CHAPTER-5

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5.1 Introduction

The Indian Judiciary is one of the most powerful in the world. The judiciary in the country today has come to enjoy enormous powers. It is not only the arbiter of disputes between citizens, between citizens and the state, between states and the union, it also in purported exercise of powers to enforce fundamental Rights, directs the Governments to close down industries, commercial establishments, demolish jhuggis, remove hawkers and rickshaw pullers from the streets, prohibit strikes and bandhs etc. In short, it has come to be the most powerful institution of the state. The stature of the judicature is so high and its powers so wide that any action designed to debunk, defile or denigrate the great dignity and impartial integrity of the institution is regarded as an invasion on the people’s faith in the courts fearless, biasfree, favour-free functionalism and its solemn credibility as a constitutional instrumentality of justice. Indeed, a judge is an epitome of manners in men as the highest personage of law. To derivate from the most right honesty and impartiality is to betray the integrity of all law. A judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or the legislature.¹

Administration of justice and judges are open to public criticism and public scrutiny. Any criticism about the judicial system or the judges which hampers the administration of justice or which erodes the faith in the objective approach of the judges and beings administration of justice to ridicule must be prevented. The contempt of court proceedings arise out of that attempt.²

Its strength is the faith and confidence of the people that could be permitted to be undermined because that will be against the public interests. It is the bed rock and handmaid of democracy. If people lose faith in justice parted by a court of law, the entire democratic set up would crumble down. So, there can be no quarrel with the proposition that anyone who intends to tarnish the image of judiciary should not be allowed to go unpunished. By attacking the reputation of judges, the ultimate victim is

the institution. The day the consumers of justice lose faith in the institution that would be the darkest day for mankind. The importance of judiciary needs no reiteration.³

All state institutions, whether it is the judiciary, legislature or the executive, are merely servants of the people. Every other institution of the state is accountable to the anti-corruption agencies, and to the judiciary which has the power of judicial review of every executive and legislative action. Moreover, the political executive is accountable to the legislature and the legislature is democratically accountable to the people that at least are the theory of our constitutional scheme. However, when it comes to the judiciary, it is neither democratically accountable to the people, nor to any other institution. The only recourse against a judge committing judicial misconduct is impeachment, which has been found to be totally impractical remedy. To initiate the impeachment process one needs the signature of 100 Lok Sabha or 50 Rajya Sabha M.P.’s. This one cannot secure unless two conditions are satisfied. First, one must have conclusive documentary evidence of very serious misconduct against a judge. And second, the evidence and the charges must have been published, such that it has assumed the proportions of a public scandal.⁴

However, the media is afraid and unwilling to publicize the charges against judges (even than they have documentary evidence to back the charges) because of the fear of contempt of court which constantly longs as a sired over their necks. This has effectively led to a situation of total impurity in the higher judiciary. Not only one corrupt Judges effectively insulated from any action against then, they have also protected themselves from public exposure of wrong doing by using the threat of contempt. Demanding judicial accountability has almost always caused the initiation of contempt proceedings, thereby stifling on the issues that plague the judiciary.⁵

In a democracy fair criticism of the mocking of all the organs of the state should be welcome and would in fact promote the interests of democratic functioning. The right of fair criticism provides that a person shall be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided.⁶ Judges and courts are not unduly sensitive or touchy to fair and

⁴ Supra note 1.
⁵ Id., pp. 242-243
reasonable criticism of their judgments fair comments even if outspoken but made without maturity or attempting to impair the administration of justice and made in good faith in proper language do not attract any punishment for contempt of court.  

5.2 Contempt by Lawyers

The role of a legal practitioner whether called an Advocate or a Barrister or a pleader or a Mukhtar, is very important in democracy. Certain very healthy conventions are attached with this profession, for example an Advocate cannot advertise to get work. He cannot keep agents to bring clients to him. In the past in the gram of a Barrister there was a pocket on the back in which the clients could drop the fee whatever they could afford. This is a sort of public service. Law is complicated with numerous Acts, Rules and Notification; a citizen can be bewildered as he would in a dense forest. The language of the legislation is complicated and very often confusing. It is only with the help of an Advocate can be have his rights recognized and enforced. 

In re under Article 143 Constitution of India, the Supreme Court emphasizing the importance of the role of Advocates observed as follows:

“Section 3 of the Advocates Act, 1961, confers on all Advocates the Statutory right to practice in all courts including the Supreme court before any tribunal or person legally authorized to take evidence and before whom such advocate is by or under any law for the time being in force entitled to practice. Section 14 of the Bar Council Act recognizes a similar right. If a citizen has the right to move the High Court or the Supreme Court against the invasion of his fundamental rights guaranteed to all citizens, the legal profession plays a very important and vital role, and so, just as the right of the judicature to deal with matters brought before them under Art. 226 or Art. 32 cannot be subjected to the powers and privileges of the issue (Legislative bodies) under Art. 194(3). That is one integrated scheme for enforcing the fundamental rights and for sustaining the rule of law in this country.”

7 In re Roshan Lal Ahuja, 1993 Supp 4 SCC 446.
Pointing to the relations between the court and counsel it was pointed out in *Diwan Durga Das v. B.K. Kishore*, a very laudable and long standing convention has been established which is to the effect that a statement made by a counsel from the back is accepted by courts. The convention is certainly laudable, as it produces smooth working and it establishes healthy relation between the court and the members of the Bar, but a convention at best is not law and when it is found that statements made by a counsel are ineligible, it is open to the court not to accept them and to ask for affidavits in support of the statements made by the counsel.

The very nature of the calling of the lawyer and the judge may sometimes lead to merely duels, sometimes humorous, sometimes harsh and sometimes heated. The mutual rapier thrusts on either side may at any time become the ignition point for an ugly situation. But the tradition and decorum of their calling should advise the lawyer and the judge to take it all calmly and look for ahead as to their duty in the administration of justice. It is not good for the judge to feel merely superior or for the lawyer to exhibit any 'bravado spirit'. Just as the lawyer has to realize that the law of contempt of court is there to check his excess, the judge should also feel that he is not above that law, which he is functioning under that law.

In *Banarsilal v. Neelam*, a revision petition drafted by a lawyer continued matters which amounted to contempt of court. It was contended by the respondent that the petitioner in revision cannot be even heard till he purges himself of the contempt. The court disallowed this objection as that will be throttling free access to court for redress. The court added: “The summary power of punishing for contempt has to be used sparingly and only in serious cases. The High Court must of necessity possess this power in the larger interests of sustaining the authority and impartiality of the judicial process but its usefulness depends on the wisdom and restraint with which it is exercise. To use it against professional lawyers, when there is no malice and no attempt to impair or obstruct the administration of justice, but when they seem to have genuinely exercised their professional right of criticism- may be in somewhat ill-advised language-in seeking justice for their clients is to use it for a purpose for which it does not seem to have been intended.

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10 1959 Cri. L.J. 406 at p. 408 (All); AIR 1959 All 211.
12 AIR 1969 Delhi 304.
In a Madras Case\textsuperscript{13} an injunction was issued to an Advocate restraining him from functioning as Managing Director but he footed the order taking umbrage under the new Articles of Association and a fresh resolution of the Board under which he thought there a new Jural basis not within the mischief of the original injunction, on which the mischief of the original injunction, on which he could function. It was held that if the Advocate had such a notion as to his new Jural basis he ought to bring them all to the notice of the court praying for modification or cancellation of the injunction. But in view of his unqualified apology and his being a senior member of the Bar the court felt “that interests of justice do not require that he should be mulched in fine. He has already learnt his lesson. By his unqualified apology he has purged himself of the contempt which he has committed. The right of Advocacy, the right to forcefully represent to the court may all be right on the part of counsel. But he should not be party to contumacious averments even in what is called a ‘representation petition’.

5.2.1 Status of Lawyer

A lawyer by virtue of his position is an officer of the court, and belongs to a privileged class enrolled not only for the purpose of rendering assistance to the court in the administration of justice but also for giving professional adverse, for which they are entitled to be paid, by those members of the public who requires their services. Their position as lawyers, their training and practice give them immense influence with the public and their example must necessarily have a much greater effect, whether for good or for evil, than the example of those who do not occupy this privileged position. Members of legal profession are under no duty to their clients to make grave and scandalous charges either against judges or the opposite parties on the mere wish of their clients. They are agents, not of the man that pays them but are acting in the administration of justice, and in matters of making applications to court they are bound to exercise an independent and to conduct themselves with a sense of personal responsibility. If they fail to act with reasonable care and caution, they are unfit to enjoy the privileges conferred upon them by law and serious and serious breaches will be visited with punishment.\textsuperscript{14}

The respondent complained to the High Court that his case before the Rent controller was disposed off after considerable delay and he had been put to inconvenience and expense. He further blamed the counsel for prolonging the case before the Rent Controller. These grievances were held not to constitute contempt of court.\[15\]

The refusal by a person whose statement was taken by the commission to sign to the same it could not be construed as an act of contempt of court when the commissioner who was directed to report if the house contained any luggage, exceeded his rights and started taking down statements.\[16\] Counsel who sign applications or pleadings containing matters scandalizing the court without reasonably satisfying themselves about the prima facie existence of adequate grounds therefore with a view of prevailing or delaying the court of justice, are they guilty of contempt of court.\[17\]

It should widely be made known that counsel who sign an application or pleadings containing matters scandalizing the court without reasonably satisfying themselves about the prima facie existence of adequate grounds therefore with a view to prevent or delay the course of justice, are themselves guilty of contempt of court, and it is no duty of a counsel to his client to take any interest in such application, on the other hand, his duty is to advise his client for referring from making any allegations of this nature in such application. However, every form of defence in a contempt case cannot be regarded as an act of contumacy and it depends upon the facts of each case and on the general impression about a particular rule of ethics amongst the members of the profession.\[18\]

The High Court will take a serious view, if public officers of responsibility act in such a manner as to obstruct the course of justice or disobey to implement the orders of court, for such act will undermine the prestige of courts and set a bad example to the public. At the same time, the filing of frivolous applications for contempt against public officers with a view to harass them is equally reprehensible and court will give exemplary costs against such abuse of process of the High Court.\[19\]

\[15\] Swarnamayi Panigrahi v. B. Nayak, AIR 1959 Orissa 89; 1959 Cri. LJ 626.
\[17\] D. Jones Shield v. N. Ramesam, AIR 1955 Andra 156; 1955 Cri. LJ 1028.
A lawyer is a person educated and trained in law. The choice of words by him in the matter of drafting the legal documents and arguments has to be careful, lawyers, because of their profession, advise people in making agreements, contracts, wills, etc., also prepare pleadings, applications, arguments etc. The use of language has to be balanced and in fitness of things within the framework of the law of the land. He cannot and should not be reckless in use of language. There are barriers, which are known to a lawyer and those have not to be crossed, lawyers have not to over-step the limits of decency and ethics in the matter of their behavior towards the judges and their decisions.\(^{20}\)

In *Court on its own motion v. Radhe Kishan*,\(^{21}\) the court observed that it must be made clear that a counsel is not exempt from the ordinary disability which the law imposes and his position is not inavoidable and in privileges cannot extend to interfere with the administration of justice. On the other hand he is expected to help in suborning the course of justice and not to impede it in any manner. It is to be remembered that pleaders have a duty not only towards their clients but also towards the court of which they are pleaders, and it is part of their duty to co-operate with the court in the orderly and pure administration of justice.\(^{22}\)

The Advocates Act 1961 has repealed a most of enactments including Indian Bar Council Act. When the new Bar Council of India came in to existence, it framed rules called the Bar Council of India rules as empowered by the Advocates Act. Such rules contain a provision specifically prohibiting an Advocate from adjusting the fees, payable to him by a client against his own personal liability to the client. As a rule, an advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client. Misconduct envisaged in Section 35\(^{23}\) of the Advocates Act is not defined. The section used the expression “misconduct professional or otherwise”. The word “misconduct” is a relative term. It has to be considered with reference to the subject matter and the context in herein such term occurs. It literally means wrong conduct or improper conduct.\(^{24}\)

\(^{20}\) Supra note 8 at p. 908.

\(^{21}\) AIR 1957 PH 105; 1957 Cri.LJ 657.

\(^{22}\) In the matter of Mohendra Lal Roy, AIR 1922 Cal. 550 at p. 557.

\(^{23}\) Advocates Act, 1961: Punishment of Advocates for Misconduct, Sec. 35.

There must be something which can fairly be described as misconduct; otherwise there can be no reasonable cause for taking disciplinary action. "Misconduct" itself is a sufficiently wide expression; it is not necessary for instance that it should involve moral turpitude. The court has a right to expect a higher standard of loyalty to the court under co-operation from those who practice profession of law. Any conduct which in any way renders a mean unfit for the exercise for the exercise of his profession or is "likely to hamper or embarrass the administration of justice by the High Court or any of the court subordinate thereto" may be considered to be misconduct calling for disciplinary action.25

Prior to this Act, High Court alone was competent to punish an Advocate for unprofessional conduct. Under the Indian Bar Council Act, 1926, the High Court, on receipt of a finding from the Bar Council and after hearing all parties, could reprimand, suspend or remove from practice any advocate whom it found guilty of professional or other misconduct. The power of punishment for misconduct of an advocate under the present Act resides in the State Bar Council under Section 35 or in the Bar Council of India under Section 36 not entered on any state roll. An advocate, therefore, is primarily punished by the member of his even fraternity in the shape of the disciplinary committee. Any person aggrieved by an order made by the disciplinary committee can, within sixty days of the date of communication of the order to him, prefer an appeal to the Bar Council of India under Section 37. Again any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under Section 36 or Section 37 may, within sixty days of the date on which order is communicated to him, prefer an appeal to the Supreme Court that is the highest court of Appeal in the Union of India.26

Both in law and in ordinary speech, the term 'misconduct' usually implies an act done willfully with a wrong intention and as applied to professional people; it includes unprofessional acts even though such acts are not inherently wrongful.27 Conduct of an advocate who was party to racket involved in defrauding and creating aspirant loanees amounts to professional misconduct and order of the disciplinary

26 Ibid.
committee of the Bar Council is justified in imposing the penalty of removal of the name of advocate found guilty from roll of Advocates.\textsuperscript{28}

The relationship between advocate and client is based only on confidence and trust. If an advocate is allowed to give advice to one party and appear for the opposite party in court the confidence reposed in him will be lost and his conduct will amount to prostitution of the profession. Counsel appearing for one party is not expected to please both his party and the opposite party and if he does so, it will amount to professional misconduct and breach of trust.\textsuperscript{29}

The Supreme Court in \textit{All India Judges Association v. Union of India},\textsuperscript{30} has observed that the administration of justice and the party to be played by the advocates in the system must be looked into from the point of view of litigant public and right to life and liberty guaranteed under Article 21 and right to grant legal aid as contemplated under Article 39-A of the constitution. The Supreme Court had various landmark decisions upheld the legal profession as a Nobel profession.

Krishna Iyer J., in the \textit{Bar Council of Maharashtra v. M.V. Dabholkar},\textsuperscript{31} observed that the vital role of the lawyer depends upon his probity and professional lifestyle. The central function of the legal profession is to promote the administration of justice. As monopoly to legal profession has been statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of confidence of the community in him as a vehicle of social justice. "Law is not trade briefs-no merchandise". Legal profession is monopolistic in character and the monopoly itself whereas certain high traditions which as members are expected to upkeep and uphold.\textsuperscript{32}

Law is Supreme and it is intended for the welfare of the people. The Bar had its own tradition, in the part, and it was respected not only for its professional excellence, but also for its participation in all public authority intended for the welfare of the community of late, there have been numerous instances where members of the Bar have not followed the code of conduct expected of them, be it inside the court.

\textsuperscript{28} Devendra Bhai Shankar Mehta v. Ramesh Chandra Vithal Das Seth, AIR 1992 SC 1398 at p. 1405.
\textsuperscript{29} Supra note 24.
\textsuperscript{30} AIR 1992 SC 165.
\textsuperscript{31} AIR 1976 SC 242.
\textsuperscript{32} M. Veerabhadra Rao v. Tek Chand, AIR 1985 SC 28 at p. 38.
halls or outside it, either in relation with the client or even with any member of the public. It will be no answer to state that there has been deterioration in all professions for the legal profession not only safeguards the rights of several other professions, but is also called upon to perform the professional work, after mastering the nuances in every other profession for those who seek justice from courts belong to a variety of professions. Needless to add that it must be the reason why the legal profession stands kept on the pinnacle. It may be the right of any member of the Bar, in his personal life, to have his own political affiliation, but when it comes to court proceedings politics cannot be introduced in it. It was the duty of the lawyers to protect the dignity and decorum of the judiciary. If lawyers fail in their duty, the faith of the people in the judiciary will be undermined to a larger extent. It is said that lawyers are the custodian of civilization. Lawyers have to discharge their duty with dignity, decorum and discipline.\textsuperscript{33}

5.2.2 Bench and Bar

Judges are priests in the temple of justice whereas lawyers are worshippers of Goddess of justice in the temple. Worshippers through the medium of priests have to reach to the Goddess of Justice. For the same, both are necessary and in absence of the one, another is incomplete. Hence lawyers and judges have to co-ordinate, co-operate and collectively work towards the delivery of justice. Bench and Bar need to harmonize and balance their functioning to achieve the sacred goal i.e. justice instead, situation might arise due to which both could be pitted against each other i.e. Bench versus Bar.\textsuperscript{34}

5.2.2.1 Decisions of the Supreme Court on Contempt by Advocate

In re, \textit{V.C. Mishra},\textsuperscript{35} the Supreme Court having found the contemnor, an advocate guilty of committing criminal contempt for "obstructing the court of justice by trying to threaten, over once and overbear the court by using insulting, disrespectful and threatening language, sentenced simple imprisonment for a period of six weeks, and suspended him from practicing as an Advocate for a period of three years. As a result of suspension from practice all elective/nominated offices/posts also

\begin{itemize}
\item \textsuperscript{33} Supra note 24
\item \textsuperscript{35} (1995) 2 SCC 584.
\end{itemize}
stood vacated. The six weeks simple imprisonment was kept in suspension for a period of four years, to be activated in case contemnor found guilty of any other offence of contempt of court. The order of the court to suspend the contemnor advocate was made invoking powers under Article 129 and 142 of the Constitution.\(^{36}\)

The Supreme Court declared that it can take cognizance of contempt of High Courts and in exercise of its power under articles 129 and 142 of the constitution it punished the contemnor before it. This ruling of the Apex Court brought up a controversy with a good amount of academic discussion in the press. This controversy mainly related to the punishment meted out to the contemnor, who was also the chairman of the Bar Council of India. The Bar Council of India is the authority that is conferred with the powers to regulate the legal profession. Under the Indian Advocate Act, the body is conferred with the responsibility of enrolling Advocates, which is done through the state Bar Councils, as well as the power to revoke or suspend the right of an advocate to practice. The controversy that was sparked off by this judgment also included some legal issues, relating to the powers of the courts of law especially the Supreme Court in relation to contempt matters. Contempt is a tool that the courts of law are now wielding with considerable frequency to ensure that their orders, directions and judgments are respected.\(^{37}\)

Aggrieved by the direction that contemnor shall stand suspended from acting as an Advocate for a period of three years issued by the Supreme Court invoking powers under Articles 129 and 142 of the constitution, the Supreme Court Bar Association through its honorary secretary had filed the petition under Article 32 of the Constitution viz. *Supreme Court Bar Association v. Union of India.*\(^{38}\) The petitioner sought relief from the Apex Court and prayed to issue an appropriate writ, direction, or declaration, declaring that the disciplinary committee of the Bar Council set up under the Advocate Act, 1961, alone above exclusive jurisdiction to inquire into an suspend or debar an advocate from practising law for professional or other

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\(^{36}\) Art. 129. The Supreme Court shall be a court of record and shall have all the powers of such a court including the powers to punish for contempt of itself.

