CHAPTER-3

THE CONCEPT, MEANING AND DEFINITION OF CONTEMPT OF COURT
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3.1 Introduction

The law relating to contempt of court has developed over the centuries as a means whereby the courts may act to prevent or punish conduct which tends to obstruct, prejudice or abuse the administration of justice either in relation to a particular case or generally. Law of contempt is of fundamental importance in every legal system. The power, which the courts have of vindicating their own authority, is coeval with their first foundation and institution. It is necessary incident to every court of justice to fine and imprison for contempt of the court committed on the face of it. The sole purpose of proceedings for contempt is to give our courts the power effectively to protect the right of the public by ensuring that the administration of justice shall not be obstructed or prevented. The existing law relating to contempt of courts in India is essentially of English origin. The contempt jurisdiction appears to be based on the principle that the courts has the duty of protecting the interest of community in the due administration of justice and so, it is entrusted with the power to omit for contempt of court, not to protect the dignity of the court against insult and injury, by to protect and indicate the right of public so that the administration of justice is not prevented, prejudiced, obstructed or interfered with.¹

3.2 Meaning and Concept

3.2.1 Meaning of Contempt

The words “contempt of court are archaic and are borrowed from English law contempt jurisdiction is intended no so much to protect the dignity of the individual Judges, but for the protection of administration of justice and the preservation of public confidence in its honesty and impartiality, and to uphold the supremacy of law. This power is considered necessary, because, unlike the Executive and the Legislature, the Judiciary has no forum from which to define itself. The executive has ample resources and can hit back. The Legislature can indicate its stand on the floor of the house. The judiciary from its very position cannot enter into publicación

controversy. The power to punish for contempt is awesome power and should be very sparingly exercised. It is, excellent to have a giant's strength, but it is tyrannous to use it like a giant. Lord Denning put it aptly: "Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must not rest on sheer foundations, nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more at stake it is no less than freedom of speech itself.²

The term, 'contempt of court' is not statutorily defined. In the common parlance, the term is not vague or indefinite. The term is divided into civil contempt and criminal contempt and is explained because instances may arise where a definition becomes necessary. An absence of definition may raise constitutional concerns, in leaving the meaning of the term for judicial determination, because an act leading to contempt of court invites panel consequences. Contempt of court may be defined as a willful or negligent action or inaction, involving an obstruction or interference or a tendency to cause obstruction or interference in respect of due administration of justice. Thus any conduct which is capable of diminishing the prestige and authority of the courts, which is likely lower the esteem of the judiciary in the minds of the people and which creates an impression that with impunity the orders of the court could be disobeyed by mere strategies or contrivance, would invite an action for contempt of court. Again, any act which is calculated to disturb the confidence of the public in the unquestioned effectiveness of the orders of the court will turn out to be a contempt of court.³

Contempt is an act of deliberate disobedience or disregard for the laws, regulations, or decorum of a public authority, such as a court or legislative body. In legal terminology, contempt refers to any willful disobedience to, or disregard of, a court order or any misconduct in the presence of a court action that interferes with a Judge's ability to administer justice or that insults the dignity of the court.⁴

Any conduct by which the cause of justice is perverted, either by a party or a stranger, is a contempt; thus the use of threats, by letter or otherwise, to a party while

⁴ C.J. Miller. 'Contempt of Court'. 1989, p. 34.
his suit is pending, even if the threatening letter is marked “private” or abusing a party in letters to persons likely to be witnessed in the cause, have been held to be contempt.5

Essentially, contempt of court is a matter which concern the administration of justice and the dignity and authority of judicial tribunals, a party can bring to the notice of the court, facts constituting that may appear to amount to contempt of court, from such actions as the court deems it expedient to adopt. Contempt jurisdiction should be reserved to, what essentially brings the administration of justice into contempt or unduly weakens it, as distinguished from a wrong that might be inflicted on a private party, by infringing a decretal order of court.6

The law of contempt stems from the right of the courts to punish by imprisonment or fines, persons guilty of words or acts, which either obstruct or tend to obstruct the administration of justice. Such contempt may be committed in respect of single Judge or a single court, but may in certain circumstances, be committed in respect of the whole to judiciary or judicial system. The good faith of the Judges is the firm bed rock on which any system of administration securely rests, and any attempt to shake the people’s confidence in the courts amounts to strike at the very root of our system of democracy. The law punishes not only acts which do in fact interfere with the courts and administration of justice as such, but also those, which have that tendency, that is to say, are likely to produce a particular result.7

3.2.2 Defining Contempt

It is indeed difficult and well high impossible to frame a comprehensive and complete definition of ‘contempt of court.’ Anything that curtails or impairs the freedom of the limits of the judicial proceeding must be necessity result in hampering the administration of law and in interfering with the due course of justice. This necessarily constitutes contempt of court. Oswald defines contempt to be constituted by any conduct that tends to bring the authority and administration of law into disrespect or disregard or to interfere with or prejudice parties or their witnesses.

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during litigation. *Halsbury* defines contempt as consisting of words spoken or written which obstruct or tend to obstruct the administration of Justice.  

According to the *Britannica Encyclopedia*, "In law, an act of disobedience to a court order may be treated as either criminal or civil contempt; sections for the latter and upon compliance with the order. An act or language that consists solely of an affront to a court or interferes with the conduct of its business constitutes criminal contempt; such contempt carries sanctions designed to punish as well as to coerce compliance."  

*Blackstone* expounds the matter clearly.

"Some of these contempt's may arise in the face of the court, by rude and contumacious behaviour, by obstinacy, perseverance or prevarication, by breach of the peace or any willful disturbance whatever; others in the absence of party, as by disobeying or treating with disrespect the King's writ or the rules or process of the court, by perverting such writ or process to the purpose of private malice, extortion or injustice, by speaking or writing contemptuously of the court, or Judges acting in their judicial capacity, by printing false accounts or even true ones, without proper permission, of cases then pending in judgment and by anything in short, that demonstrates a gross want of that regard and respect which, when our courts of justice are deprived of their authority so necessary for the good order of Kingdom, is entirely lost among the people."

According to the *Columbia Encyclopedia*, "Contempt, in law, means interference with the functioning of a legislature or court. In its narrow or more usual sense, contempt refers to the despising of the authority, justice, or dignity of a court. A contempt of court can be classified as civil or criminal, direct or constructive. Civil and criminal contempt's are distinguished by the function of the punishment- if it is to indicate judicial authority, the contempt is criminal; if it is to enforce the rights and remedies of a party, and the contempt is civil. A direct contempt is one committed in the presence of the court while it is in session. A constructive contempt is one that is

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10 Supra note 8, pp. 2-3.
committed at a distance from the court and that tends to obstruct or defeat the administration of justice. A refusal to answer a question when directed to answer by a Judge is a direct criminal contempt. Disobeying an injunction or a court order that a Judgment be satisfied is a civil contempt. A major distinction is whether the court needs to hear evidence to determine if contempt was committed. Direct criminal contempt may be punished summarily by fine or imprisonment; civil and constructive criminal contempt's can also be punished by fine or imprisonment, but the accused must be granted a hearing. In the United States, congress can punish for contempt of congress behavior that occurs during legislative proceedings and that threatens its legislative power. Congress must act before it adjourns, and any imprisonment can last no longer than that session. State legislatures also have limited powers to punish for contempt.”

Under *West's Encyclopedia of American Law*,¹² “Contempt of Court is behavior that opposes or defines the authority, justice, and dignity of the court. Contempt charges may be brought against parties to proceedings; lawyers or other court officers or personnel, jurors, witnesses, or people who insert themselves in a case, such as protesters outside of a court room. Courts have great leeway in making contempt charges, and thus confusion sometimes exists about the distinctions between types of contempt. Generally, however, contempt proceedings are categorized as civil or criminal, and direct or indirect.”

According to *World University Encyclopedia*,¹³ contempt is an intense feeling or attitude of regarding someone or something as inferior, base, or worthless, it is similar to scorn. It is also used when people are being sarcastic. Contempt is also defined as the state of being despised or dishonored; disgrace, and an open disrespect or willful disobedience of the authority of a court of law or legislative body.

According to the *American International Encyclopedia*,¹⁴ contempt is the deliberate obstruction of courts proceedings by refusing to obey court order or by interfering with court procedures. Contempt of court can be punished by fine, imprisonment, or both.

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3.3 Definition and Classification

3.3.1 Difficulties invoked Defining Contempt

In the law of contempt, difficulty and vagueness start at the definition stage itself. Contempt in its root sense signifies disrespect to that which is entitled to respect or regard, and the expression ‘contempt of court’ has been “a recognized phrase in English law from the 12th century.” If administration of justice has to be effective, respect for its administration has to be fostered and maintained and it is out of rules framed by courts in this behalf that the law of contempt has grown. From rudimentary rules devised for the limited purpose of securing obedience to the orders of court, there evolved in the course of time elaborate and far-reaching doctrines and extraordinary procedures. Right till the present century, these doctrines and procedures were never subjected to legislative scrutiny with the result that the law of contempt had, as it were, a wild growth. Each new precedent was not declaratory but creative of the law. Each new type of attack on the administration of justice received a corresponding elaboration or extension of the contempt law. As Craies has said, “the ingenuity of the Judges and those who are concerned to defeat or defy justice has rendered contempt almost protean in its character.” And even now, it may well be said the categories of contempt are not closed. The result is that there are contempts and contempts, contempt’s ranging from mere disobedience to orders of the court and involving only a wrong of a private nature as between the parties to a suit at one end and contempt’s involving physical violence or large-scale blackmail or mudslinging by means of publication on the Judge at the other end. In view of the haphazard

17 For example, Pratap Singh V. Gurbaksh Singh Cr. Appeal Nos. 128 and 129 of 1959 where the Supreme Court by a majority held that a disciplinary proceeding instituted while a case is pending under the authority of an executive instruction (as distinguished from a condition of service) which required a Government servant to exhaust all his executives remedies before resorting to a court of law would amount to contempt of court.
18 In the words of Blackstone, ‘Some of these contempt’s may arise in the face of the court; as by rude or contumacious behaviour; by obstinacy; perverseness or prevarication; by breach of the peace or any willful disturbance whatever; others in the absence of the party; as by disobeying or treating disrespect the King’s writ or the rules or process of the court; by preventing such writ or process to the purposes of private malice, extortion or injustice; by speaking or writing contemptuously of the court, or Judges acting in their judicial capacity; by printing false accounts (or even true ones without proper permission) of causes then pending in Judgment and by anything, in short, that demonstrates a gross want of that regard and respect which, when once courts of justice are deprived of, their authority (so necessary for the good order of the Kingdom) is entirely lost among the people. (Blackstone’s commentaries, Vol. IV, p. 285).
development inherent in the process of development of law by judicial precedents, it is not possible to attempt neat and clear cut classification of the various branches of the law of contempt and, in view of the possibility of new types of contempt arising in future, it is not possible to demarcate the area of operation of the law of contempt. It is for these reasons that Judges and jurists have not succeeded in formulating a comprehensive and complete definition of the concept of contempt of courts. The Shaw Cross Committee observed: "Not the least of the difficulties in this field (definition) is that contempt, being a growth of the common law, has no authoritative definition or limitation…. It can be defined in the most general terms. In the words of one of our Judges "It is indeed difficult and almost impossible to frame a complete and comprehensive definition of contempt of court. The law of contempt covers the whole field of litigation itself. The real end of a judicial proceeding, civil or criminal, is to ascertain the true facts and dispense justice… anything that tends to curtail or impair the freedom of the limbs of the judicial proceedings must of necessity result in hampering the due administration of law in interfering with the course of justice." 

3.3.2 Civil and Criminal Contempt

The expression “contempt of court” does not appear to have been defined by statute in any Anglo-American Jurisdiction. Contempt is stated broadly to fall into two groups, viz., Civil Contempt and Criminal Contempt. In considering the law relating to Criminal Contempt Lord Hardwicke traditional definition is generally referred to, although by no means exhaustive. Lord Hardwicke observed: “There are three different sorts of contempt’s. One kind of contempt is scandalizing the court itself. There may be likewise or contempt of this court in abusing parties who are concerned in causes here. There may also be contempt of this court in prejudicing mankind against persons before the cause is heard”. In the Contempt of Court Bill, 1883, Lord Selbourne suggested the following classification:

“(1) Contempts of the court itself, not consisting of any disobedience

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19 Shaw Cross Committee Report, p. 4, (Report of the Committee of International Jurist headed by Lord Shaw cross)
21 Paragraph quoted from Sanyal Committee Report, 1963, Ch. IV, Para I.
22 Id., at para (2) (1).
to its orders;

(i) by strangers;

(ii) by parties;

(a) in the face of the court; punishable by fine and by imprisonment by a court of record, inferior as well as superior;

(b) outside the court, punishable by fine and imprisonment by superior courts of record only;

(2) disobedience to the orders of the court; confined to parties, punishable by imprisonment and not by fine.”

