

PRESS FREEDOM AND CONTEMPT OF COURT LAWS

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(Abstract)

In a democratic country like India, the contempt powers of the courts and press freedom are equally important. Though the contempt powers of the courts and press freedom are conflicting interests, a balance between them is necessary for the due administration of justice and development of democratic values enshrined in the Constitution. The Contempt of Courts Act, 1971, contains right approach in this regard to achieve a real balance between press freedom and protecting the judiciary from unwanted interferences with administration of justice. Thus under the Contempt of Courts Act, 1971, in contempt proceedings, the press is placed on a better position compared to citizens. However, unfortunately, the judiciary is rather disregarding the additional status given to the press in contempt proceeding and treats press on a par with citizens. The attitude of judiciary in this regard is against the letter and spirit of the Contempt of Courts Act, 1971. The article looks into the position of the press under Indian Constitution, position of the press envisaged under the Contempt of Courts Act, 1971, and judicial approach to the press freedom incorporated under 1971 Act.

Introduction

Whatever may be the rationale behind the contempt power of courts¹, in the present day, contempt power of court is the main weapon to ensure due administration of justice by protecting the dignity of courts, preventing interference with functioning of the courts and by enforcing

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¹ Two theories are suggested as the basis for the rationale behind contempt power. The first is based on the divine authority of the King as the representative of the God to rule the Kingdom and the other is based on the social contract theory. See Ronald L. Goldfarb, *The Contempt Power* 2 – 22. (Columbia University Press, New York, 1963).

court orders². However, important as undoubtedly it is to protect the due administration of justice from wrongful interferences; there are other competing values which must be recognized³. This is especially true of the freedom of the press and other news media to publish news and their views and the corresponding interest of the public to be informed when it conflict with contempt of court⁴.

A free and healthy press is indispensable to the functioning of a true democracy⁵ and it is *sine qua non* of any free country where there is no dictatorship and no throttling dissemination of news and views⁶. A democratic political society or government which exists on the consent of the people can rest only on the free debate and free exchange of ideas amongst the people and thus every democratic nation today recognizes the value of the freedom of the press⁷. Freedom of press is basically the freedom of the individuals to express themselves through the medium of

² See *Attorney General v Times News Papers Ltd.*, [1973] 3 All E R 745, 749, See also *A.G. v BBC*, [1980] 3 All E R 161, 170. The same view was followed in India also. See *J.R. Parashar v Prasant Bhushan*, (2001) 6 SCC 735, *Rajendra Sail v Madhya Pradesh High Court Bar Association.*, AIR 2005 SC 2473.

³ It has been pointed out that contempt of court in India as currently interpreted by the superior courts is highly antique and is acting as a serious impediment to the freedom of speech in India.

http://www.judicialreforms.org/files/coja_resolution_22.9.01.pdf, visited on 16-05-2011.

⁴ C.J. Miller, *Contempt of Court* 19 (Oxford University Press, 2000). The public interest in the proper administration of justice and public interest in freedom of speech should balance each other. The conflict between freedom of speech and the proper administration of justice is most likely to arise when a media publishes material which may interfere with the course of particular legal proceedings. Typically, those responsible for the publication of the material may not be intending to prejudice the proceedings. They may have been motivated solely by a desire to bring to the attention of the public matters of public interest and concern. Nonetheless, they may be guilty of a criminal offence under that branch of the law of contempt. Sally Walker, *Freedom of Speech and Contempt of Court: The English and Australian Approaches Compared*, 40 ICLQ 583,583 (1991).

⁵ Dr. H.P. Gupta & P.K. Sarkar, *Law Relating to Press And Sedition In India* 80 (Oriental Publishing Co., Allahabad 1st ed. 2002, Reprint (2005).

⁶ Abhitosh Pratap Singh & Madan Mohan, *Contempt of Court and the Media*, 13 KULR 320, 328 (2006).

⁷ Felix Q. Antonio, *The Freedom of the Press in a Nation in Transition – the Philippine Experience*, 53 Phi. L J 14 (1978). It has been stated that the prevalence of an independent judiciary as well as a free press are both essential in a constitutional democracy. K.G. Balakrishnan, *Reporting Court Proceeding by Media and the Administration of Justice*, (2010) 6 SCC (J) 1, 1.

press⁸. This freedom has been regarded as a necessity for the mental health and for the well being of the society and is treated as the mother of all other liberties⁹. The importance of press freedom in a democratic society was highlighted by Frankfurter J., in *Bridges v California*,¹⁰ where it was observed that freedom of speech and of the press are essential to the enlightenment of free people and in restraining those who wield power¹¹. The press freedom and functioning of the democracy is so much interwoven, which led Thomas Jefferson, the third President of United States, to say that if he had to choose between having ‘a government without newspaper’ and ‘newspaper without a government’, he would have no hesitation in preferring the latter¹². The newspaper and magazines are given high position in a democracy based on a thinking that they are in a position to create a shared political culture that extend even to remote rural areas¹³. Their penetration and periodicity allows them to speak to many people at the same time, shaping first impression of the news and reinforcing views through repetition¹⁴. The argument in favor of press freedom is the same as that of freedom of speech, and is based on the fact that printed media records the ideas in a permanent form, which speech cannot. This view led to the first amendment to the American Constitution in 1791 which provided that the Congress shall make no law abridging the freedom of speech of the press¹⁵. Thus in America, even in the earlier period, it was well settled that the press freedom shall not be interfered with.

Freedom of speech and expression and contempt of court are two conflicting public interests¹⁶. The law requires the balancing of these two vital but often competing democratic

⁸ B.R.Sharma, *The Freedom of Press Under the Indian Constitution* 2 (Deep & Deep Publications, New Delhi, 1994).

⁹ *In Re: Harijai Singh*, AIR 1997 SC 73, 77.

¹⁰ 314 US 252.

¹¹ *Id* at 284.

¹² Jefferson’s letters to Carrington, Jan. 16, 1787, excerpted in Durga Das Basu, *The Law of The Press* 11 (Wadhwa and Company Nagpur, 4th ed. 2002).

¹³ Jeffery A. Smith, *War and Press Freedom* 5 (Oxford University Press, New York, 1999).

¹⁴ *Id*.

¹⁵ The First Amendment provides:- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

¹⁶ One of the most important limitations on the freedom of the press has been pointed out as the power of the courts to punish for contempt publications which tend to obstruct the administration of justice. Sam S. Gill, *Contempt of*

values – the right to free speech and the necessity to preserve public confidence in the judicial system¹⁷. For a normal and balanced functioning of the society, both press freedom and due administration of justice must to be protected¹⁸. Thus, due administration of justice and press freedom must be given equal importance and laws which prohibit contempt of court shall not unreasonably prohibit press freedom.

