CHAPTER – III

CONSTITUTIONAL PERSPECTIVE OF CONTEMPT IN INDIA

1.1 INTRODUCTION

The Constitution of India\(^1\) is the supreme law of the land. It lays down the framework defining fundamental political principles, establishing the structure, procedures, powers and duties, of the Government and spells out the fundamental rights, directive principles and duties of citizens. It declares the Union of India to be a Sovereign, Socialist\(^2\) and Secular\(^3\), Democratic, Republic, assuring its citizens of justice, equality, and liberty.

It is the longest written Constitution of any Sovereign Country in the World, containing 395 Articles, 12 Schedules (originally 8 Schedules), 26 Parts (originally 22 Parts) and 94 Amendments\(^4\), for a total of 117,369 words in the English language version. Besides the English version, there is an official Hindi translation. Being the supreme law of the Country, every law enacted by the Legislature must confirm to the Constitution.\(^5\)

In 1946, at the initiative of British Prime Minister Clement Richard Attlee\(^6\), a Cabinet Mission\(^7\) to India was formulated to discuss and finalize plans for the transfer of power from the British Raj to Indian leadership and providing India with independence under

---

6. Prime Minister of the United Kingdom from 1945 to 1951.
7. The Cabinet Mission came to India on 4\(^{th}\) March, 1946.
dominion status in the Commonwealth of Nations\(^8\). The Mission discussed the framework of the Constitution and laid down in some detail the procedure to be followed by the Constitution Drafting Body. With the independence of India on August 15, 1947, the Constituent Assembly\(^9\) became a fully sovereign body and began work on 9 December 1946.\(^{10}\)

The Constitution was drafted by the Constituent Assembly, which was elected by the elected members of the Provincial Assemblies of the Country. Presided over by Dr. Sachidanand Sinha\(^{11}\) for the first time, the Indian Constituent Assembly played the most important role in creating the Constitution of India. After Dr. Sinha, Dr. Rajendra Prasad\(^{12}\) became the President of the Assembly. Comprising over 30 Schedule Caste Members, the Constituent Assembly also included Sections of Christians, Anglo-Indians and Minority Community. Harendra Coomar Mookerjee, being the Minority Community Chairman, also successfully worked for the Christians. While H.P. Modi was the representative of the Parsi Community, Frank Anthony headed the Anglo-Indian Section of the Country in the Constituent Assembly. Some of the prominent female personalities of the Constituent Assembly were Vijaylakshmi Pandit and Sarojini Naidu. From Shyama Prasad Mukherjee, B N Rau and Maulana Abdul Kalam Azad to K M Munshi, Sardar Patel and Alladi Krishnaswami Aiyer, each one had a significant contribution towards the present form of the Constitution of India.

Bhimrao Ramji (B.R.) Ambedkar, a Dalit who earned a Law Degree from Columbia University, Chaired the Drafting Committee\(^{13}\) of

---

\(^{8}\) The Commonwealth of Nations normally referred to as the Commonwealth and previously as the British Commonwealth, is an intergovernmental organization of 54 independent member States.

\(^{9}\) As provided in the Cabinet Mission Plan, 1946, The Constituent Assembly came into being in November, 1946.

\(^{10}\) The first meeting of The Constituent Assembly was held on 9\(^{th}\) December, 1946 as the Sovereign Constituent Assembly for India.

\(^{11}\) Dr. Sachidanand Sinha was the first President of the Constituent Assembly.

\(^{12}\) Dr. Rajendra Prasad was elected President of the Constituent Assembly.

\(^{13}\) On August 29, 1947, a Drafting Committee of 7 members set up under the Chairmanship of Dr. Ambedkar.
the Constitution and shepherded it through Constituent Assembly debates. It was in the year 1948 that a Draft Constitution including a range of proposals was formed by the concerned Committee. The Constituent Assembly of India held two meetings in February 1948 and October 1949 to go through the clauses of the Draft. Finally, from 14th to 26th of November, 1949 the Constituent Assembly analyzed each and every provision of the Draft. The then President of the Constituent Assembly of India signed the Draft on November 26th, 1949.

The Constitution of India which came into force in 1950 \(^{14}\) does not provide in its provisions any new law on contempt. It recognizes the existing law and gives Constitutional sanctity to the same. The Fundamental Right of Speech guaranteed in Article 19 (1) (a) of the Constitution is made subject to reasonable restrictions on the exercise of the right in the interest of Contempt of court, among other things such as Security of State, etc. Any new law can be formulated on the above basis. The existing law of contempt of court is protected in Article 19. The Supreme Court and the High Courts are recognised as Courts of Record by virtue of Articles 129 and 215 respectively. The power of superintendence of the High Court over all other subordinate tribunals is assured in Article 227.