Broadly speaking, the classification follows the method of dividing contempt into criminal and civil contempts. The Shaw Cross Committee adopted the same classification on the grounds of convenience. Broadly speaking, civil contempts are contempts which involve a private injury occasioned by disobedience to the judgment, order or other process of the court. On the other hand, criminal contempts are right from their inception in the nature of offences. In Legal Remembrancer v. Motilal Ghose,23 Mukerji J. observed: “A criminal contempt is conduct that is directed against the dignity and authority of the court. A civil contempt is failure to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein. Consequently, in the case of a civil contempt, the proceedings for its punishment is at the instance of the party interest and is civil in its character; in case of a criminal contempt, the proceedings is for punishment of an act committed against the majesty of the law, and, as the primary purpose of the punishment is the indication of the public authority, the proceeding confirm as nearly as possible to proceedings in criminal cases. It is conceivable that the dividing line between the acts constituting criminal and those constituting civil contempts may become indistinct in those cases where the two gradually merge into each other.”24

Notwithstanding the existence of a broad distinction between civil and criminal contempt’s, a large number of cases has shown that the dividing line between

23 ILR 41 Cal. 173 (252).
24 Supra note 21, para (2) (1)
the two is almost imperceptible. In *Dulal Chandra v. Sukumar*, the following observations occur.\textsuperscript{25}

"The line between civil and criminal contempt can be broad as well as thin. Where the contempt consists in more failure to comply with or carry out an order of a court made for the benefit of a private party, it is plainly civil contempt and it has been said that when the party, in whose interest the order was made, moves the court for action to be taken in contempt against the contemnor with a view to an enforcement to his right, the proceeding is only a form of execution. In such a case, there is no criminality in the disobedience, and the contempt such as it, is not criminal. If, however, the contemnor adds defiance of the court to disobedience of the order and conducts himself in a manner which amounts to obstruction or interference with the due course of justice, the contempt committed by him is of a mixed character, partaking as between him and his opponent of the nature of a civil contempt and as between him and the court or the state, of the nature of a criminal contempt. In cases of this type, no clear distinction between civil and criminal contempt can be drawn and the contempt committed cannot be broadly classed as either civil or criminal contempt... To put the matter in other words, a contempt is merely a civil wrong where there has been disobedience of an order made for the benefit of a particular party, but where it has consisted in setting the authority of the courts at naught and has had a tendency to invade the efficacy of the machinery maintained by the state for the administration of justice, it is a public wrong and consequently criminal in nature."\textsuperscript{26}

In the contempt of courts Bill which ultimately became the contempt of courts Act, 1926, the definition ran thus:

"Whoever, by word either written or spoken or by signs or by visible representation or otherwise, interferes with or obstructs or attempts to interfere with or obstruct the administration of justice in, or brings or attempts to bring into contempt, or lowers or attempts to lower the authority of, a court.......... is said to commit contempt of court".\textsuperscript{27}

\textsuperscript{25} *AIR* 1958 Cal. 474 (476-477).
\textsuperscript{26} Supra note 21, para 2(2).
\textsuperscript{27} Supra note 8 at p. 7.
This definition was, however, deleted by the select committee, the late Sir Hari Singh Gaur, strongly advocated the need for defining the expression on the ground that courts may, without a definition, at times, violate the principle that the “object of the discipline enforced by the court in cases of contempt of court is not to vindicate the dignity of the court or the person of the Judge but to prevent undue interference with the administration of justice.” He pointed out that the assumption of the select committee in deleting the definition, namely that the case-law on the subject will form an adequate guide, is open to question. For, “in order to afford such guide, the courts will have to ream over a vast mass of case-law and thus act under the uncertainty of the meaning of contempt of court which it is for the public to understand in order that they may know what to avoid and how to avoid it and for the Judges to administer it, within the limits of the law.” On the other hand, in the debates on the Bill, several members spoke about the futility of defining satisfactorily the expression ‘contempt’ and one member went to the extent of remarking that the only country which has a definition of the word is China and that our law givers in India have wisely decided not to follow that celestial empire. Pandit Motilal Nehru characterized the attempt to define the impossible. Pandit Motilal Nehru, N.C. Kelkar and Rangaswamy Iyengar strongly urged the view that the power to punish for contempt should be confined only to the three Presidency High Courts and that it should not be extended further as the whole law of contempt of court, in so far as it was not covered by the ordinary criminal law, was based on a legal fiction. Incidentally, they also favored acceptance of an apology before conviction and sentence.28

Notwithstanding the wisdom of our earlier legislators in refraining from incorporating a definition in our law, at one stage the Sanyal Committee were inclined to consider favourable a definition of criminal contempt somewhat on the following lines:29

“Wherever by words, either spoken or written, or by signs, or by visible representation, or otherwise:

(a) interferes or attempts to interfere with or obstructs or attempts to obstruct, the administration of justice; or

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28 Ibid.
29 Supra note 21, para 3(2).
Committee argues following arguments in support of such definition. As contempt of court sorrows of a criminal offence it is highly desirable to state in clear terms the ingredients of such an offence if it were possible to do so. Not only that, the jurisdiction to punish for contempt affects and abridges two of the most valuable fundamental rights, namely the right to personal liberty and the right to freedom of speech and expression and it is both necessary and proper that the offence should be clearly defined. The absence of a definition has debarred persons from expressing themselves fully either on matters requiring judicial or legislature reform. Even if the definition happens to be in broad terms, it could very well act as a guide for the public and the courts. While giving some indication as to what are the common heads of contempt, it may also serve to demarcate to the public at least contain areas within which they can act without the fear of being hauled up for contempt. For it may suggested that most of the common contempt in our country are born out of ignorance and a definition may serve to remove that ignorance.

On the other hand, the committee anticipated the criticism against such a general definition. As a definition it is too vague and general for the purpose intended. It does not demarcate or delimit with any degree of precision the scope of what is defined. It only seeks to repeat the statements made so often in the voluminous case-law on the subject and will neither arrest the ‘wild growth’ as alleged in the law of contempt nor the creation of new types of contempt’s. A definition might have been called for if it were possible to eliminate any specific category of cases from the concept of contempt, but at the outset we wish to observe that we would certainly not favour a definition which may have the effect of placing under fetters on the courts thereby rendering than powerless to deal with great evils threatening or likely to threatens the administration of justice. We cannot afford to embolden the licentious to trample upon or overthrow an institution which has all

30 Compare the definitions in the Mysore Contempt of Courts Regulations; 1930 and the Indore Contempt of Courts Regulations, 1930- the latter of which is neither accurate nor exhaustive.
31 Supra note 8 at p. 8.
along been regarded as the best guardian of civil liberties. If Judges “should be libeled by traducers so that people lost faith in them, the whole administration of justice would suffer”. With this warning the committee considered whether it would be possible to delimit the concept of contempt by excluding there from any specified categories, for in such a contingency a definition in modification of the existing law would be fully justified.

For instance, contempt by scandalizing the court is one of the most controversial branches of the law relating to contempt and for various reasons this branch of the law has proved to be the most vulnerable to criticism. In *McLeod v. St. Aubyn*, Lord Morris observed that committal for contempt by scandalizing the court itself has become obsolete in England because courts are satisfied to leave to public opinion attacks or comments derogatory or scandalous to them. If that were so, this head of contempt could well have been omitted from the law. In *Devi Prasad V. Emperor*, it was observed that cases of contempt which consists of scandalizing the court itself have become definitely rare, but the offence had not become obsolete. In our country a considerable percentage of the cases of contempt which have come upon appeal before our Supreme Court during the last decade are all cases of scandalizing the court. In the words of Mukherjee, J. the “scandalizing might manifest itself in various ways but in substance it is an attack on individual Judges or the court as a whole with or without reference to particular cases casting unwarranted and defamatory aspersions upon the character and ability of the Judges. Such conduct is punished as contempt for this reason that it tends to create distrust in the popular mind and impair the confidence of people in the court which are of prime importance to the litigants in the protection of their rights and liberties. An idea of the manifold ways in which scandalizing the court may manifest itself can be obtained from the Judgment of Jagannadh Das, C.J., as he then was, in *State v. Editors and publishers of Eastern Times* in which the learned C. J., considered in a comprehensive manner the case-law on the subject and summarized practically all the important cases.

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33 Supra note 8 at p. 8.
34 (1899) AC 549 (561).
35 Lord Atkin in 70 IA 216 (223).
37 JLR 1952 Cutt. 1.
38 Paragraph quoted from Supra note 8, pp. 8-9.
A matter to be taken into account in considering the law relating to contempt by scandalizing is the need for drawing a clear-cut distinction between comment or criticism affecting Judges in their representative capacity on the one hand and those affecting them in their personal capacity. Personal attacks against the Judges should be susceptible to punishment in the same way as attacks upon any other individual. But there would hardly be any justification for treating such attacks as standing on a higher footing than attacks against ordinary individuals. Redress in respect of such attacks has necessarily to be left to the general law of defamation. This position viz., that were personal attacks on Judges will not amount to contempt is so well established by a long line of decisions that it is hardly necessary to restate it in so many words. If it is feared that there may still be cases where a judicial personage is galled by public criticism against himself to such a degree that he is led to mistake the criticism as directed against the administration of justice, and instead of pursuing the remedies available to him as an individual he may resort to his powers to punish for contempt, the answer is that such cases would be exceptional and the remedy therefore should be found elsewhere rather than in a definition.\(^39\)

The judicial committee of the Privy Council had laid down as early as 1943 that the proceedings for scandalizing the court should always be with reference to the administration of justice. “The test to be applied is,” it observed, “whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due administration of the law.”\(^40\) Lord Atkin speaking for the judicial committee, further stated that if a Judge is defamed in such a way as not to affect the administration of justice he has the ordinary remedies for defamation if he should feel impelled to use them.\(^41\)

When “scandalizing the court” as a ground for contempt proceeding has become very rare. If not absolutely obsolete in the United Kingdom’s, from where we borrowed the concept as well as the judicial proceeding, in India appear to have resuscitated it after proposing to give it a decent, silent burial in the Bill nearly half a century ago. The main reason adduced seems to be in the words of Gnanendra

\(^{39}\) Supra note 21, Ch. IV, para 3(5).
\(^{40}\) Devi Prasad Sharma and Others v. Emperor, AIR 1967 All 64.
\(^{41}\) Id. at p. 205.
Kumar, J., in the *State v. Raghubir Sahai*\(^{42}\) stated that the social and economic conditions of the public in India are such that it would be very dangerous to grant them the liberty of scandalizing the courts in an unbridled manner.\(^{43}\)

There is no doubt that the socio-economic conditions of the people in India are different from those in the United Kingdom. But is that the real reason for giving a wide interpretation to the motion of scandalizing the court thereby, permitting it to cover almost any remark made against a Judge? Could it be that the social and emotional condition of Judges in India are different from those in the United Kingdom with the result than an Indian Judge appears to think that a critical remark, say, about his knowledge of the law, which may be injurious to his personal prestige, will lower the dignity of the court and tend to interfere with the administration of justice. It may not be forgotten that even when a member of the public expresses his conviction that a particular Judge knows no law, he does not question the authority of the Judge; he only bemoans his fate that he is under the authority of a Judge who could honestly claim substantial ignorance of what he purports to apply in carrying out his duty of administering justice. In like manner, he may bewail certain facts of his fate; but that does not mean that he is disobedient to the dictates of the gods who, he believes, have authority over him. As Lord Denning remarked, a Judge's dignity should be upheld on surer foundations than recourse to contempt of court proceedings. If these surer foundations are absent, the most prudent and practical method would be to lay them.\(^{44}\)

The Phillimore Committee,\(^{45}\) set up by Lord Hailsham L.C. in 1969, was of the view that “there is need for an effective remedy against imputations of improper or corrupt judicial conduct”. (Paras 162-164) recommended that “scandalizing the court” should cease to be part of the law of contempt. Instead, it should be made an indictable offence both in England and Wales and in Scotland to defame a Judge in such a way as to bring the administration of justice into disrepute. Proof that the allegations were true and that publication was for the public benefit should be a

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\(^{42}\) AIR 1967 All 586. The learned Judge also pointed out that democracy in India was still an infant in 1967 and that the majority of the population was illiterate and sadly suffered from “lack of responsibility and propriety.” One wonders how long it will take for this infant to grow into maternity and for the people of India to develop a sense of responsibility and propriety.

\(^{43}\) Id. at p. 588.


\(^{45}\) Report of the Committee on Contempt of Court (UK), 1974.
defence. In England and Wales, there should be made a branch of the law of criminal
libel.”

Just before the Phillimore Committee was set up, the law had been stated by
Denning M.R., in *R. v Metropolitan Police Commissioner*, ex-parte Blackburn.47

“Let me say at once that we will never use this jurisdiction as a means to
uphold our own dignity. That must rest on surer foundations. Nor will we use it to
suppress those who speak against us. We do not fear criticism, nor do we resent it.
For there is something for more important at stake. It is no less than the freedom of
speech itself.”