Art. 142(1), The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree to passed or order so made shall be prescribed by or under any law made by Parliament and until provision in that behalf is so made, in such manner as the President may by order prescribe.


misconduct, arising out of punishment imposed for contempt of court or otherwise. Similarly it also prayed further to declare that the Supreme Court of India or any High Court in exercise of its inherent jurisdiction has not such original jurisdiction, power or authority in that regard.  

Main constitutional questions:

The two main issues before the Supreme Court in the V.C. Mishra case were:

(i) Whether Article 129 of the Constitution vested the court with the power to punish for contempt of itself and not of the High Court’s; and

(ii) The powers under Articles 142 and 129 must be necessarily exercised in conformity with the contempt of courts Act, 1971.

The three judges Bench in Vinay Chandra had pointed out that the jurisdiction and powers of the Apex Court under Art. 142 are supplementary in nature and are provided to do complete justice in any matter, are independent of jurisdiction and powers of the Supreme Court under Article 129 which cannot be trammeled in any way by any statutory provision including the professions of Advocates and contempt of courts Act and these Acts cannot denied, restrict or limit the powers of the Supreme Court to take action for contempt under Article 129. In different words, the Supreme Court herein read these two constitutional provisions viz. Articles 129 and 142 superior to the statutes, which were considered as subordinate to the Constitution.

On the other hand in the writ petition the learned senior counsels of petitioner Mr. Kapil Sibal and Dr. Rajeev Dhavan assailed the holding of earlier court and contended that powers conferred on the Supreme Court by article 142, though very wide in their amplitude, can be exercised only to do completed justice in any case or cause pending before it and since the issue of “professional misconduct” is not the subject matter of “any cause” pending before the court while dealing with a case of contempt of court, it could not make any order either under Articles 142 or 129 to suspend the licence of an Advocate contemnor for which punishment, statutory provisions otherwise exists. Similarly the learned solicitor General also submitted that under Article 129 read nor create a ‘punishment’ not otherwise permitted by law.

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39 Supra note 34 at p. 73.
40 Supra note 35, para 51 at p. 624.
and that since the power to with Article 142 of the Constitution, Supreme Court can neither create a 'Jurisdiction' punish an advocate for 'professional misconduct' by suspending his licence vests exclusively in a statutory body constituted under the Advocates Act, the Supreme Court cannot assume that jurisdiction under Articles 142 or 129 or even under Section 38 of the Advocate Act.  

With great respect to the three judges Bench in Vinay Chandra, it is submitted that the interpretation accorded by it to the ambit and scope of Art. 142 of the Constitution is not the correct one, whereas the constitution Bench in A.R. Antulay v. Ramdas Nayak, and Sub Committee on Judicial Accountability etc. v. union of India laid down the correct approach. In those cases the Supreme Court observed that while exercising power under Article 142, the court will exercise the same in assessing the needs of complete justice of a cause or matter and it will take note of the express prohibitions in any substantive statutory provisions based on same fundamental public policy and regulate the exercise of its power and discretion accordingly, which it is submitted is a correct approach and moreover as per the doctrine of precedent the three judges bench ought to have followed the same.

In the instant writ petition the five judges bench rightly followed the view and Dr. Anand J. in delivering the unanimous judgment hold that, 'when this court is seized of a matter of contempt of court is seized of a matter of contempt of court by an advocate, there is no case, cause or mater' before the Supreme Court regarding his professional misconduct even though in a given case, the contempt committed by an Advocate may also amount to an abuse of the privilege granted to an advocate may also amount to an abuse of the privilege granted to an advocate by virtue of the licence to practice law but no issue relating to his suspension fomi practice is the subject matter of the case. The powers of this court under Article 129 read with Article 142 of the Constitution, being supplementary powers have to be used in exercise of its jurisdiction in the case under consideration by this court. Moreover, a case of contempt of court is not strict sense a cause or a matter between the parties inter se. It is a matter between the court and the contemnor.

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41 Appeal from Bar Council of India to the Supreme Court.
42 Supra note 34 at p. 74.
45 Supra note 38, para 41.
The learned judge further observed that the power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of 'professional misconduct' in a summary manner giving ago by to the procedure prescribed under the Advocates Act. The power to complete justice under Article 142 is in a very corrective power, which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act, 1961 by suspending his licence to practice in a summary manner while dealing with a case of contempt. It needs to be remembered that Article 142 being curative in nature cannot be construed as powers which authorize the court to ignore the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to supplant substantive law applicable to the case or cause under consideration of the court Article 142 even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly.46

From a reading of Article 142 it is clear that the statutory provisions cannot be ignored or taken away or assumed by the Supreme Court. The Advocates Act, 1961, empowers the Bar Council to take action against the Advocate for professional misconduct. The Bar Council is empowered under Section 35 of the Advocates Act, 1961 to punish advocates for professional misconduct. The act contains a detailed and complete mechanism for suspending or revoking the licence of an advocate. A disciplinary committee hears the case of the advocate concerned and then order any of the punishment listed in Sec. 35 (3) (a-d) Advocate Act, 1961. If the advocate is guilty of contempt of court as well as professional misconduct the court must punish him for the contempt, whereas refer the professional misconduct to the Bar. The Bar will then initiate proceedings against, this provides the advocate right with right to be heard and appropriate action is taken by the disciplinary committee. After such proceedings if the advocate is aggrieved he may approach the Supreme Court. Section 35 of the Advocate Act, 1961 provides for an appeal to the Supreme Court.

46 Ibid., paras 43, 47.
This section confers upon the court appellate jurisdiction. This section can in no way be construed to give original jurisdiction to the court.\textsuperscript{47}

There was an inherent fallacy in the case of Vinay Mishra, it was said once the matter is before the court it can pass any order or direction. But the matter is that of contempt of court not of professional misconduct. The court has jurisdiction or the matter of contempt by professional misconduct vests with the Bar. As the Bar can suspend an advocate only after giving him an opportunity to represent himself which is the requirement of due process of law, after the case of \textit{Maneka Gandhi v. Union of India}.\textsuperscript{48} The court in Vinay’s case vests with itself with the jurisdiction that it never had.\textsuperscript{49} The Supreme Court is vested with the right to punish those guilty of contempt of court under Article 129 read with Article 142 of the Constitution of India. The power to punish contemnors is also vested with the High Courts under Article 215 of the Constitution and the contempt of court Act, 1971 also governs the punishment given by the High Court. This act in no way controls the jurisdiction of the Apex Court. The court in re Vinay Mishra misconstrued Article 129 read with Article 142 and robbed the bar to of all powers to try and punish those for professional misconduct. It even assumed jurisdiction when section 38 of the Advocate Act, 1961 explicitly provides only appellate jurisdiction to the Apex Court. The court punished Shri Mishra by suspending him thus the petition arose in the 1998 case, \textit{Supreme Court Bar Association v. Union of India}.\textsuperscript{50}

The Supreme Court overrules the Mishra case in Supreme Court Bar Association case and recognized the Bar Council’s power to try and punish all those guilty of professional misconduct. It is well settled that contempt proceedings are brought about to protect the majesty of law and uphold the judiciary’s position, the central pillar in India democracy among the public and give them reason to keep their faith in the administration of justice. Contempt proceedings are not brought about to restore the pride of the judge in who’s court or against whose order there was contempt. In the Mishra case the court instead of protecting the image of the judiciary, the upholder of the laws knowingly or unknowingly, tried to restore the pride of the

\textsuperscript{48} (1978) 1 SCC 248.
\textsuperscript{49} Supra note 47.
\textsuperscript{50} Supra note 38.
judge by suspending the advocate Mishra who might have been influenced by his high position in the Bar, and felt that appropriate punishment might not be meted out to them.  

In the Supreme Court Bar association case the court took a very objective view and taking the help of law and construing it in the right way came to the conclusion that the power to punish any professional misconduct rests with the Bar, whereas to punish for contempt only it has jurisdiction for itself and subordinate courts. No statute can take the contempt jurisdiction away from the supreme as well as High Court.

M.Y. Shareef and Another v. The Hon'ble Judges of the High Court of Nagpur and others, a writ petition under Article 226 filed in the High Court of Nagpur for an order of prohibition against the state from deporting him by treating him as a national of Pakistan. In view of the certain adverse remarks of the judges a petition was filed for transfer of the case to another Bench. This petition was signed not only by the party but also by his two counsels. This petition as also the main petition under Article 226 was discussed. Notice was issued to the applicant and his two counsel to show cause why they should not be committed for contempt for scandalizing the court. They were convicted for contempt and ordered to pay a fine. The matter was carried to the Supreme Court by special leave. In the Supreme Court the appellants tendered an unqualified apology. The Supreme Court adjourns the appeal for two months directing the apology to be tendered to the High Court. This was accordingly done but the High court did not alter the sentence. The matter was again before the Supreme Court.

A section of the Bar seems to be laboring under an erroneous impression that when an advocate is acting in the interests of his clients or in accordance with his instructions he is discharging his legitimate duty towards him even when he signs an application or a pleading which contains matter scandalizing the court and that when there is conflict between his obligations to the court and his duty to the client, the later prevails.

51 Supra note 47.  
52 (1955) I SCR 757; AIR 1955 SC 19; 1955 Cri. LJ 133.  
It should be widely made known that an advocate who signs an application or pleading containing matter scandalizing the court which tends to prevent or delay the course of justice is himself guilty of contempt of court unless he reasonably satisfies himself about the prima facie existence of adequate grounds there for and that it is no duty of an advocate to his client to take any interest in such applications; on the other hand, his duty is to advise his client for refraining from making allegations of this nature in such applications. In border line cases where a question of principle about the rights of an advocate and his duties has to be settled an alternative plea merits consideration, for it is possible for a judge who hears the case to held that there is no contempt in which case a defence of unqualified apology is meaningless, because that would amount to the admission to the commission of an offence. Every form of defence in a contempt case cannot be regarded as an act of contumacy. It depends upon the circumstances of each case and on the general impression about a particular rule of ethics amongst the members of the profession.\textsuperscript{55}

In this situation, the question for consideration in the appeal now is whether the two appellants have purged the contempt by tendering an unqualified apology in the Supreme Court as well as the High Court, the genuineness of which has been again emphasized by their counsel before the Supreme Court, or whether the sentence of fire awarded to them by the High Court should necessarily be maintained for upholding the authority and dignity of the court.\textsuperscript{56}

The proposition is well settled and self evident that there cannot be both justification and an apology. The two things are incompatible. There has been nothing said in the lengthy judgment of the High Court that these counsel in their long career at the Bar have ever been disrespectful or discontinues to the court in the past. After a careful consideration of the situation that arises in this case Supreme Court reached the decision that the dignity of the High Court would be sufficiently if upheld if the unqualified apology tendered in this court in the first instance and reiterated in absolute terms again at the next hearing is accepted and that apology is regarded as sufficient to purge the contempt. The matter has become very stale and the ends of justice do not call for maintaining the punishment of fine on two senior counsels for acting wrongly for erroneous impression of their rights and privileges. For the reason

\textsuperscript{55} Ibid.
\textsuperscript{56} Supra note 53 at p. 212.
Supreme Court set aside the sentence of fine passed on both the appellants by the High Court and unqualified apology given by them to the Supreme Court and High Court is accepted.\textsuperscript{57}

\textbf{R.K. Garg v. State of Himachal Pradesh,}\textsuperscript{58} the appellant contemnor, an advocate, hurled a shoe at the trial court judge and explained his conduct by saying that he acted under an irresistible impulse generated by the provocative language used by the judge. But the High Court held that the appellant had given an untrue version of the very genesis of the incident. However, in view of the fact that the appellant tendered an unconditional apology to the Supreme Court and to the court where the offence was committed, a long sentence of imprisonment was not called for. The appellant was present in Supreme Court and it was visible that he had suffered enough in mind and reputation and no greater purpose was going to be served by subjecting him to long bodily suffering. Accordingly, sentence of six months was reduced to one month and fine of Rs. 2000 was enhanced to Rs. 1000.

In \textit{Rachapudi Subba Rao v. The Advocate-General, Andhra Pradesh,}\textsuperscript{59} an appeal was directed by Rachapudi Subba Rao against a judgment of the High Court of Andhra Pradesh, whereby the appellant was convicted for committing gross contempt of court under Section 12 read with Sections 10 and 15 of the contempt of courts Act, 1971\textsuperscript{60} and sentenced to undergo one month’s imprisonment. The Supreme Court also held that the appellant had committed serious and gross contempt of court as he had recklessly imputed malafide and lack of good faith to the judicial officer who had decided the cases against him. The court also observed that the imputations leveled were perse scandalous and actuated by bad faith. The main reason of upholding the judgment of High Court was the absence of relentment. He was sentenced with one month’s imprisonment because he did not even pretend to give any reason for the alleged malicious attitude on the part of the judicial officer either in notice or in counter affidavit. Rejecting the appellant’s contention that in view of Sec. 13\textsuperscript{61} contempt of courts Act, 1971 no sentence could be imposed on him. The court opined

\textsuperscript{57} Id., pp. 212-213.
\textsuperscript{58} AIR 1981 SC 1382.
\textsuperscript{59} (1981) 2 SCC 577.
\textsuperscript{60} 'Contempt of Courts Act, 1971'; Sec. 12. Punishment for contempt of Court; Sec. 10, Power of High Court to Punish Contempts of Subordinate Courts; Sec. 15, Cognizance of Criminal Contempt in other cases.
\textsuperscript{61} Ibid, Sec. 13 Contempt not Punishable in certain cases.
that if the act complained scandalization of the judicial officer in regard to the
discharge of his judicial functions, thereby substantially interfered or tended to
interfere with the due course of justice, which was a facet to the broad concept of the
‘administration of justice’, and as such, was punishable under Sec. 13 of contempt of

In *L.D. Jaikawal v. State of U.P.*, the Supreme Court said that “we are sorry
to say that we cannot subscribe to the slapsay-sorry and forget school of thought in
administration of contempt jurisprudence”. In the said case a senior advocate
appeared for his client before a special judge and had made a written application to
the said special judge couched in scurrilous language, making the imputation that the
judge was a ‘corrupt judge’ and adding that he was ‘contaminating the seat of
Justice’. He was held guilty for contempt of court and sentenced for one week simple
imprisonment along with a fine of Rs. 500. The Supreme Court declined to interfere
and set aside the sentence merely because the appellant advocate tendered a formal
apology, wherein he stated that he was doing so ‘as directed by the Hon’ble Supreme
Court’.

In *M.B. Sanghi v. High Court of Punjab and Haryana and Others*, the
contemnor was a practicing lawyer. He had made an attack on the judge which was
disparaging in character and derogatory to judge's dignity and would really shake the
confidence of the public, thus, he was held guilty for contempt. Though the
contemnor had tendered an unqualified apology but it was not accepted and the court
held that the apology is not a weapon of defence to purge the guilt of their offence;
nor it is intended to operate as a universal panacea but it is intended to be evidence of
real contriteness.

In *Shamsher Singh Bedi v. High Court of Punjab and Haryana*, an
advocate, Shamsher Singh, filed an appeal under Section 19 of the contempt of courts
Act, 1971 against the judgment and order of a Division Bench of the Punjab and
Haryana High Court for making allegations of malafide intention against the sub-
Divisional Magistrate. The appellant wanted to submit that the remarks made in the

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62 AIR 1984 SC 1374.
63 Id. at p. 1375.
64 AIR 1991 SC 1834.
notice were against the individual presiding officer and not against the court as such and, therefore, a clear cut case is not made out. But the Supreme Court opined that such remarks were scandalous and with reference to judicial functions of Magistrate which interfered with administration of justice could not be said to be aimed at the individual, therefore, the conviction of the advocate was upheld.

In re Nand Lal Balwani Case, the advocate shouted slogans in the open court and, therefore hurled his shoe, toward the court thereby interrupting the court proceedings. He was informed that his action was aimed at intimidating the court and causing interference in conduct of judicial proceedings and amounted to gross contempt of this court. He was informed of the charge and asked if he had anything to say in his defence. At his request, time was given to him to file an affidavit in response to the charge. He filed an affidavit, in which he admitted his intemperate behavior in the court and tendered unconditional apology. The court said that from the manner in which the contemnor had behaved, a deliberate, motivated and calculated attempt, to impair the administration justice was discernible. The apology was not accepted at it was not bonafide. A deterrent punishment of simple imprisonment of four months was imposed upon them.

In re S.K. Sundaram S.K. Sundaram, advocate (hereinafter referred to as the contemnor) sent telegraphic communication to Dr. Justice A.S. Anand, the Hon’ble Chief Justice of India on 3-11-2000. It reads thus:

I call upon Shriman Dr. A.S. Anand, Hon’ble Chief Justice of India, to step down from the constitutional office of the Chief Justice of India forthwith, failing which I will be constrained to move the criminal court for offence under Sections 420, 406 and 471, of the Indian Penal Code, 1860 for falsification of your age, without prejudice to the right to file a writ of quo warranto against you and for a direction to deposit a sum of Rs. 3 crores for usurping to the office of Chief Justice of India even after attaining the age of superannuation.

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66 2000 Cri. LJ 919 (Allahabad).
68 Indian Penal Code, 1860, Sec. 420 Cheating and dishonestly inducing delivery of property; Sec. 406 punishment for criminal breach of trust; Sec. 471 using as genuine a forged document or electronic record.
69 Supra note 67 at p. 2376.
Within three days of dispatch of the said telegram the contemnor filed a criminal complaint before the Chief Metropolitan Magistrate, Chennai in which he arraigned the Chief Justice of India as an accused in the case. He produced a copy of the above quoted telegram as one of the documents appended with the complaint. On a note put up by the Registrar General of the Supreme Court regarding the said telegraphic communication, the matter was taken up on the judicial side and they passed an order on 7-11-2000 that prima facie they were satisfied that the contents of the said telegram, sent by S.K. Sundaram, Advocate, amount to gross contempt of court. The contemnor filed a written reply to the notice issued to him endeavouring to justify his actions by saying that he had done what he believed to be right and fair within the bounds of his knowledge of law and language. The court after making a survey of a number of decisions made the following observations:

We may observe that any threat of filing a complaint against the judge in respect of the judicial proceedings conduct by him in his own court is a positive attempt to interfere with the due course of administration of justice. In order that the judges may fearlessly and independently act in the discharge of their judicial functions, it is necessary that they should have full liberty to act within the sphere of their activity.70

After analyzing the whole fact the court came to the conclusions that the impugned action of the contemnor was a case of gross criminal contempt of court. Therefore he was held guilty of criminal contempt of court and sentenced to undergo imprisonment for six months. But after awarding the sentence the court considered another aspect. The contemnor said that he was a heart patient. Therefore, the court ordered that the sentence of imprisonment for six months would stand suspend for a period of one month from that day. If the contemnor would give an undertaking in this court, in the form of an affidavit, to the effect that he would not commit or even attempt to commit any act of criminal contempt, then the sentence now imposed by court would remain suspended for a further period of five years. The above stated case shows that the contempt power has been misused by the courts to go so far as to hold that no motives can be ascribed to judges or courts.

