the defence of truth would virtually defeat the objective of the proposed legislation. The Committee, therefore, recommends deletion of the words ‘in public interest’ from clause (b) of the proposed amendment to section 13.

18. The Committee observes that Sections 3, 4, 5, 6 and 7 of the Principal Act provide for matters which do not hold a person guilty of contempt of court. In a sense, these provisions are all exemptions against contempt. Section 8 deals with defence and Section 12 provides punishment for contempt of court. Section 13 provides that contempts will not be punishable in certain cases. ‘Interpretation of this Section implies that unless contempt is of such a nature that it substantially interferes or tends substantially to interfere with the due course of Justice’, a person cannot be held guilty of contempt. The proposed amendment is based on the two elements, one imposing sentence or lessening of punishment which presupposes that contempt has been committed and secondly the

defence of truth on satisfaction of its being bona fide and in public interest, burdens the contemner to establish or prove that whatever he states is believed to be true and the truth is bona fide and is in public interest. This does not seem to be within the spirit of the Bill. However, if the proposed defence of truth is reflected or inserted suitably as one of the exemptions or defences under section 8, it would give the contemner an additional help, because he may plead the defence of truth and may not be held punishable.

18.1. Subject to above, the clause is adopted.

CLAUSE 1, ENACTING FORMULA AND TITLE

19. Clause 1, the enacting Formula and the Title were adopted with some changes which were of consequential or drafting nature, namely, the figure '2004' and the words and 'fifty-fifth' to be substituted by the figure '2005' and the words 'fifty-sixth', respectively.

GENERAL OBSERVATIONS

20. During the course of deliberations on the Bill, a member of the Committee (Shri Ram Jethmalani) made detailed observations on the subject which are reproduced below:-

“The present Bill before the Committee is an attempt to bring the law in conformity with constitutional liberty and the public interest in disclosure of truth. It is not in public interest to push matters under the rug and prevent the light of truth from illuminating the corridors of judicial power.

Eminent witnesses almost unanimously tried to persuade us to delete from the definition of criminal contempt, class of contempt, described in Section 2(c)(i) of the 1971 Act in the following words :

‘Scandalises or tends to scandalise, or lowers or tends to lower the authority of any court;’

The strength of this suggestion was not impressionable. It is felt that this change must wait for sometime. However, the witnesses themselves suggested

that if, for some reason, the Committee does not approve of this radical proposal, it should, as a compromise, at the very minimum recommend that Section 13(2) of the Bill should be reframed as hereunder indicated :

A slight change may be made in both the sub-sections (1) and (2) of section 13 of the Act. The words 'impose a sentence' may be deleted and the words 'adjudge a person guilty' may be substituted in their place. Courts often adjudge a person guilty but refrain from imposing a sentence. Even that causes great damage to a person in reputation and otherwise. Even a finding of guilt should be prevented when no appreciable injury to administration of justice is caused by the conduct of the contemnor.

Section 13(1) should, therefore, read as under :

'Notwithstanding anything contained in any law for the time being in force, no court shall adjudge a person guilty under this Act for a contempt of court, unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice'.

In 13(2) will read as under :

'No one shall be held guilty of contempt of court by making or publishing any statement relating to a Judge or court which is true or which he, in good faith, believes to be true.

Explanation : Nothing will be believed in good faith unless it is believed with due care and caution'.

The question that has been raised before us is whether the changes which we have mentioned above require an amendment of the Constitution, since the Supreme Court derives its power to punish for contempt from Article 129 of the Constitution and the High Courts derive their power from Article 215 of the Constitution? We are satisfied that no constitutional amendment is necessary. What is necessary is that Parliament must make it clear that the provisions of the Contempt of Courts Act, 1971 will apply to the Supreme Court, as well as to the High Courts, in the exercise of their power under the two Constitutional Articles mentioned above.

In Section (1) of the Act, sub-section (3) should be added, reading as under :-

‘The provisions of this Act shall apply to the Supreme Court of India and to the High Courts in exercise of their respective powers and jurisdiction under Article 129 and Article 215 of the Constitution of India’.

We have indicated that the whole law of contempt is the restriction of the constitutional right of the citizens guaranteed by Article 19(1)(a) of the Constitution. Any restriction imposed upon this right will be void unless sanctioned by Parliament in exercise of its legislative power under Clause (2) of Article 19. If Parliament enacts that the maximum punishment for contempt shall be three months’ imprisonment, it would be plainly absurd that either the Supreme court or the High Courts should sentence a person to life imprisonment or even a day longer than three months. If the Act is not binding on these two Courts, the whole Act will be a futile exercise of legislative power of Parliament, because it is only these two courts which can punish for contempt. We have no doubt that the courts will feel bound by the legislation, but if a different view is taken by the courts, there will be time enough to amend the Constitution”.

21. The Committee is of the view that Government may appropriately address these concerns.

* To be appended at printing stage.

* Published in the Gazette of India, Extraordinary Part-II, Section 2, dated the 1st December, 2004.

** Rajya Sabha Parliamentary Bulletin Part-II (No. 41840) dated the 14th December, 2004.

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[1] Contempt of Court : Justice J.D. Kapoor, Universal Law Publishing Company Pvt Ltd. Ed. 2004.

[2] Extracts From ‘Contempt of Court, Justice J.D. Kapoor. Pages 486, 487.