The American Supreme Court has long since discarded the obsolete offence of
‘Scandalizing the Court.’ The American courts have, since *Schenk*,48 preferred to test
all abridgements of free speech by the ‘clear and present danger’ doctrine. In
*Bridges*49 the court has given extremely strong reasons for not taking contempt
proceedings, which should, it is respectfully submitted, commend themselves for
acceptance our Judges. Justice Felix Frank further, even in his dissenting Judgment,
emphasized the public responsibility of Judges thus that “There have sometimes been
martinetts upon the bench as there have been pompous wielders of authority who have
used the paraphernalia of power in support of what they call their dignity. Therefore
the Judges must be kept mindful of their ultimate public responsibility by a vigorous
stream or criticism expressed with candour, however blunt.”50

In the words of justice Niyogi:

“It is indeed difficult and almost impossible to frame a comprehensive and
complete definition of contempt of court. The law of contempt covers the whole field
of litigation itself. The real end of a judicial proceeding, civil or criminal, is to
ascertain the true facts and dispense justice. Anything that tends to curtail or impair
the freedom of the limbs of the judicial proceedings must of necessity result in

47 (1968) 2 All ER 319 at 320 (Q B).
50 Supra note 46 at p. 165.
hampering the due administration of law and in interfering with the course of justice.\textsuperscript{51}

When such is the case and Jurists and Judges all over the world are unable to define contempt in its entirety, and despite the warning of the Sanyal Committee so eloquently and tritely spoken as above, the parliamentary committee on the subject deemed it proper to give an all inclusive definition of contempt. This is sad since many jurists submitted detailed memoranda on this subject and gave clear evidence before the parliamentary committee as to the utter inadvisability and impossibility of defining 'contempt'. It would appear that the predominant feeling of parliamentarians during the tenure of the committee 1967-71, and even after words, was that by defining contempt, the judicial power could be checked. The prejudice against the judicial power appeared to weigh too much. It was forgotten that the constitution has vouchsafed certain powers to the three wings of government-the executive, the legislative and the judiciary-and that these powers cannot be abrogated or invaded by any of the three wings as against the other.\textsuperscript{52}

It may also be remembered that when the Contempt of Courts Act, 1926, was in the Bill stage, despite the strong advocacy for defining contempt, the committee dropped the idea. Neither in England nor in America has the term been defined so far. The show cross committee would not go into a detailed definition of contempt except in a general way of broad classification, e.g., civil and criminal contempts, ex facie contempt, contempt by scandalization of court, obstruction to administration of justice, etc. The Sanyal Committee would also oppose any comprehensive definition as no definition can be all inclusive. Even the rule of exclusion, i.e. to lay down what is not contempt, cannot be exhaustive. It is the province only of the courts to say what is or what is not contempt. Article 129 and 215 of the Constitution recognizes all the existing law and the constitution do not permit any containment of the powers of the court vis-à-vis contempt except by way of reasonable restriction. A mere definition cannot take away the power sui generis of courts as to contempt. It will be most unreasonable to curtail the judicial power to lay down what is and what is not contempt according to the circumstances of a given case. To tight jack by way of an

\textsuperscript{51} Supra note 20.
all inclusive definition will be to throttle this jurisdiction of the courts. It will be ultra
virus and an encroachment on the judicial power by parliament. 53

In the end committee feel that it is not desirable in the interest of proper
administration of justice that any modification should be made in the general concept
of contempt as now well-understood. Contempt cannot be defined except by
enumerating the heads under which it may be classified- heads which can never be
exhaustive and a definition merely incorporating such heads under which criminal
contempt, or even contempt as a whole is generally classified, would be useless a
definition and is totally unnecessary. An inclusive definition would be wholly
unsatisfactory. Anything more precise is impossible. On the other hand, this does not
mean that the law of contempt is not in need of reform and committee proceed to
consider under suitable heads in what respects the law relating to contempt may be
usefully amended. 54

Despite having bound various difficulties in giving any comprehensive
definition of the term 'contempt of court' the Bhargava Committee recommended the
definition of the said term in the Bill. The reason for such a recommendation as
formed from its report is as follows:

"The law of contempt of court touches upon citizens Fundamental Rights to
personal liberty and to freedom of expression and therefore, it is essential that all
should have clear idea about it. The committee was, however, aware that it would be
difficult to define in precise term the concept of contempt of court, nevertheless it was
not beyond human ingenuity to frame or formulate a suitable definition thereof. The
committee have, therefore after giving a very anxious and elaborate thought to this
aspect of the Bill evolved a definition of the expression 'contempt of court while
doing so, the committee have followed the well known and familiar classification of
contempt into 'civil contempt' and 'criminal contempt' and have given essential
indications and ingredients of each class or category of contempt. The committee
hopes that the proposed definition will go a long way in enabling the public to know
what contempt of court means so that they could avoid it, and the courts will find it
easy to administer it. The proposed definition would also, the committee trust,

53 Ibid.
54 Supra note 8 at p. 10.
removing uncertainties arising out of an undefined law and help the development of the law of contempt on healthier lines.\textsuperscript{55}

3.4 Need for law of contempt

Every court or Tribunal passes orders after conclusion of the trial or hearing of the cases with the intention that the orders should be implemented and the party in whose favour order was passed should get the relief and enjoy the fruit of the litigation. But generally it is seen that the party against whom the order is passed avoids obeying the order, is puts obstacle in the implementation of the same, or delays the implementation. Then the question arose how to get the orders passed by the courts, be implemented. To get rid of this problem, the law of contempt was enacted. Every enactment has provided for to gets its orders implemented, by way of attachment of the property or arrest etc. But still there some enactments where such provision is not made such as, under Article 226 of Constitution of India, no such provision is made. The law of contempt is made to meet such exigencies.\textsuperscript{56}

The court exercising jurisdiction under the Contempt of Courts Act actually has no power to get the order passed by the courts implemented. In case the order is not implemented and the court is satisfied that there is willful disobedience on the part of the person or the authority that is responsible to implement the order, then the court can hold him guilty for committing contempt and punish him.\textsuperscript{57}

Then the question arise, if the court exercising power under the Contempt of Court Act, has no power to get the orders implemented, then what is the use of such a law. It is very important and relevant question. The party who is to get the relief is interested in getting the relief and not getting punishment to the guilty. The answer is that in most of the cases as soon as the guilty party receives notice from the court why you should not be punished for committing contempt, he to avoid any punishment, implement the orders immediately that is due to the fear of punishment. Hence the law of contempt provides an instant and quick remedy to get the order passed by the courts implemented. The other advantage to the petitioner is that it is a summary

\textsuperscript{55} Bhardava Committee Report 1968, para 15.
\textsuperscript{57} Ibid.
proceeding and he gets him work done in a short time, otherwise be might have never got the order implemented. 58

The following passage of *Wilmot J. in R. v Almon* 59 explains the necessity of contempt law:

"The arraignment of the Justice of the Judges, is arraigning the King's Justice; it is an impeachment of his wisdom and goodness in his choice of his Judges; and excites in the minds of his people a general dissatisfaction with all judicial determination, and indisposes their minds to obey them; and whenever men's allegiance to the law is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice, and, in my opinion, call out for a more rapid and unmediated redress than any other obstruction whatsoever. 60

The Contempt power is considered necessary because, unlike the Executive and the Legislature, the Judiciary has no form from which to defend itself. The Executive has ample resources and can effectively, protect its dignity. The Legislative can vindicate its stand on the floor of the house. The judiciary, from its very position, cannot enter into public domain. To conclude the power to punish for contempt is an awesome power and should be very sparingly exercised.

3.5 Object and Purpose of Contempt

There can be no doubt that the purpose of contempt Jurisdictions is to uphold the majesty and dignity of law courts and their image in the minds of the public is in no way whittled down. If by contentious words or writings the common man is led to lose his respect for the Judge acting in the discharge of his judicial duties, than the confidence reposed in courts of justice is ruddily shaken and the offender must needs be punished. In essence the law of contempt is the protector of the seat of justice more than the person of the Judge sitting in that seat. Mr. J.C. McRuer, Chief Justice Ontario, 61 put it differently and stated:

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58 Ibid.
59 (1765) Wilm. 243.
60 Id., at p 255.
"The law of contempt of court is not a law for the protection of Judges or to place them in a position of community from criticism. It is a law for the protection of the freedom of individuals. Everyone in a well ordered community is entitled to the protection of a free and independent administration of justice ... it is for the press to enlighten the public on what has been done in this branch of Government, fairly and firmly to criticize what has been done where criticism appears to be warranted, but never to attempt to influence the courts of justice or to undermine the faith of those who live under the protection of the law and the impartial authority of courts."

Hugo Fischer would appear to state it more differently emphasizing the guarantee of due process of law. He said:

"A Judge hearing a case must not be exposed to fears or apprehensions, litigants must be protected against the possibility that their case will be influenced by matters extraneous to the litigation in which they are engaged and an accused must not be exposed to attempts to arouse public opinion against him. If this is the true purpose of the protection granted to the courts the dignity of the courts is no longer identical with the prestige of the individual Judge or the bench. The protection is designed to ensure freedom from unlawful interference with the due process of law. If this is accepted, we may come to a further conclusion, namely, that the suppression of constructive criticism itself constitutes an interference with the due administration of justice."

The concept of contempt proceeding is not meant to protect the Judges personally but that it is conceived for safeguarding the honour of the seat of justice which must never be allowed to be ridiculed or interfered with so as to make the common man feel that the halo of divinity and justice is kept pure and unsullied and he can look to the person enthroned in that seat of justice as a divine, impartial, unruffled emblem of justice.

It should no doubt be constantly borne in mind that summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the

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62 Paragraph quoted from Supra note 8 at p. 11.
64 V G. Ramachandran's Article, 'Can a Judge be indicted for contempt against a lawyer' All India Reporter, 1954, Journal 45.
purpose of preventing interference with the course of justice and for maintaining the
authority of law as is administered in the court and thereby affording protection to
public interest in the purity of the administration of justice. This is certainly an
extraordinary power which must be sparingly exercised but where the public interest
demands it, the court will not shrink from exercising it an imposing punishment even
by many of imprisonment, in cases where a mere fine may not be adequate.  

A court should never forget that the power to punish for contempt large as it is,
must always be exercised cautiously, wisely and with circumspection. Frequent or
indiscriminate use of this power in anger or irritation would not help to sustain the
dignity or status of the court, but may sometimes affect it adversely. Wise Judges
never forget that the best way to sustain the dignity or status of their office is to
deserve respect from the public at large by the guiltily of their Judgments, the
fearlessness, fairness and objectivity of their approach, and by the restraint, dignity
and decorum which they observe in their judicial conduct.

Contempt jurisdiction is exercised for the purpose of upholding the majesty of
law and dignity of judicial system and also of the courts and tribunals entrusted with
the task of administering delivery of justice. Power of contempt has often been
invoked, as a step in that direction for enforcing compliance with orders of courts and
punishing for lapses in the matter of compliance. The majesty of judicial institution is
to be ensured so that it may not be lowered and the functional utility of the
constitutional edifice is preserved from being rendered ineffective. The proceeding
for contempt of court cannot be used merely for executing the decree of the court.
However, with a view to preserving the flow of the stream of justice in unsullied form
and in unstinted purity willful defiance with the mandate of the court is treated to be
contemptuous. Availability of jurisdiction to punish for contempt provides efficacy to
the functioning of the judicial forum and enables the enforcement of the orders on
account of its deterrent effect on evidence.

The object of the law of contempt is not to vindicate the prestige or position of
a presiding officer of a court, but to maintain the continuity of the crystal clear flow of
the stream of justice. Contempt law is not to provide a cloak for judicial authorities to

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66 In Re Article 143 of the Constitution of India AIR 1965 SC 745 (Para 142).
cover up their inefficiency and corruption, or to stifle criticism made in good faith against such officers. Thus the punishment is inflicted, not for the propose of protection either the court as a whole or the individual Judges of the court from a repetition of the attack, but for protecting the public, and specially those who either voluntarily or by compulsion and subject to the jurisdiction of the court, from the mischief they will incur if the authority of the tribunal is undermined or impaired.

The object of the contempt law has been very clearly been stated by the Supreme Court in the case of re Vinay Chandra Mishra. In this case the court has observed: “If the judiciary is to perform its duties and functioned effectively and true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected at all costs. Otherwise the very cornerstone or our constitutional scheme will give way and with it disappear the rule of law and the civilized life in the society. It is for this purpose that the courts entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalizing them and obstructing them from discharging their duties without fear or favour. When the court exercises this power, it does not do so vindicate the dignity and manner of the individual Judge who is personally attacked and scandalized, but to uphold the majesty of law and of the administration of the justice. The foundation of the judiciary is the trust and confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to collate disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.