**1.2 CONSTITUTIONAL PROVISIONS IN RELATION TO CONTEMPT**

The Constitutional provisions in relation to law of contempt are found in the following Articles:-

I. Freedom of Speech with Restrictions and Contempt: Article 19 (2) read with Article 19 (1) (a)

II. Supreme Court as a Court of Record: Article 129

III. High Court as a Court of Record: Article 215

IV. Superintendence of High Courts: Article 227

V. Articles 142 and 129 of the Constitution of India

\(^{14}\) It came into force 26 January, 1950, but some provisions of the Constitution came into force immediate i.e., 26\(^{th}\) November, 1949.
1.2.1 FREEDOM OF SPEECH VIS-A-VIS LAW OF CONTEMPT

Freedom is inconceivable without free speech. Truth can be discovered only in the market place of ideas, through a clash of freely expressed adversary concepts. Freedom devoid of free speech is of no effect. Men and women, who are free should be in a position to exchange ideas in order to manage their own affairs.\textsuperscript{15} The basic concept of Freedom of Speech and Expression is as old as civilization itself. The scent of Freedom of Speech was not confined to Britain; Colonial Americans also welcomed it with enthusiasm. By the end of the first half of the eighteenth century, it became a forceful instrument for shaping public opinion.\textsuperscript{16}

The basic concept of Freedom of Speech and Expression which takes within its fold the Freedom of the Press also has been amongst the most jealously guarded liberties. This Freedom is indispensable in democratic Government. In the history of political philosophy, it has taken many twists and turns. In a democratic dispensation based on the Rule of Law, the Freedom of Speech and Expression assumes greater significance. Since democracy is an exercise in collective self-governance by and through the elected representatives of the people, it is obvious that they should project the aims and aspirations of the people and be responsive to them.

Freedom of speech and expression includes the right of every citizen to criticise the judiciary as an institution and its functioning. The court to maintain their independence use the power of contempt to punish one who lowers the dignity of the court or interferes with administration of justice. This precisely is the conflict between freedom of speech and expression and contempt of court. Both freedom of speech and power of contempt are vital for a democratic setup. Freedom of speech ensures judicial accountability whereas power of contempt ensures fair administration of justice.

(i) FREEDOM OF SPEECH AND CONTEMPT LAW IN DIFFERENT COUNTRIES

(a) Position in U.K.

Unlike India where Article 19(1)(a) of the Constitution of India ensures freedom of speech to all citizens, in England freedom of speech including freedom of press has been guaranteed by the court decisions and various legislations from time to time.

The important decision involving freedom of speech and contempt of court is in the matter of special reference from Bahamas Island\textsuperscript{17} known as ‘Bahamas Case’. It was a special reference on a case by the Secretary of State for the Colonies and was heard by Board consisting of 11 members of the Privy Council. The facts of the case in brief are that the Chief Justice of a Colony had return letters to a newspaper and in reply, a man had, in a letter published in a newspaper, held up the Chief Justice.

“... to public ridicule in the grossest manner, representing him as an utterly incompetent judge and a shirker of his work and suggesting that it would be a providential thing if he were to die.”

The Board did not give a formal judgment but reported that the letter complained of, though it might have been made this subject of proceedings for libel, was not, in the circumstances calculated to obstruct or interfere with the course of justice or the due administrations of the law, and therefore did not constitute a Contempt of court.

This case is important in the sense that with this was put an end to the theory that the judge has an integrated personality, and any attack on a judge which reduces the people’s confidence in him as a judge is contempt.\textsuperscript{18}

The decision of the Privy Council, in \textbf{McLeod v. St. Aubyn}\textsuperscript{19}, is also important. In this case the Privy Council reversed the findings of

\textsuperscript{17} (1893) A.C. 138 (P.C.).


\textsuperscript{19} (1899) A.C. 549.
the lower court and held that where the appellant was neither printer nor publisher nor writer of such scandalous matter, he was neither constructively nor necessarily guilty of contempt of court and held that the judge who committed the appellant must pay the cost of appeal to Her Majesty in Council.

The next important case which left an indelible mark on the law of contempt is Ambard v. Attorney General of Trinidad and Tobago\(^\text{20}\), which contains Lord Atkin’s classic statements of the law of contempt. In this case an article entitled ‘The Human Element’ appeared in a newspaper wherein the article pointed out the different sentences awarded in two cases which appeared to the writer to be similar. In one of which he considered that the sentence was too light and in the other that the sentence was not heavy enough. He was held guilty of contempt. Special leave was given to appeal to the Privy Council. After observing that the Privy Council found no evidence to justify the findings that the article was Written with the intention of lowering the dignity of the Court, or had that effect, Lord Atkin said:

“but whether the authority and position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way: wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of Justices, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men”.\(^\text{21}\)

Greater emphasis was laid on freedom of speech by Lord Denning, Lord Salmon and Lord Davies in R. v. Commissioner of

\(^{20}\) (1936) A.C. 322 (P.C.).

\(^{21}\) (1936) A.C. 322, p. 335 (P.C.).
Police, Blackburn\(^{22}\), wherein Mr. Quintin Hogg, Q. C. wrote an article ‘Punch’, in which among other things, he said “The recent judgment of Court of Appeal is a strange example of blindness which sometimes descents on the best of judges ... it is to be hope that the courts will remember the golden rule of judges in the matter of *obiter dicta*. Silence is always an option.”\(^{23}\)

It was admitted at the hearing of the contempt proceedings that the reference to the Court of Appeal was a mistake, and the reference should have been to the Division Court. Notwithstanding this, in three separate judgments, the Appeal Court held that there was no contempt and in this case, even greater emphasis was laid on freedom of speech than had been by Lord Atkin.