70 Id. at p. 2380.
In *Prem Surana v. Additional Munsif and Judicial Magistrate*,\(^1\) the appellant was an Advocate and a criminal proceeding was pending against him before a Magistrate at Jaipur. When his application for exemption from personal appearance was rejected the appellant reached the court abusing and threatening the Magistrate and gave a severe slap on the face of the Magistrate. The Division Bench of Rajasthan High Court rejected the appellant’s apology and found him guilty of committing criminal contempt of the court and sentenced him to undergo simple imprisonment of six months together with a fine of Rs. 2000. Through the criminal appeal the appellant sought the Supreme Court to free him from the sentence awarded. Dismissing the appeal, the Supreme Court held that attack on a Judge with a slap was a slur on the entire judiciary, it was a slur on the justice delivery system of the country and as such question of acceptance of any apology or an undertaking did not and could not arise, neither could there be any question of any leniency as regards the sentence. His appeal was dismissed and he was ordered to be taken into custody for undergoing the remaining period of sentence.

In *Radha Mohanlal v. Rajasthan High Court*,\(^2\) the Supreme Court opined that it was painful to punish anyone, and more particularly a member of legal profession, for contempt of court but in order to secure the ends of justice, in extreme cases, it became the duty of the court to do so. Since the contemnor was a senior citizen aged 81 years, he was hardly in active practice any more. Despite the fact that he had been reckless and persistent, the court thought that the object of punishment will be served by reducing the three month’s simple imprisonment to one already undergone by the appellant, while maintaining the fine and the imprisonment in default of payment of fine.\(^3\)

In *Haridas v. Smt Usha Rani Banik and Others*,\(^4\) it was held that the statements like “Judge bashing” and using derogatory and contemptuous language against judges has become a favorite pastime of some simple tend to scandalize and lower the authority of the courts and cannot be permitted because, for the functioning of democracy, an independent judiciary to dispense justice without fear and favour is paramount. Its strength is the faith and confidence of the people in that institution.

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\(^{1}\) (2002) 6 SCC 722.
\(^{2}\) 2003 Cr. L.J 1207 (SC).
\(^{3}\) Id. at p. 1210.
\(^{4}\) Supra note 3.
That cannot be permitted to be undermining because that will be against the public interest. Rejecting the apology the court sentenced him to undergo imprisonment for a period of two months.

In *R.K. Anand Registrar, Delhi High Court and I.V. Khan v. Registrar, Delhi High Court*, in this matter arose from a criminal trial arising from a hit-and-run accident in which a car allegedly travelling at rock less speed crashed through a police check post and unrushed to death six people, including three policemen. The main accused was driving a black BMW car, man inebriated state, at very high speed. The trial was meandering endlessly even after eight years of the accident and in the year 2007, a well known English language news channel called NDTV telecast a program on 30-5-2007 in which one restless for prosecution was shown meeting with I.U. Khan, the Special Public Prosecutor (Appellant 2) and R.K. Anand, the senior defence counsel (appellant 1) and two others, and negotiating for his sell-out in favour of the defence for a very high price.

Shocked by the programme, the Delhi High Court *suo motu* initiated a proceeding. It called for all the materials from the news channel on which the telecast was based and after examining those materials issued show cause notice to senior defence lawyer and Special Public Prosecutor, why they should not be convicted and punished for committing criminal contempt of court as defined under Section 2 (c ) of the contempt of courts Act, 1971. High Court held them guilty of committing contempt of court and in exercise of power under Article 215 of the Constitution prohibited them for appearing in the Delhi High Court and courts subordinate to it for a period of four months from the date of the judgment. The High Court also held that both advocates had forfeited their right to be designated as senior advocates and recommended to the full court to divest them of the honour. Additionally, they were also sentenced to a fine of rupees two thousand each. Supreme Court dismissing the appeal of appellant 1 and allowing the Appellant 2 and his conviction for criminal contempt is set aside. The period of four months prohibition from appearing in the Delhi High Court and the court subordinate to it is already over. The punishment of fine given to him by the High Court set aside. The appeal of R.K. Anand is dismissed.

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75 *(2009) 8 SCC 106.*
76 *id. at p. 109.*
77 *Id. pp. 109-110.*
subject to the notice of enhancement of punishment issued to him as indicated in the judgment.  

In *Hari Singh Nagra and Others v. Kapil Sibal and Others*, the message sent by Mr. Kapil Sibal to be published in the souvenir of Mehfil will have to be regarded as fair criticism of his senior colleagues for their failure to bring up the Junior Bar and of those members of the Bar who were shouting at each other and threatening the judges. The message is nothing but concern of a senior advocate who has practiced long in this court who noticed that the public image of the legal community was as nadir. The article nowhere targets a particular judge. This is not a case of an attack on a judge which was published in the newspaper and an impression was given that Mr. Sibal had made a frontal attack on the judiciary. The article is an expression of opinion about an institutional pattern. The article by itself does not affect the administration of justice.  

In *Vishram Singh Raghubanshi v. State of Uttar Pradesh*, the appellant was an advocate practicing for the last thirty years in the District court, Etawah (U.P.). He produced one Om Prakash for the purpose of surrender impersonating him as Ram Kishan S/o Sh. Ashrafi Lal who was wanted in a criminal case in the court of IInd ACJM, Etawah. There was some controversy regarding the genuineness of person who came to surrender, and therefore, the Presiding Officer raised some issues. The appellant misbehaved with the Presiding Officer and the appellant stopped over the dias of the court and tried to snatch the paper of the statement from him and started abusing him that “madarchod, bahanchod, High Court Ko Contempt refer kar,” and stopped out, abusing similarly from the courtroom. The Presiding Officer made a complaint against the appellant to the State Bar Council and also made a reference to the High Court for initiating contempt proceeding against him. In reply to the show cause notice issued by the court, the appellant denied the allegations and tendered an apology in the form of an affidavit. The State Bar Council discussed the complaint but the High Court framed charges against him. In response to the same, the appellant

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78 Id. at p. 208.
80 Mehfil-e-Wakale ('Mehfil', for short) is a cultural and literacy group/Association of lawyers practicing in the Supreme Court.
81 Supra note 79, para 24 at p. 512.
82 (2011) 7 SCC 776.
again submitted an affidavit tendering a similar apology. The Division Bench on considering the matter held the appellant guilty of contempt and sentenced him to 3 month's simple imprisonment with a fine of Rs. 2000.  

Discussing the appeal and sending the appellant forthwith to jail, the Supreme Court held that the case of impersonation of the person to be surrendered is a serious one, and the appellant being an officer of the court, was under duty to satisfy the court and establish the identity of the person concerned. The conduct of the appellant was in complete isolation and in contravention of the "standards of professional conduct and etiquette" laid in Section 1 of Chapter II (Part VI) of the Bar Council of India Rules. A person aggrieved with misbehavior/conduct or bias of a judicial officer has a right to raise his grievance, but it should be before the appropriate forum and by resorting to the procedure prescribed for it, Under no circumstance, can such a person be permitted to become the law unto himself and proceed in a manner he wishes, since it would render very existence of the system of administration at state.  

The dangerous trend of making false allegations against Judicial Officers and humiliating them requires to be curbed with heavy hands; otherwise the judicial system itself would collapse. The Bench and the Bar have to avoid unwarranted situation on trivial issues that hamper the cause of justice and are in the interest of none. "Liberty of free expression is not to be confounded or confused with license to make informed allegations against any institution, much less the judiciary". An advocate in a profession should be diligent and his conduct should also be diligent and conferred to the requirements of the law by which an advocate plays a vital role in the presentation of society and judicial system.  

Court has clearly laid down that apology tendered is not to be accepted as a matter of course and the court is not bound to accept the same. The court is competent to reject the apology and imposing the punishment recording reason for the same. If the words are calculated and clearly intended to cause any insult, an apology if tendered and lacks penitence, regret or contrition, does not deserve to be accepted.  

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81 Id. at p. 777.  
82 Id. at para 8, p. 781.  
83 Id. at para 9.  
84 Id. at para 18, p. 784.  
85 Id. at para 27, p. 786.
5.2.2.2 Decisions of the High Court on Contempt by Advocate

The decisions of *Court of its own Motion v. B.D. Kaushik and Others,*\(^{88}\) is important because in full bench of Delhi High Court there were 12 judges who gave their majority opinion and 9 judges were in minority.

In the instant case the advocates aided and abetted by others, in large number, stormed the various court rooms in High Court when judges of the High Court were discharging their judicial functions. They also prevented various lawyers from discharging their judicial functions as officers of the court and also stopped the litigants from conducting their cases in the court. Subsequently, the President of the Bar Association made a statement in which he stated the owned moral responsibility as President of the Delhi Bar Association, he further stated that they would try their level best not to repeat such incidents in future and also assured that there would be no recurrence.

Golak Chand Mittal, C.J. delivering the majority judgment held that, however, in the totality of the circumstances including the outrageous incident and unqualified apology, High Court declined to award the sentence and deferred it as the High Court wanted to further watch their conduct and behavior for a period of one year.\(^{89}\) S.B. Wad, J., delivering the minority view, held that since the contemnors had committed cross and outrageous contempt and the apology tendered by the contemnors would be liable to be convicted.

On 2, July 1991, Justice G.T. Nanavati of the Gujarat High Court issued a contempt notice against a leading advocate, Girish Patel, who had stated in court that the judge had "an anti-labour attitude". The contempt notice has sparked furors of protests from trade unions and labour lawyers in Gujarat and has once again put the focus on the inadequacies and injustices of the contempt of courts Act. Justice G.T. Nanavati, one of the most senior judges of the Gujarat High Court, is the bane of the working class people and tribals and those who appear in court for them, because he has an extremely conservative and reactionary approach, being generally anti-litigants and anti-poor. His remarks in court against workers, tribals, dalits and slum-dwellers are usually so caustic that they would hurt anyone who works with these people. He

\(^{88}\) 1993 Cri. IJ 336 (Delhi).
\(^{89}\) Id. at p. 340.
has been known to make remarks like “workers are members of the suicidal squad for the country”, “All labour laws must be scrapped.”

A brief resume of the facts of the matter in which the notice of contempt is rooted, needs to be spelt out. In a reference relating to an industrial dispute, the industrial tribunal had passed an award granting 8% wages to workmen for the period of illegal lockout declared by the company they worked in, which the company had to deposit within 30 days of the date of publication of the award. As the company failed to deposit this amount, the union representing the concerned workmen filed a contempt petition in the Gujarat High Court. The company, meanwhile challenged this award directly in the Supreme Court ignoring established principles of law, but their petition was rejected. The company then challenged the award in the High Court. The High Court admitted the petition but did not stay the award. The court, however, directed the company to deposit the amount awarded by the tribunal within 6 weeks from the date of the order and allowed the workmen to withdrew the same, contingent on their filing individual undertaking to the effect that in case the company succeeded ultimately and the amount was ordered to be refunded, then each of the workmen’s respective refunds would be adjusted against the retirement benefits or provident fund, gratuity, etc., payable to them by the company. The Supreme Court, however, observed that the company was at liberty to go back to the High Court to ask for some better sort of security from the workers apart from the above undertakings.

The company thereafter filed a civil application before the High Court asking for modification of the interim order in the earlier petition, with regard to security. When the matter came up for hearing in July, 1991 before the Decision Bench of Justice G.T. Nanavati and J.M. Panchal J., the company’s advocate asked for extension of time as he had not been able to serve all the workers. Mr. Girish Patel, appearing for the workmen and the Union, pointed out to the Judges that the company had failed to deposit the amount of the lockout wages in the court, so the question of the workers withdrawing the amount against security had not arisen at all. The court had made an observation to the effect that there was a stay on the award decreeing

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91 Ibid.
payment of the lock out wages. Mr. Patel had replied that the High Court and Supreme Court had both categorically refused to stay the award, and all that the High Court had done so far was to specify the manner in which the workers could withdraw the amount once it had been deposited by the company in the court.²

Justice Nanavati then observed that in doing so the earlier judges had passed an ‘unusual order’, and that it was a “mistake and needed to be rectified.” He then proceeded to tell the company’s advocate that they may not deposit the amount. At this point, Mr. Patel pleaded that the workers had to file a contempt petition and yet the company had failed to comply with the award. All that justice Nanavati had to say to this was, “you might approach another court for contempt.” To this Mr. Patel replied that it was the duty of the High Court to see that the dignity and honour of all institutions be maintained, and of their orders were not complied with, that would undermine their authority and dignity. To this justice Nanavati said: “We are here to maintain the dignity of the court, and not of the lawyers.” Mr. Patel then began to say, “This anti labour attitude………………,” whereupon he was silenced in mid-sentence by justice Nanavati who started dictating the order for contempt of court. The charge served on the helpless Mr. Patel reads as follows:³

“In open court Mr. Patel while conducting his matter stated that one of us (G.T. Nanavati) has an anti labour attitude. He further stated that because of such attitude, dignity of the court is not maintained. By starting like this Mr. Patel has cost an aspersion on the impartiality of this Bench and this, in our opinion, amounts to scandalizing the court.

In the above stated case we can see that how the Judges suppressed the voice of truth through the weapon of contempt. Sometimes they use it to satisfy their personal ego and sometimes to use it as a shield to protect their arbitrary actions.

In re, Tapan Roy and Others,⁴ the contemnor, an advocate, was enraged by the rejection of prayer for confirmation of interim bail of certain accused persons. He along with some others persons challenged the order, abused the S.D.J.M in filthy languages in open court and created chaos and terror in the court room. An attempt

² Id., pp. 24-25.
³ Ibid.
⁴ 1997 Cri. L.J.2166 (Cal.).
was also made to attack the Judicial Magistrate. Contemnors tendered an unconditional apology. But the court held that it was not a fit case for dropping proceedings on ground that the apology was tendered. Thus the contemnors were sentenced to four months simple imprisonment along with fine.

In the *Judge, II Labour Court, Thane v. R.S. Pande,* during the course of hearing a heated discussion took place between advocate George Kurian and R.S. Pande. Thereafter, a scuffle took place between them. The judge Mr. S.A. Dwivedi asked both the sides to observe restraint but his request went unheeded by them. Consequently, he retired to his chamber. A written complaint was made by the Judge, the Bombay High Court held that the incident mentioned above amounted to interference with due course of judicial proceedings and held the contemnor guilty of criminal contempt. On the question of punishment the court's view is noticeable that “we wish to emphasis that there should be some compelling reasons warranting impositions of a jail sentence.” Further, the court held that “we are of the view that the ends of justice would be squarely satisfied if in addition to accepting the unqualified apology tendered by the contemnor, he is sentenced to pay a fine of Rs. 2000 and in default, to undergo two months simple imprisonment.”

In *S.P. Singh, C.J.M v. Ram Bharose Lal Agrawal,* the contemnor advocate addressed the District court in highly disrespectful manner. When the contempt proceedings were initiated against him, he tendered an unqualified and unconditional apology not only before the High Court but also before District court and admitted that he was an old man suffering from heart ailment. The court again accepted the apology and discharged the contemnor upon that apology.

In the *State of U.P v. Rajendra Singh Chaudhary,* the contemnor advocate, Rajendra Singh Chaudhary, entered and remained in court of Additional Chief Judicial Magistrate under intoxication. He committed and spat in court, his behavior interfered with the course of judicial proceedings as well as obstructed administration of justice in preventing the court from functioning. The court held him guilty of contempt of court and sentenced to three months simple imprisonment and a
fine of Rs. 2000. Further, the court brought to the notice of the contemnor that he could go to appeal against the said judgment. The suggestion of the court for further appeal is suggestive of un-decidedness of the court itself regarding the nature and amplitude of punishment.

The Sikkim High Court in Advocate General, Sikkim v. Ashwani Khurana, held Ashwani Kumar guilty of contempt of court for writing a letter to Chief Justice. The letter was treated as contumacious and court held that the contemnor was in the habit of addressing communication to Chief Justice with regard to his litigation. Thus, the unconditional apology tendered by the contemnor was not accepted and he was sentenced to simple imprisonment for seven days and fine of Rs. 2000 awarded. But the substantive sentence of imprisonment was suspended for three years.

The decision of Madras High Court in re, S. Durai, the contemnor, S. Durai, had made a scurrilous allegation against court and criticized the final order passed by the court. He went to the extent that he would report about the order to the Supreme Court or to the Geneva court and would not leave judge of the court even after retirement. The contempt petition was adjourned to several dates hoping that at least by the passage of time, the contemnor would show the attitude of regret before the court.... The attitude of the contemnor should that he persistently and consistently attempted to malign the institution of judiciary as well as the lawyers and the state. Though the court opined that the contumacious and scurrilous attacks on judges was not pardonable and sentenced him to undergo simple imprisonment for six months but on his request on affidavit to file an appeal the said sentence was suspended for one month.

From the analysis of various High Courts predicts it becomes clear that the proceedings regarding criminal contempt are uncertain like anything. In no case of criminal contempt certainty of punishment could be seen. Here it is submitted that for an effective legal and penal policy certainty of punishment, however, minor it may be, is sine qua non not only to further the independence of judiciary but also to strengthen the democracy.

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99 2002 Cri. LJ 2492 (Sikkim).
100 2003 Cri. LJ 157 (Madras).
101 Id. at p. 161.
From the above discussion regarding cases of Supreme Court and High Court following inferences emerge:

The criteria on which on which contempt proceedings should be initiated is not settled for certainty and in exercise of the inherent jurisdiction to punish a person for the contempt, the court has jurisdiction to pass any order mentioned under Sections 12 and 14 of the contempt of courts act, 1971. The S.K. Sundram Case shows that the contempt power has been misused by the courts to go so far as to hold that no motive could be described to judges or courts. If the court accepts the apology then also no one can predict the decision because in some cases the court only imposes fine, whereas in other neither imprisonment nor fine. In some cases, it appears that apology was satisfying while in some other cases, it did not. In such a situation the contemnors also do not show any sincerity regarding apology. The analysis makes it clear that the problem relating to contempt is mainly concern with interpretation. Upon which principles the Act should be interpreted is not established. Committing the contemnors to prison is always discretion with the court. The power of deciding whether a particular criticism of judges amounts to 'scandalizing the court on commencing the authority of the court' is the very negation of the notion of justice in which no person can sit in judgment over his own cause. A judge like everyone else will have to earn respect. They cannot demand respect by demonstration of power. It should be remembered that exercise of such power results in eroding the confidence of the people, rather than creating trust and faith in the judiciary.

On the other hand, liberty of free expression cannot be permitted to be treated as a license to make reckless imputations against the impartiality of judges deciding the case. The advocate or the party appearing in person owes a duty to maintain dignity decorum and order in the court proceedings and judicial process.