The object of punishing contempt is not to safeguard or protect the dignity of the Judge or the magistrate. Its object is to preserve the authority of court ensure an ordered life in society. The object of contempt law, thus, to protect the public confidence in the system of administration of justice. The interference with the administration of justice may be in the form of disobedience, of the court’s order or in the form of scandalizing the court or lowering the authority of the court in the eyes of

69 AIR 1995 SC 2348.
the public or interfering with the course of any judicial proceeding, etc. The contempt power has been given to the court for preventing any kind of such interference with the administration of justice. The expression “administration of justice” has been used in a wide sense. Its ambit is not confined to the judicial functions of the Judges, i.e. duties of a Judge sitting in the seat of justice, but it includes all the functions of a Judge, whether administrative, adjudicatory or any other function, necessary for the administration of justice.\(^7\)

### 3.6 Nature and Scope of Law of Contempt

The contempt jurisdiction is an universal type of jurisdiction combining ‘the Jury, the Judge and the hangman’ and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual Judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperiled that the authority of the courts should not be imperiled and there should be no unjustifiable interference in the administration of justice.

#### 3.6.1 Distinction between Criminal Offence and Contempt

Although criminal contempts has some of the characteristics of any criminal offence, particularly since the offender can be punished by imprisonment or fine, it is best to regard it as an offence *Sui generis*. The procedure is entirely different in cases of criminal contempt from that which applies in ordinary criminal cases. Like any other offence a criminal contempt must be proved beyond all reasonable doubt, but unlike other offences there is no prosecution, no summons or warrant for arrest, nor is there a trial by jury. At common law there is no theoretical limit either to the length of the term of the imprisonment or the amount of fine which may be imposed. Furthermore, general statutory restrictions on imposition of penalties are not necessarily applicable to contempt. For contempts committed in the face of court, the punishment can be immediate and is imposed by the Judge sitting in the court at the given time even if the contempt is directed against the Judge himself.\(^7\)

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\(^7\) Baradakanta Mishra v. Registrar, Orissa High Court, (1974) 1 SCC 374.

3.6.2 Libel and Contempt

The position is that a defamatory attack on a Judge may be a libel so far as the Judge is concerned and it would be open to him to proceed against the libeler in a proper action if he so choose. If, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt. One is wrong done to the Judge personally while the other is a wrong done to the public. It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual or prospective litigants form placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties. Scandalizing the court, therefore, would mean hostile criticism of Judges as Judges or judiciary. Any personal attack upon a Judge in connection with the office he holds is dealt with under law of libel or slander.

3.6.3 Justification – Pleading Truth as a defence

The Phillimore Committee, though clearly alive to the difficulties recommended that it should be a defence to establish that the allegations are true and that then publication was for the public benefit. The committee suggested, however that the public benefit requirement would be unlikely to be met unless the defendant had previously taken steps to submit the evidence of corruption or partiality to the Lord Chancellor.

However in constituting reasonableness can truth be the main defense? The judicial pronouncements as they stand now do not permit truth as defence in a contempt case. Also in *Perspective Publication v. State of Maharashtra* the Supreme Court has held that truth could be a defence in a case of libel but not contempt. The unfortunate position is that not only no evidence is allowed to be led to establish the truth, the assumption is also made that the allegations are all false.

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73 Ramakrishna Reddy v. The State of Madras AIR 1952 SC 149.
74 Supra note 4 at p. 193.
76 AIR 1971 SC 221.
Defenders of this viewpoint point out that it may be that a Judge is really biased on corrupt or dishonest. But to tell him in an open court or in a press statement, will only lower the prestige of the court in the eyes of the common man. That a Judge is corrupt should be a matter of administrative enquiry under Section 6 of the 1971 Act. The truth is that this enquiry is highly inadequate and since it is made in total secrecy its purpose of avoiding public denunciation is achieved but not the purpose of removing corruption from the public life. Shri Soli Sorabji has expressed the view that such enquiry is inadequate.77

There are some Judgment, which propound the thesis of fair defence but do not exactly support truth as a defence. One of them is in the case of Ramakrishna Reddy v. State of Madras,78 where the Supreme Court has said that if “the allegations were true obviously it would be to the benefit of public to bring matters into light. But they were false; they cannot but undermine the confidence of the public in the administration of justice into disrepute.” Mr. Soli Sorabji has pointed out “Surely performances of public duty cannot be penalized as contempt.”

Not permitted truth as a defence in a contempt case is directly against the following fundamental propositions:79

(a) Witness in the courts are made to take oath that they will speak the truth and nothing but the truth. But the same truth stated in a contempt case is not a defence;

(b) One national Moto is Satya Meva Jayate;

(c) From Vedas to Mahatma Gandhi, the story has been one of experiments based on truth;

(d) The Bible says, “You shall know the truth and the true shall make you free.” Nobody suggest that in the name of the truth scurrilous and baseless insinuations will be allowed to go unpunished. But certainly the courts can distinguish truth from trash.

Though truth is made a defence in 2006 amendment to contempt of courts Act, 1971 woos of critics of the judiciary is unending, because the defence is made

78 Supra note 73.
79 Supra note 77 at p. A 117.
conditional an again left to the discretion of the judges. The amendment which introduced in section 13(b) says “The court may permit, in any proceedings for contempt of court, justification by truth as a valid defence if it is satisfied that it is in the public interest and the request for invoking the said defence is bonafide.”

3.7 Definition of Contempt of Court under the Contempt of Courts Act, 1971

According to Section 2(a) of the Contempt of Courts Act, 1971 defines “Contempt of Court” means Civil Contempt and Criminal Contempt;

Section 2(b) of Contempt of Courts Act, 1971 defines “Civil Contempt” means willful disobedience to any Judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;

Section 2(c) of the act defines “Criminal Contempt” means the publication (whether by words spoken or written, or by signs, or by visible representation, or otherwise, of any matter or the doing of any other act whatsoever which:

(i) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or
(ii) Prejudices, or interferes or tends to interfere with, the due process of any judicial proceedings; or
(iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

3.7.1 Civil Contempt under the Act

The term civil contempt has been defined under section 2(b) of the Act. As per the definition civil contempt means useful disobedience to any Judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court. To understand the scope of the definition it can be sub-divided into two parts:

(i) Willful disobedience to any Judgment, decree, direction, order, writ of other process of a court;
(ii) Willful breach of an undertaking given to a court.

Supra note 1, at p. 108.
The terms Judgment, decree etc, are not defined in the Act and will take their natural meanings. A “decree” is the formal expression of an adjudication which conclusively determines the rights of parties with regard to all or any of the matters in controversy and may be either preliminary or final.\textsuperscript{81} An “order” means the formal expression of any decision of a civil court which is not a decree.\textsuperscript{82} A “Judgment” means the statement given by the Judge on the grounds of a decree or order.\textsuperscript{83} The word “Judgment” will have to read with or “decree” and “order,” for there cannot be disobedience of the grounds as such. “writ” refers to the prerogative writs that can be issued under Articles 226 and 32 of the Constitution. “Direction” may be understood as similar to “order”. An example of “other process of a court” could be a summon to appear as a witness. The term “undertaking” is considered separately.

Both the two sub parts of the definition of civil contempt speak of something done willfully. The world ‘willful’ is therefore, very important for the correct interpretation of the term civil contempt. The word ‘willful’ denotes deliberate and intentional act or omission.

\textbf{3.7.1.1 Willful}

The meaning to be attached to the words ‘willful’ and ‘willfully’ has to be ascertained on a close examination of the scheme and nature of the legislation in which the words appear and the context in which they are used.

In \textit{Ashok Paper Kamgar Union v. Dharam Godha},\textsuperscript{84} the court has explained the meaning of ‘willful.’ According to the court ‘willful’ means an act or omission, which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order to the court must be of such a nature which is capable of execution by the person charged in normal circumstances.

\textsuperscript{81} Code of Civil Procedure, 1908, Section 2(2).
\textsuperscript{82} Id., Section 2 (14).
\textsuperscript{83} Id., Section 2 (9).
\textsuperscript{84} AIR 2004 SC 105.
Willful disobedience may be either total or partial, irrespective of whether the directions, orders or judgments etc., of the court may either be specific or implied from the findings of the court. However, in both the cases disobedience must be willful. Whether the disobedience has been willful, is an issue to be decided by the court taking into account the fact and circumstances of the case. If it is proved that the compliance with the order was impossible, the alleged contemnor is not punished for contempt. After analyzing the judicial divisions and views of the scholars and authors we may derive a conclusion that if all possible steps have been taken by the officer responsible for the implementation of the order, he should not be punished for the contempt of court. However, care must be taken so that it may not result in a method of willfully avoiding the order of the court.

Every infraction of the court’s order does not amount to contempt. It is only a willful and deliberate violation of the court’s order and continuous conduct on the part of the contemnor which is to be condemned in contempt proceedings.

In dealing with the allegations of contempt it is not for the court to assume a vindicative attitude in judging the allegations made against the contemnor. Such allegation should be considered dispassionately in order to see if there has been deliberate and willful defiance to the order of the court so as to attract an order of conviction and sentence for contempt. Every infraction of the court’s order does not amount to contempt of court. It is only a willful and deliberate violation of the court’s order and continuous conduct on the part of the contemnor which is to be condemned in contempt proceedings. Section 13 of the contempt of courts Act, 1971, provides that no court shall impose a sentence for the contempt unless it is satisfied that the contempt is of such a nature that it substantially interfere or tends substantially to interfere with due course of justice. A willful and deliberate violation of the court must be shown to interfere with the due course of justice before such conduct can be punished for contempt.

Where the husband does not pay the maintenance and the expenses of the proceedings, the court can stay the further proceedings. If the petition is by wife for maintenance

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the reliefs under the Act and the husband who is ordered to pay the maintenance and expenses of the proceedings under the Act willfully disobeys the orders of the court though he is in a position to pay, he can be proceeded against for the contempt of court and can be punished.  

Willful disobedience of an order of injunction cannot be inferred from the inaction of the institution to invite the decree-holder to come and take charge of the office. The circumstances established in the case are not sufficient for drawing the conclusion that the opposite parties had either intended or actually disobeyed the decree of this court. In fact the applicant could have put his decree into execution and if the execution court had found that the Judgment-debtor has opportunity to obey the decree and had not obeyed it, the court could have taken coercive measures against the opposite parties. Contempt proceedings are not meant to pressurize Judgment debtors.

3.7.1.2 Not a Substitute for Execution Proceedings

It may reiterate that weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for the maintenance of the court’s dignity and majesty of law. Further an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemnor and the court.

Contempt proceedings are not intended to be a substitute of the execution process. When execution is available, the parties should approach the court or authority who can execute that order. Contempt proceedings are not substitute for proceedings for enforcement of the private legal rights. There is a marked difference between a complaint made by an individual for a wrong done to him and a petition moved before a court inviting to take notice of the fact that its contempt has been committed. The contempt is of the court and not of the individual.

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92 V.G. Narayanakutty v. Flag Officer, 1957 Cri. LJ 51 (Ker)Para 20.
Section 28 A of the Hindu Marriage Act, 1955 captioned as ‘Enforcement of Decrees and Orders’ make it clear that all the decrees orders made by the court in any proceedings under this Act shall be enforced in a like manner as the decrees and orders made in exercise of original civil jurisdiction. The precise contention of the council for the husband is that, when the above orders could be executed by the wife, she cannot be permitted to come before the court invoking contempt jurisdiction of the court.94

It has been held in the case of Ahmed R.V. Peermohammed v. Jogi S. Bhar,95 that contempt proceedings cannot be used as a lever for obtaining speedy execution of an executable decree instead of resorting to the nominal procedure prescribed by the law for executing such decrees. In the case of Om Prakash v. Secretary, Home Department,96 it has been held that a contempt proceedings cannot be a substitute for execution proceedings and moreover, contempt proceedings should not be allowed to be used as a lever by the litigants for bringing pressure on the State functionaries in getting the decree or orders executed without resorting to the remedies available under the Act itself.

It has been held in Dr. Laxmi Narain v. Jialal Jain,97 that willful disobedience of an order of injunction cannot be inferred from the neglect of the institution to invite the decree holder to come and take charge of the office. The circumstances established in the case are not sufficient to draw a conclusion that the opposite parties had either intended or actually disobeyed the decree of the court, in fact, the applicant could have put his decree into execution and if the execution court had found that the Judgment debtor has opportunity to obey the decree and had not obeyed it, the court could have taken suitable measures against the opposite parties. Contempt proceedings are not meant to pressurize judgment debtors.