Lord Denning said:

“Let me say it once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundation. Nor will use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. There is something far more important at stake. It is no less than freedom of speech itself. It is the right of every man, in Parliament or out of it, in the Press or over the Broadcast, to make fair comment even outspoken comment, on matters of public interest... Mr. Quintin Hogg has criticised the court, but in so doing he is exercising his undoubted right. The article contains an error no doubt, but errors do not make it a contempt of court, we must uphold his right to the uttermost ... All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticism. We cannot enter into public controversy, still less in to political controversy.\(^{24}\)

Salmon L. J. said:

“It is the inalienable right of everyone to comment fairly upon any matter of public importance. This right is one of the pillars of individual liberty - freedom of speech, which our courts have always

\(^{22}\) (1968) 2 Q.B. 150.

\(^{23}\) (1968) 2 Q.B. 154.

\(^{24}\) R v. Commissioner of Police, (1968) 2 Q.B. 150.
unfadingly upheld...The criticism here complained of, however, rumbustious, however wide of the mark, whether expressed in good taste or in bad taste seems to me to be well within the limits of reasonable Courtesy and good faith.”

Edmund Davies L. J. said:

“The right to fair criticism is part of the birth-right of all subjects of Her Majesty. Though it has its boundaries, that right covers a wide expanse, and its curtailment must be jealously guarded against. It applies to the judgments of the courts as to all other topics of public importance”.

The court in all the cases discussed has upheld the right of an individual to criticise even if it is not in good taste all the time. It clearly shows a clear understanding of the law of contempt jurisprudence and the importance of the right to freedom of speech.

The importance of the freedom of speech, which was emphasized by Lord Denning M.R. and Salmon and Edmund Davies L.J. in the case discussed in the preceding paragraph received further support, and the law of Contempt of court was further developed, as a result of Attorney General v. Times Newspapers, and Attorney General v. British Broadcasting Corporation. These decisions led to judicial and legislative changes in the law of contempt of court designed to increase the freedom of speech and the press. It would be convenient to set out the various proceedings which culminated in the enactment of the Contempt of Court Act, 1981.

The events, which finally led to the case of Attorney General v. Times Newspapers, discussed here. Mothers when pregnant had taken the drug thalidomide. Their children had been born deformed. That was in 1962. Actions were started once for damages. Distillers, who distributed the drug, tried to settle the actions. All parents agreed

---

26 Ibid. p. 156.
27 (1973) 1 Q.B. 710.
29 (1973) 1 Q.B. 710.
to a settlement except five and the settlement went on.

In the meantime the editor of The Sunday Times wrote an article on 24 September, 1972 to draw attention to plight the thalidomide children which were looked upon as a notional tragedy and it raised a great public outcry. Distillers pointed out to the Attorney General that the article was a contempt of court because legal actions by parents of some of the children were still pending. The Attorney General took no action after receiving the editor's explanation. However, the editor sent to the Attorney General a draft article for which he claimed facial accuracy on the testing manufacture and marketing of the drug. The Attorney General took the view that the proposed article would involve a Contempt of court as it would create serious risk of interference with Distillers freedom of action in the litigation. The matter came before the Division Court in Attorney General v. Times Newspapers Ltd.\textsuperscript{30} It was argued for the Times Newspaper that whatever may have been the law in the past, the time had come to perform a balancing exercise between the public interest in free discussion and debate on the matter of public importance on the one hand, and the public interest in the unimpeded trial or settlement of disputes according to law on the other. It was further submitted that the existing rules should be relaxed, and in cases like the one before the court, there were really two competing public interests - one in protection of the administration of justice and another in the right of the public to be informed on the grave and weighty issues of the day, and that the latter interest was more important in the circumstances of this case.

Accordingly, they granted an injunction, “restraining the respondents, their servants or agents or others from publishing or causing or authorizing to be published, or printed, an article dealing with the distribution and use of the drug thalidomide.” On appeal, this injunction was vacated by Lord Denning M.R., Philmore and Scarman L. JJ. Lord Denning, after stating that the Court would not allow ‘trial

\textsuperscript{30} (1973) 1 Q.B. 710.
by newspapers’ or ‘trial by television’ or ‘trial by medium other than courts of law’, said that:

“In so stating the law, I would emphasize that it applies only ‘when litigation is pending and is actively in suit before the court’. To which add that there must appear to be ‘a real and substantial danger of prejudice’, to the trial of the case or to the settlement of it. And when considering the question, it must always be remembered that besides the interest of the parties in a fair trial or a fair settlement of the case there is another important interest to be considered. It is interest of the public in matters of national concern, and the freedom of the press to make fair comment on such matters. The one interest must be balanced against the other.”31

The need for a litigation being active was also emphasized by Philmore L. JJ.32 and Scarman J.33 This emphasis on the need for a litigation being "active" if an article like the present one was to be treated as contempt of court had important consequences, as will appear when we deal briefly with the Contempt of Court Act, 1981, passed by the British Parliament.