The question in this regard is how to achieve a balance between press freedom and contempt of court. In the conflict between press freedom and contempt of court, each system gives different weightages and laws are formulated accordingly. Initially the English courts gave almost complete precedence to contempt of court. No additional immunities were given to media and even the slightest interference with the functioning of judiciary by way of publication was treated as contempt of court¹⁹. However the law underwent substantial change by the enactment of Contempt of Court Act 1981.

Press freedom under the Contempt of Court Act 1981

The 1981 Contempt of Courts Act made drastic changes in English law in the relation between contempt powers of the courts and press freedom. One of the notable features of the Act

Court by Publications, 24 CLR 114 (1935). See also, *Contempt by Publication*, 59 Yale L J 534 (1950). It has been pointed out that before the 17th century the offences relating to interference with administration of justice were decided through the regular criminal process on an indictment with the right to trial. But the advent of a volatile and critical media caused the judges to create a powerful law of contempt of court by which punishment for contempt of court would be dealt with by a summary process. This led to the development of the present contempt law. Rajeev Dhavan, *Contempt of Court and the Press*, September 10, 2010. Available at <http://y4e.in/pdf/wc/Free%20Speech/Contempt%20of%20Court%20and%20the%20Press.pdf> (Last visited on 10-09-2010).

¹⁷ Madhavi Goradia Divan, *Facets of Media Law* 68 (Eastern Book Company, Lucknow, 1st ed. 2006).

¹⁸ Both the United States and England have long wrestled with the problem of maintaining a free press consonant with a system of fair trial. Often, the two goals have conflicted and, presently, both countries resolve the conflict by resorting, or not resorting, to the same contempt power. Ronald Goldfarb, *The Constitution and Contempt of Court*, 61 Mich L Rev 283, 303 (1962).

¹⁹ In *R v Gray*, [1900] 2 QB 36, it was observed that any act done or any writing published calculated to bring a court of or a judge of a court into contempt or to lower his authority, is a contempt of court. Id at 40. See also *Re Johnson*, (1987) 20 QBD 68, *R v Griffiths, ex parte A.-G.* [1957] 1 QB 192.

is that the press is placed on a different footing in contempt proceedings. Thus, though the strict liability rule is incorporated in the Contempt of Court Act 1981²⁰, exception is given to press from the operation of the rule in some respects. The Act provides that a person is not guilty of contempt of court under the strict liability rule in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith²¹. The protection can be claimed if the proceedings was 'held in public' which means not in camera or in chambers²². Further the good faith requirement will be satisfied where the report is made honestly and with no ulterior motive²³. It is to be noted that even if a report does contain inaccuracies, no action for contempt will lie unless those inaccuracies prejudice the prospects of a fair trial or the administration of justice in general²⁴. It is true that the freedom enjoyed by the press under Section 4 (1) to publish reports of open court proceedings could be limited under 4 (2) by an order issued by the court to postpone the publication of the proceeding or any part of the proceeding as the court think necessary. However, to issue an order to postpone a publication, substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent is required²⁵. Further, studies in regard shows that the courts are adopting restrictive view to applications under section 4 (2) to postpone publication of the

²⁰ In Section 1 of the Contempt of Court Act 1981, the strict liability rule is explained as the rule of law whereby conduct may be treated as contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.

²¹ Section 4 (1) of Contempt of Court Act 1981 reads:- Subject to this Section a person is not guilty of contempt of court under the strict liability rule in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith.

²² Clive Walker, Ian Cram, Debra Brogarth, *The Reporting of Crown Court Proceedings and the Contempt of Court Act 1981*, 55 Mod L R 647 (1947).

²³ Id.

²⁴ Id at 648.

²⁵ Section 4 (2) of Contempt of Court Act 1981 reads:- In any such proceedings the court may, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary for that purpose.

proceedings. Thus the normal approach followed by the courts is to reject such applications rather than postponing a publication on the ground of substantial risk of prejudice²⁶.

The U S approach

Influenced by constitutional status of freedom of press, different approach is adopted by the American Courts in the conflict between contempt power of courts and press freedom. In contrast with English approach, the U S courts places their emphasis on the importance of untrammelled expression and the contempt of court by publication is dealt by applying the test of clear and present danger to the administration of justice²⁷. The test requires that substantive evil must be extremely serious and the degree of imminence must be extremely high before utterances can be punished for contempt of court²⁸. In practice, this has allowed the media to report even on pending judicial proceedings with little or no restriction and provide extensive (and often controversial) coverage of high profile cases²⁹.

Freedom of press under the Indian law.

Unlike in U S, in India, freedom of press is not guaranteed separately under the Indian Constitution. But it is well settled that Article 19(1) (a) which guarantees freedom of speech and expression include liberty of press also³⁰. However, even at the time of commencement of the Indian Constitution, there was strong argument for conferring additional status for press freedom

²⁶ Clive Walker, Ian Cram, Debra Brogarth, *The Reporting of Crown Court Proceedings and the Contempt of Court Act 1981*, 55 Mod L R 649 (1947).

²⁷ The University of Chicago Law Review, *Free Speech vs. the Fair Trial in the English and American Law of Contempt by Publication*, 17 U Chi L Rev 540, 541 (1950).

²⁸ See *Bridges v. California*, 314 US 252 (1941); *Pennkamp v. Florida*, 328 US 331 (1946); *Craig v. Harney*, 331 US 367 (1946); *Wood v. Georgia*, 370 US 375 (1962).

²⁹ *Background Paper on Freedom of Expression and Contempt of Court for the International Seminar on Promoting Freedom of Expression with the Three Specialised International Mandates*, March 21, 2011, available at <http://www.article19.org/pdfs/publications/foe-and-contempt-of-court.pdf> (Last visited on 21-03-2011).

³⁰ See *Sakal Papers (P) Ltd v Union of India*, AIR 1962 SC 305, *Express News Papers (P) Ltd. v Union of India*, AIR 1958 S.C. 578, *Brij Bhushan v State of Delhi*, AIR 1950 SC 129.

by incorporating the same through specific provision in the Constitution. The need and importance of freedom of press as a separate freedom was raised even in Constituent Assembly debates and some of the Members of Constituent Assembly were very much critical about omission to guarantee freedom of press as a separate and distinct fundamental right in the draft Constitution. Thus, Prof. K.T. Shah, who moved an amendment for the inclusion of freedom of press in the Chapter of Fundamental Rights during Constituent Assembly debates argued thus³¹:

“The freedom of press, as is very well known, is one of the items round which the greatest and the bitterest of the constitutional struggle has been waged in all countries where liberal Constitutions prevail. I am amazed that in this Constitution a very glaring omission has taken place in the draft by leaving out the freedom of the press. I cannot imagine why these draftsmen, so experienced and so seasoned, have felt it desirable to leave out the freedom of the press, and leave it to the charity of the administrators of the Constitution when occasion arose to include it by convention or implication, and not by express provision”.