However, it must be distinctly understood that if is only in cases where the court has ordered delivery of any property or ordered payment of compensation by sale after attachment of the property of the debtor or without it that the question of execution arises where the court has passed a temporary or permanent injunction, then

95 (1990) (1) Mah. L.R. 126 (Bom.).
96 U.P. 1987 (13) ALR 799 (All).
97 Supra note 90.
the non-compliance of the same will straightway tantamount to contempt. Further, deliberate non-compliance with the process of execution of a decree will also tantamount to contempt.98

From the foregoing discussion it is evident that in a given case the court may decline to exercise contempt jurisdiction where no deliberate or willful defiance to the Judgment or decree is there and many relegate the aggrieved party to avail of ordinary remedy of execution. But would be far from laying down a universal law that the contempt proceedings is not a substitute of the execution proceedings and that the court cannot exercise contempt jurisdiction where remedy of execution is available. In fact civil contempt is not purely a matter between the council and the contemnor as Rules of many High Courts provide that an aggrieved person can file a petition for contempt. Even apart from the rules framed by the High Courts, the provisions of the Act do not insist for obtaining consent of the Advocate General before filing a petition for civil contempt. Therefore, as a necessary corollary any ‘aggrieved person’ introduced expressly or impliedly in cases of civil contempt certainly means contempt power in civil contempt has dual purpose, one is coercive and other is punitive. Thus, when parliament has once retained distinction between civil and criminal contempt under the Act, one cannot say that in civil contempt also the purpose of exercise of contempt jurisdiction is only punitive.99

The aim of Rule of law and administration of justice is to provide adequate relief and equality to all the citizens in order to contribute social welfare, overall happiness and satisfaction. In order to fulfill this noble aim, the execution side of courts order, is a vital aspect for timely consideration to make remedial measures so as to increase the overall satisfaction of the society as a whole.100 Misinterpretation of executive directions and orders, of the court by the executive authority does not amount to be willful disobedience, and therefore, it is not a fit case where contempt proceedings can be preceded.101

99 Supra note 1, at p. 112.
3.7.1.3 Non Compliance of Void Order

The Supreme Court of India has recently examined the question of void order in the context of the breach of injunction under order 39 Rule 2 A of the code of Civil Procedure 1908. The question before the court was “whether a person who disobeys an interim injunction made by the civil court can be punished under Rule 2A of the order 39 where it is ultimately found that the civil court had no jurisdictions to entertain and try the suit.” The court took into consideration number of decisions of the Indian Courts and foreign courts and hold that the ultimate decision holding that the court had no jurisdiction did not make interim orders passed meanwhile either nonest or without jurisdiction.102

In *Shiv Chander Kapoor v. Amar Bose*, 103 J.S. Verma J. speaking for a 3-Judge Bench observed thus, with reference to the statement of law that ‘void’ is meaningless in an absolute sense; and ‘unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.’ In the words of Lord Diplock, ‘the order would be presumed to be valid unless the presumption was rebutted in competent legal proceedings by a party entitled to Sue.’

To the same effect is the opinion of Jagannatha Shetty, J. “If an act is void or ultra virus it is enough for the court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not ‘quash’ so as to produce as new state of affairs.”104

Apropos to this principle, Prof Wade states that the principle must be equally true even where the ‘brand’ of invalidity is plainly visible; for there also the order can effectively be resisted in law only by obtaining the decision of the court. Wade sums up these principles: “the truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff’s lack of standing, because he does not deserve a

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102 Supra note 1, pp. 114-115.
discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case, the ‘void’ order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another.”

Thus it is clear that the order passed or Judgment given by a court having no jurisdiction to do so is also required to be obeyed until on a proper application the Judgment or the order is declared to be without jurisdiction. It would be highly improper to leave the question whether the order is without jurisdiction or not to be litigating parties. If such a course is allowed to be taken by the litigating parties, it would result into annihilation of the rule of law which is sine qua non for the existence of a civil society.

3.7.1.4 Vague Order No Contempt

It is well settled that disobedience of orders of court, in order to amount to ‘civil contempt’ under section 2(6) of the contempt of courts Act, 1971 must be ‘willful’ and proof of more disobedience is not sufficient. Where there is no deliberate flouting of the orders of the court but a more misinterpretation of the executive instructions, it would not be a case of civil contempt.

The fundamental principle of criminal law, including the law of contempt of courts, is that if there is a bonafide dispute or if there is possibility of some justification for the action complained of or there is no mens rea, the benefit of doubt must go to the accused.

Once the order had been passed by the court not only the plain meaning of the language used is to be considered but also the spirit and the sense in which the order had been passed has also to be kept in mind may be that in some cases the order may be couched in such a language that it may create some kind of doubt and confusion in the mind of those who have to comply with it, but the best way, in such cases, is not to circumvent the order but to try as much as possible to comply with it first. If that

106 Supra note 1 at p. 117.
107 Id. at p. 122.
may not be found feasible then to make an effort to approach the court and to seek clarification or modification of the order.\(^{109}\)

No proceeding for contempt can be found on the alleged violation of an order which is not clear and specific and which by its own terms of a contingent character, the direction contained in it being dependent on certain other facts which are left undetermined by order and remain to be determined.\(^{110}\)

A proceeding upon the disobedience of an order or direction which provides scope for different reasonable and rational interpretation. Similarly, if the direction contained in an order is subject to or dependent upon determination of some other facts, the violation of such direction cannot give rise to a proceeding of civil contempt.\(^{111}\)

3.7.1.5 No Specific Direction No Contempt

Earlier order of Supreme Court for restoration of complainant’s seniority in service without any specific direction regarding monetary consequences. The corporation granting promotion to complainant and treating such promotion relating to certain period as mere notional without monetary benefits. Absence of specific direction in earlier order to that effect. The punishment was, therefore, not awarded however Supreme Court made it clear that promotion for said period should be accompanied by monetary benefits.\(^{112}\)

Wherein a complaint for contempt of court it was alleged that a willful disobedience was caused by the H.P. Tourism Development Corporation of the directions of the Supreme Court in that despite the specific directions in the order for restoration of complainant’s seniority in service over and above two other officers, the authorities reviewed the promotions and granted the promotion to the complainant. However, it treated the promotion for period from 28.5.1982 up to 3.9.1986 on which latter date complainant, even according to the corporation itself, had become entitled to and had been granted promotion, as a mere notional promotion without any monetary benefits, it was held that though there was no specific direction in the order

\(^{109}\) Dayashankar Dubey v. Subhas Kumar, 1992 Cri. L.J. 319 (All) (Para 13, 14).

\(^{110}\) Supra note 25.


of court to consider complainant’s case for promotion with effect from 28.5.1982 such a relief was implicit in the reasoning of the order and the withholding of the monetary benefits in respect of this period was inconsistent with what was decided in the Judgement and what complainant was clearly entitled to. However it was held that as there was no specific direction in that behalf in the order, technically, there may be no case for punishment for contempt, but it should be made clear that the promotion for the period from 28.5.1982 to 3.9.1986 should be accompanied by the monetary benefits. It was more so when the complainant’s junior in service had been granted such promotion.\(^{113}\)

Moreover, the complainant might have also become eligible for considerate for promotion to the post of an appointment as Additional General Manager in the post that was specially created on 5.5.1987 and has case for consideration for promotion should have to be reviewed as on date when his junior had been promoted. It was directed that in such as case, though the complainant’s promotion would have been on a notional basis as the said post had been abolished, such promotion if given would be accompanied by monetary benefits.”\(^{114}\)

3.7.1.6 Undertaking

The word ‘undertaking’ is not defined in the Act. An undertaking given to the court by a person or corporation in a pending proceeding, on the faith of which the courts sanctions a particular course of action or inaction, has the same force as an order of injunction passed by the court. A breach of such an undertaking is a misconduct amounting to contempt.

There is a conceptual and fundamental destruction between an undertaking made to the court and an order passed on consent of parties.\(^{115}\) A consent order may or may not contain such undertakings. Ordinarily, an undertaking does not, by itself dispose of a proceeding, but a consent order does. However, so far as contempt of court is concerned violation of consent order is as much a case of contempt as violation of a contested order.\(^{116}\) It had earlier been held that there lay a clear cut distinction between a consent orders passed by the court at the instance of the parties.

\(^{113}\) Ibid.

\(^{114}\) Ibid.


On the one hand and an undertaking to the court on the other hand and that a violation of the consent order would not be tantamount to contempt of court.\footnote{This view was subsequently rejected on the ground that 'a compromise decree is as much a decree as a decree passed on adjudication.'} This view was subsequently rejected on the ground that 'a compromise decree is as much a decree as a decree passed on adjudication.'\footnote{There may, however be cases where without a formal decree of the court, the proceedings may terminate in view of the statement made by the parties before the court. In such cases, the undertaking of a party would only be an undertaking to the other party and hence the question of contempt of court would not arise. Notwithstanding the fact that an act which is in gross breach of assurance of given by one party to another may not be countenanced and give rise to claim for damages to the aggrieved party, it does not provide the foundation for contempt proceedings.} On the other hand, when a party persuades and induces the court to pass a decree one way or the other, then certainly a breach of such an undertaking would amount to contempt.

Whether an undertaking has been given or not will normally be apparent form the record of the case. There are however some ambiguous situations including statements made at the bar by the counsel. There is no requirement under the Act that an undertaking must be in writing and hence a statement at the bar may well amount to an undertaking. Much will depend on the precise statement made and recorded by the court; for instance, where the court had recorded that “learned counsel for the appellants has started that the appellant shall clear and debt within a period of one-and-a-half years in four equal installments...,” it was held not to amount to an undertaking.\footnote{A writ petition seeking grant of accreditation to a journalist was disposed of on an undertaking by the government advocate to “advise the government” to grant accreditation. The government did not grant accreditation. It was held that there was no breach of undertaking amounting to contempt.} Sometimes parties give conditional undertakings. It is of course up to the court whether to accept such an undertaking or not, but if it does, there will be no contempt unless the conditions mentioned in the undertaking are satisfied, however, it

is again up to the court to interpret an undertaking as conditional or unconditional. For instance, an undertaking by the Railways to absorb existing workmen "as far as practicable" was held to be an unconditional undertaking in facts of that.\footnote{Howrah Parcel (Eastern Railway) Labour Contractor Mazdoor Panchayat v. Union of India, (1992) 2 SCC 386.}

Though strictly speaking an undertaking refers to a future act, the Supreme Court held that a false representation made to the court will also amount to contempt if the court is induced to sanction a particular course of action on the basis of a representation and the court ultimately finds that the party never intended to act on such representation, or the representation was false.\footnote{Rita Markandey v. Surjit Singh Arora, (1996) 6 SCC 14, (Para 12).} It may be noted that in any event, even assuming that a false representation does not amount to civil contempt, it will certainly amount to criminal contempt since it would be an interference with the administration of justice.

Similarly, a party giving an undertaking based on an assumption that he knows is false is guilty of misconduct amounting to contempt.\footnote{Roshan Sain Boyce v. B.R. Cotton Mills, (1990) 2 SCC 636.} An undertaking that is contrary to statutory provisions cannot be the basis for contempt proceedings.\footnote{Chhaganbhai Norrinbhai v. Soni Chandubhai Gordhanbhai, (1976) 2 SCC 951.} In so far as change of law subsequent to the giving of an undertaking is concerned, two situations are possible:

if under the new law the undertakings is not capable of being complied with, no contempt will be for non compliance;

if the amended law only changes the circumstances in such a manner that the undertaking need have been given, it cannot normally be availed of to avoid compliance with the undertaking already given, however, in such a case, the extent of change in the new law will determine the issue.

It often happens that whom there is an injustice or violation of the rights of assesses by any authority in Government, the assesses goes to the court in a writ petition. For example, if a licence is improperly refused or if the same goods manufactured by two different assesses are classified differently resulting in unequal treatment before the law, the Excise Department may assure the court of corrective action. But if the necessary steps are not promptly taken, in accordance with the
assurance given to the court, the assesses does not get the relief to which he is entitled and such failure in implementation of the assurance amounts to contempt. As per the definition of contempt of court a willful breach of an undertaking given to a court is a form of civil contempt. An Advocate representing a party can make a statement before the court which amounts to undertaking. There can also be an undertaking in the form of a consent decree.\(^{126}\)

In *B.G. Khemka v. Kapoorchand Ltd.*,\(^{127}\) the decision was that when an advocate gives an undertaking on behalf of his client, he may not use the words “to the court” in his statement but such an undertaking is always understood to be an undertaking to the court which can be enforced by committal proceedings.

The observations of the Calcutta High Court in *Smt. Lajuklata v. N. Prasad*,\(^{128}\) are very pertinent in this connection:

> “The court, it is true, ought not to be vindicative in matter. At the same time the court cannot allow itself to be trifled with. Litigants before this court ought to understand that they will not be permitted to give undertakings to this court and then break them with impurity.”

Breach of understanding is a type of civil contempt, however, it is often difficult to find out what is undertaking. It comes in different shapes. Sometimes a statement of an Advocate amounts to undertaking. Sometimes it appears in the shape of a consent decree. Then there may be difficult questions of fact and law as to whether there was breach of undertaking at all. The courts have to examine the facts carefully before punishing an alleged contemnor.\(^{129}\)

Where an order or an undertaking is given to the court a breach of its is contempt of court. The question is, what is meant in this context by the order of the court or undertaking given to the court. Is a decree passed on compromise an undertaking to the court as decided in *Bajrang Lal Gangadhar v. Kapur Chand Ltd.*,\(^{130}\) *Suretennessa Bibi v. Chintaharan Das*.\(^{131}\) A compromise is an agreement


\(^{127}\) AIR 1950 Bom. 336.

\(^{128}\) AIR 1950 Bom. 336.

\(^{129}\) AIR 1950 Bom. 336.