Emphasizing the importance of the freedoms of speech Scarman L.JJ. observed that further, these Writs are only a minor feature in a situation which deeply disturbs the nation, and in which the public have a very great interest in freedom of discussion.

He cited with approval the following passage from the judgment of Owen J. in *Ex Parte Dawson*34:

...if in the course of the ventilation of a question of public concern matter is published which may prejudice a party in the conduct of a lawsuit, it does not follow that contempt has been committed. And then, a little later : The discussion of public affair... cannot be required to be suspended merely because the discussion ... may, as an incident but not intended by product, cause some

32 Ibid. p. 744.
33 Ibid. p. 746.
likelihood of prejudice to a person who happens at the time to be a litigant.

The second ground on which the Court of Appeal vacated the injunction was that after the Divisional Court had granted the injunction on 29 November 1972, speeches were made in Parliament and reported in the newspapers in which the Distillers were said to be gravely at fault and not have faced up to their moral responsibility. And various newspapers had printed matters of the same nature as that printed by The Sunday Times.

It will be seen that the Appeal Court adopted the test of balancing rival public interests in the administration of justice and in the freedom of speech before deciding whether the act complained of was a contempt of court.

The Attorney General not satisfied with the outcome in the appellate Court appealed to the House of Lords by special leave: Attorney General v. Times Newspapers. The views propounded by Jordan C. J. in Ex Parte Bread Manufactures Ltd., that proceedings in contempt require the court to balance two public interests, namely, between freedom of speech and discussion on matters of public concern and interest, on the one hand and the public interest in preventing improper influence being brought to bear on litigants on the other were approved and upheld by the Law Lords.

Lord Reid observed:

“public policy generally requires a balancing of interests which may conflict. Freedom of speech should not be limited to any greater extent than is necessary but it cannot be allowed where there would be real prejudice to the administration of justice.”

Lord Moris, Lord Diplock, and Lord Cross also expressed similar views. It would be pertinent to detail the diesel of Lord Simon: “Your Lordships, then are concerned with two public interests, which are liable to conflict in particular situation - in freedom of

discussions on the one hand and in unimpeded settlement of disputes according to law on the other. I agree with Lord Denning that the law must hold these two interests in balance.”

Lord Reid observed that he knew no better statement of law than that contain in the following passage from the judgment of Jorden C. J. in Ex parte Bread Manufactures Ltd.’s case37

...the administration of justice, important though it undoubtedly is, is not the only matter in which the public is vitally interested; and if in the course of the ventilation of a question of public concern matter is published which may prejudice a party in the conduct of a law suit. It does not follow that contempt has been committed. The case may be one which as between competing matters of public interest the possibility of prejudice to a litigant may be required to yield to other and superior consideration. The discussion of public affairs and the denunciation of public abuses, actual or supposed, cannot be required to be suspended merely because the discussion or the denunciation may, as an incidental but not intended by-product, cause some likelihood of prejudice to a person who happens at the time to be a litigant. It is well settled that a person cannot be prevented by process of contempt from continuing to discuss publicly a matter which may fairly be regarded as one of public interest, by reason merely of the fact that the matter in question has become the subject of litigation, or that a person whose conduct is being publicly criticised has become a party to litigation either as plaintiff or as defendant, and whether in relation to the matter which is under discussion or with respect to some other matter.38

However the Law Lords held that the article amounted to contempt of court and granted a limited injunction restraining the respondents from publishing or causing or authorising or procuring to be published or printed any article or matter which prejudice’s the issue of negligence, breach of contract or breach of duty. It seems that

their decision was rested on the narrow ground that it was contempt of court to put in the impugned article, material which prejudged the issue of pending litigation or was likely to cause prejudice and accordingly the publication of the impugned article, which in effect charged the company with negligence, would constitute a contempt since negligence was one of the issues in the litigation.

Another fear of the law Lords was that this would set in a trend of trial press, or by the radio or by media other than the courts.

However there was a simple solution to this problem as suggested by Seervai.39 The House of Lords, like the courts below, had a discretion to grant or refuse an injunction against the Times newspapers. In the case before them, the House clearly decided important questions for the first time, and thereby limited the scope of contempt of court in favour of freedom of speech and the media. Therefore, the house having laid down the law, which would necessarily govern all future cases, could have refused an injunction in the exercise of its discretion by observing that on the fact of the case the impugned article could exert no greater pressure on distillers than they had been subjected to as a result of discussion in Parliament and in similar articles in other newspapers.

The matter did not end here. The Sunday Times took the matter to the European Court of Human Rights40, which upheld the action of Sunday Times and disapproved views of House of Lords of granting a limited injunction.

