8.1 Of all the risks a journalist faces in the day-to-day presentation of news and views the one about which he or she is likely to exercise most care is contempt of court. The punishment for publishing a contempt can be swift and severe; grave contempts can result in imprisonment of the editor or journalist; and there are numerous examples of the courts imposing fines for lesser contempts.

8.2 There was no codified law of contempt till the Contempt of Courts Act was passed in 1926. It was replaced by the Contempt of Courts Act 1952. After a few years' working of the 1952 Act, it became obvious that the law relating to contempt was unsatisfactory and needed changes in view of the pronouncements of the Supreme Court. One departmental¹ and one parliamentary committee² examined the matter at length. On the basis

². The Bhargava Committee Report, 1968.
of these reports, the Contempt of Courts Bill, 1968 was presented in Parliament, harmonising as far as possible the interests of the individual in the freedom of expression and the interests of the administration of justice within the framework of the Constitution. The Bill was eventually passed as the Contempt of Courts Act, 1971, "to define and limit the powers of certain courts in punishing contempts of courts and to regulate their procedure".

8.3 The Press Council of India undertook an exhaustive examination of the law relating to contempt of courts on the basis of the 1968 Bill and observed thus:³

One might be forgiven for the feeling that the law in this (press vis-a-vis judiciary) respect has not been quite fair to the need of the freedom which the Press must enjoy, due in great part to unnecessary oversensitiveness on the part of the courts and the judges as regards their dignity. Besides, it is acknowledged on all hands that the Press is greatly handicapped by the contours of the law in this regard being vague and undefined such that it leads to timorousness on its part when dealing with the conduct of judges or their decisions, or commenting on matters of public interest, which is far from healthy.

The Press Council is greatly concerned at this state of the law and earnestly desires that this condition of uncertainty in the law should be ended by properly framed legislation which would, at the same time, safeguard the freedom of the Press and the prestige and dignity of the judiciary, while ensuring the orderly progress of the judicial process of the adjudication of cases.

8.4 Articles 129 and 215 of the Constitution make the Supreme Court and the High Courts respectively 'Courts of Record' with power to punish for contempt. Apart from this, the Constitution permits reasonable restrictions on the guaranteed right of freedom of speech and expression in the interests of, inter alia, contempt of court.

8.5 Neither the Act of 1926 nor of 1952 provided any definition of 'contempt of court,' and it was held that the legislature considered it unnecessary to define it as the term had already gained a definite meaning ascribed to it by judicial pronouncements of English and Indian courts.\(^4\) The Act of 1971, for the first time, gave a complete definition of the expression, by codifying the results of judicial decisions, in cls (a) to (c) of section 2. Accordingly, "contempt of court" consists of two categories: civil and criminal. Civil contempt is

defined in cl (b); briefly speaking, it may be said to be 'contempt in procedure,' committed by disobeying judicial decrees, orders and the like. Criminal contempt is defined in cl (c). It means the publication of any matter or the doing of any other act which

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

8.6 The Press Council was not happy with this definition. It declared that "the Bill did not deal with the important and vital question of what constitutes the contempt of by what is termed "scandalising the court," but leaves it subject to the same undefined rules dependent on the uncertainty consequent on the predilection of individual judges and courts as at present. This is not satisfactory and the Council would urge the enactment of legislation which would balance the functioning of a free Press with the maintenance of
public confidence in the independence, impartiality and integrity of the judiciary." The Council considered that innocent writings without intent to interfere with the course of proceedings in a court should not attract the penal consequences. The Council rejected the orthodox view found in the Bill that since it was difficult to prove intention, the mischief done, whether intended or not, deserved to be punished. It then offered suggestions for improvement in various clauses of the Bill. One suggestion was that as in the case of criminal contempt committed in the face of a judge, in cases of contempt arising out of attacks on the impartiality or integrity of a judge also, the proceedings should be heard by other judges of the court. In cases where the attack was on the entire body of judges of a High Court, the case should be directed to be heard by the Supreme Court. 

