CHAPTER – 1

INTRODUCTION

In a democratic society, the function of judiciary is to uphold the Rule of Law. The Rule of Law is the foundation of a democratic society. The judiciary is the guardian of the Rule of law. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to, the dignity and authority of the courts have to be respected and protected at all costs. It is for this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts, whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute by scandalising them and obstructing them from discharging their duties without fear or favour. The rules embodied in the Law of Contempt of Court are the means by which the law vindicates the public interest in the 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 the private rights of parties or litigants though such individuals undoubtedly benefit from the protection that the law of contempt provides.

The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice and as such no action can be permitted which may shake the very foundation itself. The confidence in courts of justice which the public possess must in no way be tarnished, diminished or wiped out by contumacious behaviour of any person. An erring Judge and erring contemnor are both a danger to the pristine purity of the seat of justice. The Judge punishing a contemnor only
does his duty of upholding the dignity and majesty of the seat of justice. If anyone affects by his conduct this sanctity and purity of the seat of Justice is really shake the people’s confidence in the courts, which strikes at the very root of the system of democracy.

In an ordered community courts are established for the pacific settlement of disputes and for the maintenance of law and order. In the general interest of the community, it is imperative that the authority of the courts should not be imperilled and recourse to them should not be subject to unjustifiable interference. When such unjustifiable interference is suppressed it is not because those charged with the responsibilities of administration of justice are concerned for their own dignity, it is because the very structure of ordered life is at risk if the recognised courts of the land are so flouted and their authority wanes and is supplanted. It is not their (judges) own cause but the cause of the public which they are vindicating at the instance of public.

The procedure in contempt cases was from the beginning, summary in nature. This was objected to, on the ground that no trial of a criminal nature could be held without the aid of jury, trial with the help of jury was with the idea that, where question of fact regarding the conduct of the accused, the fact should be judged with the help of persons who are acquainted with the conduct and behavior of the persons and the status of the accused. In contempt cases, there is hardly any dispute about the facts. Where, however, complicated questions of facts are involved, summary procedure is not proper.

Summary power of punishing for contempt has been given to courts to keep a blaze of glory around them and to deter people from attempting
to render them contemptible in the eye of the public. Summary powers of the courts are to be used sparingly. The court should not be oversensitive. The courts should start with the presumption of innocence of the accused and punishment should follow only, when the case is proved beyond reasonable doubt.

Law of contempt has its ancient origin. It was first originated in the United Kingdom and has largely been developed at the common law. The power to punish for contempt is an inherent power of the Court of record. It has been described as “a necessary incident to every court of justice”. This power is recognized and has been given a fundamental status by the Constitution of India. Inferior courts may be conferred power by the statute to punish for contempt committed *ex facie*. Certain Tribunals, which don’t enjoy the status of Court of record, have also statutorily been conferred this jurisdiction. A humble effort is made in this present work to critically analyse the procedure adopted during ancient period to the enactments made from British era to the Act of 1971.

The basic areas of this study concentrates upon analysing the relevant provisions of enactments relating to development of present contempt law of 1971 and rules made by different courts and tribunal in this regard. In today’s era where the information is at the fingertip through newer technologies and social media, visual media at every doorstep and print media is no way behind have posed a great challenge in the administration of justice. Every information is now a day globalized. The instant mode of its publication through different social media (Facebook, Twitter, WhatsApp, Instagram and different Blogs) having based on community interaction pose a new challenges and hardships particularly in
the sphere of interference with the course of fair trials. These media starts their own trial and declare any accused as murderer or rapist even before police takes up the case to investigate upon the subject or Court/Tribunal starts their own proceeding respectively. Thus, the indefeasible right to freedom of speech and expression has come in direct conflict with the Law of contempt. The duty of courts has become more onerous in maintaining a fair balance between the right of freedom of expression at one side and avoidance of extraneous influence upon the court arising from information available through different media at another side. The courts should be most cautious in the cases of criminal trials keeping in mind the interest of society as well as interest of the accused. The court should make it sure that the trials are protected from prejudice due to such interference through publication particularly in view of the newer mode of information dissemination technology. This study will make a contribution in suggesting as to how the contempt law be made in consonance with the present day situation and how the indefeasible right to freedom of speech and expression be made a prized reality.

Basically, contempt law is classified as civil and criminal contempt and may arise due to disobedience of the writ of the Court or by interference in the working of the Court. The purpose of punishment for contempt in either case is to uphold the effective administration of justice. The Contempt of Courts Act, 1971 defines 'Civil Contempt' as wilful disobedience to any judgment, decree, direction, order, writ, or other process of a court or wilful breach of an undertaking given to a court.

