revision against the orders of the Sessions Court. The Act by itself does not punish the respondent in the domestic violence case, but if the case discloses any offences punishable under the Penal Code or any other penal law, or under the Dowry Prohibition Act. As far as this case is concerned, it runs as a civil case and in the manner the maintenance under Section 125 of Cr.P.C. or in the manner in which security proceedings are held by the Magistrate under the provisions of Cr.P.C.

Criticism

- Men's organizations such as the Save Indian Family Foundation have opposed the law, arguing that it might be misused by women during disputes.
- *Renuka Chowdhury*, the Indian Minister for Women and Child Development, agreed in a Hindustan Times article that "an equal gender law would be ideal. But there is simply too much physical evidence to prove that it is mainly the woman who suffers at the hands of man".
- Former Attorney General of India *Soli Sorabjee* has also criticized the broad definition of verbal abuse in the Act.
- According to the president of India, *Pratibha Devisingh Patil*, "Another disquieting trend has been that women themselves have not been innocent of abusing women. At times women have played an unsavory, catalytic role in perpetrating violence whether against the daughter-in-law, the mother-in-law or female domestic helps. Instances exist whereby protective legal provisions for the benefit of women have been subjected to distortion and misuse to wreak petty vengeance and to settle scores.
- Some surveys have concluded that 6 to 10 percent of dowry complaints are false and were registered primarily to settle scores. It is unfortunate if laws meant to protect women get abused as instruments of oppression. The bottom-line therefore, is the fair invocation of legal provisions and their objective and honest implementation."

To conclude the law alone would not be able to control the will of the human behaviour. In order to reduce the offences we must change the attitude and behaviour of men; and this has to start early in boyhood. Enlightened fathers, husbands and brothers are more likely to respect daughters, wife and sisters.

TRUTH OR NO-TRUTH – PURPOSE OF PUBLICATION SHOULD MATTER IN CONTEMPT MATTERS

By

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The dilemma over 'truth' loomed large over Indian contempt law for quite considerable time. The curtain is down in 2006 in the form of Contempt of Court (Amendment) Act, 2006 amending Section 13 of 1971 Act and recognizing 'justification by

truth' as a valid defense in qualified circumstances[1]. Though the curtain is down everything is not down. Clouds continue to hang on. Clarity eludes. The dividing line between freedom of speech and expression/ Press and ill-motivated attempts to interfere with administration of justice is not clearly drawn. Whether the failure of the judiciary in general or the corruption or malfunctioning or blemishes of an individual Judge can be allowed to be presented, pressurizing the judiciary or an individual Judge in disposing of a pending case, needs attention. Purpose-oriented attack, though studded with truth in its content, cannot be allowed to be used as a defense in a contempt case.

"Truth" before the Amendment: The experiment with "Truth" was a mixed scenario. There have been occasions where the Courts went rude and sophisticated.

For instance, in *Bathina Ramakrishna Reddy v. State of Madras*,[2] the Constitution Bench of the Supreme Court observed: "The article in question is a scurrilous attack on the integrity and honesty of a judicial office. Specific instances have been given where the officer is alleged to have taken bribes or behaved with impropriety to litigants who did not satisfy his dishonest demands. If the allegations were true, obviously it would be to the benefit of the public to bring these matters into light. But if they were false, they cannot but undermine the confidence of the public in the administration of justice and bring the judiciary into disrepute."

In this case, the appellant, though he took sole responsibility regarding publication of the article, was not in a position to substantiate, by evidence, any of the allegations made therein. The appellant admitted that the allegations were based on hearsay. The Court held that it was incumbent upon him, as a reasonable man, to attempt to verify the information he had received and ascertain, as far as he could, whether the facts were true or mere concocted lies. The Court held that the appellant had not acted with reasonable care and caution, and could not be said to have acted *bona fide*, even if good faith could be held to be a defense at all in a proceeding for contempt.

When Chief Justice *E.S. Venkataramaiah* of Bombay High Court gave an interview, on the eve of his retirement, to *Kuldip Nayar*, contempt proceedings were initiated against him for scandalizing the entire judiciary, for his statement that "the judiciary in India has deteriorated in its standards because such judges appointed as are willing to be 'influenced' by lavish parties and whisky bottles." … "in every High Court, there are at least 4 to 5 judges who are practically out every evening, wining and dining either at a lawyers' house or a foreign embassy." The Division Bench observed that the entire interview appeared to have been given with an idea to improve the judiciary and it was not a fit case where *suo motu* action was called for and dismissed the petition on merits.

In *Hari Singh Nagra v. Kapil Sibal*,[3] when criminal contempt proceedings were taken up against *Sibal* for his comments, the Division Bench of the Supreme Court held that "the article of Mr. *Sibal* is an expression of opinion about an institutional pattern. The article nowhere targets a particular Judge.

1. Amended Section 13: Contempts not punishable in certain cases – Notwithstanding anything contained in any law for the time being in force:

(a) no Court shall impose a sentence under this Act for a contempt of Court unless it is satisfied that the contempt is of such a nature that it substantially interferes or tends substantially to interfere with the due course of justice;

(b) the Court may permit, in any proceeding for contempt of Court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is *bona fide*.

2. AIR 1952 149

3. (2010) 7 SCC 502

The message of Mr. *Sibal* examined the evils prevailing in the judicial system and was written with an object to achieve maintenance of purity in the administration of justice. The message is an exposition of Mr. *Sibal's* ideology and he had shown the corrective measures to be adopted to get the institution rid of the shortcomings mentioned by him." The contempt proceedings were dropped.