In the reply given by Dr. Ambedkar, it was stated that the press has no special rights which are not to be given or not to be exercised by the citizen in his individual capacity. The editors of press or managers are all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression. It was thus expressed that in his judgment no special mention is necessary for freedom of the press³². This explanation of Dr. Ambedkar was accepted and no separate freedom of the press was included in the Indian Constitution, other than the normal freedom of speech and expression guaranteed to citizens under Article 19(1) (a) of the Constitution³³. Thus the freedom of press under Indian Constitution

³¹ 7 *Constituent Assembly Debates Official Reports* 714 (Lok Sabha Secretariate New Delhi Third reprint, 1999).

³² Id at 780.

³³ According to the makers of the Constitution, freedom of the press is implicit in the freedom of press. For details see, Justice K.T. Thomas, *Parliamentary Privileges Vis - A - Vis Freedom of the Press*, NULS. L.J. [2] 58, 62 (2008).

is governed by Article 19(1) (a)³⁴, which guarantees the freedom of speech and expression to every citizen³⁵.

However the non inclusion of freedom of press as a separate fundamental right under Part 111 of the Indian Constitution was remedied to a considerable extent through various Conventions and Declarations dealing with press freedom to which India is also a party³⁶. Similarly, imbibing the spirit of press freedom, the 44th Amendment, which incorporated Article 361 A in the Constitution provides for special protection in matters of publishing faithful report of legislative proceedings of either House of Parliament or the Legislative Assembly, provided the publication is substantially true and without malice. This is an instance where special protection was conferred on the press through constitutional provision itself³⁷.

³⁴ Article 19(1) (a) of Indian Constitution reads:- **Protection of certain rights regarding freedom of speech, etc.-**
All citizens shall have the right-

(a) to freedom of speech and expression;

³⁵ However it is often argued that both judges and journalists discharge constitutional functions, and to undertake these heavy responsibilities and discharge their duties, other than the general freedom of speech and expression guaranteed to every citizen under Article 19 (1) (a), special protections and freedoms are necessary to the press. Krishan Mahajan, *Press and Judicial process*, [9] Journal of the Bar Council of India, 356 (1982). See also *I.R. Coelho v State of T.N.*, (2007) 2 SCC 1 at 100.

³⁶ Article 19 of Universal Declaration of Human Rights, 1948, declares the freedom of the press, further Article 19 of the International Covenant on Civil and Political Rights, 1956, also recognize freedom of press. Article 10 of the European Convention on Human Rights, provides as follows:

- (1) Everyone has the right to freedom of expression. The right shall include the freedom to hold opinions and to receive and to impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent the State from requiring licensing of broadcasting, television or cinema enterprises.
- (2) The exercise of these freedoms, since it carries with it duties and responsibilities may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

³⁷ Article 361 A reads -: **Protection of publication of proceedings of Parliament and State Legislatures.** – (1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper

Further, in some cases, though the courts adopted a literal interpretation to Article 19 (1) (a) and reached the conclusion that no additional immunity can be claimed by the press with respect to freedom of speech and expression³⁸, in many other cases, the courts accepted the argument that based on the delicate nature of the functions discharged, and social responsibility vested with the press, additional immunity must be given to it³⁹. Thus in *Bennet Coleman & Co v Union of India*⁴⁰, it was observed that freedom of press is the Ark of the Covenant of Democracy and additional protection must be given to the press to discharge their functions effectively⁴¹.

of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State, unless the publication is proved to have been made with malice:

Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.

(2) Clause (1) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.

Explanation. – In this article, “newspaper” includes a news agency report containing material for publication in a newspaper.

³⁸ *M.S.M. Sharma v Sree Krishna Sinha*, AIR 1959 SC 395. The Supreme Court in this case scrutinized the ingredients of press freedom and observed that in India, the freedom of speech is nothing but the freedom of expression of every citizen. Further being a right flowing from freedom of speech and expression, the liberty of the press in India stands on no higher footing than the freedom of speech and expression of a citizen and no privilege attached to the press is distinct from the freedom of the citizen. Id at 402.

³⁹ There exists even the view that if freedom of press had been enshrined as a specific freedom in the Constitution, it might have been liable to be construed in a narrow fashion. But when it includes part of freedom of speech and expression it acquires a broader meaning and connotation because it carries with it all the elements which are the elements of freedom of speech and expression. Mahabhusi Sridhar, *The Law of Expressions*, 92 (Asia Law House, 1st ed. 2007).

⁴⁰ AIR 1973 SC 106.

⁴¹ Id at 110, See also *Express news Paper Ltd v Union of India*, AIR 1958 SC 578. In this case, the petitioner under Article 32 of the Constitution, raised the question of constitutionality of Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955. The Act provided for minimum wages and some other service benefits to be paid to the working journalists. The petitioner’s argued that the statute imposed additional financial burden on the petitioners and thus amount to violation of their fundamental rights under Article 19 (1) (a) and 19 (1) (g). In this case while dealing with press freedom Supreme Court even went up to the extent of comparing between the First

Similarly, treating press freedom on a different footing, in *V.S. Achuthanthan v G. Kamalamma & others*⁴² the Kerala High court observed that the courts which are conferred with the jurisdiction to take cognizance upon private complaint have to bear in mind that the freedom of press as guaranteed by Article 19 (1) (a) of the Constitution of India is highly important and until a strong case is made out on the basis of specific and definite pleadings and averments, the press persons shall not be dragged into court proceedings⁴³.