The Contempt of Courts Act, 1971 defines 'Criminal Contempt' as the publication (whether by words, spoken or written or by signs or by
visible representations or otherwise) of any matter or the doing of any other act, whatsoever 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.

The present Act gives a definition of contempt which is vague and ambiguous and is not compatible with the changing circumstances. Judge’s subjective opinion in determining the alleged contempt has resulted into uncertainty in the law. Further, the tolerance of society should also supposed to advance with the change in circumstance as well as change in time. Thus, the standards of scurrilous abuse and scandalising the court which was prevailing at time of enacting the law of contempt cannot be equated with the present day. The demand of the hour is to redefine the law in objective terms so that it prevents judges to act in any arbitrary manner in dealing with the matter of contempt. The Act defines ‘civil contempt’ as ‘wilful’ disobedience to any judgment, decree, direction, order, writ or other process of a court or ‘wilful’ breach of an undertaking given to a court. But, the definition of ‘criminal contempt’ does not contain the word ‘wilful’. It makes vulnerable for the contemner to be punished under criminal contempt even though there is no mens rea present in the alleged act. The uncertainty creates scope for arbitrariness, which is against the spirit of our Constitution. Further, contempt proceeding are quasi-criminal in nature and entail penal consequences including sentence by way of
imprisonment and therefore such uncertainty in definition is anathema to law. The present uncertainty in the law of contempt creates potential conflicting consequences between the very Act and the sacrosanct right and freedom guaranteed under the Constitution as well as law, therefore a closer scrutiny thereof is warranted. It is therefore becomes necessary to study and examine the impact of contempt jurisdiction on these freedoms. The present research is a study of the court decision in regard to contempt jurisdiction and analyse the same, keeping in view the right breached upon which is guaranteed by the Constitution.

In all contempt proceedings what is sought to be ensured is that there is no unjustified interference with the court in the performance of its duties and, that parties to proceeding are not subjected to any extraneous influence. If immediately after an occurrence and before the police complete their investigation, publication are made in newspapers concerning the truth or falsehood of one version or the other, such publications is bound to react the minds of witnesses and of the jurors also, if any; and if such publication emanate from persons exercising high influence in public life, they may even overawe the Magistracy.

Courts are necessarily presided over by Judges who, like all other men, are liable to err. They are the product of this very society and have emotion like ours. They may sometimes get swayed in highly charged atmosphere but their decisions are open to fair, honest and reasonable criticism. The criticism may be couched in strong language but to ascribe their decisions to improper motives is to bring the Judge himself and the whole court into contempt and undermine the confidence of the public in all judicial determinations.
To expect that every citizen of India should make comments, speech or writing on the merits of subject-matter of any case at the risk of being hauled up and found guilty of contempt and sentenced thereunder by the court, would stifle his right to freedom of speech as it might be considered to mean an unreasonable restriction on the fundamental right mentioned above. Further, where a particular question has assumed general importance or has become a matter of public concern, a citizen might consider it not only his right but also his duty to express himself in a hypothetical fashion on the respective merits of the general controversy and of other matter connected therewith.

In a vast country like India, questions of public and general importance be they social, economical or political may became the subject-matter of discussion and dispute. The public Press is generally the medium through which question relating to reform of the law or society or the administration of justice or problems connected with it are raised. In a democracy, where the party system prevails the law of contempt should not be so strained as to materially affect the freedom of speech. In this connection court should be called upon particularly, in cases of alleged defamation; to reconcile the right of free speech and the public advantages that a knave should be exposed and the right of an individual suitor to have his case fairly tried.

Ours is a developing country, and any healthy comment on the working of court should be taken on good note. Any fair comments made about the judgments and orders of any court without any iota of malice are not contempt, but it is rather beneficial for growth of a person and a society in a democracy. The hallmark of any democracy like ours is debate,
criticism and healthy discussion among the people and the organs of the State form an important tool for proper fulfilment and development of any individual or the country. But in the garb of fair criticism, no one can be permitted to distort orders of the court and deliberately give a start to its proceedings, which have the tendency to scandalise the court or bring it to ridicule, in the larger interest of protecting the administration of justice. When the contemnor challenges the authority of the court, he interferes with the performance of duties of judges' office or judicial process or administration of justice or leads to generation or production of tendency bringing the judge or judiciary into contempt. In the general interest of the community it is imperative that the authority of the courts should not be imperilled and there should be no unjustifiable interference in the administration of justice.

The law of contempt is an excellent example of this dichotomy between rationality and mythology surrounding the judiciary. The concept originated in English medieval monarchies as a way to preserve the unchallengeable authority of the king, who was believed to be the fountainhead of justice. The authority of God as the last word was believed to be manifested in him, the human sovereign. Therefore, in this new, ‘democratic’ era, this protection of the judiciary against criticism as well as the procedure for its trial appears problematic.