The respondents referred the decision of the House of Lords to the European Court of Human Rights complaining of a breach of Articles of the European Convention. The Court had to consider various competing provisions of the European Convention. The Sunday Times claimed that the decision of the House of Lords in Attorney General v. Times Newspapers Ltd.41, was a breach of

certain provisions of the Convention and in particular of Article 10 which provides:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without influence by public authority and regardless of frontiers.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protections of the reputation or rights of order, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

The court also considered the provisions of Article 6 (1):

“in the determination of his civil rights and obligations or of any criminal charge against him everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...”\(^{42}\)

It was argued for The Sunday Times\(^ {43}\) that the restriction imposed upon them was not ‘prescribed by law’ because the law of contempt on court was too uncertain in its application. Yet only two of the 20 judges agreed. There was also debate as to how far the wording of Article 10(2), ‘maintaining the authority and impartiality of the judiciary’, actually extended. The court explained its breadth in the following passage:

“insofar as the law of contempt may serve to protect the rights of litigant, this purpose already included the phrase maintaining the authority and impartiality of the judiciary: the rights so protected are the rights of individuals in their capacity as litigants, that is, as


persons involved in the machinery of justice, and the authority of that machinery will not be maintained unless protection is afforded to all those involved in or having recourse to it."

Nevertheless, on the facts of the particular case before them, a majority of 11 held that the restriction imposed on The Sunday Times by the House of in a democratic society for maintaining the Lords was not necessary authority and impartiality of the judiciary even in this wide sense.

Another important case where the court had to do the balancing act between the public interest involved free press and fair administration of justice is that of Attorney General v. British Broadcasting Corporation. A religious sect sought to stop a television broadcast which was disparaging of them. They failed. After that broadcast a number of action were brought by the Exclusive Brethren. But no action was brought by the Exclusive Brethren against the British Broadcasting Corporation (B.B.C.) for libel.

The British Broadcasting Corporation advertised in the Radio Times their intention to broadcast a repeat of time aforesaid television programmed. The Exclusive Brethren demanded that the broadcast should not be made because its contents would prejudice the hearing of the case before the local valuation court. The matter was brought to the attention of the Attorney General who, two day’s before the broadcast, issued a Writ restraining the B.B.C. from making the television broadcast.

Lord Salmon observed that: “The B.B.C.’s broadcast raised matters of great public importance and, if true, was rendering an important service to the public. The broadcast was indubitably defamatory. But... the Exclusive Brethren brought no action for libel. Had they done so, and the B.B.C. had raised a defence of justification, it is highly unlikely that the Brethren could have obtained an interim injunction... to prevent the B.B.C. from repeating broadcast of 26th

---

Thus freedom of press through these two cases got a new lease of life. It was to be recognised that the freedom of press can be restrained only if there is a ‘pressing social need’ for such a restraint. In order to warrant a restraint, there must be a social need for protecting the confidence sufficiently pressing to outweigh the public interest in freedom of press.

To sum up it can be said that the law of contempt of court in England now accepts the need to balance two competing public interests, namely, between ‘a free Press and a fair trial’. It accepts that moral pressure on a party to the litigation expressed in sober and temperate language to forego a party’s legal rights in the interest of justice and morality is a legitimate exercise of the right to freedom of speech and the press. The provisions of the Contempt of Court Act, 1981, make it impossible for a party, by merely serving a Writ to prevent discussions in the press and other media, of matters of public concern and interest. In short, the area of freedom of speech and the press has been enlarged, and the area within which contempt of court can operate to restrict that freedom has been narrowed.

(b) **Position in America**

A general reading of the case laws pertaining to the freedom of speech and expression would reveal that the Supreme Court of United States has more than once upheld the guarantee of speech enshrined in the First Amendment which states that Congress shall make no law ... abridging freedom of speech or of the press.46

In *Schenck v. United States*47, it was observed by report that there must be a determination of whether or not the words used in such circumstances are of such a nature as to create a clear and present danger that they will bring about the substantive evils. How much ‘likelihood’ is another question, ‘a question of proximity and degree’ is another.

---

47 249 U.S. 47 (1919).
Similarly Justice Branders, in Schaefer v. United States\textsuperscript{48}, observed “the test to be applied... is not the remote or the possible effect.” Justice Holmes in Abrams v. United States\textsuperscript{49}, observed “we should be eternally vigilant against attempts to cheek the expression of opinions that we loathe and believe to be fraught with death, unless they so eminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.”

Times Mirror Company v. Superior Court of State of California\textsuperscript{50}, and Bridges v. State of California\textsuperscript{51}, were two cases while growing out of different circumstances and concerning different parties both related to the scope of United States Constitutional Policy safeguarding free speech and fair trial. Both the cases were disposed off by Justice Black through a common judgment.

The facts of Times Mirror case are that the Times Mirror Company was issued notices of contempt of court for publishing an editorial entitled as “probation for gorillas”. After vigorously denouncing two members of a labour union who had previously being found guilty of assaulting non union truck drivers, it closes with the observation:

Judge A. A. Scott makes a serious mistake if he grants probation to Matthew Shannon and Kennan Holmes. This community needs the example of their assignments to the jute mill.