\(^{130}\) AIR 1950 Bom. 336.
between the parties and not an undertaking to the court and parties would observe its terms. Orders of disobedience to which is contempt of the court punishable by committal, are meant orders relating to injunctions requiring a person to do an act or abstain from doing it. Others kinds of orders, which fall in this category are orders which as the failure of party to comply with an order to answer interrogatories, or discovery or inspection of document. A compromise between parties on the basis of which a decree has been made is not at all an undertaking to the court, and on breach of terms of compromise embodied in the decree, no committal proceedings can be initiated.\(^\text{132}\)

A consent order or a compromise decree where the fraud, if any, is practiced by the person concerned not on the court but on one of the parties. Thus, the offence committed by the person concerned not on the court but on one of the parties. Thus the offence committed by the person concerned is \textit{qua}. The party \textit{non qua} the court, and, therefore, the very foundation for proceeding for contempt of court is completely absent in such cases. In these circumstances, it is clear that unless there is an express undertaking given in writing before the court by the contemnor or incorporated by the court in its order, there can be no question of willful disobedience of such an undertaking.\(^\text{133}\)

Undertaking is nothing but a promise to do or abstain from doing something. If there is no promise, there is no undertaking. Undertaking is an engagement by one of the parties to the other. It is a promise given by a party in the course of legal proceedings or his counsel, generally as a condition to obtaining some concession from the court or the opposite party.\(^\text{134}\)

3.7.2 \textbf{Criminal Contempt Under the Act}

Section 2(c) of the Contempt of Courts Act, 1971 posits criminal contempt to mean: Publication (a) by words spoken or written; (b) or written or by signs; (c) or by visible representations or otherwise or any manner; (d) or any act whatsoever which-

(i) Scandalizes or tends to Scandalize, or lowers or tends to lower the authority of any court; or

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

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

The definition of the term ‘contempt’ in section 2(c) of the Contempt of Courts Act, 1971 makes it clear that contempt may be committed either by publication (whether by words spoken or written or signs) or by the doing any other act which leads to any of the consequences contemplated in sub-clauses (i), (ii) and (iii) of sub-section (C) of section 2 of the contempt of Courts Act, 1971. Hence in the instant case even though a letter may have been delivered in private capacity to a Magistrate, it may still lead to the consequences which are regarded as the essence of criminal contempt. Its tendency to scandalize or lower the authority or interfere with the due course of any judicial proceeding is the crucial test. Reactions to such letters or representations are bound to vary with individuals. Nevertheless, it is not unlikely that a Magistrate or Judge may feel greatly scared and demoralized by such serious allegations and this may interfere with the fearless and conscientious discharge of his duties. It is therefore a salutary principle enshrined in the law of contempt of court that no person should be allowed to do any act which has the effect of leading to any such consequences. In such circumstances the absence of publication is immaterial. In an Orissa case it was pointed out, reading section 2(c) (i) and (ii) a criminal contempt does arise when disparaging allegations casting aspersions on the conduct of Judges, disputing their integrity with reference both to their administrative as also judicial conduct are made by a person in a petition to the High Court.

Sarkaria, J. postulates a pithy analysis of clause (c) of section 2, of the Contempt of Courts Act, 1971 in Rachapudi Subba Rao v. Advocate General, A.P. "It is noteworthy, that in the categorization of contempt in the three sub-clauses (i) to (iii), only category (ii) refers to judicial proceedings." Scandalizing of court in its administrative capacity will also be covered by sub-clause (i) and (iii). The phrase ‘administration of justice’ in sub clause (iii) is for wide in scope than ‘course of any judicial proceedings.’ "The last words in any other manner" of sub-clause (iii) further

extend its ambit and give it to a residuary character. Although sub-clauses (i) to (iii) describe three distinct species of ‘Criminal contempt” they are not always mutually exclusive. Interference or tending to interfere with any judicial proceeding or administration of justice is a common element of sub-clauses (ii) and (iii). This element is not required to be established for a criminal contempt of the kind falling under sub-clause (i) of the contempt of Courts Act, 1971.138

Under clause (c) of section 2, “publication of any matter” or “doing of any other act” which ultimately obstructs the smooth administration of justice or breaks the rule of laws essential for constituting the offence of “criminal contempt.” Therefore it is important to know the precise meaning of these two concepts.139

3.7.2.1 Publication of Any Matter

“Criminal Contempt” envisages primarily publication of the information. The Act has not defined what constitutes “publications.” According to the Concise Oxford Dictionary, publication means “making the public known.” In the light of this definition it may be said that for constituting the offence of “criminal contempt,” such publication must result in scandalizing or tending to scandalize the authority of any court, or lowering or tending to lower the authority of any court, or it prejudices the due course of any judicial proceedings, or interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner. Otherwise it does not amount to “criminal contempt.” Similarly, a more possibility of occurring any of the above incidents does not also amount to “criminal contempt,” unless there is an intention to that effect.140

3.7.2.2 Doing of Any Other Act

There is no explanation provided under the Act as to what is meant by “doing of any other act whatsoever,” appearing in clause (c) of section 2. It is a wider term and can be explained by the court based on the merit of each case.

Using insulting language to over the court with a view to secure favourable order was held to amount interference with the administration of justice, and therefore

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140 Ibid.
the respondent was held to be guilty of contempt of court per se. Addressing the court in a loud tone using the words "Either he is anti-national or the Judges are anti-nationals," just when the Judges had dictated the order in the case was held to amount to contempt of court.\textsuperscript{141} In this case, the Supreme Court felt that of late this type of behavior by litigants appearing in person is on the increase. Such litigants carry the wrong notion that by such behavior a favourable order can be extracted. If this impression is gaining ground it needs to be removed at the earliest.

Where the contemnor tenured his apology with a condition that it should be published in press, when he was tried for contempt of court for charging the High Court Judges with corruption and such statements were published with the sole intention to deter the Judges from deciding cases against him, but he failed to stand to the terms of the Apology, and again wrote against the Judges, it was held by the Supreme Court that his conduct and writing constitute serious interference with the administration of justice and therefore he was liable for contempt of court.\textsuperscript{142} Notice importing malice, partiality and dishonesty to the court in the judicial adjudication of the suits against the party was also held to constitute "criminal contempt."\textsuperscript{143}

In \textit{Delhi Judicial Service Association, Tis Hazari Court v. State of Gujrat and Others},\textsuperscript{144} the Supreme Court has observed as follows:

".....the definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake in effective and orderly administration of justice. The court has the duty of protecting the interest of the community in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the court against insult or injury, but, to protect and to vindicate the rights of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with. 'It is a mode of vindicating the majesty of law, in its active manifestation, against obstruction and outrage.' The object and purpose of punishing contempt for interference with administration of justice is not to safeguard or protect the dignity of

\textsuperscript{142} National Textile Workers Union v. P.R. Ramakrishnan & Others, AIR 1983 SC 759.
\textsuperscript{143} Supra note 137.
\textsuperscript{144} Supra note 170.
the Judge or the Magistrate, but the purpose is to preserve the authority of the courts to ensure an ordered life in society.”

3.7.2.3 Scandalizing the Court (Section 2(c)(i))

A ‘Scandal’ is ‘thing or a person causing general public outrage or indignation’ and to ‘Scandalize’ someone is to ‘offend the moral feelings, sensibilities etc., or to shock.’ Quite a few people behave in a Scandalous manner and many of them are men and women who hold office in the organs of State such as the Governments, Legislatures or Courts. This archaic and quaint expression of “scandalizing” is derived from the historic times in England when a strong measure of awe and respect for the status of the sovereign and his Judge was considered essential to his maintenance of public order. The crime of scandalizing the court has been described “as an act done or writing published calculated to bring a court or Judge of court into contempt or to lower its authority.”

Bearing in mind the meaning of “Scandalizing,” it seems that the peculiar offence 1 the law of contempt turn the concept of scandalizing on its head. The people, instead of being allowed to be scandalized by the behavior of Judges and to express their reaction freely, are expected to observe silence and bound to refrain from “Scandalizing” the Judges unless they wanted to spend time in jail. Tact’s do not matter. Truth does not matter. Only the “dignity” of the court matters and it must be shielded at all costs from being subjected to a searching and scorching scrutiny by the public and the press.

It is fundamental that if the rule of law is to have any meaning and content the authority of the courts and Judges and the confidence of the public in they should not be allowed to be shaken. As observed by the Apex Court in D.C. Saxena, Dr. v. Hon’ble the Chief Justice of India, ‘As per the Third Scheduled to the Constitution oath and affirmation is taken by the Judge that he will duly and faithfully perform the duties of the office to the best of his ability, knowledge and judgment without fear and favour, affection or ill will and will so uphold the Constitution and

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147 Supra note 145 at p. 32.
148 AIR 1996 SC 2481.
the laws. In accordance therewith Judges must always remain impartial and should be known by all people to be impartial. Should they be imputed with proper motives, bias, corruption or partiality, people will lose faith in them. The Judge requires a degree of detachment and objectivity which cannot be obtained, if Judges constantly are required to look over their shoulders for fear of harassment and abuse and irresponsible demands for prosecution or resignation. The whole administration of justice would suffer due to its rippling effect. It is for this reason that scandalizing the Judges was considered by the parliament to be contempt of a court punishable with imprisonment or fine.

In the case of the Advocate General, State of Bihar v. M/s. Madhya Pradesh Khair Industries and another, the Supreme Court held "every abuse of the process of the court may not necessarily amount to contempt of court: abuse of the process of the court calculated to hamper the due course of a judicial proceedings or administration of justice is a contempt of a court. It may be that certain minor abuses of the process of the court may be suitably dealt with between the parties, by staking out pleadings under the provision of Order 6 Rule 17 or in some other manner. But, on the other had it may be necessary to punish as a contempt, a course of conduct which abuses or makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest and a vital stake in the effective and orderly administration of justice, because unless justice is so administered there is the peril of all rights and liberties perishing. The court has the duty of protecting the interest of the public in the due administration of justice and so it is entrusted with the power to commit for contempt of court, not in order to protect the dignity of the court against insult and injury as the expression "contempt of Court" may seem to suggest, but to protect and to vindicate the right of the public that the administration of justice should not be prevented, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, on its active manifestation against obstruction and outrage." The law should not

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149 AIR 1980 SC 946.

150 Code of Civil Procedure, 1908 striking out pleadings- The court may at any stage of the proceedings order to be struck out or amended any matter in any pleading- (a) which may be unnecessary, scandalous, frivolous or vexatious, or (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or (c) which is otherwise an abuse of the process of the court.
is seen to sit by simply, while those who defy it go free, and those who seek its protection lose hope."\(^{151}\)

It is a well established principle that publication that are considered to be scurrilously abusive of a Judge and those which impugn the impartiality of the court or a Judge amount to contempt by scandalizing the court. In either of the cases comment can be directed against a particular or Judges in General. Allegations of partiality or impropriety are probably the most common way in which the court has been held to be scandalized. Allegations of partiality are treated serious because they tend to undermine confidence in the basic function of a Judge.\(^{152}\)

The Supreme Court has said\(^{153}\) that scandalizing in substance is an attack on individual Judges or the court as a whole with or without referring to particular cases casting unwarranted and defamatory aspersions upon the character or ability of the Judges. Such conduct is punishable as contempt for the reason that it tends to create distrust in the popular mind and impairs confidence of the people in courts which are of prime importance to the litigants in the protection of their rights and liberties.

It seems, therefore, that there are two primary considerations which should weigh with the court when it is called upon to exercise the summary powers in cases of contempt committed by 'scandalizing' the court itself. In the place, the reflection on the conduct or character of a Judge in reference to the discharge of his judicial duties would not be contempt if such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice. It is not be stifling criticism that confidence in courts can be created... In the second place, when attacks and comments are made on a Judge or Judges, disparaging in character and derogatory to their dignity, care should be taken to distinguish between what is libel on the Judge and what amounts really to contempt of courts. The fact that a statement is defamatory so far as the Judge is concerned does not necessarily make it contempt.\(^{154}\)


\(^{152}\) Supra note 72 at p. 229.

\(^{153}\) Supra note 36.

\(^{154}\) Ibid.
Administration of justice and Judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by their conscience and oath of their office, that is, to define and upholds the constituents and the laws without fear and favour. This the Judges must do in the light given to them to determine what is right. Any criticism about the judicial system or the Judges which hampers the administration of justice of which erodes the faith in the objective approach of Judges and brings administration of justice into ridicule must be prevented. The contempt of court proceedings arise out of that attempt. Judgments can be criticized; it brings the administration of justice into deep disrepute. Faith in the administration of justice is one of the pillars through which democratic institution functions and sustains. In the free market place of idea criticism about the judicial system or Judges should be welcomed, so long as such criticisms do not impair or hamper the administration of justice. This is how courts should approach the powers vested in them as Judges to punish a person for an alleged contempt, be it by taking notice of the matter suo motu or at the behest of the litigants or a lawyer. Further, that interaction more subtle than major premise is the pride and the prejudice of a human instrument of a Judge through which objectively the Judge seeks to administer justice according to law.¹⁵⁵

Subha Rao’s Case¹⁵⁶ is a good instance for illustrating section 2 (c) (i) of the Contempt of Courts Act, 1971. There an additional subordinate Judge dismissed a suit of the appellant and decreed that of the then defendant. During the pendency of the decree holder’s petition for execution of the decree and that of the appellant for its stay, the appellant issued a notice to the Judge inter alia alleging that in his Judgment he had created new facts by making a third version without evidence; that he had intentionally, with bad faith and maliciously, disordered the oral and documentary evidence, that he had maintained different standards in the same Judgment, that he had side tracked the binding direct decisions of the High Court and the Supreme Court; and that in the circumstances he could be said to have acted with malafide exercise of powers without jurisdiction and therefore he was liable for damages for loss incurred by the appellant and for the injury. The High Court held that these


¹⁵⁶ Supra note 137.
allegations in the notice amounted to criminal contempt as defined in section 2(c) and sentence the contemnor to one month imprisonment.