The Constitution guarantees freedom of speech and expression under Article 19(1) (a) and also permits reasonable restrictions under Article 19(2) to be imposed by statute for the purposes of various matters including ‘contempt of court’. Article 19(2) does not refer to ‘administration of justice’ but interference of the ‘administration of
justice’ is clearly referred to in the definition of ‘criminal contempt’ in section 2 of the Contempt of Courts Act, 1971 as amounting to contempt. Thus, the publications which interfere with the administration of justice amounts to criminal contempt under the Act and in order to preclude such interference, if the provisions of the Act impose reasonable restrictions on freedom of speech, such restrictions would be valid.

Freedom of speech and expression is a prized privilege in a democratic society. No less important is the maintenance of independence and integrity of judiciary and public confidence in the administration of justice. It thus becomes necessary to draw a balance between the two values. Moreover, the right of accused as to fair trial as guaranteed under Article 21 of the Constitution cannot be trampled upon in the garb of exercise of free speech. It is necessary to create a just balance between the freedom of speech and expression guaranteed in Article 19(1) (a) and the due process of criminal justice required for a fair criminal trial, as part of the administration of justice. *Free speech must stop when it impinges fair trial.*

As a general principle of law man is presumed to know the nature and consequences of his action and is, therefore, held responsible for it. However, there are certain exceptions to this general rule, wherein a person may be excused of his offence.

The law of contempt is a quasi-criminal in nature and ensues penal consequences. It is therefore, becomes as a matter of necessity that it must provide certain defences, so that in certain condition the person accused of contempt may absolve himself from the penal consequences.
The defences available to a contemner are engrafted in section 3 to 8 in the Contempt of Court Act, 1971. Section 3 to 7 specify the acts which would not be contempt (statutory defences to certain charges of criminal contempt) and section 8 provides those other defences that would have been valid defences and not affected by any provision of this Act.

In regard to 'criminal contempt' too much discretion has been usurped by the judges in applying the law to the facts. This has not only created confusion in the law but has also resulted into inconsistency in judicial approach. It, therefore, becomes incumbent that the little safeguards as available in the Contempt of Courts Act, 1971 and as judicially recognized be given full effect. Rule of strict liability as applied by the courts in contempt proceedings effectively negatives any fair chance of success of any defence plea as may be available under the law. The current judicial trend making mens rea irrelevant in 'criminal contempt' is highly undesirable. It is further not clear as to whether such a procedure can be termed as just, fair and reasonable. The rule of strict liability should be applied in very well defined situations warranting such a course. Besides, the plea of justification by truth ought to be made unqualified. The present amended law on this point is hedged is by so many qualifications virtually rendering the plea as meaningless. Any restriction on freedom of speech and expression which does not recognise plea of truth is plainly unreasonable and hence unconstitutional. Moreover, the defences provided under the law are meaningless as far as the Supreme Court is concerned in the light of the law operating today making inapplicable the provisions of the Contempt of Courts Act, 1971 to the Supreme Court. Hence, in regard to Supreme Court there should be no restriction
except its own judicial restraint. Thus the provision of Contempt of Courts Act, 1971 be expressly made operative to the Supreme Court.

The principle object of the Contempt of Courts Act, 1971 is to protect the authority and the dignity of the court; this can neither be used to silence or suppress the criticism of court judgment nor be used to discourage frank and free expression about the state of judicial system.

The recent judicial trends in contempt law shows a very unfortunate and disturbing development where this extraordinary power is being used to punish the person for nothing more than speaking their mind.

It is important to note that judicial sensitiveness should not give way to judicial restraint. When, a contemner is punished it has to be seen that whether conviction of the same actually serves to preserve the dignity and authority of the judiciary. There is real risk that public confidence in the judiciary is likely to eroded rather than enhanced if an ever sensitive judiciary starts invoking the contempt power at the drop of hat. Overall progression of judicial attitude in this area raises issues which go beyond the hyper sensitive approach of the courts.

The authority of judiciary should rest on the firmer foundations of the quality and nature of its judgments rather than on respect extracted under the threat of penalty. A more vigorous public scrutiny has only served to strengthen the judiciary everywhere.

In this present work an attempt has been made to throw light on the judicial response towards the contempt law in India. In this attempt the various judgment of the Supreme Court, High Courts have been taken into consideration to provide a clear picture of the contempt law in India. A
look at the past judgments of the higher courts gives at one side the liberal approach by the judiciary on the principle that judges are not immune from criticism and the shoulders of the judiciary are broad enough to shrug off any insult. At the other side Majesty of the court was used to enable the court to function and not to protect an individual judge, which cannot be allowed to be undermined by scurrilous writers in the name of criticism. However, recent judicial approach in this branch of law gives a highly intolerant view in regard to criticism of the judicial function. The present work contains some of the recent judgment and their analysis to understand the approach of the judiciary in regard of contempt law which has in some other democratic country has become virtually a dead letter.