The basis for punishing the publication as contempt was by the trial court set to be its “inherent tendency” and by the Supreme Court its “reasonable tendency” to interfere with the orderly administration of justice in an action then before a court for consideration. Justice Black reviewing the case law on the law of contempt remarked that it is neither the “inherent tendency” nor the “reasonable tendency” which is sufficient to justify a restriction of free expression but it is

\textsuperscript{48} 251 U.S. 466 (1920).
\textsuperscript{49} 250 U.S. 616 (1919).
\textsuperscript{50} 283 California Reporter 893 (1991), (hereinafter referred to ‘Times Mirror case’).
\textsuperscript{51} 314 U. S. 252 (1941), (hereinafter referred to ‘Bridge's case’).
the test of “clear and present danger” which has to be satisfied. Moreover the likelihood however great that a substantive evil will result cannot alone justify a restriction upon freedom of speech or the Press. The evil itself must be substantial.52

Justice Black further observed that it must be recognised that public interest is much more likely to be kindled by a controversial event of the day than by a generalisation, however, penetrating of the historian or scientist. Since the Courts punish utterances made during the tendency of the case but it is equally true that this is the precise time when public interest in the matter discussed would naturally be at its height. Moreover the ban is likely to fall not only at a crucial time but upon the most important topics of discussion. It is equally true that when a controversy of public interest is going on the audience is most receptive and if the freedom of speech and expression and also of press is curtailed at this moment of time it is essentially infringement of freedom of speech.

An endless series of moratoria of public discussion even if each very short, could hardly be dismissed as an insignificant abridgment of freedom of expression. And to assume that each would be short is to over look the fact that the pendency of a case is frequently a matter of months or even years rather than days or weeks.

Justice Black observed that the substantive evil here sought to be averted is of two folds:

1. Disrespect for the judiciary and
2. Disorderly and unfair administration of justice.

Dealing with the first evil feared, disrespect for judiciary, Justice Black observed that the assumption that the respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. For it is a prized American privilege to speak one’s mind, although not always with perfect good taste, on all public institutions. And an enforced silence, however, limited, solely in the name of preserving the dignity of the

bench would probably engender resentment, suspicion and contempt much more than it would enhance respect.

The other evil feared, disorderly and unfair administration of justice is more plausibly associated with restricting publications which touch upon pending litigation. The very word ‘trial’ connotes decisions on the evidence and arguments properly advanced in an open court. Legal trials are not like elections, to be won through the use of meeting-hall, the radio, and the newspapers but we cannot start with the assumptions that publication of the kind here involved actually do threaten to change the nature of legal trial and that to preserve judicial impartiality, it is necessary for judges to have a contempt power by which they can close all channels of public expression to all matter which touch upon pending cases remarked Justice Black.\textsuperscript{53}

Justice Black in Brides case \textsuperscript{54} after turning to the particular utterances here in question and the circumstances of the publication observed that from the indications in the record of the position taken by the Los Angeles Times on labour controversies in the past, there could have been little doubt of its attitude towards the probation of Shannon and Holmes. In view of the papers long continue militancy in this field, it is inconceivable that any Judge in Los Angeles would expect anything but adverse criticism from it in the event probation were granted. Hence this editorial given the most intimidating construction it will bear, did no more than threaten future adverse criticism which was reasonably to be expected any way in the event of lenient disposition of the pending case. To regard it therefore as in itself of substantial influence upon the course of justice would be to impute judges a lack of firmness, wisdom, or honour, which we cannot accept as a major premise.

Thus the court after perusing the relevant case laws and keeping in mind the fact and circumstances the court reversed the

\begin{footnotes}
\item[53] Bridges v. State of California, 314 U.S. 252 (1941).
\item[54] 314 U.S. 252 (1941).
\end{footnotes}
findings of the trial court and the Superior Court and held “we are all of the opinion that upon any fair construction their possible influence on the course of justice can be dismissed as negligible and that the Constitution compels us to set aside the convictions as impermissible exercise of the States power”.

The facts of the Bridge’s case are that while a motion for a new trial was pending in a case involving a dispute between two unions, one of which Bridges was an officer, a telegram was sent to the Secretary of Labour. The telegram referred to the judges decision as ‘outrageous’; said that attempted enforcement of it would tie up the port of Los Angeles and involve the entire pacific coast; and concluded with the announcement that the CIO Union, representing some twelve thousand members did not intend to allow State Court to override the majority vote of members in choosing its officers and representatives and to override the National Labour Relations Board.

Justice Black observed that Bridge’s conviction was not on the basis of the use of the word outrageous and further observed that the remainder of the telegram fairly construed appears to be a statement that if the courts decree should be enforced there would be a strike. It is not claimed that such a strike would have been in violation of the terms of the decree, nor that in any other way it would have run a foul of the Law of California. On no construction therefore can the telegram be taken as a threat either by Bridges or the Union to follow an illegal course of action.

The court rightly observed that if there was electricity in the atmosphere it was generated by the facts; the charge added by the Birdge’s telegram can be dismissed as negligible.

Justice Frankfurter delivered a separate but concurring judgment. His observation regarding the criticism of the Court and freedom of speech deserves mentions:

“judges as persons, or courts as institutions, are entitled to no

---

55 314 U.S. 252 (1941).
56 Ibid. p. 255.
greater immunity from criticism than other persons or institutions. Just because the hold with the interests of justice they may forges their common human frailties and fallibilities. There have sometimes been martinet upon the bench as there have also been pompous wielders of authority who have used the paraphernalia of power in support of what they called their dignity. Therefore judges must be kept mindful of their limitations and of their ultimate public responsibility by in vigorous stream of criticism expressed with candor however blunt."

