CHAPTER IV

LAWS ON SECURITY OF STATE OR SEDITION RELATING TO PRESS

Next to defamation in importance is sedition in which the press is not unoften found to be involved.

Press, it should be clearly understood, is not free to express or publish news and views affecting security of state which amounts to sedition.

What is Sedition

Sedition has been described and its punishment has been provided in section 124A of the Penal Code. Section 124A runs thus :

124A. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring Sedition into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measure of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Sedition as a political crime

The offence defined in section 124-A of the Penal Code may be called a political crime for two reasons. First, the decision whether or not to prosecute a person for the alleged offence is taken by the Government on political considerations and a court cannot proceed with the trial of the case except with the previous sanction of the Government. Secondly, as the offence is against Government established by law in Bangladesh the content of the matter for which prosecution may successfully by maintained varies with the structure of the Government for the timebeing.

As the Government in the republican Bangladesh is of the people and is in theory run according to the public opinion, it cannot be said that the Government is brought into contempt or hatred by the words uttered by a person, still less there can be any excitation of disaffection towards it. Therefore, it may be argued that the political offence of sedition has no place under the system. This argument assumes that there is a basic agreement in regard to the form of government and that the ultimate interest of the members of the body politic for all practical purposes is identical. One may well be justified in making the assumptions in countries like the United Kingdom and Switzerland. But in our country, there is no such agreement. Tradition and law-abiding instinct of the people largely countribute to the tranquillity in the state. But in Bangladesh which recently became free, it is difficult to expect that these conditions invariably exist. On the other hand the economic backwardness of the people contains roots of discontent, which might in turn, create affiliations accross the territorial lines. In all countries of the East, there is an awakening of the hitherto unprivileged for their legitimate share of political power which in itself requires careful handling in order to be constructive and evolutionary instead of developing in the opposite directions. Bangladesh therefore cannot take the risk of dispensing with the legal weapons to counteract the political crime of sedition altogether.

Bangladesh became free after a bloody war extending over three quarters of a year against the established Government. Ideas acquired by the people in the course of that war do not die down until the lapse of a considerable time. Ideas, very often, long outlive their utility and only time can bring about a change in the outlook of the people. An average Bangladeshi even now entertains a distrust against the government and the police force.

No state can be expected to concede freedom to those who profess to put an end to it by availing of that freedom. In that case, there is also no point in waiting until an overt act is done towards the commission of the crime when their cherished aim is to destroy that freedom itself.

India, Pakistan, Australia, Canada, France, Gold Coast, the United Kingdom and the United States have laws similar to the political crime of sedition in Bangladesh. To retain such a law cannot considered a sign of a reactionary legal system.

Meaning of Sedition

Sedition has been described as disloyalty in action and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction towards the Government to create public disturbance, or to lead to civil war, and generally all endeavours to promote public disorder. Sedition in itself is a comprehensive term and it embraces all those practices whether by word, deed, or writing which are calculated to disturb the tranquility of the State and lead ignorant persons to endeavour to subvert the Government and laws of the country. Sedition as defined under this section does not necessarily involve creation of disorder. The word sedition does not occur in Section 124-A ; it is only found as a marginal note to Section 124-A and is not an operative part of the section but merely provides the name by which the crime defined in the section will be known. There can be no justification for restricting the contents of the section by the marginal note.

The offence does not consist in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. But if a man neither excited nor intended to excite any rebellion or outbreak or forcible resistance to the authority of the Government, still if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty of sedition.

The offence of sedition is the result of balance of two contending forces, namely freedom and security. Freedom and security in their pure forms are antagonistic poles : one pole represents the interest of the individual in being afforded the maximum right of self-assertion free from governmental and other interference wihile the other represents the interest of the politically organized society in its self-preservation. It is impossible to extend to either of them absolute protection, for, absolute rules would inevitably lead to absolute exceptions and such exceptions would eventually corrode the rules. It is now generally an accepted postulate that freedom of speech and expression which includes within its fold freedom of propagation of ideas lies at the foundation of all democratic organizations, for without free political discussion, no public education so essential for the proper functioning of the processes of popular Government is possible. While conceding the imperative necessity of freedom, it at the same time must be remembered that the first and most fundamental duty of every Government is the preservation of order, since order is a condition precedent to all civilization and the advance of human happiness. The security of the state and organised Government are the very foundation of freedom of speech and expression which maintains the opportunity for free political discussion. The protection of freedom of speech and expression should not be carried to an extent where it may be permitted to disturb law and order or create public disorder with a view to subverting Government established by law. It is, therefore, necessary to strike a proper balance between the competing claims of freedom of speech and security of the state. This balance has been found by the legislature in the enactment of Section 124-A which defines the offence of sedition for our country. The interpretation of Section 124-A has over

the years gone through various vicissitudes and changes. It must, however, be now taken as well settled that words, deeds or writing constitute sedition punishable under Section 124-A only if they incite violence or disturb law and order or create public disorder or have the intention or tendency to do so.

Validity of Section

The section does not contravene Art. 39 of the Bangladesh Constitution.

Incitement to violence is not necessary

To constitute this offence incitement to violence or disorder is not necessary. Exciting feeling of enmity to Government is enough.

Intention

The essence of the crime of sedition consists in the intention with which the language is used ; but this intention must be judged primarily by the language itself. Although in inferring the intention the principle that a man must be presumed to intend the natural and reasonable consequences of his action must be applied, the writings should be read in a fair, free and a liberal spirit and if any doubt should arise in regard to the intention the benefit of that doubt should be given to the writer. Consequently having regard to time, place, circumstances and occasion for publication, the reasonable, natural and probable effect on the minds of people to whom they are addressed, appears to be that feelings of hatred, contempt or dissatisfaction would be excited towards the Government then it is justifiable to say that they are written with that intent and that they are an attempt to create the feelings against which the law seeks to provide. The intention of a writer charged with the offence of sedition may be inferred from the particular language or it may be proved from the language in conjunction with what the writer had said on other occasions and where it is ascertained that the intention was to excite feelings of disaffection to Government it is immaterial whether or not the words written could have the effect of exciting such feelings of disaffection, and it is immaterial also whether the words were true or were false.

Liability of printer, publisher and editor

The man who is the proprietor and owner of the dress and the publishing house connected with a seditious publication cannot be allowed to contend that he can shut his eyes to everything going on upon his premises and then pretend that he has no knowledge of the contents of the publication printed and issued by him. Where there is *prima facie* evidence against him he could have evidence to show that, in spite of this circumstantial evidence against him, in fact he was away from the premises during the wholetime that the paper was being printed and published and that he had not been informed either of the printing and publication or of the contents of the same. But if he does not call such evidence he can be rightly convicted. The fact that the accused is the declared keeper of a press would not by itself be sufficient to prove that he had knowledge of all the matter printed at that press. He cannot escape criminal liability by a plea that he was not aware of the publication or that he was out of station when it was printed or that he had no intention to commit the offence. Knowledge by the printer of the nature of the matter printed is a question to be determined on the particular facts of a particular case.

If an article constitutes an offence under Section 124-A, the fact that it was not written by the editor does not affect the question of his guilt.

A publisher of an article must be deemed to intend that which is the natural result of the words used having regard to the character and description of people expected to read them. Mere printing is sufficient. Publication is not necessary.

Fair comment

Explanation 2 to section 124-A, Penal Code, is intended to protect criticisms of Government measures, and administrative and executive action of Government, and they give a perfect freedom to journalists, to discuss the measures and administrative acts of Government, to disapprove of them, to attack them, and to use forcible and strong language, if necessary, and to do everything legitimate and honest in bringing before the public or the Govern-

ment, the fact that their measures or their actions are disapproved by a section of the public, or by that particular speaker or journalist. But no publicist, journalist or speaker has any right to attribute dishonest or immoral motives to Government. Criticism, though harsh and uncompromising, must be free from the taint of language which is likely to arouse, or calculated to endanger feelings of enmity, hatred, or disloyalty against Government. The ruler in the democratic state is really the servant of the people and may well be criticised by them. So long, therefore, the criticism has no direct tendency to bring the Government established by law into hatred and contempt and so long as it does not induce the people disobey the laws to defy legally constituted authority, the offence of sedition cannot be said to be committed. Words which were formerly considered to be seditious are now accepted without demur as the inevitable result of the freedom of thought. A man may criticise or comment upon any measure or act of the Government and freely express his opinion upon it. He may express condemnation but so long as he confines himself to that he will be protected but if he goes beyond then he must pay the penalty for it. The question of intention is an important factor in such cases. In a democratic country criticisms of governmental measures and administrative actions are to some extent unavoidable ; they are made for the purpose of enlisting popular support, and in considering the effect of such criticisms no serious notice ought to be taken of crude, bludering attempts or rhetorical exaggerations by which nobody is likely to be impressed. With the change of times the effect of criticisms also changes : what was damaging contempt or hatred of a bureaucratic Government is not so of a popular Government a Government which can neither afford to be hypersensitive, nor impervious, to criticism.