The policy of the legislature had so far been to leave the formulation of the law of contempt to the courts. The only safeguards provided in the law are that the power to punish for contempt (subject to the limited exception as to contempt in the face of the court for which provision is made in the Indian Penal Code) is vested in the superior courts and limits are set to the punishment which may be awarded by the courts. Before the Constitution came into force there was no statutory provision for appeals from decisions of High Courts in contempt cases though the Privy Council after some initial reluctance finally asserted its jurisdiction to hear appeals in contempt cases. The High Courts and the Supreme Court have interpreted the provisions as to appeals contained in the Constitution as sufficiently wide to permit appeals in such cases from High Courts to the Supreme Court.

The jurisdiction to punish for contempt touches upon two important fundamental rights of the citizen which are of vital concern to him, viz., the
right to personal liberty and freedom of expression; rights which are of vital importance in any democratic system. Though a charge of contempt is as serious as a criminal charge, the trial is not in accordance with those safeguards that the ordinary procedure for the trial of a criminal offence requires, but is by way of summary proceedings. What constitutes contempt of court has to be ascertained from case law which is voluminous and not always consistent. Even then, the citizen may not know where he stands because contempt may take new forms and shapes in the ever changing complicated world of today. The High Courts as courts of record assert that the power to punish for contempt is inherent in them and consequently they are the final authorities to define what constitutes contempt. In the absence of an appeal as a matter of course the necessary corrective is not always available in respect of such decisions. Very often the contemner escapes the sentence by tendering an apology and such cases do not in any way tend to clarify the law. For it is quite conceivable that a judge who hears a contempt case may hold that there is no contempt in which event a defence of unqualified apology is meaningless as that would amount to an admission of guilt. It may be mentioned in passing that it is not unusual for an alleged contemner to tender an unqualified apology because if he tried to submit a qualified apology or an apology in the alternative even when justified by the circumstances of the case, more often than not he may have to pay for it heavily. In fact there is a possibility of such a defence being regarded as an act of Contumacy. Further, a person in contempt cannot be heard in prosecution of his own appeal until he purges his contempt.

Comments on matters which may or may not come before the court but which are agitating the public mind may constitute contempt although
the editor or publisher of the newspaper in which the comments have appeared may have acted in perfect good faith. In a vast country like India the law of the contempt in relation to pending and imminent proceedings may work hardship in many cases. Further, should there be any contempt if proceedings are merely imminent? If the answer is in the affirmative, would it be possible to say when proceedings maybe regarded as imminent? Would it not be better that punishment is meted out only in those cases where the evil consequences of contempt are extremely serious and the degree of imminence extremely high? A criticism is often made that judges do not always appreciate the distinction between attacks on them which are of a defamatory character and attacks which interfere with the administration of Justice.

The power to punish for contempt has often been described as arbitrary, unlimited and uncontrolled. In the circumstances, would it be sufficient or proper to leave the whole matter to be regulated by the courts themselves as hitherto on the basis that, as courts have invariably stated that this power should be used very sparingly and only in extreme cases and always with reference to the interests of the administration of justice, is it not necessary to fetter their discretion in any way?

The problem had been receiving the attention of the legislature both in India and elsewhere also. The Press Commission reporting in 1954, had occasion to consider this subject once again, and that body had before it several representations to the effect that the law of contempt, particularly in its application to newspapers, was much too vague and required to be crystallised; that the law could be stretched to any limits making it impossible for an honest writer to comment on judicial procedure or even
on the merits of judicial decisions; that contempt should be precisely and rigorously defined and so on. The Commission, however, did not recommend any change either in the procedure or practice of the contempt of court jurisdiction exercised by the High Courts. In this connection it may be pertinent to observe that a body had been appointed to inquire generally into the state of the Press in India and its present and future lines of development, and the law of contempt came to be examined by it only as an incidental matter. And in coming to that conclusion the Commission was largely influenced by the observations made by courts from time to time that this power should be sparingly used and with great caution.

On the other hand, in England, a Committee appointed by the International Commission of jurists (British Section) headed by Lord Shawcross found that the law of contempt was unsatisfactory in quite a few important respects and the recommendations of that Committee, made in 1959, have already been made the basis for the Administration of Justice Act, 1960.