Thus the court reversed the findings of the Trial and the Appellate Court and held Bridge’s telegram as not amounting to contempt of court.

Subsequently in Pennekamp v. Florida, after noting that “free discussion of the problems of society is a cardinal principle of Americanism principle which all are zealous to preserve, the court reaffirmed its belief that the essential right of the courts to be free on intimidation and coercion... is consonant with a recognition that freedom of the press must be allowed in the broadest scope compatible with the supremacy of order.”

The Doctrine of Clear and Present Danger was once again scrutinised and upheld in Craig v. Harney. There the Court held that to warrant a sanction “the fires which the expression kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil.”

The next important case is that of James Wood v. Georgia. Briefly, the facts of the case are that on June 6, 1960 a judge of the Bibb Superior Court issued a charge to regularly impaneled grand Jury, giving its special instructions to conduct and investigation into a political situation which had allegedly arisen in the country. The Jury

---

58 328 U.S. 331 (1946).
59 331 U.S. 367 (1947).
60 370 U.S. 375 (1962).
was advised that there appear to be “an inane and inexplicable pattern of Negro block voting” in Bibb counting and that rumours and accusations had been made which indicated candidates for public office had paid large sums of money in an effort to gain favour and to obtain the Negro vote. The charge explained that certain Negro leaders after having met and endorsed a candidate, had switched their support to an opposing candidate who put up a large sum of money and that this created and unhealthy, dangerous and unlawful situation which tended to corrupt public office holders and some candidates for public office.\textsuperscript{61}

The following day, while the Grand Jury was in session investigating the matters set forth in the instructions delivered by the court the petitioner issued to local press a written statements in which he criticised the judges actions and in which he urged the citizenry to take notice when their highest threatened political intimidation and persecution of voters in the country under the guise of law enforcement.

The petitioner delivered to the bailiff of the court, stationed at the entrance to the Grand Jury room, “An open letter to the Bibb County Grand Jury,” which was made available to the grand jury at petitioner’s request. This letter, implying that the court’s charge was false, asserted that in the petitioner’s opinion, the Bibb County Democratic Executive Committee was the organization responsible for corruption in the purchasing of votes, and that the Grand Jury would be well advised also to investigate that organization.

A month later, on July 7, 1960, the petitioner was cited in two counts of contempt based on the above statements. The citation charged that the language based by the petitioner was designed and calculated to be contemptuous of the court, to ridicule the investigation ordered by the charge, and “to hamper, hinder, interfere with and ‘obstruct’ the Grand Jury in its investigation. It also alleged that the news release was issued from the Bibb County Sheriff’s

Office, located in the court-house in which the Grand Jury had been charged and where it was deliberating, and that the language imputed lack of judicial integrity to the three judges of the court responsible for the charge. An amendment to the citation alleged that the statements “in and of themselves created... a clear, present and imminent danger to the investigation being conducted... and to the proper administration of justice in Bibb Superior Court.”

The next day the petitioner issued a further press release in which he repeated substantially the charges he had made in the release on June 7, and in which he asserted that his defense to the contempt citation would be that he had spoken the truth. The contempt citation was thereupon amended by including a third count based on this latter statement. The third count contained the same allegations as the other counts and, addition, charged that the petitioner’s action presented a clear and present danger to the handling of the contempt citation against the petitioner.

The Trial Court was of the view that the mere publishing of the news released and defense statement constituted a contempt of court and in and of itself was a clear and present danger to the administration the justice. The Trial Court without making any findings and without giving any reason adjudged petitioner guilty on all accounts and imposed concurrent sentences of 20 days and separate fines of $200 on each. On Writ of Error to the Court of Appeals the convictions on counts one and three were affirmed and the conviction on count two based on the open letter to the grand jury was reversed.

The Georgia Supreme Court declined to review the conviction on the first and third counts. Hence the petitioner filed a Writ of Certiorari in the United State Supreme Court which was granted accordingly.

The Court recognizing that the right of the court to conduct their business in an untrammeled way lies at the foundation of our

---

system of government and that courts necessarily must possess the means of punishing for contempt when conduct tends directly to prevent they discharge of their functions and further that the courts have continuously had the authority and power to maintain order in their court rooms and to ensure litigants a fair trial the exercise of that bear contempt power is not what is questioned in this case. Here it is asserted that the exercise of the contempt power, to commit a person to jail for an utterance out of the presence of the court has abridged the accused liberty of the expression.63

The court endorsing the “clear and present danger” doctrine developed by the court in Bridge’s case observed that “the out of court publication were to be governed by the clear and present danger standard described as working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished”.64

(c) Position in Germany

Article 18865 of the Weiman Constitution of 1919, which deals with Freedom of Speech states:

“Every German has the right within the limits of general laws to express his opinions freely by word of mouth, writing, printed matter or picture, or in any other manner. This right must not be affected by any conditions of his work or appointment and no one is permitted to infine him on account of his making use of such rights.