Disapprobation of measures of Government motivated throughout by a desire to excite hatred, contempt, and disaffection towards it attracts the application of Section 124-A and it is immaterial to consider whether absolute independence is advised or any form of constitution advocated.

There is another section (123A) relating to sedition in the Penal Code. Section 123A runs thus :

123A : (1) Whoever, within or without Bangladesh, with intent to influence, or knowing it to be likely that he will influence, any person or the whole or any section of th public, in a manner likely to be prejudicial to the safety of Bangladesh or to endanger the sovereignty of Bangladesh, in respect of all or any of the territories lying within its borders, shall by words, spoken or written, or by signs or visible representation, condemn the creation of Bangladesh in pursuance of the proclamation of Independene on the twenty-sixth day of March, 1971, or advocate the curtailment or abolition of the sovereignty of Bangladesh in respect of all or any of the territories lying within its borders, wheher by amalgamation with the territories of neighbouring states or otherwise, shall be punished with rigorus imprisonment which may extend to ten years and shall also be liable to fine.

Condemnation of the creation of the State, and advocacy of abolition of its sovereignty.

(2) Notwithstanding anything contained in any other law for the time being in force, when any person is proceeded against under this section, it shall be lawful for any court before which he may be produced in the course of the investigation or trial, to make such order as it my think fit in respect of his movements, of his association or communication with other persons, and of his activities regard to dissemination of news, propagation of opinions until such time as the case is finally decided.

(3) Any court which is a Court of appeal or of revision in relation to the court mentioned in Sub-section (2) may also make an order under that sub-section.

General Comments

Security and liberty are the *sine qua non* for the proper functioning of any democratic state. But, it has been aptly said by Schwarts that security and liberty, in their pure form, are antagonistic poles. The one pole represents the interest of politically organised

society in its own self-preservation. The other represent the interest of the individual in being afforded the maximum right of self assertion, free from governmental and other interference.

However desirable it may seem to be, absolute protection cannot be extended to either of them. For, as has been said, such exception would eventually corrode the rules.

Every state has the paramount duty to demand loyalty from its citizens in respect of its territorial integrity and sovereignty. Nobody may be allowed to condemn the creation of Bangladesh. The state must care for its self-preservation.

Though the distinction between disapprobation of Government measures and condemnation of the creation of Bangladesh may at times appear to be thin, it is not illusory. If from a reading of the writing as a whole it does not appear to have intended to influence any person to condemn the creation of Bangladesh or to advocate the curtailment of its territories, then it cannot be construed as attracting the peril of this Section. Whether a writing constitutes condemnation of the creation of Bangladesh is a matter of fact.

Whatever may have been the significance and the scope of its application before the immunity of speech was guaranteed by Article 39 of the Constitution, Section 123A of the Penal Code should now be read in the context of the changed circumstances. Some distinction between making a demand, whether political or economic and the adoption of means to achieve the object must be recognised. This has been nicely expressed in a case where the petition was convicted under Section 124A for demanding that certain tract of Pakistan should be named as Pakhtoonistan.

"It is permissible for a citizen to hold up the men who from the executive government to ridicule and contempt if they are guilty of maladministration. All that the accused had done was to give an exaggerated emphasis on the treatment meted out to a leader of a political party while under custody. It is not the criticism of the government, in whatever venomous and enraging wounds it is cloaked

but the adoption of methods for the attainment of a purpose which encourage force and violence and which may lead to conflict with the authorities with the certainty that there will be grievous loss of life. Short of that every criticism of government is permissible." P.L.D. 1958 Pesh 15.

Words must be judged in the light of conditions in the contemporary society. Bitter criticism of the government policy which was advocated as having resulted in the predominance of West Pakistan in the administraton of the country and demand of regional autonomy for East Pakistan, now forming the State of Bangladesh were not considered as sufficient of show that the person detained under Rule 32 (1) (b) of the Defence of Pakistan Rules, 1965 indulged in any activity prejudicial to the country's security, or to the public safety. In the words of Salauddin J,

"As long as the law of the land permits oppositional activities and some amount of freedom of thinking and expression, mere expression of opinion, however much unpalatable it may be to the Government of the day, does not.....call for any action under a special law and order situation or endanger the maintenance of essential supplies and services."

CHAPTER V

LAWS ON PUBLIC ORDER RELATING TO PRESS

Public order means and includes public safety and tranquillity.

Laws relating to public tranquillity

Chapter VIII of the Penal Code relates to offences against the public tranquillity.

The offences in this Chapter may be classified in the following four groups :

I. Unlawful assembly.

(1) Being a member of an unlawful assembly (ss. 141, 142, 143)

(2) Joining an unlawful assembly armed with deadly weapons (s. 144).

(3) Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (s. 145).

(4) Hiring of persons to join an unlawful assembly (s. 150).

(5) Harbouring persons hired for an unlawful assembly (s.157).

(6) Being hired to take part in an unlawful assembly (s. 158).

II. Rioting (ss. 146, 147).

(1) Rioting with deadly weapon (s. 148.)

(2) Assaulting or obstructing a public servant in the suppression of a riot (s. 152).

(3) Wantonly giving provocation with intent to cause riot (s. 153).

(4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed. (s.154).

(5) Liability of person for whose benefit a riot is committed (s.155).

(6) Liabiity of the agent of owner or occupier for whose benefit a riot is committed (s. 156).

III. Promoting enmity between different classes (s. 153A and 153B).

IV. Affray (ss. 159, 160).

Texts of the law are as follows

Unlawful assembly

141. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is—

First.—To overthrow by criminal force, or show of criminal force, (Government or Legislature), or any public servant in the exercise of the lawful power of such Public servant ; or

Second.—To resist the execution of any law, or of any legal process ; or

Third.—To commit any mischief or criminal trespass, or other offence ; or

Fourth.—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right ; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Being member of unlawful assembly

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Punishment

143. Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Joining unlawful assembly armed with deadly weapon,

144. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining or continuing in unlawful assembly, knowing it has been commanded to disperse,

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Rioting,

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Punishment for rioting.

147. Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Rioting, armed with deadly weapon.

148. Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Every member of unlawful assembly guilty of offence committed in prosecution of common object.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

150. Whoever hires or engages, or employs, or promotes, of connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement of employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Hiring, or conniving at hiring, of persons to join unlawful assembly.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse,

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

Assaulting or obstructing public servant when suppressing riot, etc,

153. Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both ; and if the offence of rioting

Wantonly giving provocation with intent to cause riot if rioting be committed ; if not committed

be not committed with imprisonment of either description for a term which may extend to six months or with fine, or with both.

153A. Whoever by words, either spoken or written or by signs, or by visible representations, or otherwise, promotes or attempts to promote feeling of enmity or hatred between different classes of [the citizens of (Bagladesh)], shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Promoting enmity between classes.

Explanation.—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce, feelings of enmity or hatred between different classes of the citizens of (Bangladesh).

153B. Whoever by words, either spoken or written, or by signs or by visible representations, or otherwise, induce or attempts to induce any student, or any class of students or any institution interested in or connected with students to take part in any political activity (which disturbs or undermines or is likely to disturb or undermine, the public order) shall be punished with imprisonment which may extend to two years or with fine, or with both.

Inducing students, etc, to take part in political activity.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand (taka), if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and, in the event of its taking place, do not use all lawful

Owner or occupier of land of unlawful assembly is held.

means in his or their power to disperse or, suppress the riot or unlawful assembly.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

Liability of person for whose benefit riot is committed.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom.