The present work is the reflections to resolve the questions as what is contempt law? What are the procedures to be followed to punish a contemner in case his act or action put the contempt law in motion? How the contempt law comes in conflict with the indefeasible right guaranteed under the Constitution? What are the defences available to the contemner under the Act to absolve himself of the liability of contempt? Whether these defences are really honoured by the courts? are some of the issues which was solved and referred at this work.

As the society advances, people get more and more cultured. They should able to control their sentiments even in adverse, unjust and
unfavorable circumstances. Respect for the law and of courts should enhance. In such circumstances, contempt of court cases should become obsolete. This may be not very true in respect for the courts that should be the rule of the day. Unfortunately, for the overall lawlessness prevailing these days, contempt of courts cases are on the increase. This happens, when the people suffer injustice and redress either does not come at all or when it comes with great delay.

**Object of Contempt Law**

The law of contempt has been enacted with the purpose of securing public respect and confidence in the judicial process. The courts are empowered to exercise contempt jurisdiction in order to uphold the majesty and dignity of law courts so that the image of court in the minds of the public are in no way erased or whittled down. When the words spoken or written are contumacious in nature, the common man lose his respect for the judge acting in the discharge of his judicial duties, the confidence of the public in courts of justice is eroded and the recourse to such incident should be to punish the offender. In essence, the law of contempt is the protector of the seat of justice more than the person of the judge sitting in that seat. If such confidence is shaken or broken, the confidence of the common man in the institution of judiciary and democratic set-up is likely to be get eroded which, if not checked, is sure to be disastrous for the society itself.

Administration of justice should always be based upon fairness, reasonableness and without any biasness. A court hearing a case may sometimes get exposed to fears or apprehensions. It is the duty of the court to protect litigants who has knocked its door for justice from the possibility
that their case will not be influenced by matter beyond the merit of the litigation in which they are engaged and an accused must not be exposed to situation in which public opinion brands him guilty, before the trial is concluded by the court. If this is the true purpose of the protection granted to the courts, the dignity of the court is no longer identical with the prestige of the individual judge or the bench. This protection ensures freedom from unlawful interference. If this is accepted, we may come to a further conclusion, namely, that the suppression of constructive criticism itself constitutes an interference with the due administration of justice.

The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice.

**Evolution of Contempt of Court law in India**

The existing law relating to contempt of courts is essentially of English origin. The indigenous legal systems of India, based as they were on the concept of a law above the sovereign and his courts, and functioning as they did. Doubtless, courts or assemblies (*sabhas*) were protected from being scandalised. The King and the King's council stood on a higher footing than the caste, village or assembly.

While it was an offence to scandalise or defame, the King or the King's council or the other courts or assemblies there does not appear to have been in vogue any special procedure for the trial of these offences. Not only that, the law seems to have insisted upon the judges also
maintaining decorum and adherence to the code of judicial conduct requisite for keeping administration of justice unsullied. If the judge misbehaved or offended against the dignity of the law, he was as much liable to punishment, nay liable to a higher degree of punishment than the ordinary individual defaming the judge or the assembly or the court.

The concept of 'contempt of court' goes back to the times when the ruler or the King used to dispense justice himself. When he delegated this power of dispensing justice to courts presided over by the judges, the courts, naturally, demanded respect and obedience; and any disrespect to the court was treated as an affront to the dignity and authority of the King.

Power to punish for contempt being an attribute of a court of record, the setting up of such courts by the British in India necessarily meant the introduction of English law of contempt. One of the earlier courts of record, if not the earliest, expressly created as such seems to be the Court of the Mayor and Corporation of Madras established under the East India Company's Charter of 1687. But since appeal lay from this court to the Admiralty Court established under the Royal Charter of 1683 as also to the Governor-in-Council, it may be justified in treating these latter-mentioned courts also as courts of record. Later, we have the Mayor's courts established under the Charter of 1726 and re-constituted under the Charter of 1753 which were courts of record and as incidental to that status possessed the power to punish for contempt. In Calcutta, the Mayor's court was succeeded by the Supreme Court established under a Charter granted in 1774 in pursuance of the Regulating Act of 1773. In Madras and Bombay the Mayor's courts continued till 1797 when they were superseded by Recorder's Courts established under 37 Geo. III, c. 142. The Recorder's
Court at Madras was abolished by the Government of India Act, 1800, and a Supreme Court established in its place by Charter in 1801. In Bombay, likewise a Supreme Court was established in place of the Recorder's Court by a Charter granted under a statute of 1823. The Recorder's Court and the Supreme Court had the same powers for punishing for contempt, as the superior court of England. The Supreme Courts were in turn succeeded by the High Court under the High Court Act, 1861.