8.7 Newspapers are often charged with the criminal contempt of scandalising the courts. Apart from highlighting any basic problem in relation to the press and the law of contempt, most of the scandalising cases either involve disgruntled litigants attacking the judges or the newspapers publishing unverified market place gossips about judges. The language used in many of these

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5. Supra note 3. p.108.
6. Ibid, p. 123
newspaper stories often expressed the frustrations of the authors. Justice Masodkar recounted this in a case when he accepted the apology of one such writer and remarked that the latter’s

*Ex*pressions, ... merely indicate coloured flare of language and which may have origin in an injured state of mind and as such unhealthy expression of personal sense of frustration though tantamount to contempt, would not by itself be the ground to take any serious view of the matter. [He] ... has submitted unqualified apologies and we have nothing to doubt his bona fides. Looking to the background of his case and his personal frustration as a writer, he has overstepped in expression. Matters of expression are personal in nature. Much depends on the training and culture of the maker. What may appear to a sophisticated mind as harsh, rough, rude and uncouth may not be so to unsophisticated and even to angry, irritated and brooding. There is nothing before us to hold that the opponent was actuated by desire to disrupt nor we are sure about his ability to express what he feels just or unjust ...

8.8 This indulgence, congruent with the spirit of the Constitution, is very near to the American approach where in a similar situation the judges will ask the

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question: is there a clear and present danger that the administration of justice will be affected? Since a 'clear and present danger' cannot really be shown in a large number of cases, the law of contempt does not really act as a check on comments made by the press. The American courts do not depend on contempt of court to ensure a fair trial of issues. The American procedure allows other methods and techniques in order to secure a fair trial; and American judges are not unduly perturbed by adverse newspaper comments.

8.9 Even in England the rigid doctrinaire approach is slowly fading away with the passing of the Contempt of Court Act 1981. Section 2(2) of the Act states that the strict liability rule will only apply to those publications which create a substantial risk of serious prejudice to the course of justice in the relevant proceedings. The relevant test for contempt is: Is there a substantial risk of serious prejudice? The courts have made it clear that it is a double test - the risk must be substantial and the likely prejudice has to be serious. In the words of Lord Chief Justice Lane:

A slight or trivial risk of serious prejudice

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was not enough nor was a substantial risk of slight prejudice.⁹

8.10 Indian courts, true to the old English approach, display a tendency to frown upon any kind of comment on a matter which is pending before a court or where it is imminent that a cause or matter may come before the courts. Besides, the courts frequently punish people who say or do things which, in the opinion of the judges, lower the dignity of the court. The line between comment which scandalises the judges and comment which is legitimate criticism is not always easy to draw. No clear statement on the limits of permissible discussion emerged even though the Delhi High Court judgments in the Congress Party (1971) and Supersession of Judges (1974) cases insisted on the right of the public to discuss matters of public importance even if such matters were pending determination before the courts.¹⁰ Apart from the Avadh Bar case,¹¹ the Supreme Court did not get an opportunity to deal with any case under the 1971 Act till 1978. In the wake of the great controversy surrounding the appointment of the Chief Justice of India, the Times of India carried a news item in which a group of Bombay


lawyers accused the judges who had decided the Habeas Corpus case during the emergency of behaving in a cowardly manner. Chief Justice Beg explained and defended the judgment in that case and took the view that the newspaper should be held guilty of contempt. Unfortunately, the majority did not deal with the case and simply disposed of the matter on the basis "that it is not a fit case where a formal proceeding should be drawn up". In the companion Indian Express case, though Justice Krishna Iyer had written a long inconclusive essay laying down certain guidelines in such cases, which was self-confessedly obiter dicta, it is not clear as to whether he prefers the test as to whether there should be a clear and present danger or whether one should look at the motive of the contemner or the overall social effect or all of these things. Though in the Supersession case, the Delhi High Court insisted on the right of the public to discuss matters of public importance, there is no complete discussion on how this right is recognised by the law of contempt of court.

8.11 It was in this context that the Press Council, in association with the Indian law Institute, undertook a comprehensive study and made important recommendations

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for amending various sections of the 1971 Act in 1982. With a firm view that truth or bona fide belief that the subject matter of the publication is true should constitute a defence, the Council recommended the following as a new provision in section 5:

Publication of any statement which is true or which the maker in good faith believes to be true shall not constitute criminal contempt provided the making of the statement is not accompanied by publicity which is excessive in the circumstances of the case.