The debatable question in this regard is whether the lenient approach adopted by the court with respect to press freedom is applicable to contempt proceedings initiated against the press also. The argument of the press that in contempt matters the press must be treated on a different footing from ordinary citizen was specifically considered in *Bijoyananda v Balakrushna*⁴⁴. In this case it was attempted to introduce a distinction in favor of the press and claimed that writing in newspaper regarding judicial proceeding and administration of justice is essentially for the benefit of the public and is to be treated as privileged and the news paper should not be made subject to contempt proceedings⁴⁵. Orissa High Court rejected the argument and observed that the law of contempt of court does not recognize any extraordinary privilege that can be claimed by the press in contempt proceeding compared to other citizens⁴⁶. The additional status of the press in contempt proceeding was subsequently raised in a number of other cases but the court rejected the argument on the ground that the Contempt of Courts Acts did not confer any

Amendment to the American Constitution with freedom of press under Article 19 (1) (a). *Id* at 615 – 616. See also *Sakal Papers (p) Ltd v Union of India* AIR 1962 SC 305, where it was held that the right to propagate one's idea is inherent in the concept of freedom of speech and expression. For the purpose of propagating his ideas every citizen has a right to publish them, to disseminate them and to publish them. He is entitled to do so either by word of mouth or by writing. The right guaranteed thus extends, subject to any law competent under Article 19 (2), not merely to the matter which he is entitled to circulate, but also to the volume of circulation. In other words, the citizen is entitled to propagate his views and reach any class and number of readers as he chooses subject of course to the limitations permissible under a law competent under Article 19 (2). *Id* at 310, See also *Reliance Petrochemicals Ltd v Indian Express News Papers Bom. Pvt. Ltd*, (1988) 4 SCC 593, 604.

⁴² 2008 (2) K.L.J. 417.

⁴³ *Id* at 441. See also Dr. M. Sridhar Acharya, *Scope of Freedom of Speech and Press: New Trends in Judicial Interpretation*, 26 IBR 47, 48 (1999).

⁴⁴ AIR 1953 Ori. 249, 252.

⁴⁵ *Id* at 252.

⁴⁶ *Id*.

additional immunity to the press⁴⁷. The question in this regard is, whether the Contempt of Courts Act deals with press freedom on a par with citizens, or any additional status can be claimed by the press in contempt proceedings regarding publication as conferred by the English Contempt of Court Act. The question can be looked at different levels.

Trial by media and press freedom

Although the direct effect of 'trial by media' is often difficult to measure, the adverse influences of pre trial publicity was accepted by even the most staunch defenders of press freedom⁴⁸. Publication in media pertaining to offences and civil disputes has certain advantages⁴⁹. But at the same time, adverse comments published by media regarding pending or imminent judicial proceedings may prejudicially influence the judge, witness and those who are connected with administration of justice making fair and impartial administration of justice

⁴⁷ See *E.T. Sen v Edatata Narayan and others*, AIR 1991 Del. 201. In this case regarding contempt proceeding against newspaper, Delhi High Court observed that neither the Constitution nor any other law contemplates any exemption or a saving provision in favor of the press or the profession of journalism as such, with the result that freedom of speech and expression available to press or the journalists is in an equal degree to all citizens conferred under Article 19 (1) (a). Id at 210. See also In re S. Mulgaokar, AIR1978 SC 727, *Rajendra Sail v Madhya Pradesh High Court Bar Association*, AIR 2005 SC 2473, *In Re Harijai Singh*, AIR 1997 SC 73, *In Re D.C. Saxena*, AIR 1996 SC 2481. In all these cases there the Courts refused to accept any special position of the press in contempt proceeding. The approach of Kerala High Court *In Re M.V. Jayarajan* 2011 (4) KLT 570 was slightly different. This was a case where a political leader from Kerala, M.V. Jayarajan was punished for contempt of court. The criticism made by the contemnor against the judiciary and judges were published by all newspapers and channels with high importance. It was argued that if Jayarajan was liable for contempt of court, all news papers and channels which published the speech of Jayarajan must also be held liable. The Court rejected the argument and observed that by publishing factum of contempt committed by the respondent, the media was not committing any contempt of court especially when they were not justifying the conduct of the respondent. Id at 619 - 620. This approach is only exceptional. Further the approach is not based on any sound rationale evolved from the Contempt of Courts Act, 1971, and cannot be treated as laying down any law establishing superiority of press compared to ordinary citizen.

⁴⁸ T. E. C., Jr., *Contempt by Publication: The Limitation on Indirect Contempt of Court*, 48 Va L Rev. 556 (1962).

⁴⁹ Primarily, but for the interference of media a number of offences against poor and downtrodden would have remained unnoticed. Secondly publications made by media, regarding criminal cases make the investigating agency more vigilant, prosecution more alert and above all warns the society regarding offences.

virtually impossible⁵⁰. However in spite of the disadvantages, publications regarding civil and criminal cases are most leniently dealt under Indian contempt law. Under the present Contempt of Courts Act, whatever may be the impacts of publication regarding a particular judicial proceeding, it will amount to contempt of court only if the proceeding is ‘pending’ at the time of publication within the meaning of the Act⁵¹. Thus a criminal proceeding can be treated as ‘pending’ only if charge sheet or *chellan* is filed, or the court has issued summons or warrant as the case may be⁵². Regarding civil cases, the proceeding can be treated as pending only by filing of plaint or otherwise⁵³. Thus a proceeding can be treated as pending only by the intervention of

⁵⁰ *A - G v Times Newspaper Ltd* [1973] 3 All E R 54, 61. See also The University of Chicago Law Review, *Free Speech vs. the Fair Trial in the English and American Law of Contempt by Publication*, 17 U Chi L Rev 540, 549 (1950). See also M Jagannada Rao, Fair trial or free Press?: Law’s response to trial by media, *Constitutionalism Human Rights & the rule of law*, Essays in honour of Soli J Sorabji, Edited by prof. Mool Chand Sharma and Raju Ramachandran, Universal law Publishing Co.(2005) P.85. See also justice G.N. Ray, *Media Workshop On Crime-Judicial Reporting*, Inaugural address by Mr. Justice G.N. Ray, Chairman, Press Council of India at the workshop on “Crime – Judicial Reporting” on 21st February, 2009 at Centre for Media Studies, New Delhi, available at <http://presscouncil.nic.in/speechpdf/media%20workshop%20on%20crime%20judicial%20reporting.pdf>(Last visited on 14-12-2010).

⁵¹ Section 3 (2) of the Contempt of Courts Act, 1971 reads:- Notwithstanding anything to the contrary contained in this Act or any other law for time being in force, the publication of any such matter as mentioned in sub – section (1), in connection with any civil or criminal proceeding not pending at the time of publication shall not be deemed to constitute it contempt of court.

⁵² Clause (B) of explanation to Section 3 Provides -: in the case of a criminal proceeding under the Code of Criminal Procedure, or any other law-

- (i) Where it relates to the commission of an offence, when the charge sheet or *chellan* is filed, or when the court issues summons or warrant, as the case may be, against the accused, and
- (ii) in any other case, when the Court takes cognizance of the matter to which the proceeding relates, and
in the cases of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired;
- (b) which has been heard and finally decided shall not be deemed to be pending merely by the reason of the fact that proceeding for execution of the decree, order or sentence passed therein are pending.