In the case of some of the old provinces of India there were no High Courts but only Chief Courts or Courts of Judicial Commissioners, functioning as the highest courts in those provinces. For a long time, it was far from clear whether the Chief Courts and Courts of Judicial Commissioners had the same powers in relation to contempt as the High Courts. It was also equally unsettled whether the jurisdiction of the High Courts in contempt extended also to contempt of courts subordinate to them. The subordinate courts, not being courts of record, obviously did not possess any inherent powers to punish for contempt as well. The absence of clear-cut provisions in regard to the contempt jurisdiction of the Chief Court, and Courts of Judicial Commissioners, the uncertainty about the power of High Courts to punish for contempt of courts subordinate to them, the limited character of the statutory provisions relating to punishment of contempt of subordinate courts, were brought to the forefront in an accentuated when a Calcutta newspaper made unwarranted and prejudicial comments on certain proceedings pending in the Court of a Magistrate at Khulna was brought to the notice of the Provincial Government of Assam and Bengal in 1907-08. Expert legal opinion taken in that connection indicated that the power of punishment by summary process for contempt of courts was confined to the three High Courts of
Calcutta, Madras and Bombay and was only exercisable by those courts in respect of offences committed within that portion of their territorial jurisdiction where the common law of England was in force.

After consultation in 1908-09, by the Lord Minto's Government a Bill was prepared in 1911, penalising contempt of authority of courts of justice or of persons empowered by law to record evidence on oath and the publication of false or inaccurate reports of pending judicial proceedings or of comments touching persons concerned in them calculated to cause prejudice in the public mind in regard to such proceedings. It was sought to be made clear that honest criticism, i.e., comments made in good faith which are in substance true would not amount to contempt. But the consideration of the Bill was postponed on account of the outbreak of the First World War.

After further consideration, Government finally abandoned the said Bill and decided in favour of introducing legislation on the lines of Tej Bahadur Sapru's suggestions. Such, in short, was the genesis of the Bill, which after important modifications came to be enacted as the Contempt of Courts Act, 1926. The Bill as originally drafted purported to define 'contempt of court' and while assuming a power in the High Court (including Chief Courts and the courts of Judicial Commissioners) to punish for contempt of itself, sought to confer a like power on the High Court in respect of contempt of courts subordinate to it. It also sought to define the extent of the punishment which may be awarded in contempt cases. The Bill also included provisions relating to taking cognizance of offences by way of contempt and the procedure to be followed in respect of such offences. The 1926 Act may well be regarded as a step in the right
direction. But in view of the interpretation placed upon the Act that the power of punishment provided in section 3 related only to contempt of subordinate courts, the Act was amended in 1937 to make it clear that the limits applied in all cases.

Incidentally, one of the defects of the Contempt of Courts Act, 1926, was removed in 1950 by the passing of the judicial Commissioners' Courts (Declaration as High Courts) Act, 1950.

The 1952 Act, while largely re-enacting the provisions contained in the 1926 Act, made two important changes. By defining the expression 'High Court' to include courts of Judicial Commissioners the Act made it clear that those courts had power to punish contempt of subordinate courts also. Secondly, the Act made it clear that the High Court (including the court of Judicial Commissioner) 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.

A Committee was set up in the year 1961 under the chairmanship of Shri R.N. Sanyal the then Additional Solicitor General. The Committee made a comprehensive examination of the law and problems relating to contempt of court in the light of the position obtaining in our own country and various foreign countries. The recommendations which the Committee made took 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 interests of administration of justice. Sanyal Committee's recommendations formed the basis of the contempt of courts Bill, which
was referred to the Joint Select Committee of Parliament on Contempt of Court.

Thus, the extant law on the subject in India, viz., the Contempt of Courts Act, 1971 came on the Statute Book to give effect to the accepted recommendations of the Sanyal Committee.

**Constitutional Provisions Regarding Contempt of Courts**

Article 19(1) (a) guarantees to all citizens the right to freedom, of speech and expression and article 19(2) provides, *inter alia*, that this right is subject to any law imposing reasonable restrictions in relation to contempt of court. Articles 129, 142(2) and Entry 77 of List I of the Seventh Schedule pertain to contempt of the Supreme Court, while Article 215 pertains to contempt of High Courts. Entry 14 of List III of the Seventh Schedule covers contempt of courts other than the Supreme Court.