Liability of agent of owner or occupier for whose benefit riot is committed,

The agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

157. Whoever harbours, receives or assembles, in any house or premises in his occupation or charge, or under his control any persons, knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Harbouring persons hired for an unlawful assembly.

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment or either description for a term which may extend to six months, or with fine, or with both.

Being hired to take part in an unlawful assembly or riot or to go armed.

and whoever, being so engaged or hired as aforesaid, goes armed or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon or offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray."

Affray

160. Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month or with fine which may extend to one hundred (taka), or with both.

Punishment affray.

Discussion on writings provocative of class enmity

Scetion 153*A and* 153*B* of the Penal Code which have been already quoted and Section 153A and 153B which relate to provocative writing merit elaborate discussion. These sections relate to such publications of the press as might create serious law and order situation through provocation of class hatred.

Justification for making the provocation of class hatred and class enmity a crime

No individual has the freedom to provoke class war. Not only is class enmity and hatred destructive of political harmony but it also leads to tension and disorder in the community. In the casteridden and communal background, it is not difficult to provoke people to disorder. Not only that the law relating to class hatred was not sufficient to deal with the new situation, it was found necessary to tighten the law and the Parliament has enacted a law.

In the earlier times, state consisted of a mumber of groups and there was no direct link between the state and the individual. Loyalties were then tribal ; now they are national.

For successful functioning, the state has to effectively maintain direct relation with the individual and the group layalties should be disregarded to the maximum possible extent. As law and public opinion influence each other, the penal law of class hatred may be so used as to reduce the evil effects of group layalties to a minimum.

Freedom of the press

The Constitutions of 1962 and 1956 guaranteed the freedom of the press. The non-reference to the liberty of the press in them was merely was considered unnecessary. The liberty of the press means complete freedom to write and publish without censorship or restriction save such as is absolutely necessary for the preservation of society. There should be as few restrictions on the freedom of the press as the conditions obtaining in the country justify except in times of grave emergencies, such as war, civil commotion on a large scale and even then only in respect of matters involving the security of the state. Press is the mouthpiece of public opinion. Its functioning is more important now when the country has become free than it was before. It has to work as a link between the Parliament which frames legislation and the public which express their hope and aspiration through it. The right to freedom of speech and expression carrries with it the right to publish and circulate one's ideas, opinions and views with complete freedom and by resorting to any available means of publication, subject to such restrictions as could be legitimately imposed. Therefore a journalist may comment expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means,but he must do so without attempting to excite hatred and disaffection.

Scope

Section 153-A means that no subject is entitled to write or say or do anything whereby the feelings of one class of subjects should

be inflamed against another class of subjects. It is a statutory provision of law for the purpose of preserving order and amity between various classes of subjects.

Criticism of Government.

Adverse criticism, however, pungent, misdirected or unjustified, against a ministry or a Government does not properly fall within the purview of S. 153-A. Thus it was held that to attack the policy of the British Government does not necessarily involve attacking the British people and the one need not necessarily be hated when the other is blamed. It is possible that the same articles published in anewspaper criminates its author both under S.124-A and S. 153-A.

Validity of section

S. 153-*A* makes punishable the promotion of hatred and enmity and there can be no manner of doubt that if acts mentioned in S.153-A were not offences, public order will be prejudicially affected. The explanation attached to the section does not bar the pointing out of objectionable matters which are promoting feelings of hatred or enmity and the restriction on the liberty of speech and expression imposed by section 153A is, therefore reasonable, and they do not offend against fundamental rights guaranteed by the Constitution.

Class hatred

Where a book contains passages in it which might be construed to create some distant feeling of disaffection against the rich and the wealthy, but it is not easy to hold that they have a direct effect of actual promotion of any ill-feeling or hatred, particularly as the theme is a conflict between capitalism and labour throughout the world and in all the stages of history, the book cannot be said to contain objectionable matter within S.153-A and the benefit of doubt should be given to the accused. But where the original book not only propounds the doctrine of Communism, but is a manifesto of the Communist Party and professedly contains "a complete theoretical and practical party programme", and the picture of the class struggles is highly coloured, and references to the French Revolution of 1830,

the Parisian Insurrection of 1848 and the Reform Agitation in England, etc. point to the readers a revolutionary method for the achievement of the purpose in view, and there is a pointed reference to the methods often adopted by the proletariat in destroying property, smashing machinery to pieces and setting factories ablaze and restoring by force the former status of the workman and declares that Communists must every-where support their revolutionary movement against the existing social and political order of things, and announces that the end can be attained only by forcible overthrow of all existing social conditions, and ends with an appeal to the working men to unite, it would come within the mischief of this section.

Explanation

An explanation appended to a section is not the same as a proviso. Therefore explanation to S. 153-A cannot be used to enlarge, the provisions of the substantive section any more than a proviso can be used to enlarge the provision to which it is a prioviso.

The explanation to S. 153-A indicates that the essence of an offence under S. 153-A is malicious intention, and if there is no malicious intention in the publication, honesty of purpose may safely be inferred. Section 153-A is not intended to apply to the case of the honest agitator, whose primary object is to secure redress of certain wrongs, real or fancied, and who is not actuated by the base mentality of a mere mischief-monger. If the writer is expressing views which he holds honestly, however wrong they may be, and has no malicious intention, he cannot be brought within the mischief of S. 153-A, a section in which the Legislature has preserved a delicate balance between the undesirability of anything tending to excite section or to excite strife between classes, and the undesirability of preventing any *bonafide* argument for reform. In this connection it may be remembered that the editor of a newspaper has certain public duties, one of which is to publish matters which, it is in the public interest, that it should be known and if he does so honestly, he is evidently not liable to be dealt with by a criminal court.

Classes of people

The first and most important ingredient in the connotation of the term 'classes' is that the words used must point to a well defined and readily ascertainable group of subjects. In the second place some element of permanence or stability in the group would have to be present before there can be an attempt to excite enmity against that group. Thirdly, the group indicated must be sufficiently numerous and widespread to be designated "a class". The group should have a common and exclusive designation and should also possess common and exclusive characteriestic which may be associated with their origin, race or religion. It follows that a joint stock company or its shareholders, or landlords could not be said to constitute a class within the meaning of the section. Similarly 'capitalist' is altogether too vague a word to denote a definite ad ascertainable class so as to come within S. 153-A.

Public tranquillity may be disturbed by publication of matters which are intended to outrage religious feelings. Such publication is an offence under Section 295-A which reads as follows :

Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

295-A "Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of the citizens of Bangladesh, by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER VI

LAWS ON OBSCENITY RELATING TO PRESS

What is obscenity ?

An exact and precise definition of obescenity is not possible. It is essentially a relative and subjective term. It is subjective in the sense that it describes the reaction of the human mind to a certain kind of experience. The same object may not have the same effect on all persons. As D.H. Lawrence observed, 'what is pornography to one man is a laughter of genius to another.' The concept of obscenity would not only vary from individual to individual but it would also vary from community to community and in the same community from one place to another. What is obscene to a community, conceding for a while that such a common standard is ascertainable, would ultimately be determined by the attitude of the society in a particular period, to certain things which are intimate in the life of human beings. In other words the standard of obscenity is the resultant of the cultural values of a given society at a given time. What has been condemned as obscene by one community has been hailed as a masterpiece of literary work by the same community in a later period or by another community at the same time. The classic illustration of this could be found in the reaction of English and French communities to Emile Zola's *La Terre*. Just at the time Vizetelly, the publisher of *La Terre*, was convicted and sentenced by an English Court for having published the novel, Zola was awarded membership of the Legion of Honour by the French Government. Seven years later, Zola was honoured by literary London. It would be surprising to note that *Fruits of Philosophy*, a work of Annie Besant and Charles Bradsaugh, was the object of a criminal trial. Eminent writers like Thomas Hardy, George Moore, Henrik Ibsen and Bernard Shaw have not escaped the accusation of the authorship of obscenity though later their works have been acknowledged as works of immense literary value.