⁵³ Clause (A) of explanation to Section 3.

the court. This would mean that before the filing of *chellan* or charge sheet in criminal cases, and before filing of plaint in civil cases, whatever may be the nature of publication and however it interferes with administration of justice, the same will not amount to contempt of court. Thus, very wide protection is given to media in India under the Contempt of Courts Act, 1971. The position was different under 1926 and 1952 Contempt of Courts Acts. Under the 1926 and 1952 Contempt of Courts Acts, following the common law, not only interference with pending judicial proceeding but also imminent judicial proceedings were treated as contempt of courts. But the matter is entirely different under the present law and the protection given to media under the 1971 Act is much wider than the protection given to media under English law because under common law, interference with not only pending judicial proceeding but also imminent judicial proceeding could lead to contempt of court. But in India, under the present law, contempt of court is committed only when the interference is with the pending judicial proceeding. The Law Commission of India has taken note of the situation and reached the conclusion that the law is unreasonably favouring the press and recommended for the application of *sub judice* period from the time of arrest instead of the present position of treating it from the time of filing of charge sheet or *chellan* as the case may be⁵⁴.

Innocent publication of matters

The Contempt of Courts Act, 1971 also protects the media from innocent publication of matters. The protection is given under section 3 of the Act⁵⁵. 3 (1) provides that, if at the time of

⁵⁴ See 200th report of the 17th Law Commission.

⁵⁵ Section 3 of Contempt of Courts Act, 1971, reads:- **Innocent Publication and distribution of matter not contempt:-**

- (1) A person shall not be guilty of contempt of Court on the ground that he has published (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) any matter which interferes or tends to interfere with, or obstructs, or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at that time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.
- (2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub - section (1), in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of Court.

publication, the person who is responsible for the publication has no reasonable ground for believing that the proceeding was pending, the publication can be treated as innocent publication. Regarding such publications, the publisher shall not be liable for contempt of court even if the publication interferes or tends to interfere with, or obstructs or tends to obstruct the course of justice in connection with any pending judicial proceeding. Thus section 3 (1) provides protection to trial by media in a different angle. If sub clause (ii) of section 2 read with sub clause (2) of section 3 and explanation to section 3 establishes the position that publication regarding judicial proceeding can amount to contempt of court only if the proceeding is pending

(3) A person shall not be guilty of contempt of Court on the ground that he has distributed a publication containing any such matter as is mentioned in sub - section (1), if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid:

Provided that this sub - section shall not apply in respect of the distribution of –

- (i) any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in S. 3 of the Press and Registration of Books Act, 1867(25 of 1867);
- (ii) any publication which is a newspaper published otherwise than in conformity with the rules contained in S.5 of the said Act.

Explanation:- For the purpose of this section, a judicial proceeding-

(a) is said to be pending-

(A) in the case of a civil proceeding, when it is instituted by the filing of a plaint or otherwise.

(B) in the case of a criminal proceeding under the Code of Criminal Procedure, 1898(5 of 1898), or any other law-

i. where it relates to the commission of an offence, when the charge - sheet or challan is filed, or when the court issues summons or warrant, as the case may be, against the accused, and

ii. in any other case, when the Court takes cognizance of the matter to which the proceeding relates, and

in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired;

(b) Which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceeding for the execution of the decree, order or sentence passed therein are pending.

before a court of law, section 3 (1) provides that even if the proceeding is pending before a court of law, the publisher shall be liable for contempt of court only if he had reasonable ground for believing that the proceeding was pending, irrespective of the fact that the publication interferes or tends to interfere with or obstructs or tends to obstruct the course of justice in connection with any civil or criminal proceeding. Thus section 3 (1) is an extension of section 2 (ii) read with section 3 (2) and explanation to section (3). It is to be noted that the protection given under the section can be claimed only by the publisher or the person who is responsible for publication. The position in this regard prior to the 1971 Act was considered by Orissa High Court in *State v Biswanath Mohapatra*⁵⁶. In this case the Court observed that lack of knowledge regarding pendency of a case cannot exonerate a person from the offence of contempt of court⁵⁷. This position has been specifically reversed by the Contempt of Courts Act, 1971 and additional immunity was conferred on media regarding publications.

The importance of section 3 and the extent of protection given to the press would be clear only after taking into consideration the relevance of *mens rea* under the Contempt of Courts Act, 1971. The general principle applicable in contempt law is that to attract the offence of contempt of court *mens rea* is not required⁵⁸. However, Section 3 incorporates *mens rea* in a limited extent in the form of knowledge, and provides protection to publisher if he has no reasonable ground for believing that a proceeding was pending. The immunity under section 3 would be available only if the impugned act attempted to interfere with administration of justice is by publication. If the interference is by any other method other than by publication, section 3 and the element of *mens rea* have no application in contempt proceeding⁵⁹. Thus, section 3 forms an exception to

⁵⁶ AIR 1955 Ori. 169.

⁵⁷ Id at 171.

⁵⁸ See *D.C. Saxena v Hon'ble Chief Justice of India*, 1996 (5) SCC 216, 258.

⁵⁹ This point was accepted by the Bombay High Court in *Prabhakar Laxman Mokasi v Sadanam Trimbak Yardi*, 1975 Cri L J 531, 534 where it was observed that Section 3 can be effective only when the impugned act attempted to interfere with administration of justice is in civil or criminal proceedings. With regard to any other interference, exemption under Section 3 will turn illusory. Supreme Court also accepted this view in *Rachapudi Subbarao v Advocate General A.P.*, AIR 1981 SC 755, where it was observed that Section 3 is in the nature of an exception to those categories of "criminal Contempt" which fall under sub - clause (ii) and to certain categories of "criminal contempt" which come under sub clause (iii) of section 2 (c), but not to that category of contempt which falls under sub clause (i) of section 2 (c). This is clear from the comparison of language of Section 3 (1) with that of Section 2

the general principle regarding *mens rea* contained in the Contempt of Courts Act and press is treated on a different footing compared to ordinary citizens by incorporating *mens rea* in the form of knowledge to attract liability.