One of the question arises out of the various constitutional provisions is whether the legislature is competent to deal with the subject of contempt of court and as to what are the limitations of the legislature in this matter. The doubts in regard to legislative competency seem to have arisen mainly by reason of the fact that the Constitution has, by 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, while 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.
In other words, Articles 129 and 215 are intended to ensure to the Supreme Court and the High Courts the power to punish for contempt which English courts of record possess. The wide and unqualified language of Entry 77 of List I and Entry 14 of List III of the Seventh Schedule shows that the Legislature has full power to legislate with respect to contempt of court subject only to the qualification that the Legislature cannot take away the power of the Supreme Court or the High Court to punish for contempt or vest that power in some other court, for example, a Magistrate's court. Further, the provisions of Article 142(2) to the effect that the Supreme Court shall have ‘all and every power’ to make any order for the investigation or punishment of any contempt of itself, "subject to the provisions of any law made in this behalf by Parliament" clearly assume that Parliament has full power to legislate in relation to contempt of the Supreme Court. In other words, even if Article 129 were interpreted as 'conferring' on the Supreme Court the power to punish for contempt of itself, another Article, namely, Article 142(2) expressly makes all and every power of the court to make any order for the punishment of any such contempt subject to any law made in this behalf by Parliament. Further legislation in relation to contempt, as contemplated and saved by Article 19(2), must necessarily be in relation to the substantive law of contempt and such legislation would not be possible in relation to the Supreme Court and High Courts if Articles 129 and 215 were construed to prohibit it. It would, therefore, seem to be sufficiently clear that having regard to the relevant provisions, Parliament has the power to legislate in relation to the substantive law of contempt of the Supreme Court and High Courts.

In view of the interpretation on the provisions of the Constitution relating to the competency of Parliament to legislate on contempt matters,
it may not be quite necessary to consider the theory that a court of record has not only the inherent power to punish for contempt of itself but has also the sole and exclusive power to define and determine what amounts to contempt. In the first place, the expression 'court of record' is not defined in the Constitution. Its connotation, whatever that may be, will necessarily have to be subject to the provisions of the Constitution. Looking at the matter from the point of view of the position as it obtains in India, the theory would mean that there might be as many systems of law of contempt in the country as there are High Courts plus one, for the Supreme Court is also a court of record. It might also mean that the provisions of Article 141 of the Constitution which provide that the law laid down by the Supreme Court shall be binding on all the courts within the territory of India would be subject to an exception in relation to the law of contempt. It might further mean that the present practice of the Supreme Court of entertaining appeals in contempt cases under Article 136, for example, by special leave, is erroneous. Hence the theory that the superior courts are the final arbiters for determining what amounts to contempt is really the result of legislative reluctance born perhaps of wisdom as stated in some cases to define contempt or regulate the law of contempt. Thus, it is clear that, judged by any test, it is constitutionally permissible for Parliament to legislate in relation to the substantive law of contempt of the Supreme Court and the High Courts.

But there are some limitation on the Parliament power in regard to contempt law is that the power of the Supreme Court and the High Courts to punish for contempt having been recognised in express words, by the Articles of the Constitution, cannot be abrogated, nullified or transferred to some other body, save by an amendment of the Constitution. It seems that
in none of the decided cases so far the power of the Supreme Court and the High Courts to punish for their contempt has been held to be a part of the basic feature of the constitution. It is clear in the light of the powers of the Parliament on the subject that contempt powers can always be regulated by a law in this behalf.

Secondly, Parliament's power to legislate as to contempt ought not to be so exercised as to stultify the status and dignity of these courts. It may regulate bona fide the law of contempt for the purpose of removing any undue fetters on the fundamental right of freedom of speech. But it must stop far short of impairing the status of the courts or the sanctity of the administration of justice.

The third limitation on Parliament's power to legislate in relation to contempt is that enshrined in Article 19(2). By virtue of this, legislation in relation to contempt imposing unreasonable restrictions on the right of citizens to freedom of speech and expression will be pro tanto unconstitutional.

**Objectives of the study**

The purpose of research is to discover answers to questions through the application of scientific procedures. The main aim of research is to find out the truth which is hidden and which has not been discovered as yet.

The objectives of the present study, *inter alia*, are:

(a) to develop an informed critique of pre-eminent need for upholding the citizens' most valued fundamental right to liberty and freedom of speech and expression guaranteed under Constitution of India even
as valuing the fair and impartial administration of Courts for proper dispensation of justice.

(b) to make suggestion for amendments in the present contempt law keeping in view the needs of society and anomalies/unreasonableness in the existing law itself or in its working as evidenced by various judicial pronouncements.

(c) to compile and comprehend a database of different case law on the subject of the study.

(d) to critically analyse the functioning of the contempt law with the aid and help of judicial pronouncements.

Hypothesis

In studies involving use of doctrinal research techniques, formulation of hypothesis forms one of the essential components of the research design. Hypothesis is the very foundation of scientific research. They are tentative assumptions made in order to draw out and test their logical consequences. These assumptions are made on the basis of probabilities, shrewd guesses and profound hunches.