At the same time a proper safeguard is necessary and with this in mind, the Council further suggested that the following may be added as a proviso to section 12:

Provided that if the contemnor pleads truth or bona fide belief in truth as a defence and the court finds that the defence is false the contemnor shall be punished with rigorous imprisonment for a period of six months and fine or both.

This is meant as a deterrent to those who may be tempted to falsely or maliciously make allegations which may ultimately be found to be concocted and baseless. It was with this view that the Council further suggested the addition of the following as a definition clause under section 2(cc):
Nothing is done in good faith unless it is done with due care and caution.

8.12 Dr Rajeev Dhavan, while preparing the investigative study on contempt of court,¹⁴ suggested that the punishment for scandalising the courts should be abolished. However, in his Foreword to the study, Justice A N Grover, the then Chairman of the Press Council, cautioned that the conditions obtaining in our country must not be overlooked. He said:

Once the door is laid open to level all kinds of allegations which may even be prompted by disgruntled litigants to malign the judges, there will be serious danger not only of blackmail but also of irresponsible character assassination which will bring the judiciary and the judicial system into contempt and ridicule. It is not expedient to draw inspiration from the position in the United States of America or even in the United Kingdom for the simple reason that the law of torts is very highly developed in those countries and is frequently resorted to. Moreover the damages which are awarded in case of defamation are so heavy that people are mortally afraid of making false allegations. It is not so in our country. The tortuous course which a suit for defamation generally follows and the years that it is likely to take before it is finally decided by the highest court are well known with the result that everyone is greatly

discouraged from launching such proceedings.¹⁵

8.13 Though the Press Council is in agreement with the demand of journalists and lawyers that the plea of justification should be allowed to be pleaded in contempt cases, it is to be noted that the Phillimore Committee in England was not prepared to accept that 'truth' should by itself be made a defence where a judge is scandalised.¹⁶ However, the working paper of the Canadian Law Commission took the view that 'truth' could be pleaded in a contempt trial that took place in the normal course and not as a result of a summary procedure.¹⁷

8.14 The law of contempt, intended to insulate the judiciary from insult, requires a drastic overhaul in the interests of freedom of speech and expression. The press, wary of the danger, may leave the courts untouched. Though fair and reasonable criticism of a judicial act in the interest of the public good does not amount to

¹⁵. Ibid, p. vi.


contempt, many a newspaper will not dare to venture into that dangerous arena. While s. 4 of the Act protects fair and accurate reporting of judicial proceedings, s. 5 protects fair criticism of a judicial decision because the public has an interest in the proper administration of justice. This provision is an exception to the class of contempt by 'scandalisation' of a court as mentioned in s. 2(c)(i), and is founded on the principle stated in Gray's case as follows:

Judges and court are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or public good, no court could or would treat that as contempt of court. 17

In short, the immunity on the ground of 'fair comment' is an adjustment between the public interest in freedom of expression and the public interest in the free flow of justice. The principle behind this exception to liability for contempt of court and its ambit was expressed by Lord Atkin as:

... no more than the liberty of any member of the public to criticise temperately and fairly but freely any episode in the administration

19. ibid.
of justice.\textsuperscript{20}

8.15 In the context of the foregoing analysis, it will be worthwhile to recall the view taken by the Press Commission of India in 1954:

The Indian press as a whole has been anxious to uphold the dignity of courts and the offences committed more out of ignorance of law relating to contempt than to any deliberate intention of obstructing justice or giving affront to the dignity of courts. Instances where it could be suggested that the jurisdiction has been arbitrarily or capriciously exercised are extremely rare and we do not think that any change is called for either in the procedure or in the practice of the contempt of court jurisdiction exercised by the High Courts.\textsuperscript{21}

8.16 Times have changed; and along with it the views on the subject. "Justice," as observed by Lord Atkin, "is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men."\textsuperscript{22}

\textsuperscript{20}. Ambard v. A.G. of Trinidad, A.I.R. 1936 P.C. 141.


\textsuperscript{22}. Supra note 20.