5.3 Contempt by Politicians

The object of contempt of law is not to scandalize judicial as an institution or to bring into hatred and ridicule. It is weapon in the hands of judges to maintain
discipline and dignity and dignity in court of law. Lord Denning Aptly observed: "let me say at one that received never use this jurisdiction as a means to uphold our own, dignity. This will rest on surer foundations. Nor we will use it to suppress those who speak against us. We do not fear criticism nor did we resent it. Every person has a right to make a fair comment, even out spoken comments, on matter of public interest. All we would ask is that those who criticize us will remember that, from nature of our office, we cannot enter public controversy."^105

5.3.1 Speech Made by Law Minister

P.N. Duda v. P. Shivshankar,^106 where in spite of severe criticism and wild allegation is made by P. Shivshankar against the institution of judiciary, no action was taken against the then Minister of Law, Justice and Company Affairs, Government of India. He delivered a speech before a meeting of the Bar Council at Hyderabad in which he made derogatory statement against the Supreme Court and its dignity attributing partiality towards economically affluent sections of the people by using language which was extremely intemperate, in dignified and unbecoming of a person of his stature and position.^107 The relevant portions of the said speech are as follows:^108

(a) "The Supreme Court composed of the element from the elite class had their unconcealed sympathy for the haves i.e. the Zamindars. As a result they interpreted the word ‘compensation’ in Article 31 contrary to the spirit and intendment of the Constitution and ruled the compensation must represent the price which a willing seller is prepared to accept from a willing buyer. The entire programme of Zamindari abolition suffered a setback. The constitution had to be amended by the 1st, 14th and 17th Amendments to remove the oligarchic approach of the Supreme Court with little or no help ultimately this rigid reactionary and traditional outlook of property, led to the abolition of property as a fundamental Right.

^106 Supra note 2.
The Minister further stated:

(b) Twenty years of valuable time was lost in this confrontation presented by the judiciary in introducing and implementing basic agrarian reforms for removal of poverty what is the ultimate result. Meanwhile even the political will seems to have given way and the resultant effect is the improper and ineffective implementation of the land reform laws executive and the judiciary supplementing and complementing each other.

It was further stated by him:\textsuperscript{109}

(c) The Maharajas and the Rajas were anachronistic independent India. They had to be removed and yet the conservative element in the ruling party gave them privy purses. When the privy purses were abolished, the Supreme Court, contrary to the whole national upsurge, held in favour of Maharajas.

(d) Mahadhipatis like Keshvananda and Zamindars like Golaknath evoked a sympathetic cord nowhere in the whole country except the Supreme Court of India. And the bank inaugurates the representations of the elitist culture of this country, ably supported by Industrialists, the beneficiaries of Independence, got higher compensation by the intervention of the Supreme Court in Cooper Case. Anti Social elements i.e. F.E.R.A violations bride burners and a whole horde of reactionaries have found their haven in the Supreme Court.\textsuperscript{110}

On such type of frontal attack the Bench of Sabhyasachi Mukherji and S. Ranganathan, JJ. Opined that, the speech of the Minister has to be read in its entirety and when it was read in proper perspective, his speech, under the circumstances was not amounting to impudent danger of interference with the administration of justice nor of bringing the administration into disrepute. In this judgment, the court said that the statement of law Minister was permissible because the criticism of the judicial system was made by the person who himself has been the judge of the High court and was the minister of the relevant time.\textsuperscript{110}

\textsuperscript{109} Id. at p. 5.
\textsuperscript{110} Supra note 107.
Whereas in the *Arundhati Roy's case*,\textsuperscript{111} the Supreme Court believed that she wanted to become a champion to the cause of the writers by asserting that persons like can allege anything they desire and accuse any person or institution without any circumspection, limitation or restraint. So, on the basis of record the respondent was held guilty for contempt of court punishable under Section 12 of the contempt of courts Act. However, showing the magnanimity of law by keeping in mind that the respondent is a women and hoping that better sense and wisdom shall down upon the respondent in the future to serve the cause of art and literature by her creative skill, and imagination the court felt that the ends of justice would be met if she is sentenced to symbolic imprisonment for one day and with a fine of Rs. 2000. This comment is seen not only as a sample of the gender insensitivity of the Bench but also its tendency to humiliate the contemnor even while holding her guilty of contempt and handing out a “symbolic” punishment.\textsuperscript{112}

The conviction and punishment of Arundhati Roy for contempt of court shows that despite its doctrinal activism on human rights the Supreme Court of India is still may behind the times in balancing freedom of speech and contempt of court.\textsuperscript{113} It also raises certain question viz., can a citizen of India not criticize the procedures and management of the court? Is the court not supposed to be accountable? How will its accountability be enforced if it were made absolutely immune from public criticism? Even what she said regarding Tehelka, was a mere criticism of the priorities of the court. How does such criticism erode the reputation of the court? Is the reputation of the court so fragile that it would be lost by mere criticism of its working?\textsuperscript{114} If we received *Shiv Shankar case*\textsuperscript{115} then it can be said that freedom of speech cannot be greater for one who has been a judge than for one who is citizen not moving in the corridors of power.

Arundhati Roy had no personal axe to grind. She spoke for a cause which she thought was important and needed her support. Should these things not commit while saying a person for contempt? If Shiv Shankar’s judicial belonging elicited greater tolerance of his views, Arundhati Roy’s altruistic intentions also deserved such

\textsuperscript{112} Supra note 107, pp. 209-210.
\textsuperscript{113} S.P. Sathe, 'Commentary on Accountability of the Supreme Court, Arundhati Roy Case', Economic and Political Weekly, April 2002, p. 1383.
\textsuperscript{114} Id. at p. 1384.
\textsuperscript{115} Supra note 2.
tolerance. Moreover, the court was rather patriarchal in condescendingly referring to her as a 'woman' whom they treated leniently by giving one day's punishment. Instead of referring her as a woman the judges should have used the term either a citizen or person.\textsuperscript{116}

Although in subsequent cases since 1970, the court should greater tolerance towards criticism by citizens, the power of contempt of court has remained a record hanging over the press, media and the citizens. The courts have been using this power rather too sensitively was it to be used for the protection of the judges or for the protection of the legitimacy and credibility of judiciary? The Supreme Court in some decisions had said even a bar association could not criticized a judge who was found to be of suspicious integrity.\textsuperscript{117} The court has in the past experienced that its power of contempt has severe limitations, not of law but of politics. It had to save its prestige by agreeing not to be harsh against a speaker of a legislature assembly who has refused to appear before it in response to a notice for contempt. The speaker had given decisions disqualifying certain members of the legislature on the ground of defection. Under the tenth schedule, the speaker has the last say in the matter of such disqualification. But the Supreme Court read that clause of finality narrowly and held that the speaker decision was subject to judicial review.\textsuperscript{118} The speaker clearly disobeyed the orders of the Supreme Court and insisted that his decision could not be changed by the Supreme Court. He sought to terminate the services of the legislature secretary who tried to give effect to the court decision. When the court issued him a notice to appear for the alleged change of contempt of court, he refused. It was through the intervention of the central government and only after being assured that his appearance was going to be a formality did the speaker appears before the court, to be let out with a wild warning.\textsuperscript{119} The court power to punish for contempt is likely to be ineffective against political bigwigs who defy it, or against mass disobedience, or even against the moralist Gandhian willingness to suffer the punishment rather than apologies for what according to them is not defiance but exercise of their freedoms.\textsuperscript{121}

\textsuperscript{116} Supra note 107, pp 212-213.
\textsuperscript{118} Kihoto Hollohon v. Zachillhu and Others, (1992) 1 SCC 309.
\textsuperscript{119} I. Manilal Singh v. Dr. D.H. Borobabu Singh, AIR 1994 SC 505.
\textsuperscript{121} J.R. Prashar v. Prashant Bhushan (2001) 6 SCC 733.
5.3.2 Speech Made by Chief Minister of Kerala

_E.M.S. Namboodripad v. T. Narayanan Nambiar_, in this case Mr. Namboodripad, the then Chief Minister of Kerala observed at a press conference that, "Marx and Engel considered the judiciary as an instrument of oppression.... Judges are guided and dominated by class bared, class interests and class prejudices and where the evidence is balanced between a well dressed pot bellied rich man and a poor, ill dressed and illiterate person, the judge instinctively favours the former ... judiciary is part of the class rule of the ruling class. And there are limits to be sanctity of the judiciary. The judiciary is weigh against workers, peasants and other sections of the working class and the law and the system of judiciary essentially service the exploiting classes." He was convicted for contempt of court by the Kerala High Court and sentenced to a fine of Rs. 1000 or simple imprisonment for a month in default. He preferred an appeal to the Supreme Court.

When the petitioner, who charged for contempt by the High Court, filed an affidavit and added that it did not offend the majesty of law, undermine 'the dignity of courts' or obstruct the administration of justice. He claimed that it contained a fair criticism of the system in an effort to make it conform to the people’s objective of a democratic and egalitarian society based on socialism. The criticism was not against any individual judge. It was directed against the judiciary as a whole. Further, the object of the petitioner was to educate the masses in the tenets of Marx and Engels and not to scandalize judges and he was doing so in pursuance of the guaranteed right of freedom of speech under Article 19 of the Constitution.

On the question of right to freedom of speech, the court opined that freedom of speech goes far but not far enough to condone a case of real contempt of court. The court went on to the extent that courts must do their duty according to their own understanding of the laws and the obligations of the constitution the good faith of the judges are the firm bedrocks on which any system of administration securely rests.

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123 Id. at p. 330.
124 Supra note 107 at p. 119.
125 Id., pp. 119-120.
126 Supra note 122 at p. 333.
127 Id. at p. 338.
On the point of sentence, the Supreme Court opined that the ends of justice in this case would be amply serviced by exposing the appellant's error about the true teachings of Max and Engels behind whom he shelters and by sentencing him to a nominal fine of Rs. 50 in default of which he had to undergo simple imprisonment for one week.\textsuperscript{128}

If we carefully read and compare both the speeches i.e. the speech of Namboodripad and the speech of P. Shivshankar, the former had spoken in the terms of the Marxist philosophy of class struggle while the latter had crystallized and named specifically category wise those classes. He was very outspoken and did not mince words and had no cover of philosophy. The Supreme Court had convicted E.M.S. Namboodripad for having committed contempt of court while it had interpreted and explained the speech of the then law Minister as "a study of the attitude of this court." Other portion of his speech as "a criticism of judgment" and the last part is "rather intemperate" and "a criticism of the laws."\textsuperscript{129} However, surprisingly it could be noticed that the utterances of Shri P. Shivshankar despite being more severe and scathing, were not held to be contemptuous. This zigzag and uncertain approach emanates from the lack of settled criteria to assess what 'scandalize' the court.

Wise words of Gajendragadhkar, C.J.:

"We ought never to forget that the power to punish for contempt, large as it is must always be exercised courteously, merely 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 and status of their office is to deserve respect from the public at the large by the quality 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."\textsuperscript{130}

It is submitted that the lack of settled criticize to assess what 'scandalizes' the court, the preposition that mens rea is not an essential ingredient of the offence of this

\textsuperscript{128} Supra note 107 at p. 121.
\textsuperscript{129} Supra note 108 at p. 5.
branch of contempt, the provision that even truth is not a defence against criminal contempt and the fact that judges and the prosecutor are the very same in such proceedings have complex reunifications. Together, they demand that the judiciary observe a tremendous amount of restraint when invoking criminal contempt.

5.4 Contempt by Judges, their Officers and Subordinates

Judges have been treated as demigods in country like India because of the power of contempt Wielded by them. This is a jurisdiction in which a judge, against whom an allegation has been made, can himself act as a complainant, prosecutor and judge. The judge can even refuse to allow the maker of the allegation to prove its truth. Having enjoyed enormous powers, including the power of contempt, without any accountability, the higher judiciary has tread on the toes of many persons and institutions, particularly the media.131

Democracy requires accountability of each institution of the State. Moreover, the political executive is accountable to the legislature and the legislature is democratically accountable to the people that are the theory of constitutional scheme. However, when it comes to the judiciary, it seems that the judiciary is neither democratically accountable to the people, nor to any other institution. Without accountability a powerful judiciary would not only be an anathema to Indian Constitution but also a recipe for disaster of democracy.132

5.4.1 Judicial Accountability

Judicial accountability means accountability of judiciary as an institution as well as accountability of judge as an individual. Standard hierarchal models of accountability are often said to be inapplicable to the judiciary. Judicial accountability thus takes into consideration judicial power signifying both a legal duty and a public law duty. Judges are treated as trustees so they must give an account for their conduct. Judges are obviously accountable to the people.133

Judicial accountability in India could be discerned by two ways, i.e. first, accountability of the higher judiciary in India for their judgments. Secondly, the

131 Supra note 107 at p. 222
132 Id., pp. 222-223
133 S.P. Sathe, 'Freedom of Speech and Contempt of Court.' The Lawyers, Nov. 1988, p. 17.
institutional methods of making judges accountable viz., the method of their appointment, removal and the inhibitions to criticism of their work by the law of contempt.134

The subject of judicial accountability, considering the variety of aberrations of which judges are guilty, requires careful and realistic handling. There are certain important cases and certain eminent persons demanding for judicial accountability. Hidayatullah C.J. in R.C. Cooper v. Union of India135 observed that:

“There is no doubt that the court like any other institution does not enjoy immunity from fair criticism. This court does not claim to be always right, although it does not spare any effort to be right according to the best of the ability, knowledge and judgment of the judges. They do not think themselves in possession of all truth or hold that wherever others different from them, it is so far error. No one is more conscious of his limitations and fallibility than a judge but because of his training and the assistance he gets from learned counsel he is opt to avoid mistakes more than others….. we are constrained to say also that while fair and temperate criticism of this court or any other court even if strong may not be actionable, attributing improper motives, or tending to bring judges or courts into hatred and contempt or obstructing directly or indirectly with the functioning of courts is serious contempt of which notice must and will be taken. Respect is expected not only from those to whom it is repugnant. Those who are in their criticism by indulging in vilification of the institution of courts, administration of justice and the instruments through which the administration acts should take heed for they will act at their own peril. We think this will be enough caution to persons embarking on the faith of criticism”.

Faith in the administration of justice is one of the pillars through which democratic institution functions and sustains. In the free market place of ideas criticism about the judicial system or judges should be welcomed, so long as such criticisms do not impair or hamper the administration of justice.136

134 Supra note 107 at p. 237.
In an interview with India Today in 1996, former Chief Justice of India, Justice J.S. Verma, was asked about his opinion regarding making the judiciary more accountable. The Chief Justice’s reply was:

“It’s long overdue with the increase in judicial activism; there has been a corresponding increase in the need for judicial accountability. There is a perception that the people are doubt whether some of us in the higher judiciary satisfy the require standard of conduct. Since we are the ones lay down the rules of behaviour for everyone else. We have to show that the standard of our behavior is at least as high as the highest by which we judge the others. We have to earn that moral authority and justify the faith the people have placed in us. One way of doing this is by codifying judicial ethics and adhering to them.”

Shri E.S. Venkatramaih, the former Chief Justice of India gave an interview to a noted journalist Kuldeep Nayer on the eve of his retirement on 17th December, 1989 which was published in several newspapers. In course of the interview, the former Chief Justice is stated to have made the following statements:

“The judiciary in India has determinate in its standards because such judges are appointed, as are willing to be ‘influenced’ by lavish parties and whisky bottles. In every High Court, Justice Venkatramaih said, there are at least 4 to 5 judges who are practically out every evening, wining and dining either at a lawyer’s house or a foreign embassy. He estimates the numbers of such judges around 90 and favours transferring them to other High Courts. Chief Justice Venkatramaih reiterated that close relations of judges be debarred from practicing in the same High Courts. He expressed himself strongly against sons, sons-in-law and brothers of judges appearing in the courts where the latter are on the Bench. Most relations of judges are practicing in High Courts of Allahabad, Chandigarh, Delhi and Patna. According to Chief Justice Venkatramaih practically in all the 22 High Courts in the country close relations of judges are thriving. There are allegations that certain judgments have been influenced through them even though they have not been directly engaged as lawyers

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137 Supra note 107, pp. 239-240.
in such cases. It is hard to disregard the reports that every brother, son or son-in-law of a judge, whatever his merit or lack of it as a lawyer, can be sure of earning an income of more than Rs. 10,000 a month.”

The Division Bench of Bombay High Court held that the words complained of did not amount to contempt of court on the grounds that:

(a) The entire interview appeared to have been given with an idea to improve the judiciary;
(b) The Supreme Court has discussed a writ petition filed on behalf of the State Legal Aid Committee, Jammu and Kashmir for an appropriate authority to disclose the names of 90 judges of the different High Courts in India as mentioned by the former Chief Justice of India.  

Former Chief Justice of India Y.K. Sabharwal has come under a land of suspicion of serious judicial misconduct after the daily Mid-Day reported that he had passed orders that favoured his sons.  

Mid-day had carried a series of articles showing how justice Sabharwal passed the orders of sealing commercial properties in residential areas in Delhi after his sons had got into partnership with at least two of the leading shopping mall and commercial complex developers of Delhi. These orders stood to directly benefit his sons and their partner by pushing the sealed shops and offices to shopping malls and commercial complexes and thus driving up their prices. Mid-day published much of the documentary evidence in support of this huge story exposing what appeared to be a scandalous conspiracy at the Apex of the judiciary.  

The changes of irregularities exposed by the media and the campaign for judicial Accountability in respect of some specific cases handled by Justice Sabharwal include that of ordering that the case relating to the sealing of commercial establishments in Delhi be assigned to him. Justice Sabharwal passed this order before he became the Chief Justice whereas it is only the Chief Justice of India who could have passed such an order. Justice Sabharwal son’s used his official residential

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140 Ibid.
address as their business address. This was a clear case of conflicting of interest. The judge should have avoided taking it up. Again, after he passed an order that the Amar Singh tapes (the Samajwaid Party leader and Mulayam Singh front man's phone was taped and the taps allegedly contained his confidential conversation with Mulayam Singh, some industrialists and bollywood actresses) should not be made public, his sons were allotted prime land in Noida by the Mulayam Singh Government at highly reduced prices. All these were published by Mid-Day on the basis of reliable evidence obtained from the public domain. The Delhi High Court held the three journalists and one cartoonist of the newspaper guilty of contempt of court and sentenced them to four months imprisonment without going into the merits of the evidence presented by them. The Supreme Court has, however, stayed the court's sentence on the Journalists.\textsuperscript{143}

The Mid-day journalists were convicted despite their offering to prove the truth of all their allegations. The High Court held that the truth of the allegations was irrelevant since they had brought the entire judiciary into disrepute. It held that the nature of revolutions and the context in which they appear, though purporting to single out former Chief Justice of India, far wishes the image of the Supreme Court. It tends to erode the confidence of the general public in the institution itself. The Supreme Courts sits in discussions and every order is of a bench. By imputing motives to its presiding member automatically sends a signal that the other members were drummers or were party to fulfill the ulterior design.\textsuperscript{144}

By its judgment declaring the four journalists guilty of contempt of court, the Delhi High Court has brought under public glare the special protection which the judiciary providing itself, a protection that no other arm of the state or democratic institution enjoys. This trend of trying to place the judiciary above the law has been going on for quite some time. It is worth remembering that the Supreme Court pronounced in favour of the Right to Information and went so far as to call it a fundamental right of the citizen. However, the judiciary itself has been in no hurry to place itself under the jurisdiction of the R.T.I. Act, since it was passed in 2005. The Delhi High Court hiked the application fee from Rs. 10 (as in the case of Central Government in most of the states) to Rs. 500 for applicant seeking information from

\textsuperscript{143} Supra note 141.
\textsuperscript{144} Supra note 142.
the court. The Mumbai High Court even refused to submit to the law for one full year. The appointment of information officers by the courts has been equally tardy. This has effectively led to a situation of total impunity in the higher judiciary. Not only are corrupt judges effectively insulated from any action against them, they have also protected themselves from public exposure of wrong doing by using the threat of contempt.