Obscenity, Meanings of

The problem of defining what is obscene is not easy to solve. Social changes, changes in the behaviour and outlook of the people from age to age bring in a variation in the idea of obscenity as we have seen in the previous paragraph. If one compares the dress worn by women from time to time in different parts of the world and even in the same part at different periods of history, one will be astounded as to the variable idea of obscenity prevalent the world over. The changes in the ideas of obscenity may be in terms of region, in terms of time and in terms of persons. It may even be that with the same person the same thing may not be obscene at all stages of his life. In Sukanta Halder v. The State AIR CAL. 214 Mr. Justice R.P. Mookherjee says :

....The idea as to what is to be deemed to be obscene has varied from age to age, from region to region, dependent upon particular social conditions. There cannot be an immutable standard of moral values.

It is interesting to note that section 292 of the Penal Code, which was introduced into the Code by the Obscene Publications Act, 1925, has not defined the term 'obscene'. This is a lacuna which is of great import in the administration of this branch of law. Whereas in the case of other offences, a strict definition of the offence and its constituent elements are scrupulously laid down in the code, the case of obscene publication is otherwise. It leads to the result that the judge has to make a subjective determination as to what his notion of obscenity is and then see whether the article impugned falls within that determination. On the one hand, it may be said to be good as it does not set a procrustean standard for all purposes ; on the other hand, the vagueness is generally abhorrent to the strict idea of legal liability, particularly in cases of criminal offence.

The Interanational Convention for the Suppression of Circulation of, and Traffic in, Obscene publications, which met in Geneva in 1923, itiself did not lay down any definition.

The first place where one would turn to obtain the meaning of 'obscenity' will of course, be dictionaries. The Oxford English Dictionary says of obscenity as being 'offensive to modesty or decency, expressing or suggesting unchaste or lustful ideas ; impure.. indecent, lewd'. In Webster's International Dictionary the meaning is : 'offensive to chasitity or modest ; expressing to the mind.... something which delicacy, purity and decency forbid to be exposed ; impure as obscene language, obscene pictures..' Though there are many judgments, which have referred to these meanings in approving terms, yet it will be seen that the manings are merely synonyms and lead only to further questions, such as impure in what respect offfensive to whose modesty ?' 'how do you tell that it is at all offensive ?' and so on.

A somewhat basic idea is found in a letter of Havelock Ellis : 'There can be no dout whatever regarding the.....view of obscenity" as residing exclusively not in the thing contemplated but in the mind of the contemplating person.' May one also pardonnably quote Sir A.P. Herbert : The "dirt" of today may be the art of tomorrow' ?

However that may be, so far as the law in this subcontinent is concerned the test which has been accepted and approved of in a series of cases from the earliest time is that laid down by Cockburn C.J. in Reg. V.H. Ocklin and the test is this :

"The test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall."

Legal provision on obscenity

Law relating to obscenity is incorporated in the Penal Code as under :

Section 292. *Whatever*

Sale, etc. of object books etc.

(a) Sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition circulation, makes, produces or has in his possession any obscene book, pamphlet, paper drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into cirulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception :—This section does not extend to any book, pamphlet, writing, drawing or painting kept or used *bonafied* for religious purposes of any representation sculptured, engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

Section : 293. Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such

obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Sale etc. of obscene objects to young person.

Intention : The section does not make knowledge of obscenity on ingredient of the offence and the prosecuton need not establish it. Absence of knowledge may be taken in mitigation but does not take the case out of the section. Under section 292, in the matter of selling or keeping for sale an object which is found to be obscene the ordinary *mens rea* will be required before the offence can be said to be complete. *Mens rea* need not be proved by positive evidence. In criminal prosecution *mens rea* must necessarily be proved by circumstantial evidence alone unless the accused confess. *Mens rea* cannot be said to have been absent once it is found that the periodicals are obscene.

Intention of the journalist is not to be looked in to conclude whether the offence under section 292 has been committed or not because it would be a matter for judicial determination to find as to whether the impact of the impugned material on the average human mind is such or not as to create human degradation and an urge to sexuel immorality where it may have never existed before.

The test of obscenity

The test of obscenity on a review of the authorities would be as to whether or not looking to the present day standards of morals and thoughts, the tendency of the writing alleged to be abscence would be to deprave public morality ; in other words, the question is, has it got the tendency to corrupt or deprave the mind of an ordinary man into whose hand the newspaper or the periodical is likely to fall by raising in him lascivious thoughts. It will not do to say that standard of morality vary from region to region and it is impossible to have one inflexible standard of obscenity for all countries. The court has to take into account all the factors before it comes to the conclusion as to whether or not a publication

is an obscence publication. Authorities clearly indicate that while judging the character of publication, the court must consider the effect that it would produce on the mind of an average person in whose hand the book is likely to fall. While so judging, neither a man of wide culture or superb character nor a person of depraved mentality only should be taken as a reader of such publication. It is also necessary that the court must also consider the effect on the mind of young and unwary persons or those of impressionable age. After all, it depends on the question as to who are likely to read the paper or periodical. If they are likely to be read by adolescent, there can be no reason to exclude the consideration of effect on their mind. It is difficult to subscribe to the theory of eliminating altogether the effect of a publication on the minds of young persons, for they also constitute a large part of the reading public in this country. Obscenity may be adjudged in the light of influence which the impugned matter may have not only on the minds of the persons already depraved or abnormal but also on the minds of persons who may be completely unintroduced to sex and may be innocent. If any material incities extreme immoral perversities in respect of sexual indulgence then it incites the impulses to depravity and degeneration. Such material would be undoubtedly obsecene. In the present day society in Bangladesh great emphasis is being laid on family planning and therefore it has become absolutely necessary to impart education on sex to masses ; even so the books dealing with sex matters are to be so composed that they do not cross the ounds of decency and do not tend to become pornographic. Mere defamatory article however filthy, indecent, loathsome and lewd it may be, doee not come within the definition of obscenity. The word "obscence" in the section is not limited to writings, picture etc. intended to arouse sexual desire. At the same time the mere treating with sex and nudity in art and literature is not per evidence of obscenity. The test given by Cockburn. C.J. in (1868) L R 3 QB 360 the effect that the tendency of the matter charged as obscene must be to deprave those into whose hands a publication of the sort may fall so far followed in is the subc ontinent is

the right test. The test does not offend Article 39 of the Constitution. In judging a work, stress should not be laid upon a word here and a word there or a passage here or passage there. The work as a whole must be considered, the obscene matter must be considerred by itself and separately to find out whether it is so gross and its obscenity so decided that it is likely to deprave and corrupt those whose minds are open to influence of this sort. In this connetion the interests of contemporary society and particularly the influence of impugned writing on it must not be overlooked. Where obscenity and art are mixed, art must so lerponderate as to throw the obscenity in to the back ground or the obscenity may be overlooked if it has prepondering social purpose or profit. What the court has to see is that whether a class, not an in isolated case, into whose hands the paper article or story all suffer in their moral outlook or become depraved by reading it or might have impure and lecherous thoughts around in their minds. The charge of obscenity must therefore be judged from this aspect. In judging the obscenity of one article the character of the article in a periodical is a collateral issue which need not be explored. "Obscene" means offensive to chastity or modesty ; expressing or presenting to the mind or view something that delicacy, purity forbid to be expresssed ; impure, as a obscene language ; anything "expressing or suggesting or suggesting unchaste and lustful ideas ; impure indecent, lewd." The test of obscenity is whether the language complained of would corrupt those whose minds are open to immoral influences. The form of expression and not the actual meaning is important. Distinction should be drawn between obscenity and frankness of expression R religious publication is not obscene within Section 292 as its tendency is not to depra0e morals but if extracts from it contain objectionable matter and have a tendency to deprave on corrupt minds which are often to immoral influences the fact that they formed part of a religious publication is not ground for publishing it. A uassage in a religious book may become obscene if it finds a place in a journal intended for the public

Where the consequences of a publication are likely to introduce in the minds of readers impure thoughts and revolting ideas not present in their minds before the publcation it is an offence under section 292. Obscene passages are not excused because the rest of the publication is unobjectionable. The literary eminence of the author of the article containing obscene matter does not justify the offence under the above section. There should be no printing of description exciting sensuality but descriptions of diseases with appropriate remedies therefore intended only for doctors and patients are not criminal. Where the article in question was a serious work intended to give advice to married people and particularly husbands, on how to regulate the sexual side of their lives to the best advantage, that is to say with a view to promoting their health and mutual happiness, it was held that such works when properly written serve a useful purpose and would not come within the mischief of the section.