The only case where the Supreme Court came close to suggesting that a contemnor cannot justify the contempt was in *C.K. Daphtary v. O.P. Gupta*,[4] where the Constitution Bench held that "if evidence was to be allowed to justify allegations amounting to contempt it would tend to encourage disappointed litigants – and one party or the other to a case is always disappointed – to avenge their defeat by abusing the Judge."

In 2002, when there was adverse news in the print media against the behavior of sitting High Court Judges of Karnataka High Court, the High Court *suo motu* took up contempt proceedings against several news papers for scandalizing and lowering the authority of the Court. But, when the matter reached the Supreme Court, the then Chief Justice stated that "I will reward the media if they come out with the truth …. I personally believe that truth should be a defence in a contempt case."

The National Commission to Review the Working of the Constitution (NCRWC) headed by the distinguished former Chief Justice of India, *M.N. Venkatachaliah*, in its report stated "Judicial decisions have been interpreted to mean that the law as it now stands, even truth cannot be pleaded as a defence to a charge of contempt of Court. This is not a satisfactory state of law.[5] … A total embargo on truth as justification may be termed as an unreasonable restriction. It would, indeed, be ironical if, in spite of the emblems hanging prominently in the Court halls, manifesting the motto 'Satyameva Jayate' in the High Courts and 'Yatho dharmas tatho jaya' in the Supreme Court, the Courts could rule out the defence of justification by truth. The Commission is of the view that the law in this area requires an appropriate change."[6] The Committee further recommended that "an appropriate amendment by way of addition of a proviso to Article 19(2) of the Constitution to the effect that, "in matters of contempt, it shall be open to the Court on satisfaction of the bona fides of the pleas and of the requirements of public interest to permit a defence of justification by truth.[7]"

In the United States of America, contempt power is used against the press and publication only if there is a clear imminent and present danger to the disposal of a pending case. Criticism however virulent or scandalous after final disposal of the proceedings will not be considered as contempt. The U.S. Supreme Court observed — "the assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. For it is a prized American privilege to speak one's mind, although not always with perfect good taste on all public institutions ... And an enforced silence, however, limited, solely in the name of preserving the dignity of the Bench, would probably engender resentment, suspicion and contempt much more than it would enhance respect." In Britain, the offence of scandalizing the Court has become obsolete. In European democracies such as Germany, France, Belgium, Austria, Italy, there is no power to commit for contempt for scandalizing the

4. (1971) 1 SCC 626, at pp.644, 647

5. Report of the National Commission to Review the Working of the Constitution, published by Universal Law Publishing Co. Pvt. Ltd. At page No.139

6. ibid. at page No.140

7. ibid

Court. The judge has to file a criminal complaint or institute an action for libel. Summary sanctions can be imposed only for misbehavior during Court proceedings.

"Truth" after Amendment

The very first major case to be heard since the coming into force of this amendment has exposed certain inconsistencies inherent in the Act. In the Delhi Mid Day case decided by the Delhi High Court on September 11, 2007 (*Court on its own motion v. M.K. Tayal and others*) the Supreme Court stayed the sentencing of the contemnors, 46 till it disposed of their appeal against their conviction, *i.e. Vitusah Oberoi v. Court of its own motion*. But, the Delhi High Court's brief order in this case, holding the accused guilty of contempt raises important issues which were not anticipated by the authors of this amendment or by the Standing Committee which examined the Bill.

Section 13 of the Act deals with contempt not punishable in certain cases. It shows that Section 13 of the Act can be invoked only at the time of sentencing the contemnors, and not earlier. It would then imply that the Court would be free to hold the accused guilty and convict them of contempt of Court, without hearing any arguments on the truth of the allegations made against a Judge. Once the Court finds the accused guilty of contempt, the question of permitting justification by truth as a valid defense, just in order to avoid awarding of punishment on the contemnors, appears to be illogical. Thus it is understandable that the Delhi High Court Bench asked the Counsel for contemnors, who invoked Section 13 during the arguments on sentencing, "Truth of what?" Permitting the contemnors to invoke truth as a valid defense to the alleged contempt at this belated stage hardly makes sense, as the Court had already concluded that they were guilty. Even if the Court permits such a defense, and if such a defense is sustained, would it not contradict its own conclusion that the contemnors were guilty? Any allegation of corruption against a Judge, even if it is consistent with public interest and good faith, is likely to shake the public confidence in the integrity of the Judiciary, including those brother Judges who sat with the allegedly corrupt Judge on a Bench. But the considerations of public interest and good faith must perforce outweigh this contempt which is based entirely on perceptions. The Standing Committee was aware of this inconsistency in the amendment. It noted that eminent witnesses which it heard, had pointed to this, and wanted Section 13(a) to be so amended as to prevent even a finding of guilt by the Court when no appreciable injury to administration of justice is caused by the conduct of the contemnor. They suggested similar amendment of Section 13(b) to say that "no one shall be held guilty of contempt of Court by making or publishing any statement relating to a Judge or Court which is true or which he, in good faith, believes to be true." The Committee wanted the Government to appropriately address this, along with other concerns expressed over the Bill. The Standing Committee further wanted the defense of truth to be inserted suitably as one of the exemptions or defenses under Section 8, which deals with other defenses not affected. The Committee felt it would give the contemnor an additional help, "because he may plead the defense of truth and may not be held punishable". But the Government apparently rejected these suggestions of the Committee, as is clear from the provisions of the Amendment Act. The 2006 Amendment is only a half-hearted attempt to ensure judicial accountability, and realize the objectives of the Contempt of Courts Act. A balance could be maintained between the freedom of speech and expression/Press and scandalizing the Court or interfering into the administration of justice only when purpose of the publication is considered.