The present study is designed to test the hypothesis framed after reviewing the available literature on topic. The study proposed to test the following hypothesis:

(a) The Constitution of India guarantees fundamental right to liberty and freedom of speech and expression to citizens as the most valued fundamental right.
(b) Fundamental rights are the basic structure of the Constitution and can’t be tamed at the whims and caprice of the judges of the independent judiciary.

(c) For the fair and impartial administration of courts and for proper dispensation of justice, Judiciary has to be respected and malicious and intentional motives ascribed to judges in the garb of fair, honest and reasonable criticism has to be dealt with the exercise of the extraordinary powers of the courts.

(d) In a democratic country debates and discussions on the judgments of the courts are the important tools to change and improve the conditions of society at large.

(e) Courts are not to be unduly sensitive to fair comment or even outspoken comments being made about their judgments and orders made objectively, fairly and without any malice are not to be punished as offence of contempt.

(f) Contempt law is the protector of the seat of justice rather than the person of the judge sitting in that seat. It has been enacted to secure public respect and confidence in the judicial process.

(g) After the Menaka Gandhi’s judgment every law enacted whether substantive or procedural must be due process compliant.

(h) The International practice in regard to this Act is that judges are using it sparingly; moreover they have virtually given up the power to invoke contempt laws. The offence of contempt in U.K. has become obsolete. In some other European countries there is no
power to commit for contempt for scandalizing the court; the judges have to file an action for libel.

(i) There are a variety of rules and practices that are being followed by different courts of Record and tribunals for deciding the same nature of contempt in a different manner.

Research Methodology

The doctrinal or Non-empirical research methodology has been tool for the compilation, comprehension organization, interpretation and systematization of the primary and secondary source material. Empirical research has found favour with legal scholars and the relevance of such techniques has been stressed by eminent scholars and few studies of great importance has been conducted.

The law as reflected in this research applies only to the contempt committed of the Court of the country and does not include the law concerning contempt of the legislators. The latter is primarily governed by Articles 105 and 194 of Constitution of India dealing with the privileges of Parliament and the State Legislature respectively.

The Primary sources for the study are Contempt of Courts Act, 1971 along with 2006 amendments and the Constitution of India, 1950. The other Primary sources are like Reports of various Committees/Commissions/Panels on the contempt law which have been reviewed, referred and analysed. The researcher has also taken help from the Parliamentary debate, when the bill for the Contempt Act was being discussed in the Parliament.
The secondary sources are books of eminent authors, articles published in important research journals, newspaper editorials and reports.

Now coming to the frame work of the study, the present work has been divided into six chapters:

Chapter 1; introduces the subject and the issues involved therein. It contains the problem regarding the contempt law in India, the objective of the study, the research methodology and the hypothesis upon which the present work has been done. This chapter also discussed the development of the contempt law in India right from the ancient times to the present Act of 1971. It also contains the Constitutional provisions regarding contempt law. Chapter 2 discusses the concept and definition of contempt law. The definition of contempt which includes civil as well as criminal given under the Contempt of Court Act, 1971 has been thoroughly discussed and has also been critically analysed. Chapter 3 speaks of the free speech and the law of contempt. It mainly concentrates upon the Freedom of Speech and Expression guaranteed under Indian Constitution which is termed as sacrosanct. It also includes freedom of Press; a right which the Courts are always eager to protect. This chapter also deals with how the free Speech comes in conflict with Law of Contempt. The trial by Media when the matter is before the court is also a part of discussion in this chapter. Chapter 4 has discussed various defences available to a contemner in the contempt proceedings under the Act. The chapter also includes the recent defence added to the Act by the amendment Act of 2006 i.e. justification by truth. It basically deals with the grounds on which the contemner may absolve his liability of contempt. This chapter has also discussed the standard of proof required under the Act to the liability of contempt. It also...
contains the burden of proof. Chapter 5 deals with the recent judicial approach vis-à-vis the law of contempt. This chapter has critically analysed some of the case laws pronounced by the Supreme Court and High Courts. In this chapter discussion shows that the approach of the judiciary seems to be very disturbing and dangerous as different procedure and punishment has been followed in contempt of the same nature. Chapter 6 is the conclusion and suggestion which is the real outcome of the work. The chapter has suggested some of the steps to bring changes in the present Act to make it compatible with the changing demands of the society. The chapter has also discussed the trend followed in some other countries. This chapter is the end of the work. The present study takes stock of the statutes from the beginning to the present Act, reported judicial decisions of Indian courts and some of the important foreign cases, parliamentary debates when the bill was presented for discussion in the Parliament, available academic writings, relevant statutory provisions as well as the rules made in this regard by the court of record and some of the tribunal, reports and recommendations of various commissions and committees. The work has been done within the aforesaid limitations.