Senior Advocate Fali S. Nariman pointed out that “it would be absurd to say that although article 124(4) provides for the removal of a judge for proved misbehavior, no one can offer proof of such misbehavior except on pain of being sent to jail for contempt of court. “This is a glaring defect in our judge-made law, the needs to be remedied- hopefully by judges themselves; if not, reluctantly then by Parliament,” Nariman said delivering the C.L. Aggarwal Memorial law lecture at Jaipur. He said the contempt jurisdiction “is mercurial, unpredictable, capable of being exercised differently in different cases any by differed judges in the same court.” Asserting that the law was certainly not ideal, he stressed that “truth and good faith must be reinstated as valid defences in the power to punish for contempt because they are vital for the further administration of justice.”

Senior Advocate Rajiv Dhawan wrote:

Following the Punjab revelations of judicial corruption case the Karnataka sex scandal implicating it High Courts judges. Both required investigation. Both revelations were sought to be silenced .......... How does one uncover judicial corruption and misbehavior? There is not complaint Mechanism. The movement an allegation is made against a judge, contempt notices may be issued. The formal procedure of making such complaints is under the judges Inquiry Act, 1968, en route to the initiation of impeachment proceedings. Judges do not impeach easily as itself evident from the justice V. Ramaswami imbroglio of 1990-94. The Bar and the media are the best placed to expose judicial corruption. If both are to be stifled it will be let nowhere.

Arun Jaitley, former Law Minister said that he has been perturbed over the courts in India using their power of contempt to compel journalists to reveal their

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145 Supra note 141.
146 Supra note 1 at p. 246.
147 Rajiv Dhawan, Senior Advocate of Supreme Court, ‘Contempt of Court,’ The Hindu, Dec. 13, 2002.
confidential sources. He said that legislative measures might become necessary to curb an improper use of the contempt power. Former Chief Justice J.S. Verma has said misuse of contempt power was reason for erosion of credibility of the judiciary.

Threat of contempt insulated the judiciary even further from any semblance of accountability. Veiled threats, *suo moto* notices, motions by advocates and advocate general against the journalists and politicians for contempt of court became common now a days. Arundhati Roy was sent to jail for one day for talking about rehabilitation of families uprooted by Narmada projects adversely against judicial actions and inactions. Zaheera Sheik, within and witness of communal violence was imprisonment for contempt. E.M.S. Namoodripad, former Chief Minister of Kerala is fined one rupee for attributing class character to top judiciary, while the Law Minister Mr. P. Shivshankar was left off for making comments similar to those of Nomoodripad. Is this not in uncertainty in the law? In 2007 the court forced Vijay Shekhar, a journalist with a television news channel who exposed the caucus of a corrupt magistrate his court staff and some lawyers in Gujarat State in a “warrants for cash” such – to apologize to the court or face a term in jail for contempt of court. The conviction and sentencing of journalists in 2007 for publishing information about the conduct of justice Sabharwal, a Supreme Court judge, had brought to the fore the issue of judicial accountability. But the issue soon died a natural death, since no one wanted to get into trouble with the court. This attitude is an extension of the Supreme Court’s earlier “allergy” towards bringing transparency into the Indian Judiciary.

5.4.2 Liability of Judges for Contempt

The crux of the contempt power has been enumerated by the Sanyal Committee as the need to draw a clear-cut distinction between comment or criticism affecting judges in their representative capacity and those affecting them in their personal capacity. Personal attacks upon judges must be punished in the same way as any other individual as there is no justification to put them on a higher pedestal and

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148 http://syndication.indiatimes.com (website of the Times syndication services).
150 Supra note 1 at p. 245.
151 Supra note 122.
152 Supra note 2.
153 Supra note 1, pp. 245-246.
remedy must be sought under the general law of defamation. However, where the judge due to intense public criticism against himself is so galled as to mistake such criticism to be against administration of justice, he may resort to his contempt powers. This would be exceptional.

The judge must avoid such confusion between personal libel and slander and obstruction of public justice and only the letter must be punished with contempt. Alternatively, the test would be whether the wrong done is to the judge or to the public. It is the latter it creates an apprehension in the public mind regarding the integrity or ability of the judge or deters litigants from placing complete faith in the administration of justice by the courts or if it is likely to cause embarrassment to the judge himself in the discharge of his judicial duties. Thus contempt proceedings have been initiated even when a judge is attacked for a conduct outside his judicial capacity. Contempt proceedings were initiated against publication of a report stating that the sons of Chief Justice of India were allotted petrol pump under the discretionary quota of the petroleum Minister, though the attack was neither against the judicial function nor the judicial status of the judges wherein defamation proceedings would have been more appropriate.

**M.R. Paraskar v. Farooq Abdulla**, concerned allegations made against the judiciary by the Chief Minister of Jammu and Kashmir. Chandrachud, C.J. commented:

"The right to full speech is an important right of a citizen, in the exercise of which he is entitled to bring to the notice of the public-at-large the infirmities from which any institution suffer, including any institution which administers justice. Indeed, the right to offer healthy and constructive criticism which is fair in spirit must be left unimpaired in the interests of public institutions themselves. Bonafide criticism of any system or institution is aimed at inducing administrators of that system to look inward and improve its public image. Courts do not like to assure the posture that they are above public criticism and that their functioning needs no improvement..........."

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156 AIR 1984 SC 615.
Similarly in, *Baradakanta Mishra v. Registrar, Orissa High Court*, Justice Krishna Iyer stated:

"vicious criticism of personal and administrative acts of judges may indirectly nor their image and weaken the confidential of the public in the judiciary, but the countervailing good, not merely of free speech, but also of greater faith generated by exposure to bonafide, even if marginally overzealous criticism, cannot be overlooked. Justice is no cloistered value."

In a much earlier case, Chief Gajendragadkar ordered in re, under Article 143, Constitution of India:

"We ought never to forget that the power to punish for contempt, large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent and 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 is adversely. Wise judges over forget that the best way to sustain the dignity and status of their office is to deserve respect from the public-at-large by the quality 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."

Judges committing contempt could be approached in two different ways. First words or conduct form judge could scandalize or tends to scandalize, lower or tends to lower the authority of the court. Like all other individuals a judge may also be made liable for contempt under this category. Thus unruly criticism made by District Judge against High Court Judge.

The order of reward of a case was criticized by the District Judge in a non-respectful language, Additional Session Judge, after amending death

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157 AIR 1974 SC 710; (1974) 1 SCC 374
158 AIR 1965 SC 745.
159 Supra note 157. In this case for gross discipline, the appellant District Judge was suspended from service and directed to file reply to the charges. The contents of the Reply formed the basis of the contempt proceedings. Subsequently the reply submitted by the appellant to the notice in contempt proceedings also contained serious allegations including malafides, bias and mysterious conducts of the judge in initiating contempt proceeding. This reply was also treated as contempt of court and the contemnor was punished to pay a fine of Rs. 1000 with three months imprisonment in default of payment.
160 Shafi Ahmad Khudabux Kazi v Hashmathi Hajumia Megal, AIR 1997 Bom. 260. In this case, in a civil proceeding, the decision of district Court was challenged before the High Court in writ
sentence gave interview to the channels describing accused as worst criminal, though the conformation of death sentence was only pending, are all treated as interferences with administration of justice by scandalizing the court and the conduct of judicial officers were treated as contempt of court. It was further decided that even when a High Court Judge disobey the order of Supreme Court, exercising the plenary powers of Supreme Court order Articles 141, 142, and 144, contempt proceeding could be initiated. Thus the judges are treated as any other individuals in the first situation and no serious problem or differential treatment may arise in this regard.

The question relating contempt commuted by a judge against his own court came for the specific consideration of Lahore High Court in Mohammad Shafi v Choudhary Qadir Bakshi, Magistrate, 1st class Lahore. In this case, unhappy with an injunction order passed by the sub-judge, the magistrate showered all his displeasure against the lawyer who had presented the case and hurled abusive words against the sub-judge who had granted the injunction. Further the Magistrate got up from the chair calling the sub-judge foolish in passing the injunction order. The conduct of the Magistrate was found to have the tendency of scandalizing his own court and was having the effect of diminishing the confidence of public in the administration of justice mechanism. The High Court refusing the unconditional apology made by the Magistrate, levied a fine of Rs, 50 and n default of payment of proceedings. The High Court remanded the matter back to the District Court with some directions. However, the District Judge totally neglected the directions of the High Court and moved out from established fact and decided the matter again and criticized the remand order of the High Court. The High Court observed that so long as the judgment of the High Court has not been overruled or set aside it is binding on all the Judicial Officers and they have no liberty either to criticize or act against the same. Though the conduct of the District Judge was found to a clear case of contempt, as the judge has retired long back and he was of much advanced age, the matter was dropped.

Subash Chand v S.M. Aggarwal, 1984 Cr. LJ 481. The conduct of giving interview by the trial judge, depicting the accused in the criminal case as most heinous offenders was held to be a serious matter bound to infect the administration of justice deeply.

Spencer & Co. v. Vishwadarshan Distributors Pvt. Ltd., (1995) 1 SCC 259. In this case an order was issued by the Supreme Court in a special leave petition for an early disposal of a case which was then pending before Madras High Court. In pursuance of the direction given by the Supreme Court an application was moved before the Madras High Court for an early disposal of the case. The application was dismissed by the High Court with an observation that there was nothing important to give precedence to the appeals over large number of pending appeals before the court. The Supreme Court reached the conclusion that the conduct of the High Court judge would amount to contempt of court. However, the court refused to initiate contempt proceeding with a direction that the matter may be disposed expeditiously, at any rate within one month from the date of communication of the order.

AIR 1949 Lah. 270.

Id. at p. 271.
fine, to undergo simple imprisonment for a period of one month.\textsuperscript{165} The scope of contempt committed by judges of court of Record against their own court came for the consideration of Patna High Court in \textit{Harish Chandra Mishra v Hon'ble Justice Ali Ahmed}.\textsuperscript{166} In this case contempt proceedings was initiated by three advocates of the Patna High Court alleging that a judge of Patna High Court had committed contempt of his own court by making insulting and uncharitable remarks against an advocate while hearing a civil revision application for admission. According to the petitioner the judge Shri S. Ali Ahmed made a comment in the following words:\textsuperscript{167}

"You are a small fry and I would not even like to harm you because you are such a small fry. You have no knowledge and no understanding. With your habit you are doomed. I will not harm you but you will suffer from within and be doomed. I can tolerate a lot but there is a limit to it and once the limit is reached I am very hard nut and remember that I tell you that you will suffer internally and be doomed".

According to the petitioner the above blaming continued for ten minutes. The moot question in this case was whether a judge or a court of record could be held liable for committing contempt of his own court.

The position regarding contempt committed by judge against his own court is dealt under Section 16 of the contempt of courts Act, 1971.\textsuperscript{168} As per this section contempt proceeding could be initiated for contempt committed by judge, Magistrate or other persons acting judicially.\textsuperscript{169} The position of High Court and Supreme Court judges is not specifically mentioned under the section. Thus the difficult question in this regard is whether the term ‘Judge’ under Section 16 would include a Judge of a High Court or the Supreme Court also. Section 16 starts with the words ‘subject to the provisions of any law or time being in force.’ Thus the application of Section 16 is subject to the law prevailing at the time when the contempt of courts Act, 1971 came into force. When the Act was enacted in 1971, the position of judges of court of record commuting contempt of their own court or any other court was not dealt specifically by law. There were no statutory provisions or decided cases dealing with

\textsuperscript{165} Id. at p. 273.
\textsuperscript{166} AIR 1986 Pat. 65
\textsuperscript{167} Id. at p. 68.
\textsuperscript{168} The Contempt of Courts Act, 1971, Sec 16.
\textsuperscript{169} Ibid., Sec. 16(2)
this aspect.

As there was no governing, the Patna High Court, taking into account of the preamble to the contempt of courts Act. Section 9, and Section 22, declared that the contempt of courts Act was not intended to enhance the scope of contempt law further from the position of law prevailing in 1971. Thus nothing new could be brought within the purview of contempt of court Act, 1971. Thus the term ‘Judge’ was treated as not referring to High Court and Supreme Court Judges. To support this view the High Court referred to Oswald’s text on contempt of court, where it was observed that an action would not lie against a judge of a court of record for a wrongful exercise of his official duties any more than for erroneous judgment. However, in the minority judgment, Birendra Prasad Sinha J. Observed that, even the High Court and Supreme Court Judges were not immune from contempt proceeding.

It seems that the logic followed by minority judge is preferable. It is true that Section 16 of the contempt of courts Act, 1971 starts with the words ‘subject to the provision of law for time being in force. It is also true the 1926 and 1956 contempt of court Acts were silent about contempt committed by judges of court of record against their own courts. Further there was no divided case on the point. At the time when the contempt of court Act, 1971 was enacted, there was no law providing that judges of court of record were not liable for contempt of their own court. It is submitted that, if the crux of contempt of court is preventing interference with administration of justice, interference any quarters how so high, shall not be taken lightly. Granting immunity to judges of Supreme court and High Court for their contempt and speaking loudly the need for preventing interference with administration of justice is not only meaningless, but also destroys the very spirit behind contempt law. Further it was seems that the passage taken from Oswald’s contempt of court is wrongly interpreted. According to Oswald an action will not lay against a judge of a court of record for wrongful commitment in the exercise of his judicial duties any more than an erroneous

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170 This point was specifically considered by the Supreme Court in Harish Chandra Misra v. Hon’ble Justice Ali Ahmed, AIR 1986 Pat. 65, 72.
171 The preamble to the Contempt of Courts Act, 1971, reads to define and limit of the power of certain courts in punishing contempt of court and to regulate their procedures, in relation thereto.
172 The Contempt of Courts Act, 1971, Sec. 9.
173 The Contempt of Courts Act, 1971, Sec. 22.
174 Supra note 166 nt p. 71.
175 Id. at p. 76.
judgment. Oswald also made a mention of Kemp v. Neville, where a judge of court of record was found liable and fined for acquitting against evidence, for which he had no power. Again the High Court did not take into account a further reference made by Oswald. He further continues that the Divisional Court refused to strike out as disclosing no cause of action for malicious prosecution brought against certain judges of Supreme Court of Trinidad for having (as it was lodged) of their own motion and without any evidence, caused the plaintiff to be prosecuted and committed to prison for an alleged contempt of the Supreme Court in forwarding to the Governor of the colony for transmission to the queen in council of the oppressive conduct of defendants council. At the trial of this case before Lord Coleridge C.J., the jury found as regards one of the defendants that he had overstrained his judicial powers and had acted in the administration of justice oppressively and maliciously to the prejudice of the plaintiff and to the prevention of justice.

From this it is clear that Oswald was dealing with the immunity of Judges of a court of record when he is exercising his judicial duties. It seems that the decision Fray v. Blackburn, which was relied Harish Chandra Mishra, as an authority to reach the conclusion that the judges of court of record could not be held liable for contempt of their own court, was wrongly interpreted. Again in Fray v. Blackburn the court was dealing with immunity of a judge of court of record in contempt proceeding when they are discharging judicial functions. That was why the immunity of judge in contempt proceeding was equated with immunity of a judge in erroneous judgment. But in Harish Chandra Mishra, the alleged act was not related to any judicial function. Thus the factual situation of English case referred in the decision and factual situations in Harish Chandra Mishra were different. Further the case mentioned in the judgment by Patna High Court and observations made by Oswald were on the basis of position of law prevailing in 19th and 20th Century. At that time judicial officers including judges of court of record may not claim any absolute immunity for their judicial functions and there was some doubt whether a contempt proceedings was maintainable against a judge with respect to wrongful discharge of

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177 J.F. Oswald and G.S. Robertson, 'Oswald's Contempt of Court: Committal Attachment, and arrest upon civil process with and appendix of forms', 1910, p. 20.
178 (1816) 10 C.B. (NS) 523.
179 Supra note 177.
180 122 ER 217.
181 Supra note 166.
their judicial function. But now a wrongful discharge of judicial functions, contempt of courts cannot be invoked because the judges are protected otherwise by Judicial Officers Protection Act\textsuperscript{182} and Judge’s Protection Act.\textsuperscript{183} The combined effect of these statutes is that with regard to discharge of judicial function full protection is given to judicial officers including judges of court of record.

When a judge of a court of record does something or makes comments outside the discharge of judicial duties, the immunity mentioned by Oswald may not be applicable. Abusing or using harsh words against a lawyer cannot be treated as a discharge of judicial duty. As it was not a discharge of judicial duty, none of the protections could have been claimed by the judge irrespective of his position whether he is a judge of court of record or judge of lower court. The only relevant factor was whether his conduct was so serious to create disrespect to the administration of justice mechanism. In this regard an observation made by Lord Denning may be more pertinent. It reads as follows:\textsuperscript{184}

“In the old days, as I have said, there was a sharp distinction between the inferior court and the superior court. Whatever may have been the reason for this distinction, it is no longer valid. There has been no case on the subject for the last one hundred years at least. And during this time our judicial system has changed out of all knowledge. So great is this changing that it is now appropriate for us to reconsider the principles which should be applied to judicial acts. In this new age I would take my stand on this: as a matter of principle the Judges of superior courts have no greater claim to immunity than the judges of the lower court. Every judge of the courts of this land—from highest to the lowest—should be protected to the same degree, and liable to the same degree. If the reason underlying this immunity is to ensure “that they may be free in thought and independent in judgment,” it applies to every judge, whatever his rank.”

The observation of Lord Denning would be apt in India also. In a country like India, where interference with administration of justice by scandalizing the court is becoming more and more common\textsuperscript{185} and courts are looking for more stringent

\textsuperscript{182} The Judicial Officers Protection Act, 1850.
\textsuperscript{183} The Judges (Protection) Act, 1985.
measures to prevent this type of contempt, it would be difficult to appreciate the ratio
that judges of court of record could not be held liable for contempt of their own court
even if the conduct lead to substantial interference with administration of justice. The
matter was also considered by the Supreme Court in *State of Rajesthan v. Prakash
Chand and others*, in this case the question before the Supreme Court was whether
contempt proceeding could be initiated against the Chief Justice of Rajasthan High
Court for an alleged non compliance of an order of the same court regarding
transferring of a part heard writ petition to a Division Bench for its disposal, and for
not playing that writ petition along with other part heard cases. Though in this case it
was not necessary to look into whether the judge of a court of record could be liable
for contempt of court, the court observed that section 16(1) of the contempt of
courts Act, 1971 apply to judges of court of record or not. It may be further noted that
the Supreme Court has not looked into the reason why Section 16(1) of the contempt
of courts Act, 1971 is not applicable to judges of courts of record. It is further a
surprise to note that the Hon’ble Court has not even looked into the divisions of Patna
High Court or and Madras High Court and dissenting opinion of Birender Prasad
Sinha J. in Harish Chandra Mishra case. Thus it seems that a controversial issue that
too dealing with liability of judges of courts of record in contempt of his own court
has been decided by the Supreme Court lightly. The decisions have led to anomalous
situation. The anomaly in this regard can be rectified only by an amendment to the
contempt of courts Act, specifically bringing even the judges of courts of record
within the ambit of ‘Judge commuting contempt’ of their own court.