In State v. R.N. Patra, the respondent addressed the Chief Justice of the Supreme Court as to the conduct of the district Judge and that the High Court Chief Justice being in interested relationship with the District Judge cannot hold a proper enquiry. The court held that such a statement has motivated and malafide grossly interfering with the administration of Justice and lower its authority and prestige within the meaning of Section 2(c) (i) and (iii) of the Contempt of Courts Act, 1971.

The judiciary cannot be immune from criticism. But, when that criticism is based on obvious distortion or gross misstatement and made in a manner which seems designed to lower respect for the judiciary and destroy public confidence in it, it cannot be ignored. It is not correct to say that an action for contempt of court, which is discretionary, should be frequently or lightly taken. But, at the same time, it is not correct to suggest that the court should abstain from using this weapon over when its use is needed to correct standards of behavior in a grossly and repeatedly erring quarter. It may be better in many cases for the judiciary to adopt a magnanimously charitable attitude even when utterly uncharitable and unfair criticism of its operations is made out of bonafide concern for improvement. But, when there appears some scheme and a design to bring about results which must damage confidence in our judicial system and demoralize Judges of the highest court by making malicious attacks, anyone interested in maintaining high standards of fearless, impartial, and unbending justice will feel perturbed.

Although, the question whether an attack is malicious or ill intentional, may be often difficult to determine yet, the language in which it is made, the fairness, the factual accuracy, the logical soundness of it, the care taken in justify and properly analyzing the materials before the maker of it, are important considerations. Moreover, in judging whether it constitutes a contempt of court or not the court is not concerned more with the reasonable and probable effects of what is said or written than with the motives lying behind what is done. A decision on the question whether

1976 Cri. LJ 440.
Supra note 1 at p. 185.
the discretion to take action for contempt of court should be exercised in one way or the other must depend on the totality of facts and circumstances.\[159\]

### 3.7.2.3.1 Scandalizing Distinguished from Defamation/Libel

It may be noted that distinction is to be made between an acts which scandalizes or tends to scandalize a Judge in his private or personal capacity and an act which scandalizes him in is official capacity. An attack on personal or private capacity of a Judge constitutes ‘libel’ and not contempt. The official capacity cannot be differentiated into judicial and administrative capacity. They are intertumed. Any aspersion on the administrative capacity of the Judge or the court, which undermines, lowers, or tends to undermine or lower its authority and dignity by imputing motive so as to create a distrust in the minds of the public as to the capacity of the Judges to mete out even-handed justice is scandalizing the court. The image and personality of the High Court is an integrated one.\[160\]

Contempt is a little more than libel. A defamatory attack on a Judge may be libel so far as the Judge is concerned and it would be open to him to proceed against the libeler in a proper action if he so chooses. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt.\[161\]

The *Supreme Court in Perspective Publications (P) Ltd.*,\[162\] summarized the law on this aspect, as under:

1. "It will not be right to say that committals for contempt scandalizing the court have become obsolete.
2. The summary jurisdiction by way of contempt must be exercised with great care or caution and only when its exercise is necessary for the proper administration of law and justice.
3. It is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a Judge in his judicial capacity or even to make a proper and fair comment on any decision given by him because ‘justice is not a cloistered

\[159\] Ibid.
\[160\] Supra note 138 at p. 218.
\[161\] Supra note 36.
virtue and she must be allowed to suffer scrutiny and respectful, even though outspoken, comments of ordinary man.”

(4) A distinction must be made between a mere libel or defamation of a Judge and what amounts to contempt of the court. The test in each case would be whether the impugned publication is a mere defamatory attack on the Judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by this court. It is only in the latter case that it will be punishable as contempt.

(5) Alternatively the test will be whether the wrong is done to the Judge personally or it is done to the public. The publication of a disparaging statement will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual and prospective litigants from placing complete reliance upon the court’s administration of justice or if it is likely to cause embarrassment in the minds of the Judge himself in the discharge of his judicial duties.”

In *B.K. Lala v.R.C. Dutt*, it was emphasized that men’s rea is not at all a necessary constituent of contempt. Lack of knowledge or intention is only material in relation to the penalty which the court would inflict and the test is if the matter complained of is calculated to interfere with the course of justice and not whether the contemnor intended the result. It is no argument to contend that the contemnor issued only a notice under section 80, C.P.C. to the Judge in asserting his civil rights and that he did not intend to be continuous. The test is not intention of the contemnor but whether the writing in fact does turn to lower the prestige of the judiciary.

It was rightly pointed out in *Sukh Raj v. Hem Raj*, that intention or motive of the contemnor is quite immaterial, if the publication is calculated to impede the fair trial of a case or being the administration of justice into contempt.

3.7.2.3.2 Instances did not Scandalize

In the speech made by the Law Minister before a meeting of the Bar Council of Hyderabad, the Law Minister examined the class composition of the Supreme

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164 AIR 1967 Raj 203.
Court. His views were that the class composition of any instrument indicates its predisposition, its prejudices. It was stated that the Supreme Court was composed of the element from the elite class. The Minister went on to say that because the Judges had their ‘unconcealed sympathy for the haves’ interpreted the expression ‘compensation’ in the manner they did, and that because of this the word ‘compensation’ in Article 31 was interpreted contrary to the spirit and the intendment of the Constitution. It was held that there was no imminent danger of interference with the administration neither of justice nor of bringing administration in to disrepute. In that view, the minister was not guilty of contempt of Supreme Court. The speech of the Minister read in its proper perspective, did not bring the administration of justice into disrepute or impair administration of justice; though in some portions of the speech the language used could have been avoided by the Minister having the background of being a former Judge of the High Court.165

“The judiciary in India has deteriorated in its standards because such Judges are appointed, as are willing to be influenced by lavish parties and whisky bottle....” The Bombay High Court held that the words complained of did not amount to contempt in view of the facts of the case.166

The mere statement in an application for transfer that a Magistrate is friendly with a party who happens to be an advocate and enjoy his hospitality or has friendly relations with him will not constitute contempt unless there is an imputation of some improper motives as would amount to scandalizing the court itself and as would have a tendency to create distrust in the popular mind and impair the confidence of the people in the courts.167

Criticism of a Judge addressing on political issue, does not amount contempt:

If any Judge addresses on political problems or controversies the exposes himself to discussion by public. The reasons that the Judge travels from his judicial work and descends into the arena of politics and parties. The Judge cannot in such a case take shelters behind his office if the public discusses and criticizes the views

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165 Supra note 155.
expressed by him. The reason is obvious. It is no part of the duty of a Judge nor is it a duty in discharge of office of a Judge to go and address a meeting on political matters to redress grievances of the people. However, if the speech of any Judge is criticized and if it becomes a disputed question of fact as to whether any Judge did speak or not as is alleged by the writer the matter would have to be ascertained by the courts on facts whether the Judge concern did speak on the matter ascribed to him before the court would take any action against the persons who would criticize the Judge’s speech. If on facts it appears that the Judge did say things or matters about politics such utterances or views or observations will be the personal opinions expressed by the Judge, and therefore, the protective umbrella of the court cannot be used by way of bringing the critics on the charge of contempt of court.\textsuperscript{168}

3.7.2.3.3 Instances of Scandalizing Court

No objection could have been taken to the Article had it merely preached to the courts of law the sermon of divine detachment. But when it proceeded to attribute improper motives to the Judges, it not only transgressed the limits of fair and ‘bonafide’ criticism but had a clear tendency to affect the dignity and prestige of this court. The article in question was thus a gross contempt of court. It is obvious that if an impression is created in the minds of the public that the Judges in the Highest court in the land act on extraneous considerations in deciding cases, the confidence of the whole community in the administration of justice is bound to be undermined and no greater mischief than that can possibly be imagined. It was for this reason that the rule was issued against the respondents.\textsuperscript{169}

In another case the suit was decreed in the sum of Rs. 3 lacs and appeal was pending before the appellate court an article was published alleging oblique motive and act of impropriety against Justice Tarkunde who decreed the suit in favour of one party to the suit. Held that the Article read as a whole left no doubt that it exceeded the bounds of fair and reasonable criticism. There was a clear imputation of impropriety, lack of integrity and oblique motives to justice Tarkunde in the matter of deciding the Thakersey-Blitz suit which undoubtedly constituted contempt of court.\textsuperscript{170}

\textsuperscript{168} Ram Partap Sharma and Others v. Daya Nand and Others AIR 1977 SC 809 (Para 13).
\textsuperscript{169} Ashwini Kumar Ghose, AIR 1953 SC 75 (Para 2).
\textsuperscript{170} Supra note 76. (Para 9,20).
Where a person charged the judiciary as “an instrument of oppression” and the Judges as “guided and dominated by class hatred, class interests and class prejudices, instinctively favouring the rich against the poor,” it is clearly an attack upon Judges calculate to raise a sense of disrespect and distrust of all Judicial decisions. It weakens the authority of law and law courts and the person is guilty of contempt of court, that the person did not intend any such result cannot serve as a justification.171

Publication and circulation of a booklet in public containing allegations that a Judge had made up his mind about the decision of a case and would not bear the arguments and manipulated to get the erroneous Judgment delivered from the another Judge of the Bench and controlled the hearing and thus ascribing dishonesty to the Judge amounts to contempt. Where an appeal is heard by two Judges to observe that a Judge “Toed the line” of another Judge and surrendered his own Judgment in deference to or on dictation of that Judge amount to flagrant contempt.172

In re, Mulgoakar,173 Supreme Court considered the effect of an article published in the ‘Indian Express’ entitled “Behaving like a Judge,” and another publication which discussed and criticized the proposed code of ethics for Judges. Chief Justice Beg viewed that apart from general allegations of corruption and inefficiency, suggestion of lack of moral courage to the extent of having disowned what had been done, would amount to scandalizing the judiciary.174 He concluded that National interest requires that all criticism of the Judiciary must be strictly rotational and sober and proceed from the highest motives without being coloured by any partisan sprit or tactics. This should be a part of National Ethics. News papers, in particular ought to observe such a rule imbued with what Montesquieu consider essential for aheal by democracy the spirit of value.175

Justice V.R. Krishana Iyer who gave separate but concurring Judgment laid down the following tests to be followed in case of contempt by scandalizing the judiciary.176

171 Supra note 7, (Para 6.10.11,33).
173 AIR 1978 SC 727.
174 Id. at p. 733.
175 Id. at p. 734.
176 Id., pp. 736-737.
(i) Wise economy in use by the court of this branch of its jurisdiction. The court will act with seriousness and severity where justice is jeopardized by a gross and or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process.

(ii) The second principle must be to harmonize the constitutional values of free criticism, the fourth estate included, and the need for a fearless curial process and its presiding functionary.

(iii) The third principle is to avoid confusion between personal protection of a libeled Judge and prevention of obstruction of public justice and country's confidence in that great process. The former is not contempt the latter is, although overlapping spaces abound.

(iv) The forth principle which channel discretionary exercise of the contempt power is that the fourth estate which is an indispensable intermediary between the state and the people, should be given free play within responsible limits.

(v) The fifth guidelines for the Judges to observe in this jurisdiction is not to be hypersensitive even when distortions and criticism over step the limits.

(vi) The sixth consideration is that after evaluating the totality of factors, if the court considers the attack on the Judge on Judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream.

Though Beg C.J. and V.R. Krishna Iyer J. gave different Judgments, the approach and attitude are the same. Thus according to Beg C.J., the judiciary cannot be immune from criticism. But, when that criticism is based on obvious distortion or gross misstatement and made in a manner which is designed to lower respect for the judiciary and destroy public confidence in it, it cannot be ignored.

The conclusion which emerges from the foregoing discussion is that a criticism of the Judgment or the judicial system is tolerable provided the language is use distemperate and fair and the criticism is motivated by bona fides.

177 Id. at p. 733.
3.7.2.4 Prejudices or Interferes with Judicial Proceedings (Sec. 2(c) (iii))

The term prejudice devotes a sort of interference with the course of Justice. To prejudice or attempt to prejudice the course of justice is covered by the expression to interfere or tend to interfere with the course of justice. In India, prejudicing fair trial as an instance of contempt of courts was followed in various decisions. Revkin C.J. in *Anant Lal Singh v. Alfred Henry Watson* categorically stated that a court's jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as substantial interference with the due course of justice.... This court will not exercise its jurisdiction upon a mere question of propriety where the tendency of the Article to do harm is slight and the character and circumstances of the comment are otherwise such that it can properly be ignored.