A passage out of the context may have one meaning while in relation to the context it may not have the same meaning. Whether the writing is obscene is a matter in which the court is entitled to rely on its own judgment apart from the other circumstances. A picture of a woman in the nude is not *per se* obscene. For the purpose of deciding whether a picture is obscene or not one has to consider to a great extent the surrounding circumstances, the pose, the posture, the suggestive element in the picture, and the person or persons in whose hands it is likely to fall. It is no justification that the matter published is by an eminent writer or is composed in a style not easily understood by all.

CHAPTER VII

LAW ON CONTEMPT OF COURT RELATING TO PRESS

What is Comtempt

Freedom of press is subject to any reasonable restrictions imposed by law in relation to contempt of court.

Generally speaking, any expression in any newspaper which tends to bring the authority and administration of the law into disrespect or disregard or interferes with the administration of justice or prejudice parties, litigants or their witneses during litigation amounts to contempt of court.

The proper test is. what impression an ordinary and average reader will obtain by reading the expression. When the expressions indicate that the public have lost confidence in the court, it is difficult to construe that they amount only to a crirticism against a Judge.

In Reg. v Gray, Lord Russel exdlained the edression as follows :

"Any writing calculated to bring a court or a judge of the court into contempt, or to lower his authority, is a contempt of court. That is one class of contempt. Further any writing calculated to obstruct or interfere with the due course of justice or the lawful process of the courts is a contempt of court. The former class belongs to the category which Lord Hardwicke, L. C. characterised as scandalising a court or a judge." That description of that class of contempt is to be taken subject to one, and an important, qualification. Judges and courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no court could or would treat that as contempt of court. The law ought not to be statute in such cases to criticise adversely what under such circumstances and with such an object, is published ; but it is to be remembered that in this matter the liberty of the press is no greater and no less than the liberty of every subject of the Queen."

Constitutional Provision on Contempt of Court : Article 108 of the Constitution of the Peoples Republic of Bangladesh.

108. The Supreme Court shall be a court of record and shall have all the powers of such a court including the power subject to law to make an order for the investigation of or punishment for any contempt of itself.

Supreme Court as court of record

Freedom of the Press

Freedom of the press does not mean freedom to indulge in crude or sophisticated blackmailing or licence to write anything and assassinate the character of persons, or to assume the role of investigator or try to prejudice mankind against any person yet freedom of the press is essential to political liberty and proper functioning of democracy. The American Commission in their report entitled "A Free and Responsible Press" have stated as follows :

"Freedom of the press is essential to plitical liberty. Where men cannot freely convey their thoughts to one another, no freedom is secure. Where freedom of expression exists, the beginning of a free society and a means for the very retention of liberty are already present. Free expression is, therefore, unique among liberties."

"The right to freedom of expression is an expression of confidence in the ability of free men to learn the truth through the unhampered interplay of competing ideas. Where the right is generally exercised, the public benefits from the selective process of winnowing truth from falsehood, desirable ideas from evil ones. If the people are to govern themselves, their only hope of doing so wisely lies in the collective wisdom derived from the fullest possible information and in the fair presentation of different opinions. The right is also necessary to permit each man to find his way to the religious and political beliefs which suit his private needs."

The Government of India Press Commission in its report states :

"The tender plant of democracy can flourish only in an atmosphere where there is a free interchange of views and ideas which one not only has a moral right but a moral duty to express.

Democracy can thrive not only under the vigilant eye of the Legislature, but also under the care and guidance of public opinion, and the press is par excellence, the vehicle through which opinion can become articulate. Its role consists not only in reflecting public opinion but in instructing it and giving it proper orientation and guidance. For this the press has not only moral right to free expression but is subject to certain responsibilities also. But the terrain of normal restriction is not always co-extensive with the legal restrictions which may be imposed upon the right. Up to a point the restriction must come from within. The legal protection may continue to remain even though the moral right to it has been forfeited. To quote again from the American Commissioner's Report "many a lying venal and scoundrely public expression must continue to find shelter under freedom of the press", but widely different purposes to impair the legal right even when the moral right is gone may easily be a cure, worse than the disease. Each definition of an abuse invited the abuse of the definition. If the courts had to determine the inner corruptions of personal intention, honest and necessary criticism would proceed under an added peril. Though the presumption is against resort to legal action to curb abuses of the tolerance, the control of the press must be subjective or proportional. The ethical sense of the individual, the consciousness that abuse of freedom of expression, though not legally punishable, must tarnish the fair name of the press and the censure of fellow journalists, should all operate as powerful factors towards the maintenance of the freedom even without any legal restrictions being placed on that freedom.

The test that a publication amounts to the contempt of court generally bases on the following facts :—

(1) That there has been a publication.

(2) That the publication is intended to prejudice a fair trial of a pending case.

(3) That the publication tended to interfere with the due course of justice or was calculated to prejudice the public mind.

(4) That the publication was with the knowledge of the pending case or with the knowledge that the case was imminent.

Editorial comments by newspapers relating to the judicial acts of the High Court, which exceed the bounds of fair criticism are concerned by irresponsible appreciation of the action, dictated or calculated to lower the sense of confidence in the administration of justice by attributing sectional prejudices to the judges and holding them out as issuing directions in matters of judicial proceedings on considerations other than judicial, and attributing to the court entrusted with enforcing fundamental rights, unconstitutional practice and discrimination, amount to contempt.

Thus where the main object of an article was found to be to scandalise the Chief Justice and the Judges of High Court with whose consultation, approval and full support, certain notifications were issued, and clearly to suggest that justice cannot be had where justice is being administered thereby shaking the confidence in the public mind about the administration of justice and creating an impression that the judges in the highest court in the state act on extraneous considerations, it was held that the article amounted to contempt of the High Court.

Persons have been held liable in contempt for writing and publishing articles unjustificably attacking the Chief Justice and the Judges of the High Court. The Court has, therefore, to scrutinize carefully the article to find out whether it is of such a nature as would exceed the limits of fair inference, legitimate comment and criticism or has been conceived of in haste with irresponsible appreciation of the action of the High Court with a tendency to affect the dignity and prestige of the High Court, thereby constituting a contempt.

The freedom of the press under our Constitution is not higher than that of a citizen, and there is no privilege attacking to the profession of the press as distinguished from the members of the public. To whatever height the subject in general may go, so also

may the journalist, and if an ordinary citizen may not transgress the law so must not the press. That the exercise of expression is subject to the reasonable restriction of the law of contempt, is borne out by Article 39 of the Constitution.

It should be well to remember that the judges by reasons of their office are precluded from entering into any controversy in the columns of the public press, nor can they enter the arena and do battle upon equal terms in newspapers as can be done by ordinary citizens.

A discussion in a newspaper of the merits of a pending case or of the evidence to be adduced at the trial of the witnesses who may be appearing in a case, cannot be permitted. An one-sided publication in extenso of a statement of a witness under Section 164, Cr. P.C before the Magistrate constitutes contempt of court. After a cause has been finally decided the chief hurdle to comment and criticism is removed, as there is no longer the possibility of influencing the decisions. Law recognises in such cases freedom of criticism so long as it is fair and true. Law does not restrain to punish the free expression of the disapprobation of what is done in, or by, the courts. But even in such cases it must not be forgotten that disrespectful attacks on the Court even after it has finally disposed of a case imputing to it corruption or incompetency, will make the critic liable to be summarily published for contempt of court. The publication of an article in a newspaper cannot be justified on the ground that the trial for the offence to which it relates is not then in progress nor immediately to be commenced; but the date of the hearing is to be fixed afterwards. Truth or falsity of the facts or comments published is immaterial. Good faith or malice of the author is an equally irrelevant consideration. The outcome of the trial against the person, who was the target of the newspaper attack cannot avail the contemner. The test of guilt in all such cases depends on the findings, whether the matter complained of, tended to interfere with the cause of justice, and not on the question, whether such was the objective sought; much less whether it was

achieved. The goodness of the motive in exposing an evil is not the criterion in cases of contempt committed by newspaper publication. In a case of serious contempt of court an apology, which may be tendered, could not take the sting out of the contempt. As the respondent was proprietor and editor of a local newspaper which has a limited circulation and which was not even published regularly it was held that it would meet the ends of justice, if he was ordered to pay a fine and a sentence of imprisonment was not awarded.