Innocent distribution of publication

If protection under Section 3(1) and 3(2) are available to publication and publisher, clause (3) of Section 3 deals with another aspect of press freedom i.e. innocent distribution of publication⁶⁰. It seems that the protection given to the distributor is based on the thinking that, without protecting innocent distribution, the protection given to publication or publisher is not workable. As per clause (3), a person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with civil or criminal proceeding pending at the time of distribution if he had no reasonable ground for believing that it contain or likely to contain any such matter. However as per the proviso to clause (3), to get this protection, the publication must be in conformity with the rules contained in Section 3 and 5 of the Press and Registration of Books Act, 1967⁶¹. What is required under this Section is the

(c). The words interferes or tends to “interfere with the course of justice in connection with any proceeding pending” in Section 3(1) substantially reiterate the language of sub- clause (ii) of section 2 (c). Similarly the words ‘interferes or tends to interfere with or obstructs or tends to obstruct’ in Section 3 (1) are a reproduction of the first limb of sub – clause (iii) of section 2 (c). The phrase “the administration of justice in any other manner” used in Section 2 (c) (iii) has been substituted in section 3 (1) by the narrower phrase “the \course of justice in connection with any civil or criminal proceeding pending at the time of publication”. But there are no words in Section 3 which may be referable to that species of “criminal contempt” which would fall within sub - clause (i) of the definition given in Section 2 (c). Sub - section (2) of Section 3 expressly confines its operation to those categories of contempt which are referred to in sub – section (1). Section 3(2), therefore is not applicable to that category of contempt which falls under sub – clause(i) of Section 2 (c), or which is otherwise of a kind different from those mentioned in Section 3(1). Id at 759

⁶⁰ Clause (3) of Section 3 reads:- A person shall not be guilty of contempt of Court on the ground that he has distributed a publication containing any such matter as is mentioned in sub - section (1), if at the time of distribution he had no reasonable ground for believing that it contained or was likely to contain any such matter as aforesaid:

⁶¹ Proviso to Sub Clause (3) of Section 3 reads:- Provided that this sub- section shall not apply to in respect of the distribution of –

knowledge regarding the fact that publication contain or likely to contain matters which interferes or tends to interfere with, or obstruct or tends to obstruct the course of justice in connection with civil or criminal proceeding pending at the time of publication. Thus as in the case of Clause (1), *mens rea* in the form of knowledge is necessary under Clause (3) also to make a person liable for distribution of a publication which contain matters which amount to contempt of court.

Fair and accurate report of judicial proceedings

Yet another protection given to the press under Contempt of Courts Act is with respect to fair and accurate report of judicial proceedings. Under Section 4 of the 1971 Act, fair and accurate report of judicial proceeding or any stage thereof is not a contempt⁶². It is clear from the words of ‘report of judicial proceeding or any stage thereof’ that, what is covered under Section 4 is reporting of day to day proceedings of the court⁶³. It is further clear that fair and accurate report of judicial proceeding means fair and accurate report of judicial proceeding held in open courts⁶⁴. This protection is also novel under the 1971 Act. Though under the 1926 and 1952

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- (i) any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in Section 3 of the Press and Registration of Books Act, 1867 (25 of 1867);
 - (ii) any publication which is a newspaper published otherwise than in conformity with the rules contained in Section 5 of the said Act.

⁶² Section 4 of Contempt of Courts Act, 1971 reads -: **Fair and accurate report of judicial proceeding not contempt:-** Subject to the provisions contained in Section 7, a person shall not be guilty of contempt of Court for publishing a fair and accurate report of a judicial proceeding or any stage thereof.

⁶³ *Subhash Chand v S.M. Aggarwal*, 1984 Cri L J 481. In this case, the judge after giving a death sentence held press interview and in that he substantiated his decision. Reporting the same was held not fair reporting. Id at 488. It seems that the rationale behind the Section is based on the English principle that as the trial itself must be open to the public, reporting of the trial must also be treated as part of open justice. Arthur L. Goodhart, *Newspapers and Contempt of Court in English Law*, 48 Harv L Rev 885, 910 (1935). See also Justice Tek Chand, *Law of Contempt of Court and Legislature* 174 (The University Book Agency, Allahabad, Fourth ed. 1997).

⁶⁴ It is well settled that in general, all cases brought before the Courts whether civil, criminal or others must be heard in open Court. Public trial in open court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice vagaries, and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity and impartiality of the administration of justice. See *Naresh v State of Maharashtra* AIR 1967 SC 1, 8. See also Section 327(1) of

Acts, no such privileges were given to media, following the common law, in Indian law also it was well settled that, if the proceeding is reported in verbatim, or a summary of the proceeding is given, no contempt would be committed provided it is fair and accurate⁶⁵. The protection under 1971 Act is wider and is given to a person who publishes something regarding judicial proceeding. A close reading of the Section will further indicate that the defence of fair and accurate report of judicial proceeding is available only with respect to publications in the form of reporting. If the publication is in any other method other than by reporting of judicial proceeding, protection under section 4 may not be available. Thus in *D.C. Saxena v Chief Justice of India*⁶⁶, when the publication which formed the basis of contempt proceeding was not by reporting through media but by publication through affidavits which formed part of a writ proceeding, the application of protection under section 4 of Contempt of Courts Act, 1971, was considered by the Supreme Court. The contemnor tried to defend the proceeding under section 4 of the Contempt of Courts Act, 1971 and argued that the averments contained in the affidavit were true and correct and it was only a fair and accurate report of judicial proceeding. Thus it was argued that he was entitled to get protection under section 4 of the Act and therefore the allegations contained in the affidavit could not be treated as contempt⁶⁷. The question in this regard was whether the defense of fair and accurate report of judicial proceeding is confined to publication made by press alone or to all fair and accurate publications of judicial proceedings even if published not through press. Confining the operation of the defence of fair and accurate report of

Criminal Procedure Code, 1987 which reads:- The place in which any Criminal Court is held is deemed to be an open court, to which the public generally may have access, so far as the same can conveniently contain therein.

⁶⁵ *Wasudeoraoji Sheorey v A.D.Mani*, AIR 1951 Nag. 26, 29.

⁶⁶ (1996) 5 SCC 216. In this case the publication was not through any media. The publication was through a writ petition which contained serious allegations against the then Chief Justice of India, A.M. Ahmadi, including that (1) justice A.M. Ahmadi is unfit to hold the office as chief justice of India, (2) that he should be stripped off his citizenship, (3) to direct registration of an F.I.R. against him under various provisions of Indian Penal Code for committing forgery and fraud and under the prevention of corruption Act, (4) to direct prosecution of him under the Prevention of Corruption Act, (5) to direct him to defray from his personnel pocket with expenses incurred by the petitioner in filing the two writ petitions, (6) to direct Justice Ahmadi to reimburse from his pocket to the public exchequer the entire loss caused to the State, as a consequence of nonpayment of the dues by Sri .P.V. Narasimha Rao with interest 18% per annum and (7) other consequential directions.