One instance is that of Justice V. Ramaswami where in a letter to the inquiry
committee probing allegations made against him, he (Justice Ramaswami) made
sweeping allegations against certain judges and the judiciary. Though the Supreme
Court did express apprehension of this letter, it interpreted a subsequent letter
(explaining the circumstances of the first) by the same judge to hold that in the light
of the second letter the first was not contumacious. This prima facie hit at the roots
of a basic guideline namely; intention of the alleged contemnor is irrelevant and what
matters is the “effect” of such act. There the priority of the court seems to have been
otherwise. Another instance was the contempt initiated against the Chief Justice of

156 (1998) 1 SCC 1
157 Id., pp. 21-22.
Bombay High Court for accepting gratification which was believed to influence the outcome of a certain case before him. The Supreme Court assumed the task of evading a percent to be followed in future cases of contempt by the higher judiciary, evading pronouncing a decision on the issue of contempt in that case. However, the guidelines laid down are a deviation from fanatically protecting the judges rather than analyzing judicial accountability for contempt as has been the trend.  

The contempt machinery evolved is as follows: definition of misbehavior was reiterated to include willful abuse of judicial office, willful misconduct in office, corruption, and failure to perform judicial duties, lack of integrity or any other offence involving moral turpitude. Such misconduct would extend even beyond the execution of the judicial office. It was stressed that minor offences and abrasive conduct could not be indicated with impeachment. At the same time such conduct could not be ignored as one such judge would have a repute effect on the reputation of the judiciary as a whole. Thus, need for in house machinery was stressed. Accordingly, the office bearers of the Bar Association of a High Court after gathering concrete material proving that misbehavior alleged is not of an impeachable nature must first approach the tainted judge to urge him to amend himself or approach the Chief Justice of that High Court to impress upon handling of the matter appropriately. If complaint is against the Chief Justice of a High Court, the concerned Chief Justice must verify the allegations and place the material before the Chief Justice of India. The Bar Association must suspend all further operations. The Chief Justice of India would thereafter initiate such action as necessary. This was evolved to sustain public confidence in the judiciary and rule of law as also to avoid contempt proceedings against office bearers of the Bar Association. The efficacy of this system is yet to be tested. Nonetheless, the contempt liability of the Supreme Court judge still remains shredded with probably impeachment being the only remedy.

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 conditional and again left to the discretion of the judges. The amendment which

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191 Supra note 189, pp. 250-251.
introduced Section 13(b) of the contempt of courts Act, 1971 says, “The court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bonafide.”192 The phrase “if it is satisfied that it is in public interest” is a contentious one, as courts have in the past held that allegations of corruption are contempt because they are against the public interest in that they are calculated to undermine the confidence of the people in the integrity of judges, the rationale being that, the viability of the judiciary as an institution depends on the continued public assumption that the judiciary is an honest and incorruptible institution.193 Thus, it would be open to a judge to hold that the defence is not available to a contemnor who alleges corruption against a member of the judiciary. The reasoning seems to be flow the viability of the judiciary as an institution should not depend on the assumption that the judiciary is honest and incorruptible, but rather must be based on public opinion built by the fact of its incorruptibility. The method to ensure that corruption is at a minimum is by introducing transparency in the system, which is not supported by the superfluous attitude of making allegations of corruption punishable by contempt.194

Moving to a somewhat different subject, the application of natural justice in contempt jurisprudence in India has been contentions. *Nemo Judex in causa sua* is a basic facet of natural justice which means that no one should be a judge in his own cause.195 This principle has been cited frequently by both our Supreme Court and the High Courts196 and is a bastion of the rule of law in India.197 An issue that emerges in the trial of a person for criminal contempt is that often the same judge who institutes the petition against the alleged contemnor hears the petition himself. In case a judge has been personally attacked, there is no rule which states that he should not take up

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192 Supra note 1, pp 246-247.
195 Id. at p. 44.
the case himself, although in Sukhdev Singh Sodhi, the Supreme Court has observed that it is, “desirable on general principles of justice that a judge who has been personally attacked should not as far as possible hear a contempt matter which, to that extent, concerns him personally.” The maxim “justice should not only be done but should manifestly and undoubtedly be seen to be done” as laid down by Lord Chief Justice Hewart, has been recognized as relevant in contempt petitions in the context of personal attacks on a judge as early as 1954. A judge who has been personally attacked should not hear a contempt matter which concerns him personally. However, the Supreme Court framed Rules in this regard as well as the Rules framed by various High Courts, make no mention of this and contempt petitions are frequently heard by the injured judge himself. In fact, the great social reformist who sat in the Apex Court, Justice V.R. Krishna Iyer, said that contempt jurisprudence “which makes prosecutor and judge rolled into one is itself contempt of natural justice.”

5.4.3 Contempt of Court by Subordinate Judiciary

In India the contempt jurisdiction was firstly applied by the Lahore High Court against a Subordinate Judicial Officer in Muhammad Ali v Qadir Baksh, and a first class Magistrate was punished for disobeying the orders of the subordinate judge. In this case it was observed that it is of greatest importance that the prestige and dignity of the courts of law should be preserved at all costs. There cannot be anything of greater consequence than to keep the streams of justice clear and pure so that the litigants may have the utmost confidence that they would be treated in a considerate manner by courts of law. If parties to litigation feel that they are likely to be subjected to insulting behavior at the hands of the presiding officers of the courts it would shake all confidence in the administration of justice and would thus pollute the stream of justice.

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200 Supra note 198.
201 Rules made by the Supreme Court of India under Section 23 of the 1971 Act: Rules to Regulate Proceedings for contempt of the Supreme Court, 1975.
204 AIR 1949 Lah. 270.
205 Id. at p. 273.
5.4.3.1 Disobedience of Orders

Patna High Court in *Harkishan Singh v. Chhotan Mahtan*,\(^{206}\) considered the question of disobedience of the stay order of the High Court by the Subordinate court. The order was prohibitory one and the Sub-Divisional Magistrate was informed of it. But, as there was no deliberate or willful disobedience, it was held that there was no contempt, and the Sub Divisional Magistrate was discharged. But the court made the following observation that when on order of stay or other such prohibitory order has been made by this court and when the Subordinate Judge or Magistrate is informed of the order by the advocate or pleader he ought ordinarily to accept what is stated by the advocate on pleader and stay further proceedings.... when a Subordinate Judge or Magistrate disregards a prohibitory order of which he has been given a notice in this way (informed by the advocate) it amounts to contempt of court.\(^{207}\)

The Orissa High Court in *Chintamoni Palai v. State*,\(^{208}\) followed the observation of Patna High Court and held the Sub-Magistrate guilty of contempt for disobeying the stay order of the High Court, even after being informed of the stay order by the concerned advocate. So also when the High Court on revision directed the Magistrate to consider the matter and dispose of the matter in accordance with law and evidence and if the Magistrate once again passed the same order of discharge without looking into the evidence, the Magistrate is guilty of contempt.\(^{209}\)

But simple delay in executing an order especially when there were reasonable grounds for the delay will not amount to disobedience and will not result in contempt,\(^{210}\) because there was not deliberate disobedience. There was only gross negligence on the part of that whose duty it was to carry out the orders of the High Court\(^{211}\) and that is not the test of contempt. The same view was followed by the Calcutta high Court in *State v D. Rudra, Additional District Magistrate*.\(^{212}\) In this case, the contemnor, A.D.M. Alipore did not carry out the order of the High Court, that the appellants should surrender the bail and serve the rest of the period in jail. The court held that we are prepared to accept that these officers did not willfully

\(\text{AIR 1951 Pat. 494.}\)
\(\text{Id. at p. 497.}\)
\(\text{AIR 1952 Ori. 167.}\)
\(\text{S. Vankataraman v. P.V. Singvi, 1997 Cri. LJ 1840.}\)
\(\text{H.P. Singh v. Thakur Prasad Tewari, AIR 1953 S C 436.}\)
\(\text{Id. at p. 437.}\)
\(\text{AIR 1969 Cal. 602.}\)
override any order of this court. But the entire trouble was due to the fact that it was not a case of the A.D.M controlling the judicial peshkar but the latter controlling the Magistrate.\textsuperscript{213}

The Supreme Court in \textit{Debabrata Bandopadhyy v. State of West Bengal},\textsuperscript{214} cautioned all concerned that orders of study, bail, injunctions received from Superior courts must receive close and prompt attention and unnecessary delay in dispatching or dealing with them may well furnish grounds for an inference that it was due to indifference and sometimes even of contumaciousness. The Court further observed that punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an nuclear case is to make the law of contempt do duty for other measures and is not to be encouraged.\textsuperscript{215}

In \textit{B.K. Kar v. Hon'ble Chief Justice and his companion Justices of the Orissa High Court},\textsuperscript{216} also the Supreme Court maintained that only intentional disobedience is to be held as contempt of court and not simple ignorance or mistaken view of law. The court observed that before a subordinate court can be found guilty of disobeying the order of Superior court and thus to have committed contempt of court, it is necessary to show that disobedience was intentional. There is no room for inferring an intention to disobey an order unless the person charged had knowledge of the order. If what a subordinate court has done is in utter ignorance of an order of a Superior Court, it would clearly not amount to intentional disobedience of that court's order and would therefore not amount to a contempt of court at all..... The knowledge must however be obtained, from a source which is either authorized or otherwise authentic.\textsuperscript{217}

\textit{B.K. Mishra v. The Registrar of, Orrissa High Court},\textsuperscript{218} B.K. Mishra (a District Judge) was arranged before the Orissa High Court for insisting that the judges sitting in the Bench order his contempt cause should be different from those who dealt

\begin{footnotesize}
\begin{enumerate}
\item Id. at p. 603. 
\item AIR 1969 SC 189. 
\item Id. at p. 193. 
\item AIR 1961 SC 1367. 
\item Id. at p. 1370. 
\item AIR 1974 Orissa 1. 
\end{enumerate}
\end{footnotesize}
with him on the administrative side demoting him. In effect he attributed bias to those judges. The Orissa High Court pointed out that the constitution has vested in the High Court Judicial and certain administrative functions. The judges who decide on the administrative side cannot be disqualified from deciding the very same matters when such an order is challenged in judicial proceedings. Likewise judges who are called upon to decide certain matters on the administrative side cannot be charged with interfering the cause of justice merely because similar matters are pending consideration before them on the judicial side. Full Bench decision of the Orissa High Court speaks for itself:

“A little analytical survey of the history of the service of the contemnor would indicate that this Court has not been as strict as it should have been in regard to him. Compassion has been introduced into the treatment of the contemnor by the court with a genuine belief that the contemnor would mould his ways, pick at the usual judicial temper and correct himself. Unfortunately the expectations have been belied. On the other hand, the contemnor instead of realizing his own mistakes developed an attitude of considering his own actions to be above board and anybody who found fault with him to be or the erring side. He took to making reckless and scurrilous allegations against his administrative superiors and even this court. When step was taken for correcting his lapses, he took to intimidation of this court in answer.”

The ratio decidendi in the Orissa Full Bench Decision in *B.K. Mishra v. Chief Justice, Orissa high Court* is:

1. In view of the decision of the Supreme Court in the *State of W.B. v. Nripendranath Bagchi*, which rendered in the contempt of a discrepancy proceeding against an officiating District Judge, that the control which under Article 235 of the Constitution is vested in the High Court is a complete control, subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges, and that in the exercise of that control vested in the High Court, the High Court can hold enquiries, impose

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219 Supra note 11, p. 743.
220 AIR 1966 SC 447.
punishment other than dismissal or removal subject to the conditions of service, and a right of appeal if granted before the condition of service and to the giving of an opportunity of showing cause as required by clause (2) Article 311;\(^{221}\)

(2) Further in view of the decision of the Supreme Court in *Md. Ghouse v. State of Andhra*,\(^{222}\) that an order passed by the High Court suspending a Judicial Officer pending finalization of disciplinary proceedings is not an order either of dismissed or removal from service; and so it is idle to contend that these very questions were pending consideration by the High Court either in the disciplinary proceeding started against the petitioner or in the contempt proceeding pending against him in court;

(3) A matter which has been finally decided in the highest court of the land and particularly in view of the provision under Article 141 of the Constitution, cannot become *has integra* merely because a stubborn delinquent continued to question its correctness. The power of the High Court to initiate disciplinary proceedings against a district Judge and to place him under suspension pending finalization of that proceeding was therefore no work open to question and cannot and in fact was not a matter in issue; and

(4) Simply because some of the judges who sat in a contempt proceeding against the petitioner were concerned with the administrative disciplinary proceedings against him, during which the contempt was committed, they were in no sense disqualified to adjudicate on the contempt.\(^{223}\)

In *Baradakanta v. The Registrar of Orissa*,\(^{224}\) "The appellant had quite an unsatisfactory record as a District Judge. He had been more than once reverted, suspended and subjected to disciplinary proceedings during his career. Once he was suspended by the High Court under Article 225 of the Constitution and disciplinary proceeding was started. Against this the appellant appealed to the Governor which appeal later was withheld by the Registrar, high Court. After charges were framed the appellant wrote three letters. The first letter was to the Registrar intimating his request to the Governor for transfer of the disciplinary proceedings from the High Court to the Administrative Tribunal. The second letter was to the Governor through the High

\(^{221}\) Constitution of India 1950, Article 311(2).
\(^{222}\) AIR 1975 SC 246.
\(^{223}\) Supra note 11 at p. 744.
\(^{224}\) (1974) 1 SCC 374.
Court to call for the earlier appeal withheld by the High Court. The third letter was a direct petition to the Governor with a copy to the Registrar with the remark that the High Court sends their comments on his petition to the Governor. He wrote yet another letter to the Registrar intimating that he would not submit any explanation to the charges framed against him until his representation to the Governor was disposed of. Also he could not wait for the permission of the High Court to leave Headquarters as directed earlier. Against these letters a show cause notice was issued to the appellant. The appellant raised preliminary objection to the contempt proceedings contending that the court had no jurisdiction as he had made no reference to the judicial functions of any judge.

The appellant filed an appeal to the Supreme Court for consideration of contempt proceedings and complained of bias and prejudice of the High Court particularly the Chief Justice and another pursue judge. The appeal to the Supreme Court was however withdrawn. At the instance of the Division Bench a full Bench of the High Court was constituted. Additional charges were framed as the very appeal petition to the Supreme Court contained scurrilous and scandalous allegation contumacious of the High Court Judges. The full Bench found an unanimous verdict of ‘Guilty’ against the contemnor and sentenced him to imprisonment under the contempt of courts Act 1971. It is against this sentence the present criminal appeal to Supreme Court was filed.” The appeal was dismissed but the sentence was reduced.\(^{225}\)

Palekar, J., A.N. Roy, C.J. and Y.V. Chandrachud, J., delivered the judgment of the court with Krishna Iyer and Bhagwati JJ., concurring in a separate judgment with different reasoning’s. The findings of the Supreme Court were:

The judges of the High Court especially the Chief Justice are charged with malafides, improper motives, bias and prejudice. It is insinuated that they are oppressing the appellant, have become vindicative and are incapable of doing him justice. It is also suggested that they do not administer justice fearlessly because in one matter affecting the appellant they dropped a charge against him for fear of the Supreme Court. All this amounts to scandalization of the High Court.\(^{226}\)

\(^{225}\) Supra note 11 at p. 746.
\(^{226}\) Id., pp. 746-747.
5.4.3.2 Interference of one Officer with the Functioning of Another

In *State v. Sankar Charan Sahu*,\(^{227}\) in this case M.S. Rao obtained a decree for recovery of money and in execution he obtained an arrest warrant against one Hrudananda Sahu. A criminal case was also pending against the judgment debtor. Present contempt petition arose because of the arrest warrant issued by the munsiff for the recovery of money and the order of release issued by the Magistrate. Concerned Sub Divisional Magistrate passed the orders without proper jurisdiction. The High Court held: In any case the power of the Magistrate under section 144 Cr. Procedure Code is meant to prevent imminent breach of peace and not for conferring immunity of a judgment debtor under Section 135 Cr. P.C. His order was intended to have the effect and in fact had the effect of preventing the process server of the civil court from executing the process issued to him by the munsiff and as such amounts to contempt of court.\(^{228}\)

*S. S. Roy v. State of Orissa*,\(^{229}\) the court observed that it is not sufficient in such cases for the purpose of visiting a Judicial Officer, with the penal consequences of proceeding in contempt simply because he committed an error of judgment or the order passed by him is in excess of authority vested in him. The error must be willful error proceeding from improper or corrupt motives in order that he may be punished for contempt of court. So also in *Arum Kshetrapal v. Registrar High Court, Orissa*,\(^{230}\) though the High Court found the District Magistrate, who sent a message to the Advocate General requesting him to request the High Court not to insist on the production of detune in connection with a writ of *habeas corpus*, guilty of contempt, Supreme Court held that he was not guilty of contempt. According to the Supreme Court, for constituting contempt, there should be willful disobedience and it should proceed from improper or corrupt motives. In the instant case though the appellant acted without proper care and caution, there is nothing on record to suggest any willful culpability on his part and it has been expressly held by the High Court that he was not actuated by corrupt or dishonest motive. In these circumstances the order passed by the High Court was reversed.

\(^{227}\) AIR 1952 Ori. 215.
\(^{228}\) Id. at p. 217.
\(^{229}\) AIR 1960 SC 190.
\(^{230}\) AIR 1976 SC 1967.
An important legal situation arose in *State of Rajasthan v. Prakash Chand*, in this case, Chief Justice of Rajasthan High Court in exercise of his powers transferred a part heard matter from the single judge to Division Bench. Aggrieved by the action of the Chief Justice, the judge who was hearing the matter, issued show cause notice to the Chief Justice as to why proceedings under contempt of court Act, be not taken against him for transferring the part heard writ petition to the Division Bench for hearing. Supreme Court after referring the relevant provisions of law held that the action of the judge is not only subversive of judicial discipline and illegal but is also without jurisdiction. The court observed that no such notice could be issued to the Chief Justice since the order referring the case to the Division Bench was an order legally made by the Chief Justice in exercise, of his statutory powers. Such an order can never invite initiation of contempt proceeding against him. The issuance of notice smacks of judicial authoritarianism and not permissible in law. Even otherwise it is a fundamental principle of our jurisprudence and it is in public interest also that no action can lie against a judge of a court of Record for a judicial act done by the Judge. The remedy of the aggrieved party against such an order is to approach the higher forum through appropriate proceedings.

5.4.3.3 Non Compliance of the Orders

Contempt by a subordinate judge is heinous since in the nature of things, he is an educated public servant who should have known his duties. His disobedience is mostly intentional and it ill becomes his office if he does not apologies at the earliest opportunity. It is ridiculous and highly objectionable for him to defend his action.