Power to punish for contempt of itself

1. Though as a Court of Record the Supreme Court would have the power to punish for contempt of itself, Art. 108 specifically mentions this power in order to remove any doubts.

2. The object of this power to punish is not the protection of the judges personally from imputations to which they may be exposed as individuals, but the protection of the public themselves from the mischief they will incur if the authority of the tribunal is impaired.

Hence—

(i) The power to punish for scandalising the court is a weapon to be used sparingly and always with reference to the administration of justice and not for vindicating personal insult to a judge, not affecting the administration of justice.

There are two primary considerations which should weigh with the court in such cases, viz-(a) whether the reflection on the conduct or character of the judge is within the limits of fair and reasonable criticism, and (b) whether it is a mere libel or defamation of the judge or amounts to a contempt of the court.

Where the question arises whether a defamatory statement directed against a judge is calculated to uudermine the confidence of the public in the competency or integrity of the judge or is likely to deflect the court itself from a strict and unhesitant performance of its duties, all the surrounding circumstances under which the statement was made and the degree of publicity that was given to it would be relevant circumstance. The question is not to be

determined solely with reference to the language or contents of the statement made. Mere publication to a third party, which would be sufficient to establish an ordinary libel may not be conclusive for establishing contempt. That would depend upon the nature and extent of the publication and whether or not it was likely to have an injurious effect on the minds of the public and thereby lead to an interference with the administration of justice.

"Although contempt may include defamation, yet an offence of contempt is someth[1]ng more than mere defamation and is of a different character."

(ii) Fair and reasonable criticism of a judicial act in the interest of the public good does not amount to contempt.

But the limits of bonafide criticism are transgressed when improper motives are attributed to judges and this cannot be viewed with placid equanimity by a court in a proceeding for contempt. Imputations made against judicial officers without reasonable care and caution cannot be said to be *bona fide*.

Thus, it is a gross contempt to impute that judges of the highest Court of Justice acted on extraneous considerations in deciding a case.

(iii) Any speech or writing which tends to influence the result of a pending trial, civil or criminal, or otherwise tends to interfere with the proper course of justice, amounts to contempt of court. Thus—

(a) Any threat to a party to a pending litigation which would force him to withdraw his action or to abandon it, amounts to contempt. The threat may be offered by issuing a circular that disciplinary action would be taken against a government servant if he seeks redress to a court of law in matters arising out of his employment without first exhausting the official channels of redress.

(b) It is contempt to prejudice a party to a pending judicial proceeding, e g., by holding a parallel inquiry on a matter which is sub judice, provided the scope of the inquiry is the same.

(c) It is contempt on the part of any party to a prohibitory order issued by the court to commit a breach of it after (a) service of such order upon him, or (b) otherwise acquiring definite knowledge that such an order had been made.

(d) The uttering of words or an action in the face of the court or in the course of proceedings may be a contempt, provided they interfere with the course of justice.

(e) A subordinate court may be held guilty of contempt of court for violating an order of the Supreme Court only if it disobeys the order intentionally, i.e. after having knowledge of the order from an authentic source. A mere error of judgment is not sufficient for visiting a judicial officer with the penal consequences of a proceeding for contempt.

3. But the power to punish for cotempt is an exgtraordinary power which must be used sparingly, and even on the ground of interference with the due course of justice. The court does not proceed by way of contempt "unless there is real prejudice which can be regarded as a substantial interference" as distinguished from "a mere question of propriety."

4. But though this extraordinary power must be used sparingly, where the public interest demands it the court will not shrink from exercising it and imposing punishment even by way of imprisonment, in cases where a mere fine may not be adequate.

Thus, an Advocate who signs an application or pleading containing matter scandalising the court which tends to prevent or delay the course of justice is himself liable to be punished for contempt of court unless he reasonably satisfies himself about the *prima facie* existence of adequate grounds therefore.

On Contempt of Court, we have the following Act :

Statutory Laws of Contempt in Bangladesh

Apart from the Contempt of Courts Act, there are certain specific provisions made in statutes to punish certain types of contempt.

Other statutory laws of contempt in Bangladesh—

(I) The Code of Criminal Procedure, Act V of 1898.

Sec. 480 (1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender * * * to be detained in custody and at any time before the rising of the court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred Taka and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

Procedure in certain cases of contempt.

(2) Nothing in (section 29A or in chapter XXXIII) shall be deemed to apply to proceedings under this section.

481. (1) In every such case the court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

Record in such case.

(2) If the offence is under section 228 of the Indian Penal Code, the record shall show the nature and stage of the judicial proceeding in which the court interrrupted or insulted was sitting, and the natu re of the interruption or insult.

482. (1) If the court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred Taka should be imposed upon him or such court is for any other reason of opinion that the case should not be disposed of under section 480, such court, after recording the facts constituting the offence and the statement of the accused as herein before provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or if sufficient security is not given, shall forward such person in custody to such Magistrate.

Procedure where Court considers that case should not be dealt with under section. 480.

(2) The Magistrate, to whom any case is forwarded under this section, shall proceed to hear the complaint against the accused preson in manner hereinbefore provided.

When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.

483. When the (Government) so directs, any Registrar or any Sub-Registrar appointed under the Registation Act, 1877 shall be deemed to be a Civil Court within the meaning of section 480 and 482.

Discharge of offender on submission or apology.

484. When any Court has under section 480 (or section 482) adjudged an offender to punishment (or forwarded him to a Magistrate for trial) for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such court, or on apology being made to its satisfaction.

Imprisonment or committal or person refusing to answer or produce document.

485. If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the court requires him to produce, and does not offer any reasonable excuse for such refusal, such court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the court for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document or thing. In the event of his persisting in his refusal he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a court established by Royal Charter, shall be deemed guilty of a contempt.

Appeals from convictions in contempt cases

486. (I) Any person sentenced by any court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the court to which decrees or orders made in such court are ordinarily appealable.

(Part VIII. Special Proceedings. Chapter XXXV-Proceedings in case of certain offences affecting the Administration of justice. Chapter XXXVI.—Of the Maintenance of Wives and Children)

(2) The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the reverse the sentence appealed against.

(3) An appeal from such conviction by a court of small cause in a presidency-town shall lie to the High Court, and an appeal from such conviction by any other court of small cases shall lie to the Court of Session for the sessions division within which such is situate.

(4) An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such judge, and in other cases may be made to the District Judge, or, in the presidency towns, to the High Court.

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves

487. (I) Except as provided in sections 480 and 485, no Judge of a Criminal Court of Magistrate, other than Judge of a High Court Division, shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority or is brought under his notice as such Judge or Magistrate in the course of a Judicial Proceeding.

(2) Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such court.

195 (I) **No Court shall take cognizance.**

Prosecution for contempt of lawful authority of public servants

(a) of any offence punishable under sections 172 to 188 of the Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate ;

(b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, except on the complaint in writing of such court or of some other court to which such court is subordinate : or

(c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeeding in any court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such court, or of some other court to which such Court is subordinate.

Prosecution for certain offence relating to documents given in evidence

(2) In clauses (b) and (c) of sub-section (1) the term "Court" (includes) a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.

(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate :

Provided that—

(a) Where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate : and

(b) Where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

(4) The provisions of sub-section (1), with reference to the offences named therein, apply also to (criminal conspiracies to commit such offences and to) the abetment of such offences, and attempts to commit them.

(5) Where a complaint has been made under sub-section (1), clause (a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the court and, upon receipt thereof by the court, no further proceedings shall be taken on the complaint.

Procedure in case mentioned in section 195.

476. (1) When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in section 195, sub-section (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate.

(Provided that, where the court making the complaint is a High Court, the complaint may be signed by such officer of the court as the court may appoint.)

For the purposes of this sub-section, a Presidency Magistrate shall be deemed to be a Magistrate of the first class.

(2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under section 200.

(3) Where it is brought to the notice of such Magistrate or any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided.

(*II*) *The Penal Code Act XLV of* 1860.