⁶⁷Id at 254.

judicial proceeding under section 4 of Contempt of Courts Act to publication made by press alone, the Court observed⁶⁸:-

“We fail to appreciate the stand of the petitioner that Section 4 bails him out and purges from contempt. It would be applicable only to publication of the report of a judicial proceeding fairly and with accuracy to the outside world. There is a distinction between expression in pleading and publication of the report of the judicial proceeding or an order without malice as fair and constructive criticism to readers. As stated earlier, fair criticism of judicial proceedings outside the pleadings of the court is a democratic feature so as to enable the Court to look inward into the correctness of the proceeding and the legality of the orders of the court by the court itself for introspection”.

Further it seems that the words used in the decision - ‘constructive criticism to readers’, will further limit the scope of section 4 to print media alone.

However, the protection under section 4 is subject to two restrictions. The first is that the publication must be ‘fair and accurate’. The statute does not give any explanation to ‘fair and accurate report of judicial proceeding’. Thus the meaning of fair and accurate report can be explained only with the help of decided cases. The general principle in this regard is that, under the pretext of shelter given by the provision of law, incorrect and dishonest reporting cannot be permitted⁶⁹. Thus in *Subbash Chand v S.M. Agarwall*⁷⁰, it was observed that a report which gives absolutely one sided picture cannot be treated as fair and accurate report⁷¹. The report need not be a verbatim reproduction of what actually happened in a court, provided it is accurate⁷². However to attract the plea of fair and accurate report of judicial proceeding, the words used must be reasonable and no words may be added, omitted or substituted if the effect is prejudicial to one party in the litigation⁷³. Further a publication can claim the status of fair and accurate report of judicial proceeding only if reasonable care has been taken by the publisher⁷⁴. If the

⁶⁸ Id.

⁶⁹ *Progressive Port and Dock Workers v K.M. Mathew*, 1984 Cri L J 1021, 1022.

⁷⁰ 1984 Cri L J 481.

⁷¹ Id at 488.

⁷² *Susil Sharma v State (Delhi Admn.)*, 1996 Cri L J 3944, 3950.

⁷³ *Dr.D.C. Saxena v Hon’ble Chief Justice of India*, (1996) 5 S.C.C 216, 267.

⁷⁴ *In re Harijai Singh*, (1996) 6 SCC 466, 474.

report exceeds the limit of publishing report of judicial proceeding, the protection under section 4 is not available and it will amount to trial by media⁷⁵.

The second restriction regarding reporting of judicial proceeding is that the immunity given to fair and accurate report of judicial proceeding under section 4 is subject to the restrictions contained in section 7. Section 7 deals with publication of information relating to proceeding in chambers or *in camera*⁷⁶. Before the commencement of the Contempt of Courts Act, 1971, the position prevailing in India was that the chamber proceedings or *in camera* proceedings shall not be published without the leave of the court⁷⁷. Section 7 changed the position and except in exceptional situations laid down in the Section, no publication of information relating to proceedings in chambers or *in camera* could lead to contempt of court

⁷⁵ *Susil Sharma v State (Delhi Admn.)*, 1996 Cri L J 3944, 3950.

⁷⁶ Section 7 of Contempt of Courts Act 1971 reads:- **Publication of information relating to proceedings in chambers or in camera not a contempt except in certain cases:-**

(1) Notwithstanding anything contained in this Act, a person shall not be guilty of contempt of Court for publishing a fair and accurate report of a judicial proceeding before any Court sitting in chambers or in camera except in the following cases, that is to say,-

- (a) where the publication is contrary to the provisions of any enactment for the time being in force;
- (b) where the Court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published;
- (c) where the Court sits in chambers or in camera for reason connected with public order or the security of the State, the publication of the information relating to those proceedings;
- (d) where the information relates to secret process, discovery or invention which is an issue in the proceedings.

(2) Without prejudice to the provisions contained in sub - section (1), a person shall not be guilty of contempt of Court for publishing the text or fair and accurate summary of the whole, or any part of an order made by a Court sitting in chambers or in camera, unless the Court has expressly prohibited the publication thereof on grounds of public policy, or for reasons connected with public order or the security of the State, or on the grounds that it contains information relating to a secret process, discovery or invention, or in exercise of any power vested in it.

⁷⁷ In *Hargowandas B Kotak v Chimanlal Vadilal Shah*, A.I.R. 1942, Bom. 86. In this case the Bombay High Court observed that no chamber proceeding shall be published without an order of the Court and for publishing a chamber proceeding without the specific order of the court, the contemnor was punished to pay a fine of rupees one thousand. The same view was adopted by the same High Court in a much earlier judgment, *Purshottam Harjiwan v Navnitlal*, AIR 1926 Bom. 208.

even if published without the permission of the court⁷⁸. The combined reading of section 4 and section 7 will lead to an inference that fair criticism of judicial act held in open court is not contempt and fair and accurate report of judicial proceedings before any court sitting in chambers or *in camera* will amount to contempt of court only in the circumstances mentioned in section 7. Thus, preventing publication of proceeding even if the court is sitting in chambers or *in camera* is an exception under the present law⁷⁹.

Yet another point where the law was made in favour of the press by the 1971 Act is with respect to the ratio laid down by the Supreme Court in *Naresh v State of Maharashtra*⁸⁰. In this case the main issue came for the consideration of the Supreme Court was whether press could be prevented from publishing report of judicial proceeding held in open court⁸¹. The majority adopted the view that that even if the trial is public, publication of evidence of a particular witness could be prevented because the fear of excessive publicity may prevent the witness from

⁷⁸ Section 7 of Contempt of Courts Act, 1971 reads:- **Publication of information relating to proceedings in chambers or in camera not a contempt in certain cases:-** (1) Notwithstanding anything contained in this Act, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding before any court sitting in chambers or in camera except in the following cases, that is to say,-

- (a) where the publication is contrary to the provisions of any enactment for time being in force;
- (b) where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published;
- (c) where the court sits in chambers or in camera for reasons connected with public order or the security of the State, the publication of the information relating to those proceedings;
- (d) where the information relates to secret process, discovery or invention which is an issue in the proceedings.

⁷⁹ It was observed that the result of combined reading of Section 4 and 7 is that the publication of judicial proceeding and information relating thereto cannot be forbidden for the general principle is that justice should be administered in public and publication of judicial proceeding should not be forbidden. This principle is subject to exceptions based upon yet more fundamental principle that the paramount object of courts of justice must be to ensure that justice is done. In order to attain this paramount object, it may become necessary in some cases to exclude the public and enjoin secrecy as to the proceedings and any violation of such secrecy would pro tanto amount to contempt of court. Justice Tek Chand, *Law of Contempt of Court and Legislature*, 197 (The University Book Agency, Allahabad, Fourth ed. 1997).