A subordinate court may commit contempt of the superior court by disobeying its orders. One court may commit contempt of another court by comments that may bring down the estimation of that court in the minds of the common man. Magistrates and judges of inferior courts can be punished for contempt for acting unjustly, oppressively or irregularly in execution of duties by colour of judicial proceedings wholly unwarranted by law thereby conveying disrespect to another court and divert the courts of justice. But no such penal consequences should follow for mere error of

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231 1998 Cri. LJ 2012 (Supreme Court).
232 Id. at p. 2025.
233 *State v. Bhatnagar*, AIR 1932 All 56.
judgement or exercise of authority. The error should be willful proceeding from improper or corrupt motive.\textsuperscript{234}

In \textit{Gulam Mohammad v. Sarif Baig},\textsuperscript{235} the Sub-Divisional Magistrate was apprised of the fact of stay by a telegram filed by a party received from the counsel in the High Court informing him of the order of stay. With such knowledge of stay it was held it was contempt to have disregarded it and merely recorded on the order sheet: “No action can be taken on telegram filed”. The very next day he however pronounced his orders putting the opposite party in possession of the disputed property in the proceedings under Sec. 145, Cr. P.C. On the show cause notice the Magistrate took untenable grounds and tendered an unqualified apology which was not accepted by High Court. The High Court sentenced him to pay Rs. 100 as fine.

5.4.3.4 Judge Influencing Another Judge

The Presiding Officer of a Court is the side judge of facts and law arising in any case in his court. Counsel or party can do what is permissible under law in open court to impress the court with the truth of their case. But to influence the court expressly or privately is contempt. Similarly, no other judge however high placed, can attempt to influence another judge who may be of equal, superior or inferior status to him. It is heinous if a judge were to do this. It ill-becomes him being a judge himself. It is gross contempt of court for such a judge to communicate with another judge for the purpose of influencing on the subject-matter of a case pending before the latter.\textsuperscript{236} In the instant case it was pithily stated:

“Among a large variety of acts and conduct which mounts to contempt of court, whereby due administration of justice is obstructed, interrupted, embarrassed, or impeded, an attempt to corrupt a judge is perhaps the most serious. It is a dangerous assault upon the integrity of the court. Every public office is a public trust, but a judicial office is more than that – it is a sacred trust. It is abhorrent to the conception of public justice that a judge should be influenced in making his decision by extraneous influences to corrupt him or out of feeling for personal retaliation. Courts have shown scant mercy to those

\textsuperscript{234} In re Siyaram Hanuman Prasad, 1963 MPLJ 1121.
\textsuperscript{235} AIR 1960 Ori. 218.
\textsuperscript{236} Jawand Singh Hukum Singh v. Om Prakash Agarwal, Sub Judge 1st Class, Jagadhri. AIR 1959 Punj. 632.
who have attempted to deter a presiding officer of a court from performance of his duty by attempting to influence his decision by means of private communication.”

In the instant case the gravamen of the petitioner’s complaint was that when he had filed a complaint in the Judicial Magistrate’s court against certain officials for offences under Section 352, 341, 500 and 506, of Indian Penal Code, the respondent who was a Sub-Judge and a friend of the accused spoke to the Magistrate in favour of the accused. The court on scrutiny of all the affidavits and documents filed and the evidence recorded in the matter came to the conclusion that the allegations were not only untrue but motivated by malice to damage the career of the Sub-Judge, and the court added:

“If the allegations as have been made in this case had been substantiated the guilty person would have richly deserved a deterrent punishment”.

5.4.3.5 Misuse of Official Position

Sometimes when presiding officers misuse their official position there is enough scope for contempt. In M.K. Prakash v. A.P. Porukutty Moopllamma, the court observed that having from the existence of different petitions the Munsiff misused his powers and functions as a judicial officer and had deliberately acted not only in an illegal manner but in a most non judicial manner, making administration of justice a mockery.

5.4.3.6 Non observance of well Settled Precedent

The doctrine of *stare decisis* which obliges the judiciary to follow its earlier decisions gave way for the well settled principle of precedent. The principle of law laid down by the High Judiciary has a binding authority on the lower judiciary. A Court is bound to follow any case decided by a court above it, and appellate court (other than House of Lords) are bound by their previous decisions. Indian Constitution also provides for the observance of the law laid down by the Supreme

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237 Supra note 11, p. 757.
238 Ibid.
239 AIR 1971 Ker. 248.
238 Id. at p. 256.
237 In general it means stick onto the decision.
Court by the lower court. “The law declared by the Supreme Court shall be binding on all courts within the territory of India”. Faced with the freedom of choice between traditional doctrine of stare decisis and the American doctrine of review of precedents the Supreme Court of India inevitably lent its preference to a flexible use of the doctrine of precedent without imposing the fetters of stare decisis of itself.\textsuperscript{242}

When a well settled precedent was not followed by a judicial officer it would amount to contempt of court.\textsuperscript{243} Because non observance of the principle of law laid down by the Higher Judiciary would undermine the respect for the higher judiciary and its constitutional authority.\textsuperscript{244}

Sometimes it may happen that the decision of the higher court itself is \textit{per incuriam}\textsuperscript{245} so \textit{per incuriam} will also have the binding authority on the lower court and the lower court bound to follow. But here also the lower court judge can apply the principle of distinguishing and avoid the application of a wrong principle; the lower court not only commits contempt of court but also refuses to perform a constitutional obligation. Though a court has a duty to follow the precedents it may not be possible in the interest of justice to follow the precedent verbatim in cases which may have to be viewed differently. Also in \textit{per incuriam} decisions there is no binding precedent because the court arrived at the conclusion without analyzing proper earlier decisions. The court should have in such context the privilege of distinguishing, which cannot be viewed as disobedience. Therefore, a judge may feel a compulsion to refuse to follow a precedent which may be \textit{per incuriam}. This act of distinguishing may save the judge from contempt proceedings. But express refusal to follow well settled precedent will attract contempt jurisdiction.\textsuperscript{246}

5.5 Contempt by Government Servants

Disobedience of the orders of the court by the Executive is viewed seriously by the judiciary and the court resorts to contempt jurisdiction to ensure due compliance with its orders. What constitutes disobedience of the order of the court has

\begin{itemize}
\item Shri Baradakanta Mishra v. Bhimsen Dixit, 1973 Cri. LJ 19 SC
\item Id. at pp. 22-23.
\item A decision of the court which is mistaken. A decision of the court is not binding precedent if gives \textit{per incuriam} i.e. without the court’s attention having been driven to the relevant authorities or statutes.
\item Supra note 242, pp 248-249.
\end{itemize}
not been specifically defined by any statute, and so the principles laid down by the
judiciary remain the only guiding factor.

The Calcutta High Court, in *Tarafatulah Mandal v. S.N. Maitra*, considered the matter and held that the continued interference by the executive authority with the peaceful possession of the petitioner during the existence of a stay order will amount to willful disobedience and thus constitute contempt of court.

Chakravarthi J. observed that it is true that when an injunction is granted against a corporation, which afterwards does or permit an act in breach of the injunction, there is a willful disobedience of the order and it will be no answer for the corporation to say that the act was done or the omission allowed to occur unintentionally or through carelessness, or through dereliction of duty on the part of servants of the corporation. The same principle, would apply in the case of a Government or a state, but before an individual officer of the Government can be held to be liable, it must be established that he was the person in charge of the subject matter to which the injunction or order alleged to have been disobeyed related and unless that is established no case against an individual officer can succeed.

In *Dr. Ganpati Chander Gupta v. Hardwari Lal and Others*, the Vice-Chancellor and Registrar of Maharishi Dayanand University, Rohtak had disregarded order of the High Court and then tendered apologies in alternative. Thus the court held, “it has been noticed that there is a growing tendency between the people of all ranks to disregard law on one pretext or the other and then to tender apologies. The result is that the confidence of the public in the courts is being shaken. The purpose underlying the law of contempt is to maintain their confidence in the courts of justice and uphold the majesty and dignity of the courts. It is not for the sake of private persons or judges as individuals.” Consequently they were sentenced with fine of Rs. 100 only and in default there fifteen days simple imprisonment.

In *Miss Sumedha Kalia v. State of Haryana*, a writ petition was pending questioning the reservation policy for admission for MBBS of Maharishi Dayanand University, Rohtak. During the pendency of the writ petition, the petitioners were

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247 AIR 1952 Cal. 919
248 Id. at p. 924.
249 1981 Cri. LJ 1239 (P&H)
250 Id. at p. 1244.
251 AIR 1990 P&H 239.
given provisional admission. Now the question for consideration was whether giving of provisional admission during the pendency of the writ petition will amount to disobedience of the orders of the court. Court held that there was no disobedience of the orders of the court. Court held that there was no disobedience of the orders of the court, because there was confusion in ascertaining the quota.\(^{252}\)

**K.V. Venkatesh v. Taluka Executive Magistrate,\(^{253}\)** Magadi Taluk, Magadi, in this case Karnataka High Court its order in 1985 directed the respondents to hold an enquiry. But till 1990 no enquiry was conducted. This was construed as unreasonable delay in carrying out the order, even though no time limit was fixed, and hence it was held as contempt.

But in **Maniyari Madhavan v. Inspector of police,\(^{254}\)** in this case a journalist complained of misbehavior and attack by police. In a writ petition High Court directed the matter to be enquired by the Deputy Inspector General of Police. Petitioner went to the Supreme Court to get the matter to be enquired by the Central bureau Investigation. But the Supreme Court appointed another D.I.G. to investigate the matter and submit the report within 3 months. After a lapse of one year State Government moved the Supreme Court for an extension of time. Though the situation was similar, the Supreme Court had not made any finding on contempt, though it is a clear case of contempt because no enquiry was conducted within the time prescribed by the court. The court viewed the matter seriously and directed the enquiry to be conducted by the C.B.I. within three months.

If there is violation of the order issued by the Supreme Court it will amount to contempt of court. But if the order is susceptible to two interpretation one in favour of the contemnor and another in favour of the complainant the contemnor is entitled for the benefit of doubt.\(^{255}\)

Though non-compliance of a direction of the court amounts to contempt of court, if the direction itself is premature the non-compliance of such direction will not amount to contempt. Thus in **State of Jammu and Kashmir v. Mohd. Yaqoob**

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\(^{252}\) Id. at 242.

\(^{253}\) AIR 1990 Kant. 86.

\(^{254}\) AIR 1993 SC 356.

Supreme Court held that so long as the stay matter in the writ petition was not finally disposed of the further proceeding it was disconcerted and no order therein should have been passed. Supreme Court further held that the orders passed in the contempt proceedings were not justified being premature and must therefore be entirely ignored. High Court should first take up the matter in the writ case and dispose it off by an appropriate order. Only then it should consider whether the state and its authorities could be accused of being guilty of having committed contempt of court.

The decision of Supreme Court in *Chandra Shashi v Anil Kumar Verma* is important because in this case the court established a new criteria for criminal contempt. The question involved in this case was, whether filing a forged and fabricated documents amount to contempt? Since there was no decision of the High Court or Supreme Court on this point it was required to be examined as a matter of first principle. The court further held that the word interfere means, in the context of the subject, means any action which checks or hampers the functioning or hinders or tends to prevent the performance of duty and if recourse to falsehood is taken with oblique motive, the same would definitely hinder, hamper or impede even flow of justice and would percent the courts from performing their legal duties as they are supposed to do. Though the respondent, Anil Kumar Verma, had tendered unconditional apology but the court held that the apology tendered by the respondent contemnor was not a product of remorse or contrition and, therefore, did not merit acceptance. The court further said that the apology could not be used as a weapon of defence to get purged of the guilt. Rejecting the apology in which the contemnors stated that he would lose his job and his life would be shattered, the court said the apology was not an outcome of real remorse or contrition. He was sentenced to two week’s imprisonment.

The fact and decision of *Dhananjay Sharma v. State of Haryana and others*, were almost similar to the fact of Chandra Shashi case. In this case, Dhananjay Sharma and a taxi driver, Sushil Kumar, illegally detained by the Haryana police writ

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257 Id. at p. 170.  
258 Id. at p. 171.  
260 Supra note 107 at p. 180.  
261 AIR 1995 SC 1795.
of habeas corpus were filed for the production of detenu. The police, officers of Haryana filed false affidavit before the Supreme Court and forced one of the detenu to false statement and file false affidavit in the Supreme Court to effect that he was not illegally detained by police. Such conduct aggravated their contumacious acts. The unconditional and unqualified apologies tendered by them were not accepted by the Supreme Court because they did not show any real contriteness and regret. Thus they were sentenced to suffer simple imprisonment for a period of three months and to pay a fine of Rs. 1500. The taxi driver had placed himself at the mercy of the court and said that he was so acted on account of the fear of the police of Haryana. The Supreme Court opined that he was then repentant, and his sentence was reduced to one day simple imprisonment and a fine of Rs. 1000.

In Rajesh Kumar Singh v. High Court of Judicature of M.P., an appeal was filed under Section 19 of contempt of courts Act, 1971. Appellant was the Sub-Divisional Officer (Police) Dabra, Gwalior. He had filed the appeal against the order of Madhya Pradesh High Court in contempt petition punishing him with simple imprisonment for seven days and fine of Rs. 2,000. The question before the Supreme Court is that, whether holding an inquiry in regard to an incident and recording the statements of several witnesses without the permission of the High Court and contradicting the record made by the learned Magistrate amount to contempt of court while deciding the above stated matter Raveendran, J. observed:

Of late, a perception that is slowly gaining ground among public is that sometimes, some judges are showing over sensitiveness, with a tendency to treat even technical violations or unintended acts as contempt. It is possible that it is done to uphold the majesty of courts and to command respect. But judges like everyone else, will have to earn respect. They cannot demand respect of demonstration of power. The purpose of the power to punish for criminal contempt is to ensure that the faith and confidence of the public in administration of justice is not eroded. Such power, vested in the High Courts, carries with great responsibility care should be taken to ensure that there is no room for complaints of ostentatious exercise of power.
The court further mentioned those three acts, which are often cited as examples of exercise of such power: (i) punishing persons for unintended acts or technical violations, by treating them as contempt of court; (ii) frequent summoning of government officers to court to sermonize or to take them to task for perceived violations; and (iii) making avoidable adverse comments and observations against persons who are not parties. The court further held that it should be remembered that exercise of such power results in eroding the confidence of the public rather than creating trust and faith in the judiciary. Therefore, the Supreme Court held that in the above stated case there is no material to show that the appellant acted with any ulterior motive. Any bonafide act in the course of discharge of duties and complying with the directions of the Superior Officers should not land the enquiry officer in contempt proceedings. Thus, holding the appellant not guilty of contempt of court the appeal was allowed setting aside the order of the High Court.

In Kedar Singh Kushwaha v. Dhaniram and another, the appellant was the Specified Officer and in the said capacity was authorized to determine the Election Petition filed by the first respondent. The election petition filed by him was dismissed only on the basis of an order of recounting passed by the Specified Officer in respect whereof allegedly no objection was raised.

Questioning the legality and validity of the said order, the first respondent filed a writ petition before the High Court contending that the Specified Officer had no jurisdiction to direct re-counting of votes only on the ground that no objection was raised by the parties and that he was required that sufficient evidence had been brought on record by the parties for the said purpose. It was also urged that such a judicial power could not have been delegated in favour of the Tehsildar. A learned single judge of the High Court order dated 24-7-1996 allowed the said writ petition, setting aside the order of the Specified Officer and remitted the matter back to it and directing the election petition to be decided within two months. It was furthermore directed that the Specified Officer should also decide the preliminary objection raised by the respondent in the election Petition.

\[\text{266} \text{ Ibid., para 19} \]
\[\text{267} \text{ Ibid., para 20} \]
\[\text{268} \text{ AIR 2010 SC 193} \]
\[\text{269} \text{ Id. at p. 194, para 9} \]
\[\text{270} \text{ Ibid., para 4} \]
Despite the said order, no action was taken thereon. The appellant who was holding the post of the Specified Officer/Sub-Divisional Officer at the relevant time disobeyed the order of the High Court dated 24-7-1996; a contempt petition was filed by the first respondent. Upon hearing the parties, the appellant was found guilty of willful disobedience of the order of the high Court and a fine of Rs. 1000, and his detention till the rising of the court was directed.271

The High Court however, in its order dated 24-7-1996, in clear terms, pointed out that the prescribed authority has no jurisdiction in that behalf even with the consent of the parties. Relying on the basis of a decision of this court in P.K.K. Shamsudeen v. K.A.M. Mappillai Mohindeen & Ors.,272 the High Court made extensive reference to the Rules, to hold:

"From the aforesaid rules, it is clear that any order of recounting can be passed after conclusion of that trial and the recounting can only be recorded by the Sub-Divisional Officer who is a prescribed authority to decide that dispute. The Sub-Divisional Officer has not acted properly, inasmuch as it, acted illegally in delegating the powers of recounting to the Tehsildar. The authority is described as Sub-Divisional Officer as the authority to decide the election petitions, therefore, any act done by the Tehsildar of recounting cannot be said to be proper and on the basis of recounting by the Tehsildar, the Sub-Divisional Officer gravely erred in dismissing the election petition. The order dismissing the election petition is hereby set aside with a direction to Sub-Divisional Officer to decide the petition according to law and shall also decide the preliminary objections raised by the respondents before him. He cannot shirk from his responsibility and delegate his powers to subordinate authority".273

In Nand Kishore Ojha v. Anjani Kumar Singh,274 there appears to have been a change relating to appointment in schools with the advent of the new Government in Bihar in 2006 and the framing of the Bihar Elementary School Teachers Rules, 2006, which came into force on 1st July, 2006, and has been amended from time to time. Court, however, see no justification in the defence taken on Behalf of the State of

271 Ibid., para 5 and 6.
272 AIR 1989 SC 640.
273 Supra note 268 at p. 195.
274 AIR 2010 SC 355.
Bihar that on account of such change in policy the trained teachers who were in place at the time when the undertakings were given could not be accommodated. When such undertakings were given by the State Government they were meant to be implemented. Having given successive undertaking to accommodate trained teachers in the vacant posts, without even taking recourse to the selection procedure, the state government cannot resile from its earlier undertakings and professes a change of policy for not giving effect to such undertakings. Furthermore, the appointments given to trained teachers, who were eligible at the time when the undertakings were given, were as Shiksha Mitras, which appointments were allegedly adhoc in nature and were not contemplate in terms of the said undertakings.275

In order to find a workable selection to the problem which has arisen on account of the failure of the Government authorities to abide by the undertakings given on its behalf, the advertisement for appointment of primary teachers which was published in December, 2003 and had been struck down by the High Court, was brought to the notice of the Supreme Court for the limited purpose of determining the total number of vacancies which was shown as 34,540, whereas the estimated number of trained teachers yet to be accommodated was far beyond the aforesaid figure. Supreme Court direct that the said available vacancies of 34540 shown in the advertisement for appointment of primary teachers be filled up with the said numbers of trained teachers as a onetime measure to give effect to the undertakings given by the State Government on 18th January, 2006 and 23rd January, 2006.276

According without issuing a Rule of contempt, Supreme Court direct that the 34540 vacancies shown as available in the advertisement published in December, 2003 be filed up from the amongst the trained teachers who are available, in order of seniority. Supreme Court adjourned the contempt petition for a period of six weeks to enable the state Government to implement this order.277

In Muthu Karuppan v. Parithi Ilamvazhuthi & another,278 contempt proceeding was initiated mainly on the basis of a false statement made on oath by Respondent No. 2, Rajender Kumar, inspector of police. Tamil Nadu, which resulted