228. Whoever intentionally offers any insult, or cause any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may estend to six months, or with fine which may extend to one thousand (taka) or with both.

Intentional insult or interruption to public servant sitting in judicial proceeding

172. Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be published with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred (taka), or with both ;

Absconding to avoid service of summons or other proceeding.

or, if the sommons or notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand (taka), or with both.

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servants legally competent, as sueh public servant, to issue such summons, notice or order

Preventing service of summons or other proceeding, or preventing publication thereof.

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may

extend to one month, or with fine which may extend to five hundred (taka), or with both ;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice with simple imprisonment for a term which may extend to six months or with fine which may extend to one thousand (taka), or with both.

Non-attendance in obedienee to an order from public servant.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with smiple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred (taka), or with both ;

or if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple iprisonment for a term which may extend to six months, or with fine which may extend to one thousand (taka) or with both.

Omission to produce document to public servant by person legallybound to produce it

175. Whoever being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred (taka) or with both ;

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand (taka) or with both.

Omission to give notice or information to pblic servant by person legally bound to give it.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred (taka) or with both ;

or if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand (taka) or with both ;

or if the notice or information required to be given is required by an order passed under sub-section (1) of section 565 of the Code Act of 1898 of Criminal Procedure, 1898, with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand (taka) or with both.

Furnishing false information

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes as true, information on the subject which he knows or has reason to believe to be false shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand (taka) or with both ;

or, if the information which he is legally bound to give respect the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of eithr description for a term which may extend to Two years, or with fine or with both.

Refusing oath or affirmation when duly required by public servant to make it.

178. Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand (taka) or with both.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant, in the exercise of the legal powers of such public servant shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred (taka) or with both ;

Refusing to answer public servant authorised to question.

180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent, to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred (taka), or with both.

Refusing to sign statement.

181. Whoever, being legally bound by an oath (or affirmation) to state the truth on any subject to any public servant or other person authorized by law to administer such oath (or affirmation), makes, to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation.

182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

False information with intent to cause public servant to use his lawful power to the injury of another person.

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the

injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand (taka) or with both.

Resistance to the taking of property by the lawful authority of public servant.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished wih imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand (taka), or with both.

Obstructing sale of property offered for sale by authority of public servant.

184. Whoever intentionally onstructs any sale ofproperty offered for sale by the lawful authority of any public servant, as such, shall be punished wtih imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred (taka), or with both.

Illegal purchase or bid for property offered for sale by authority of public servant.

185. Whoever, at any sale of property hold by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations undre which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred (taka), or with both.

Obstructing public servant in discharge of public functions.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred (taka), or with both.

Omission to assist public servant when bound by law to give assistance.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred (taka), or with both :

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, of affray, of apprehending a person charged with or guilty punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred or with both.

188. Whoever, knowing that, by an order promulgated by a public servant lawfully compowered to promulgate such order he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction.

Shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred (taka), or with both ;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand (taka), or with both.

Threat of injury to public servant

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Threat of injury to induce person to refrain from applying for protection to public servant.

(III) The Code of Civil Procedure

135 (1) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his court.

Exemption from arrest under civil process.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue agents and recognised agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of court while going to or attending such tribunal for the purpose of such matter and while returning from such tribunal.

(3) Nothing in sub-section (2) shall enable a judgment debtor to claim exemptiom from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.

151. Nothing in this code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

Saving of inherent Powers of Court.

These are special provisions and would have effect apart from the provisions of the general law under the Contempt of Courts Act.

7. **Law of contempt and constitutional freedoms**—The law of contempt has to be construed in relation to, and consistently with, the provisions of the Constitution from which it now derives its autho-

rity. Our Constitution has provided for a certain extent of freedom of speech and expression as fundamental right under Article 39 thereof.

Article 39 of the Constitution allows fair inference, legitimate comment and criticisms to certain extent in the exercise of the freedom of speech and expressions subject, however, to the provision of reasonable restrictions. Therefore, it would call for a scrutiny into the fairness and legitimacy of an inference, comment and criticism. This will require the consideration of the relevant provisions of the Constitution to ascertain that fact. Therefore, it will be necessary to consider these aspects vis-a vis, the relevant provisions of the Constitution.

The question had arisen whether the law of Contempt of Courts and the summary jurisdiction of the High Court in matters of contempt does not constitute an unreasonable restriction on the freedom of speech and expression guaranteed by Article 39 of the Constitution in relation to the Contempt of Courts Act. Also whether the Act is not repugnant to the provisions or Article 39 of the Constitution. It has been held in serveral Indian cases that the restrictions imposed on the freedom of speech and expression by the law relating to contempt is a reasonable restriction.

It has been held that the law in relation to contempt is expressly saved by Article 39 of the Constitution. The reason being that courts, both in England as well as in this subcontinent have thought that the power and jurisdiction to punish contempt of courts is necessary to ensure free and unhampered administration of justice and for curbing unjustified attempts to impair the confidence of the public in the courts. The jurisdiction in contempt, it has also to be emphasised, is exercised not for the vindication of the personal interests of a particular judge, but for the good of the general public. The public good is equally, if not more, important than the individual freedom of speech and expression. A balance, therefore, has necessarily to be struck between the two in order to ensure both of them. It is trite to say that unrestricted freedom is likely to dege-

nerate into licence ; but an oppressive regimentation of this freedom will seriously cripple it and make it almost non-existent and valueless. Thus, by the provision of Article 39 of the Constitution it has been sought to achieve an adjustment between the individual freedom of speech and expression on the one hand, and the need or healthy social control over that freedom on the other.

It is undeniable that the maintenance of the prestige and authority of courts is a public concern. So also the need to ensure that the course of justice is not obstructed is a matter of great importance. Equally, if not more important, it is to maintain unimpaired the confidence of the public in the Courts of Law. If the courts are brought in ridicule and disrepute, and if the public cease to have confidence in them the very foundation of State Society will be shaken. Freedom of speech and expression cannot, therefore, be permitted to go to the length of bringing courts of law into contempt, and disregard and undermining public confidence in them. Consequently necessary restriction cannot be held to be unreasonable. The power to commit for contempt is to be used to protect the interests of the public for whose benefit and for the protection of whose rights and liberties the courts exist and function.

In State of Madras v. V.G. Rao the question was raised whether the words "in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause" in Article 19 (2) of the Indian Constitution do not relate to any existing law, or do not prevent the State from making any law in relation to contempt of court, defamation, or incitement to an offence ? It was observed that even assuming that the Constitution makes the existing law relating to contempt of Court subject to reasonable restrictions on the exercise of the right of freedom of speech, the whole law of contempt of court, as it stood on the date of the coming into force of the Constitution answers the test of reasonableness.

General.—Contempts have been classified into two categories which might broadly be designated civil and criminal contempts—

the formal comprising those cases where the power of the Court is invoked and exercised to enforce obedience to order of courts and the latter where the act of the contemner is calculated to interfere with the course of justice including libels or insults to judges and publications prejudicing the fair conduct of proceedings in court. In regard to 'civil' contempts appeals lie from orders passed in such cases.

Ordinarily, in the case of civil contempts, the courts are reluctant to interfere unless the disobedience to the court's order issued for the benefit of the other party, is wilful.

Criminal contempt.—As brought out in the preceding note, where acts of the contemner is calculated to interfere with the course of justice , including libeling or insults to judges and scandalizations and publications which prejudice fair conduct of proceedings in court. Therefore the test is whether the allegations made are of such a character or are made under such circumstances as to tend to obstruct or interfere with the due course of justice or the proper adminstration of law. The *bona fides* of the person making the allegation, the nature and the circumstances under which the said allegations are made, the extent and character of the publications and similar other considerations will have to be borne in mind in coming to the conclusion whether the fact complained of is an obstruction to public justice.

Thus it would appear, that obstruction or interference within the course of justice being the criterion to determine this nature of contempt, anything said or done which do not have the effect would not be contempt.

In order to establish criminal contempt it is not necessary that there should be intention on the part of the opposite party to interfere with the course of justice. It is not even necessary that the mind of the trial court should be affected. It is sufficient if the publication tends to prejudice the public or the court for or against a party before the case is finally heard. The question of intention is immaterial so long as the words used in the publication tend to interfere with

the course of justice or prejudice the public or the court in the trial of the case.