⁸⁰ AIR 1967 SC1.

⁸¹ Id at 5.

speaking truth⁸². However in the minority judgment Sarkar J adopted a different view and opined that such a prohibition is maintainable only if the proceeding was conducted *in camera*⁸³. The irony of the majority view was that when the trial is conducted in open court, though the access of the public, including persons from media could not be prevented, the media could be prevented from publishing the proceedings held in open court. The judgment made press freedom secondary. However the minority view placed press freedom on the same footing with individual freedom with respect to proceedings conducted in open courts. It seems that the ratio laid down by the minority Judge was incorporated in the present Contempt of Courts Act. Under the present Act, the publication of report of judicial proceeding could amount to contempt of court, only if the court was sitting in chambers or in camera. Thus the law laid down in *Naresh v State of Maharashtra* was changed in favour of the press by the Contempt of Courts Act, 1971.

If the court is sitting in chambers or *in camera*, there are three categories of proceedings, where the publication even if satisfies the requirements mentioned under Section 4, may amount to contempt of court. The first category under Section 7, where even a fair and accurate report of judicial proceeding sitting in chambers or *in camera* may amount to contempt of court is, if the publication is contrary to the provisions of any enactment⁸⁴. Under this category no separate order of the court preventing the publication of the proceedings of the court sitting in chambers or in camera is necessary to treat such publications as contempt of court. Secondly under Sub clause (c) of Section 7, where the court sits in chambers or in camera for reasons connected with

⁸² Id at 10.

⁸³ Id at 21.

⁸⁴ Provisions are contained in different statutes demanding proceedings to be conducted in camera and the publication of the same may amount to contempt of court. For example The Hindu Marriage Act, 1955- Section 22 reads:- *Proceedings may be in camera and may not be printed or published.* - (1) A proceeding under this Act shall be conducted *in camera* if either party so desires or if the court so think fit to do, and shall not be lawful for any person to print or publish any matter in relation to any such proceeding except with the previous permission of the court. See also Defence of India Act, 1962, Section 16, Special Marriage Act, 1954, Section 33, Indian Divorce Act, 1869, Section 53. Similarly Clause 3 of Section 327 of Criminal Procedure Code provides that the inquiry into trial of rape, or offences under Sections 376, 376A, 376B, 376C, 376D, of Indian Penal Code shall be conducted *in camera*, and it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission o the court. See also Section 352 of the Code of Criminal Procedure, 1898.

public order or the security of the State, the publication of information relating to those proceedings would also amount to contempt of court without any specific order preventing the publication of the same. The clause imposes an absolute ban on the publication of information relating to the proceedings while the court sits in chambers or in camera for reasons connected with public order or security of State⁸⁵. Thirdly under Sub clause (d), if the information relates to secret process, discovery or invention which is an issue in the proceeding before any court sitting in chambers or *in camera*, the publication will automatically amount to contempt of court.

The second category of publications regarding *in camera* proceedings or proceeding in chambers which could lead to contempt of court is publications expressly prohibited by the court on grounds of public policy or in exercise of any power vested with the courts. Clause (b) of Section 7 deals with such category of publications. Under this category, a publication can amount to contempt of court only if its publication is expressly prevented by the court. Further the prevention must be on the ground of public policy or in exercise of any power vested with the courts.

The third category of publication which would not lead to contempt of court regarding proceedings in chambers or in camera is the publication of the text or fair and accurate summary of the whole, of any part of an order made by a court sitting in chambers or in camera disregarding an order preventing its publication. The position is dealt under Section 7(2). It is possible for the Court to prevent even the publication of the text or fair and accurate summary of whole, of any part of an order made by a court sitting in chambers or in camera, if an order is made by a court sitting in chambers or in camera expressly prohibits such publication on ground of public policy, or for reasons connected with public order or security of the State, or on the ground that it contains information relating to secret process, discovery or invention or in exercise of any power vested in it. Here also a specific order of the court, prohibiting the publication of the order of the court or any part thereof, sitting in chambers or *in camera* is necessary to treat such publication as contempt of court. Except in these circumstances, publication of even a proceedings held *in camera* or in chambers cannot be treated as contempt of court if it satisfies the requirements of fair and accurate report of judicial proceeding or any

⁸⁵ Justice Tek Chand, *Law of Contempt of Court and Legislature* 199 (The University Book Agency, Allahabad, 4th ed. 1997).

stage thereof as mentioned under Section 4 of the Act. Thus under the present Contempt of Courts Act, the courts have no discretion to prevent fair and accurate report of judicial proceeding held in open court. The point to note in this regard is that, if the proceeding of the court is in chambers or *in camera*, the public can be denied access to the court. But at the same time, fair and accurate report of judicial proceeding cannot be denied on the sole reason that the proceeding is in chambers or *in camera*. The publication of fair and accurate report of judicial proceedings held in chambers or *in camera* could be prevented only if the conditions mentioned under Section 7 of the Act is satisfied though the access of the public to *in camera* or in chamber proceedings stands denied for the simple reason that they are proceedings in chambers or *in camera*. Thus press freedom is placed on a much better footing compared to the freedom of citizens in contempt proceeding because of the elevated position given to the press under the Contempt of Courts Act, 1971.

Conclusion.

The 1926 and 1952 Contempt of Courts Acts did not confer any additional protection to the press. However, under the present Act, the press is treated on a different footing compared to ordinary citizens. They have been conferred additional privileges, immunities and protections in contempt proceedings. But it seems that, the additional status given to the press under the present Contempt of Courts Act has not been given adequate consideration by the judiciary and the same lead to consider press and citizens on the same footing. A thorough scrutiny of the present contempt law in India would reveal that this approach is not correct. The approach being followed by the courts presently, regarding the position of the press in contempt proceeding, is not only against the letter and spirit of the present Contempt of Courts Act, but also against the development of press freedom which is most important and indispensable to the functioning of a true democracy. The problem in this regard can be solved only by a correct interpretation of the 1971 Act and by recognizing the role of media as envisaged in the Act for proper administration of justice and for fostering the democratic values in society. While appreciating contempt laws, it is to be further noted that the Court and the press are rendering some constitutional functions and the press can render the constitutional functions effectively only if some additional protections and immunities were given to them. Thus, in a democratic country like India, for the better growth and achievement of constitutional goals, it is necessary to ensure that press freedom and

contempt powers are nicely balanced so that the benefits of both can be contributed to ensure due administration of justice and to foster democratic values.

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