Lahore High Court has followed the same view in *Emperor v. Khushal Chand,* that something has been published which either is clearly intended, or at least is calculated to prejudice a trial which is pending.... That the matter published tended substantially to interfere with the due course of justice or was calculated substantially to create prejudice in the public mind.

Delhi High Court considered the effect of publication of an article during the pendency of a case in the *supersession case.* The court in this case rather restricted the scope of prejudicing fair trial and thus adopted a liberal view. Chief Justice Andley held that the fact that the cases were pending in court could not prevent discussion of matter of public importance. Nor were the public obliged to go on an exploratory expedition to discover whether the matter was pending in any court. This decision of the Delhi High Court is commended by the editorial of the Calcutta Weekly Notes. “We think, this Judgment of Chief Justice Andley will go down as an outstanding contribution to the law of contempt, taking as it does a liberal and sensible attitude in keeping with the modern tenancies as oppose to the rigid and

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178 AIR 1931 Cal. 257.
179 Id. at p. 261.
180 AIR 1954 Lah. 206.
181 Id. at p. 207.
182 Anil Kumar Gupta v. Subba Rao (1974) ILR Delhi. In this case former Chief Justice of India, K. Subba Rao was cited for contempt for publishing an article in 'The statesman' discussing the matter of supersession of Judges and the appointment of A.N. Ray as the Chief Justice.
183 Id. at p. 4.
illiberal attitude taken in some of the cases of the Indian High Courts.\textsuperscript{184} Certainly opinion by a person none other than the former Chief Justice on the merits of the case will prejudice a fair trial. But the Delhi High Court adopted a very liberal attitude in this case.

Such a liberal view was followed by the Andhra Pradesh High Court in \textit{Y.V. Hanumantha Rao v. K. Pattabhiraman,}\textsuperscript{185} wherein an article published in the Deccan Chronicle was in question. Since it did not refer either to the parties to the litigation, or the matter referred in the writ petition, the article could not be characterized in anyway interfering with the course of justice. But the court laid down the following principle:

When litigation is pending before a court, no one shall comment on it in such a way there is a real and substantial danger of prejudice to the trial of the action, as for instance by influence on the Judge, the witnesses or by prejudicing mankind in general against a party to the cause. Even if the person making the comment honestly believes it to be true, still it is a contempt of court if it prejudices the truth before it is ascertained in the proceedings... there must appear to be a real and substantial danger of prejudice.\textsuperscript{186}

Since the article contained only the academic discussion of the meaning of “curfew” and the provision of law under which it is imposed and has no reference to the matter pending before the court of law, the article could not be said to constitute contempt.

Under Section 2 (c)(ii) of the Contempt of Courts Act, 1971, only when the contumacious act prejudices or interferes or tends to interfere with the due course of any judicial proceedings it is actionable. The ‘interference or tending to interfere’ should be clear from the facts of the case. In one case pertaining to publication of book a suit was filed seeking relief against the state of M.P., the Textbook Corporation and the Registrar of firms and societies by the appellant, a printer and

\textsuperscript{185} AIR 1975 AP 30. In this case following the agitation for separate Andhra State a curfew was imposed in the town of Vijayawada. Questioning the legality of the curfew order, a writ petition was filed in the High Court and it was pending, while so, Shri P. Seethapathy, Secretary, Board of Revenue Published an article entitled "The Law of Curfew" in the daily "Deccan Chronicle." In the article the author discussed the meaning, history, provisions of the law relating to curfew etc. It was alleged that this article amounted to contempt of court.
\textsuperscript{186} Id., at p. 31.
publisher of textbooks. An interim injunction was granted against the respondents but this was stayed by the High Court pending revision of that order. The appellant preferred a petition for special leave to appeal against the orders of High Court and also filed a writ petition in the Supreme Court. Then the respondent state published certain press notes though there was a stay order against the state. The appellant’s contention was that it contained false statements and so was contempt of court in as much as it sought to prejudice the court and interfere with the course of justice. The Supreme Court held:\(^1\)

(i) Mere making of incorrect statements in justification of a decision to postpone the reopening of the schools could not possibly have any prejudicial effect on the due course of justice so far as the appeal and the writ petitions are concerned. It is quite possible that some of the statements made in the press note, if incorrect might prejudicially affect the business of the appellant by bringing down sales of text books printed and published him but that is very much different from saying that he would be prejudiced in the appeal or writ petition.

(ii) There appears to be no interference as such with the course of justice in this court. Only if a wrong and misleading statement is deliberately and willfully made by a party to litigation with a view to obtain a favourable order interference with or prejudice to the due course of justice can be conceded. But that must be established.

Where there is blatant interference with courts of justice, and the contempt is of grave character, the contemnor may be punished in spite of even tendering apology.\(^2\) Thus in *Rajjaulal’s case* where he threatened dire consequences to the Magistrate if he did not release an accused on bail, it was held that even his unqualified apology did not merit any consideration as his conduct was most irresponsible. The tendency of parties or their Privy communicating with the Judge seeking thereby to influence or intimidate him as necessarily to put down.

Even Judges or Magistrate are liable in contempt if they disregard orders of superior courts and thus cause obstruction to justice. The position is similar when

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\(^2\) Railway Magistrate v. Rajjaulal, AIR 1952 MB 176.
they act unjustly, oppressively or irregularly in the exercise of their duties under colour of judicial proceedings wholly unwarranted by law or if they disobey writs issued by High Court require them to proceed or not to proceed in matters before them.  

If any kind of threat or any action which may amount to a threat is held out to a person who has approached the civil courts for redress of his grievances, with a view to induce him to forego the aid of the civil court, it is contempt.

The principle of substantial interference or real prejudice due to the strict attitude adopted by the judiciary in the post independent period but before the Contempt of Courts Act, 1971, came to be recognized likely to prejudice, tendency to prejudice, tend to prejudice, calculated to produce an atmosphere of prejudice, tendency to influence or tending to interfere, real prejudice or actual prejudice and 'substantial interference.' In case anyone of these elements was present the alleged contemnor was held liable.

3.7.2.5 Obstructs Administration of Justice (Sec. 2(c)(iii))

Any willful obstruction to the administration of justice is contempt of court within the meaning of section 2(c)(iii) of the Contempt of Courts Act, 1971. It may be more obstruction of the course of a petition to the court, or obstructing the course of justice by not fulfilling one’s undertaking to court, or more obstruction of the proceedings of court, or interfering with the administration of justice in a very that will affect the very course of justice. The obstruction must be clear and willful.

The use of the expression “in any other manner” indicates that sub clause (iii) is intended to cover the residuary case of criminal contempt not expressly covered by sub-clauses (i) and (ii) of section 2 (c) of the Contempt of Courts Act, 1971. Since most of the instances of contempt under this residuary provision relate to ‘doing of any other act’ i.e. other than publication, it is proposed to deal with this sub-clause without a dichotomy of treatment between the two. Administration of justice is an expression which is obviously wide enough to include the specific situations covered.

189 Mahabir Prasad v. State, AIR 1953 MB 60.
190 Shankerlal Sharma v. Bishw, AIR 1956 All 160.
192 Supra note 138, pp. 265-266.
by sub-clauses (i) and (ii) of the Act, 1971. As such publication of any matter or
doing of an act which interferes or tends to interfere with or obstructs or tends to
obstruct the administration of justice in a manner otherwise than by scandalizing the
court of lowering its authority or by prejudicing or by interfering with due course of
judicial proceedings would amount to criminal contempt within sub-clause (iii) of the
Contempt of Courts Act, 1971.193

This view finds support from the observations of the Supreme Court in
*Rachapudi Subba Rao v. Advocate General, Andhra Pradesh.*194 In this case the
Supreme Court noted that in categorization of contempt in three sub-clauses (i) to (iii)
of the Act, 1971 only category (ii) referred to judicial proceedings. Scandalizing of
court in its administrative capacity would also be covered by sub-clause (i) and (iii) of
the Act, 1971. The phrase ‘administration of justice in sub clause (iii) is for under in
scope than ‘course of any judicial proceeding’. Administration of justice is to be
regarded as a continuing process and as such, there can be a threat to it even after final
resolution of the proceedings. Because if an order is made for the protection of an
identifiable interest, it may will be necessary to continue to protect the interest even
after the termination of proceedings.

The last words ‘is any other manner’ of sub-clause (iii) of the Contempt of
Courts Act, 1971 further extend its ambit and give it to a residuary character. Although
sub clauses (i) to (iii) of the Act, 1971 describe three district species of
‘criminal contempt’, they are not always mutually exclusive. Interference or tendency
to interfere with any judicial proceeding or administration of justice is a common
element of sub-clauses (ii) and (iii) of the Act, 1971. This element is not required to
be established for a criminal contempt of the kind falling under sub-clause (i) of the
Act, 1971.195

It is settled law that if what is done by a person tends to interfere with the
administration of justice, then, whether or not he intends such effect or whether or not
the effect is actually caused he will be guilty of contempt.196 It is a cardinal principal
that when a superior court issues a stay order, the subordinate court ought to respect

194 Supra note 137.
195 Supra note 193 at p. 149.
that order. Though there is no intention to commit contempt of the court, yet a willful disobedience of the order with full knowledge would amount to contempt of court.\textsuperscript{197}

It is not the intention of the alleged contemnor but the effect of undermining or lowering the court in the estimation of the public or its tendency or likelihood to so undermine that is the real test.\textsuperscript{198}

The freedom of the press is in no way superior to the freedom of an individual. No extraordinary privilege can be claimed for the press. If a journalist does not take reasonable care to ascertain the accuracy of facts which he broadcasts, or if he tortures facts and vilifies an individual, he exceeds the limit of fair comment and becomes accountable in contempt.\textsuperscript{199}

In the case of the \textit{Advocate General, state of Bihar v. M.P. Khair Industries}\textsuperscript{200} Chimappa Reddy, J. delivering the Judgement of the Supreme Court said:

“While we are conscious that every abuse of the process of the court may not necessarily amount to contempt of court, abuse of the process of the court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice we must say, is a contempt of court. It may be that certain manner abuses of the process of the court may be suitably dealt with as between the parties, by striking out pleadings under the provision of order 6 rule 16\textsuperscript{201} or in some other manner. But, on the other hand, it may be necessary to punish as contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its previsions influence beyond the parties to the action and affects the interest of the public in the administration of justice. The public hence an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not in order to protect dignity of the court against insult or injury as the expression ‘contempt of court’ may seem to suggests, but, to protect and to

\textsuperscript{197} Gulam Mohammad v. Sarif Baig, AIR 1960 Ori. 18.
\textsuperscript{198} Surendra Mohanty v. Sri Nabakrishna Chowdhary, AIR 1958 Ori. 168.
\textsuperscript{199} Bijayanada Patnaik v. Balakrishnakar, AIR 1953 Ori. 249; ILR 1953 Cut. 283.
\textsuperscript{200} Supra note 149.
\textsuperscript{201} Code of Civil Procedure, 1908 and also see Supra note 150.
indicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with.”

Where an appeal was disposed of on the strength of the affidavit filed in support of a compromise petition, if the party acted in breach of the personal undertaking given in the affidavit, it has been held to be a misconduct amounting to contempt.

3.8 Sum up

From the above discussion it is pointed out that the vagueness in the existing law of contempt starts at the stage of definition. The definition of contempt as given in the contempt of courts Act, 1971 is quite vague and ambiguous giving too much discretion to the Judges in determining as to what amounts to contempt of court. It does not demarcate or delimit with any degree of precision the scope for what is defined. It only seeks to repeat the statements made so often in the voluminous as law on the subject and does not achieve the desired object of bringing clarity and certainty in the case law. Such subjectivity in determining of a alleged contempt has resulted into uncertainty in the law. The concept of ‘civil contempt’ enumerates ‘willful’ disobedience to any Judgment, decree, direct in, order, writ or other process of ‘court or ‘willful’ breach of an undertaking given to a court. As per the definition an act/publication would amount to criminal contempt even if it ‘tends’ to scandalize or lower the authority of the court; or ‘tends’ to interfere with the due course of any judicial proceeding’ or ‘tends’ to interfere with or obstruct the administration of justice in any other manner. The use of the words “tends to” in all three clauses of section 2 (c) of the contempt of courts Act, 1971 and use of the world ‘scandalize’ in section 2(c)(i) of the contempt of courts Act, 1971. Introduces the element of subjectivism on the part of the deciding authorities and hence the indefiniteness, vagueness and uncertainties on the point. The vagueness of definition only brings uncertainty in law and gives arbitrary powers to the court to determine contempt. These drawbacks and weaknesses in the law could be avoided by omitting these words from the definition clause. This would also narrow down the scope of the offence which is necessary keeping in view the rights and freedoms of the citizens guaranteed under the law.