'Contempt of Court' may include conduct which though not directly influencing the judge's mind may affect the conduct of the parties to the proceeding and which is likely to affect the course of true justice.

The mere holding of a departmental enquiry during the pendency of a criminal prosecution in respect of the same subject-matter and even passing an order therein for punishment would not amount to contempt. The departmental authorities are free to exercise such lawful powers as are conferred on them by the departmental rules and regulations. Such exercise of powers *bona fide* cannot come within the mischief of the law of contempt. The position would be different, if an attempt is made by the departmental authorities to influence the court or to create an atmosphere of prejudice.

Apart from certain exeptions which may arise due to the special nature of the conduct giving rise to a criminal contempt, the law as to attachment and committal as a form of procedure in either case is essentially the same, namely, whether it be followed as a summary process for criminal contempt or as the form of execution of an order or judgment in a civil contempt.

General criticisms of judges conduct.—Oswald had observed :

"General criticisms on the conduct of a Judge, not calculated to obstruct or interfere with the course of justice or the due administration of the law in any particular case even though libellous, do not constitute a contempt of court."

Communication to judge.—(Oswald, page 48) : "It is a grave contempt of court to communicate with, or to seek in any way to influence, a judge upon the subject of any matter which he has to determine. Thus a person who wrote a letter to the Lord Chancellor relationg to a threatened suit, and enclosed a bank note, was held guilty of a contempt and ordred to attend personally and show cause why he should not be committed ; but afterwards, on his

appearing and expressing contrition, he was dicharged on payment of costs. The contempt is the same whether the communication be accompanied by abuse or by a bribe or not."

(Oswald, page 48) : "Writing to the Judge after a case was over, unless the communication contained charges of injustice,..... presumably would not constitute a contempt. As where a defeated litigant, who had been warned during the case by the judge not to behave like a monkey in the box, telegraphed to the judge every morning for some time after the trial, why did you call me a monkey? Reply paid."

When a person communicates to a judge his opinion or decision on the facts of the case, which is subjudice, it constitutes contempt and his motive in so communicating is irrelevant.

Every private communication to a Judge or a Magistrate for the purpose of influencing his decision upon a matter publicly before him always is, and ought to be, reprobated. It is to be treated as a high contempt of court.

There is a misconception amongst some people dabbling in public affairs that writing letters to presiding officers of courts giving them the writer's view 'point in a particular case and suggesting to them a particular course to be adopted by courts is not only no offence, but even falls within the public duties of such people.

A member of a Legislative Assembly is not expected, and should not as a matter of fact, take sides in petty squablles and quarrels that take place amongst illiterate and unsophisticated village folk. What one would expect from such people holding such responsible position is not to fan the fire of internecine quarrles by taking sides, but to attempt at reconciliations and restoration of mutual good relations amongst warring factions and groups.

Libels on Judges or Courts. (Oswald, page50) : ".....A libel upon a Judge in his judicial capacity is a contempt, whether it concerns what he did in court, or what he did judicially out of it ; but a libel is not a contempt if not written of the Judge in his judicial capacity."

(Oswald, page 50) : "It has been said that commitments for contempt of court by scandalising the court itself bave become obsolete in this country, and that, when a trial has taken place and the case is over, the judge or the jury are given over to criticism. This seems to go a great deal too far. There does not seem to be any good reason for saying that the principles which governed the numerous early cases on the subject have been now set aside. Offiences of this kind are also punishable on criminal information or indictment "(Oswald, page 50).

Scandalising a Court or Judge.—The 'scandalising' might manifest itself in various ways, but in substance it is an attack in individual judges or the court as a whole with or without reference to particular cases casting unwarranted and defamatory aspersions upon the character or ability of the judges. Such conduct is punished as contempt for the reason that it tends to create mistrust in the popular mind and impair confidence of the people in courts which are of prime importance to the litigants in the protection of their rights and liberties.

Civil contempt.—Civil contempts consists of cases of non-compliance or of disobedience of the orders of the courts which are made for the benefit of private parties. A disobedience to judgments, orders and other process or for breach of undertaking categorised as civil contempt involves private injury and is punishable when the disobedience is useful. When an order made for the benefit to a party is disregarded or violated the courts seek to enforce the order by punishing the person guilty thereof for contempt, and for the reason it has been said that such a proceeding for contempt is a form of execution, the main object of the proceeding being to secure enforcement of the orders. For this reason such contempts have been also described as one of procedure.

General.—When sanctity (not in a divine sense) attaches to established courts and tribunals it follows, as a corollary, that all orders emanating from these public institutions should be respected and strictly complied with, whether the orders be mandatory or of a

prohibitive character. On the same principle and a similar analogy, it is impossible for a party to a proceeding to resile from an undertaking given to a court to do or to refrain from doing a thing in a particular way. The undertakings given to courts of law, are generally for the benefit of one party to a proceeding. If, consequently there is a disregard or breach of such an undertaking which is recorded in a case or proceeding the party affected by such a disregard or breach can bring the matter to the notice of the court to deal with it under the Law of Contempt of Court.

Order must be implicitly obeyed. At pages 102. and 103 of his Contempt of Court (1910 Ed.), Oswald says :

"An-order must be implicitly observed ; every diligence must be exercised to obey it to the letter, and any proceedings resulting in a breach are tantamount to an actual breach. But disobedience, if it is to be punishable as a contempt, must be wilful. A client cannot escape responsibility for writing a letter which amounts to contempt of court merely by syaing that he had written it at the instruction of his lawyer. In this case the lawyer accepted responsibility for making those allegations and stated that he wished to establish them. Both the client and the lawyer were fined for contempt which consisted of charging the court and the opposite lawyers with conspiracy to cheat and defraud his client. Counsel appearing for a client has a responsibility in cases where his client wants him to allege fraud and dishonesty on the part of the court in the discharge of its judicial functions and he has to exercise due care in such matters and cannot escape the responsibility simply by saying that what has been done was under instructions from his client. But even if the counsel exercises due care he cannot escape punishment because of the other rule that a contempt cannot be justified. This means that practically counsel is prohibited from making any allegation against the court notwithstanding all the care he has exercised in testing the truth thereof. The Legislature must take a hand to change this irrational position. Where the disobedience is not wilful instance, the order which is to be obeyed may be suspended for a time or the order for

attachment or committal may be directed to lie in the office. In certain proceedings by the Crown attachment issues as of course, and these observations do not apply....." (Oswald.)

Ordinarily in the case of civil contempts, the courts are reluctant to interefere unless the disobedience to the court's order issued for the benefit of the other party is wilful.

So long as an injunction order has not been vacated by the court granting it, or has not been reversed on appeal, no matter how unreasonable and unjust the injunction may be, the order must be obeyed. Violation of the order of injunction cannot be excused on the ground, that though the court acted within its jurisdiction, the order has it passed was erroneous for the court, in contempt proceedings, will not inquire into the merits of the case in which the injunction was issued.

(IV) The contempt of courts act, 1926
Act No. XII of 1926

8th March, 1926

An Act to define and limit the powers of certain courts in punishing contempts of court.

WHEREAS doubts have arisen as to the powers of the High Court Division to punish contempts of courts ;

AND WHEREAS it is expedient to resolve these doubts and to define and limit the powers exercisable by the High Court Division.... in punishing contempts of court ;

It is hereby enacted as follows :-

1.-(1) This Act may be called the Contempt of Courts Act, 1926

(2) It extends to the whole of Bangladesh

(3) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint. 1st May 1926'

2.- (2) Subject to the provisions of sub-section (3) the High Court Division .....shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts sub-ordinate to it as it has and exercised in respect of contempts of itself.

(3) The High Court Division shall not take cognizance of a contempt alleged to have been committed in respect of of a court sub-ordinate to it where such contempt is an offence punishable under the Penal Code.

3. Save as otherwise expressly provided by any law for the time being in force, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine, which may extend to two thousand taka or with both :

Provided that the accused may be discharged or the punishment awarded may be remitted an apology being made to the satisfaction of the court :

Provided further that notwithstanding anything elsewhere conteined in any law, the High Court Division shall not impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a court sub-ordinate to it.