275 Id., pp. 359-360, para 18.
276 Id. at p. 361, para 22.
277 Ibid, para 23.
278 AIR 2011 (5) SCC 496.
in stay of the bail order passed by the session judge, Chennai in favour of the Respondent No. 1, Parathi Ilamvazhuthi, elected member of Legislative Assembly of the Egmore constituency, Chennai in the election held on 10-5-2001 to the Tamil Nadu State Legislative Assembly, and prevented him from taking oath in the Assembly. In respect of the violence on the day of election, Respondent No. 1 was arrested and remanded to judicial custody on 17-5-2001. On the same day, that is, on 17-5-2001, the appellant, Muthu Karuppan, was appointed as Commissioner of police, Greater Chennai city and assumed charge. On 21-5-2001 Respondent No. 1 moved on application for bail before the Metropolitan Magistrate which was dismissed on the same day. On 22-5-2001, Respondent No. 1 moved an application for bail before the session’s judge, mainly on the ground that as the new assembly session commences on 22-5-2001, he has to take oath and further the victim, and namely, David has also been discharged from the hospital. On 23-5-2001, Respondent No. 1 was granted conditional bail by the session’s judge mainly on the ground that he has to take oath as MLA. It is further seen that against grant of bail to Respondent No. 1, inspector of police Respondent No. 2 filed an application for cancellation of bail before the High Court. On the same day, vacation judge of the High Court stayed the order of grant of the bail to Respondent No. 1 till 29-5-2001 on the ground that victim, namely, David is in serious condition and the accused Respondent No. 1 is in police custody. By pointing out that the information furnished by Respondent No. 2 in his affidavit filed in support of the application for stay of the order of grant of bail regarding his police custody is false, Respondent No. 1, filed a counter affidavit praying for vacation of the stay granted by the high Court. The learned single judge dismissed the application filed by respondent No. 2, to cancel the bail granted to the first Respondent by the session’s judge.279

Respondent No. 1 filed contempt Application before the High Court staying that on the direction supervision and knowledge of the appellant herein, respondent No. 2 moved an application to cancel the bail granted to him on the basis of false statement thereby prevented him from attending the Assembly. On 29-10-2004, the Division Bench of the High Court held the respondents therein guilty of the offence and sentenced them to undergo simple imprisonment for 7 days under section 12 of

279 Id. at p. 1649.
the contempt of court Act, 1971. Aggrieved by the judgment and order of the High Court, appellant filed appeal before the Supreme Court. On 13-12-2004 and Supreme Court stayed the operation of the impugned order insofar as it relates to the appellant. Respondent No. 2 also filed appeal before Supreme Court, but the court dismissed the appeal on merits holding that the case of the Commissioner of Police stands entirely on a different footing.280

As observed above, the contempt proceeding being quasi criminal in nature require strict adherence to the procedure prescribed under the Rules applicable in such proceedings. Appellant also pointed out that consent of the Advocate General was not obtained for initiating contempt proceedings against him. In state of Kerala v. M.S. Mani and others,281 this court held that the requirement of obtaining prior consent of the advocate General in writing for initiating proceedings of criminal contempt is mandatory and failure to obtain prior consent would under the motion non-maintainable. In Bal Thakrey v. Harish Pimpalkhute and another,282 this court held that in absence of the consent of the Advocate General in respect of a criminal contempt filed by a party under section 15 of the Contempt of Court Act, 1971, taking suo moto action for contempt without a prayer was not maintainable. However, in Amicus Curiae v. Prashant Bhushan and others,283 this court has considered the earlier judgments and held that in a rare cases, even if the cognizance is deemed to have been taken in terms of Rule 3 (c) of the Rules to Regulate Proceedings for contempt of the Supreme Court, 1975, without the consent of the Attorney General or Solicitor general, the proceedings must be held to be maintainable in view of the fact that the issues involved in the proceedings bad for reaching greater ramifications and impact on the administration of justice and on the justice delivery system and the credibility of the court in the eyes of general public. It is clear from the recent decision that if the issue involved in the proceedings had greater impact on the administration of justice, the court is competent to go into the contempt proceedings even without the consent of the advocate General as the case may be.284

280 Id. at p. 1646.
281 AIR 2001 SC 3315.
282 AIR 2005 SC 396.
283 Supra note 185.
284 Supra note 278, pp. 1648-1649.
In Gurminder Singh Kang v. Shiv Prasad Singh & others, one Shiv Prasad Singh who was in-charge block supply Officer of Aurangabad was dismissed from service in the year 1977 on charges of bribery, by the Commissioner, South Chhotanagpin Division, Ranchi. Subsequently, considering his representation, he was reappointed. While reappointing him, the said order mentioned that Shiv Prasad Singh would get the basic starting pay of Rs. 296 and will not be entitled for any future promotions. The said order became final and Shiv Prasad Singh was reappointed as per order dated 28-2-1980. The said Shiv Prasad Singh filed writ petition wherein he prayed for a direction to accord time bound promotion as per the State Government's scheme. Irrespective of the specific directions contained in reappointment order dated 28-2-1980, the said writ petition was disposed of by order dated 21-8-1995.

The said order was to the following effect that “It’s no doubt that the order was passed in the year 1980 and the petitioner did not assail the same in any court of law since then, but in the opinion of the Hon’ble Judge of the High Court of Patna, when the Government introduced the scheme of time bound promotion, petitioner cannot be denied the benefit arising there from only on account of the impugned order if he is otherwise eligible and found suitable. After having heard the learned counsel for the parties, the writ application is disposed of with the direction to the Commissioner, Food and Civil Supplies, Government of Bihar (respondent No. 2) to dispose of the representation of the petitioner by a reasoned order within three months from the date of receipt/production of a copy of this order, the certified copy of which shall be produced along with the copy of the representation before respondent No. 2 by the petitioner within two weeks”. Pursuant to the said order Shiv Prasad Singh was granted first time bound promotion from 01-04-1981 and second time bound promotion from 09-09-1992. His salary was fixed in the revised scale of Rs. 5500-9000/-. The appellant herein by his order dated 25-7-2003 in his capacity as the commissioner Food and Supplies and Commerce, Government of Bihar held that the grant of time bound promotion one on 1-4-1981 and other on 9-9-1992 were in

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285 AIR 2013 SC 520.
286 Id. at p. 521.

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contravention of the conditions contained in the reappointment order dated 28-2-1980 and so saying cancelled the said promotions. The salary was also fixed in the pre-revised scale of Rs. 296/-.\(^2\)

Consequently to the said orders dated 25-7-2003 necessary orders revising salary in the lowest scale of Rs. 5000-8000 was fixed from 1-1-1996 and the excess payment was also directed to be recovered from him. Aggrieved by the order dated 25-7-2003, the Shiv Prasad Singh filed a writ petition. While examine the grievances in the writ petition of Shiv Prasad Singh the learned Judge of the Patna High Court took the view that the order passed by the appellant dated 25-7-1995 and directed the appellant to show cause why he should not be punished for contempt. Thereafter, the appellant, stated to have filed his reply and not being satisfied with the stand taken by the appellant, the learned judge concluded that the conduct of the appellant in having passed the order dated 25-7-2003 was in violation of the order dated 21-8-1995 and, therefore, the said conduct of the appellant amounted to contempt of the order of the court. The learned judge ultimately imposed the punishment of two months simple imprisonment apart from payment of fine of Rs. 2000.\(^3\)

Supreme Court held in this case that the order of the learned single judge impugned in this appeal discloses that instead of displaying such fair conduct before the court, he appeared to have attempted to justify his action by restarting to an escape route and stated to have offered his regret and unconditional apology as a last resort to pardon him from being punished for any contempt action. The case on hand is one such instance where the appellant who was a senior level IAS Officer with not less than thirty years of experience in the state Administration came forward with a shame and flippant statement that he did not understand the implication of the orders of the High Court. In the light of the above conclusion Supreme Court did not find any scope to interfere with the order of the learned single judge. But take into account the age of the appellant, as submitted by the learned counsel appearing for the appellant, honorable court are of the view that the simple imprisonment of two months alone need not be retained. Therefore, impose a stern warning to be recorded as against the

\(^2\) Ibid.
\(^3\) Id. at p. 522.
appellant apart from confirming the imposition of fine of Rs. 2000 to be paid as per the order of the learned judge of the High Court.\textsuperscript{289}

In Debendranath Nanda v. Chandra Shekhar Kumar,\textsuperscript{290} appellant working as lecturer in Government aided institution becoming surplus. Order of the High Court to considered his case for adjustment against vacant vacancy in Government institution. Order though complied with at Government level but departmental authorities neither gave him posting nor paid salary for years. Appellant though had made out case of contempt but appellant has reached the age of superannuation can be compensated by paying monetary benefits and contempt proceedings against erring officials would serve no purpose. The contempt proceedings were dropped.

Supreme Court held that the copy supplied by the appellant relation to various orders issued by the Minister, School and Mass Education Department to the officer concerned shows that at the Government level the grievance of the appellant was properly taken care of and it is only at the Department level, the appellant was dragged from here and there by one reason or the other without giving him the posting at the appropriate place as directed by the Government. The appellant was dragged for nearly 14 years and by afflux of time, appellant has reached the age of 60 years, hence, as on date, there cannot be any positive direction for posting him at the appropriate place. However, taking note of all the earlier order of the High Court, Supreme Court is satisfied that the appellant is entitled for equivalent monetary benefits as rightly observed by state government about the appellant’s entitlement. Supreme Court feel that no purpose will be served by taking action against the erring officials, instead the appellant can be adequately compensated by way of monetary benefits. Supreme Court direct the Commissioner-cum-Secretary, Higher Education Department Bhubaneswar to assign suitable post to the appellant and corresponding monetary benefits from the date on which the Department was asked to consider and settle the same within a period of three months from the date of receipt of the copy of judgment.\textsuperscript{291}

\textsuperscript{289} Id. at p. 523.

\textsuperscript{290} AIR 2013 SC 501.

\textsuperscript{291} Id. at p. 506.
In Sudhir Vasudeva, Chairman and MD, ONGC and others v. M. George Ravishekaran and others,\textsuperscript{292} the power vested in the High Court’s as well this Supreme Court to punish for contempt is a special and rare power available both under the constitution as well as the contempt of courts Act, 1971, it is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power cases a sacred duty in the courts to exercise the same with the greatest of care and caution. Courts must not, therefore, travel beyond the fair corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Courts must also ensure that while considering a contempt plea the power available to the court in other corrective jurisdictions like review or appeal is not trenched upon. No order or directions supplemental to what has been already expressed should be issued by the court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdiction vested in the court.

In the above mentioned case aggrieved by a direction of the Madras High Court in exercise of its contempt jurisdiction to create supernumerary posts, this appeal has been filed by the respondents in the contempt proceedings. The respondents in the present appeal were engaged as Radio Operators on contract basis in the Oil and Natural Gas Corporation Ltd., (hereinafter referred to as ‘the corporation’), a public sector undertaking, issued a notification under section 10(1) of the contract labour (Regulation and Abolition) Act, 1970 employment of contract labour in various works in the Corporation, including the work of Radio Operators was prohibited. A writ petition seeking a direction to the corporation to treat the contract Radio Operators at par with the regular Marine Assistant Radio Operators was pending before the High Court at that point of time. Subsequently, the Union representing 56 number of contract employees engaged as Radio Operators instituted another Writ Petition seeking the same relief.\textsuperscript{293}

In Air India statutory Corporation and others v. United Labour Union and others,\textsuperscript{294} this court took the view that upon abolition of contract labour the persons

\textsuperscript{292} AIR 2014 SC 950.
\textsuperscript{293} Id. at p.951.
\textsuperscript{294} AIR 1997 SC 645.
engaged on contract basis became the employees of the principal employer and hence entitled to regularization under the principal employer. The said view has been subsequently dissented from, though prospectively, in *Steel Authority of India Ltd., & others v. National Union Waterfront Workers and others.* Following the decision of this court in *Air India Statutory Corporation and others* the writ petitions were allowed by a learned single judge of the Madras High Court. The Letters Patent Appeal filed by the Corporation against the said order was dismissed. The matter was carried to this court in special leave petition which was disposed with the following direction:

Following the order of this court in the Special Leave Petition the respondents herein were absorbed as Junior Helpers with effect from 29-1-1997 by an order dated 2-4-1998. Their pay was fixed at the bottom of the basic pay of class IV employees of the corporation.

Thereafter a committee was constituted by the Ministry of Petroleum and Natural Gas which recommended that the corporation is bound to absorb the entire contract Radio Operators who had the requisite qualification in the post of Marine assistant Radio Operators with effect from 8-9-1994 and in the pay scale applicable to the said post as on 8-9-1994. As the aforesaid recommendations of the committee were not being given effect to, the present respondents instituted another writ petition seeking a direction for their absorption as Marine Assistant Radio Operators with effect from 8-9-1994.

By order dated 2-8-2006 the writ petition was dismissed of with the following finding and operative directions:

"Considering the entire facts and circumstances of the case in the light of the report of the committee, recommendations made by the Ministry of Petroleum and Natural Gas and the judgment of the Supreme Court in *Air India Statutory Corporation Case,* court of the view that the absorption of the petitioners by the respondents corporation as junior Helpers with the pay of Rs. 2282/- old bottom of class IV Cadre was not fair and proper and certainly not in strict compliance of the
undertaking given by the respondent corporation before the Supreme Court. On the other hand court is of the view that the petitioners are entitled to be absorbed as marine Assistant Radio Operators." The aforesaid order dated 2-8-2006 was challenged by the corporation in writ appeal which was dismissed on 19-12-2006 with a direction to the corporation to implement the order of the learned single judge dated 2-8-2006 within a period of four weeks from the date of receipt of a copy of the order.

Alleging non implementation and disobedience of the order dated 2-8-2006 contempt petition was filed before the High Court wherein the impugned direction for creation of supernumerary posts of marine Assistant Radio Operator was made by the order dated 19-1-2012. The said order has been affirmed by a Division Bench of the High Court. Aggrieved by the said order, the appeal has been filed by the corporation.

The Superior Court held that the direction of the High Court for creation of supernumerary posts of Marine Assistant Radio Operator cannot be countenanced. Not only the courts must act with utmost restraint before compelling the executive to create additional posts, the impugned direction virtually amounts to supplementing the directions contained in the order of the High Court dated 2-8-2006. The alternative direction i.e. to grant parity of pay could very well have been occasioned by the stand taken by the corporation with regard to the necessity of keeping in existence the cadre itself in view of the operational needs of the corporation. Despite the specific stand taken by the corporation in this regard the High Court was of the view that the respondents should be absorbed as Marine Assistant Radio Operator nothing prevented the High Court from issuing a specific direction to create supernumerary posts of Marine assistant Radio Operator. The same was not done. If that be so, the direction to create supernumerary posts at the stage of exercise of the contempt jurisdiction has to be understood to be an addition to the initial order passed in the writ petition. The argument that such a direction is implicit in the order dated 2-8-2006 is self defeating. The issue is one of jurisdiction and not of justification of relevance is the fact that an alternative direction had been issued by the High Court by its order dated 2-8-2006 and the appellants, as officers of the corporation, have complied with the same. They cannot be, therefore, understood to have acted in

299 Supra note 292 at p. 952.
300 Id. at p. 953.
willful disobedience of the said order of the court and courts of the view that the order dated 2-8-2006 stands duly implemented. Consequently court set aside the order dated 19-1-2012 passed in contempt petition and allows the present appeal.\(^{301}\)

In *Nafis Ahmad and another v. Narain Singh and others*,\(^{302}\) suit for declaration of title decreed in favour of petitioners by Supreme Court on terms enumerated in compromise petition. Petitioner alleging that in spite of such decree, Patwari and Tehsildar entered name of respondent in suit property defying decree. Respondent one of the legal heirs of deceased’s who entered into compromise and admitted ownership of petitioners. No willful disobedience on part of respondent as alleged by petitioners. Contempt petition closed with liberty to petitioners to pursue appropriate remedy in law. The case of the petitioner is that they were put on possession of the suit property pursuant to an agreement of sale with the owners on 3-5-1950 and they filed suit for declaration of their title and permanent injunction on 12-7-1996 and the suit was decreed but on appeal it was reversed by the Appellate court and the High Court confirmed the same in second appeal and the petitioners preferred further appeal to this court in 2003 and during the pendency of the appeal the matter was settled and a compromise petition under Order 23, Rule 3, CPC was filed and this court disposed of the civil appeal on the terms enumerated in the compromise petition, by judgment dated 10-12-2007 and the petitioners thus became owners of the property. The petitioners have alleged that respondent No. 3 Ashiq Ali was a respondent in the civil appeal before this court, admitting the title of the petitioners to the suit property. But respondent No. 2, Tehsildar and respondent No. 1, Patwari have recorded the name of respondent No. 3, namely Ashiq Ali in the year 2011 defying the decree of this court.

Supreme Court held that the petitioners herein have compromised with the legal heirs of deceased Nabbu Khan with the land in dispute and they admitted ownership of the petitioners and undertook not to raise any objection in future. Respondent No. 3, Ashiq Ali is the legal heir of original Respondent No. 2, in Civil Appeal namely, Maseet Ali and he was impleaded as such in the appeal. The legal representative Nos. 2(i) to 2(iv) of deceased original respondent No. 2, Maseet Ali did not appear in the civil appeal though served and they did not enter into compromise

\(^{301}\) Id., pp. 955-956.
\(^{302}\) AIR 2014 SC 956.
with the petitioners. The court disposed of the civil appeal declaring the rights of the petitioners' vis-à-vis and the legal heirs of deceased Nabbu Khan on the terms of compromise petition. In such circumstances there is no willful disobedience on the part of the respondents as alleged by the petitioners. The contempt petition is, therefore closed.\footnote{id}^{303}

Contempt jurisdiction has been utilized by the judiciary as an effective means of enforcing its orders and directions even against the administrative authorities. Any kind of disobedience of any judgment, direction or order is used to be punished summarily by availing contempt jurisdiction. Non compliance of the order should also be treated in the same manner as disobedience of the order. But if there is reasonable ground because of which the concerned authority could not comply with the order, it is the duty of the concerned authority to approach the court and get necessary orders. Administrative authority has every right to take disciplinary proceedings against their subordinates. But they have no right to interfere with the administration of justice. Once the person has approached the court for redresses of grievances, any kind of administrative action against the concerned person will interfere with the administration of justice and thus result in contempt proceedings.

5.6 Sum up

The increasing use of contempt powers by the court is a warning beacon, signifying the need for urgent introspection to find out if there is some shortcoming somewhere that people are not satisfied with the justice which is being imparted to them. Yet it should not be forgotten that frequent attacks on the dignity of the courts would shake the very foundation of the judiciary. Judges have to perform quite often, responsible yet disagreeable duties, they must be given utmost protection. The honour of the judges and the judiciary, the state institution through which the judges are supposed to serve the people is prompted and protected by the openness of the judges and the judiciary to criticism. At the same time, the court should not be over or hypersensitive and should not exercise this jurisdiction upon a mere question of propriety or an exaggerated notion of the dignity of the judges and must act with dispassionate dignity and decorum. With great power comes great responsibility, and hence, the higher judicial echelons must exercise the potent power of contempt with

\footnote{id}{at p. 957.}
careful deliberation and serious circumspection to ensure that civil liberties are not unjustly trampled. It depends entirely on how the actions of the judges and the courts are perceived by the people.