No censorship shall be enforced, but restrictive regulations may be introduced by law in reference to cinematograph entertainments. Legal measures are also admissible for the purpose of combating bad and obscene literature as well as the protection of youth in public exhibitions and performances.”

(d) Position in Eire

Section 40 (6) (I) of the Constitution of Eire declares66:

64 Bridges v. State of California, 314 U.S. 263 (1941) .
65 Article 188 of the Weiman Constitution of 1919.
66 Section 40(6) (1) of the Constitution of Eire. It came into force on 29 December 1937.
The State guarantees liberty for the exercise of the following rights subject to public order and morality:

(1) The right of the citizens to express freely their convictions and opinions.

The education of public opinion being, however, a matter of such grave “import to the common good, the State shall endeavour that organs of public opinions such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of governmental policy, shall not be used to undermine public order or morality or the authority of the State. The publication or utterance of blasphemous, seditious or in-decent matter is an offence which shall be punishable in accordance with law.”

(e) Position in France

The Preamble to the Constitution of the Fourth French Republic provides:

“No one should be disturbed on account of his opinions even religious, provided their manifestation does not derange the public order established by law.

The free communication of ideas and opinion is one of the most precious rights of the men. Every citizen then can freely speak, write and print, subject to responsibility for the abuse of this freedom in cases determined by law.”

(f) Position in Burma

Article 17(J) of the Constitution of Burma mandates:

“There shall be liberty for the exercise of the following rights, subject to law, public order and morality:

(1) The right of the citizens to express freely their convictions and opinions.”

(g) Position in Japan

Article XXI of the Japanese Constitution makes provisions:

“Freedom of assembly, association, speech and press and all

---

67 Preamble to the Constitution of the Fourth French Republic (1789).
68 Article 17(J) of the Constitution of Burma, 1948.
other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy or any means of communication be violated."

**(h)  Position in U.S.S.R.**

Article 125 of the Soviet Constitution\(^\text{70}\) stated:

“In accordance with the interests of the working people and in order to strengthen the socialist system, the citizens of the U. S. S. R. are guaranteed by law:

(a) Freedom of speech,
(b) Freedom of the press,
(c) Freedom of assembly and meeting, and
(d) Freedom of street processions and demonstration.”

**(ii)  POSITION IN INDIA**

The Right to Freedom of Speech and Expression is undoubtedly an invaluable and cherished right possessed by a citizen in Indian Republic. Our Governmental setup being elected, limited and responsible, we need requisite freedom of animadversion, for our social interest which demands free propagation of views. Freedom to think as we like, and to speak as one thinks, are as a rules indispensable to the discovery and spread of truth which without free speech discussion may well be futile. At the same time, we can only ignore at our peril, the vital importance of our social interest in _inter alia_ public order and Security of our State, it is for this reason that our Constitution has rightly attempted to strike a balance between the various competing social interests. It has permitted imposition of reasonable restrictions on the citizen's right to Freedom of Speech and Expression on the specified grounds to serve the larger collective interest of the nation as a whole. Reasonable restrictions in respect of matters specified in Article 19(2) of the Constitution are essential for integrated development on egalitarian, progressive lines of any peace loving civilized society.

The leaders of our Independence movement attached special

---

\(^{70}\) Article 125 of the Soviet Constitution, 1936.
significance to the Freedom of Speech and Expression. During their struggle for attainment of the Swaraj, they were moved by the American Bill of Rights containing the First Amendment to the U.S. Constitution.\textsuperscript{71}

(a) Constituent Assembly Debates

The Constituent Assembly\textsuperscript{72} and its various Committees and Sub-Committees considered and debated the provisions relating to the Freedom of Speech and Expression as a very precious and valuable right to be available to us.\textsuperscript{73} The Sub-Committee on Fundamental Rights first considered the Right of Freedom of Expression, in the drafts of Dr. K.M. Munshi and Dr.B.R. Ambedkar, on March 25, 1947.

Dr. Munshi's draft suggested that every citizen should have, within the limits of and in accordance with the law of the Union, several personal lights including the right of Freedom of Expression of opinion and of secrecy of correspondence. The freedom of the Press was also to be guaranteed, subject to such restrictions imposed by the law of the Union as may be necessary in the interest of public order or morality.\textsuperscript{74} Dr. Ambedkar's draft provided that no law shall be made abridging the freedom of speech, of the press except for considerations of public order and morality. In a draft report, the Sub-Committee formulated five specific rights of the citizens, including the right to Freedom of Speech and Expression. Draft clause was not considered satisfactory by Dr. Alladi Krishnaswami Ayyar who suggested that the effect of the clause on Section 153-A\textsuperscript{75} of the Indian Penal Code, 1860 should be carefully studied. When the Sub-Committee reassembled to consider the draft clauses, Dr. Alladi Krishnaswami Ayyar initiated a discussion on the necessity of imposing limitations

---

\textsuperscript{72} The Constituent Assembly came into being in November, 1946.
\textsuperscript{74} B. Shiva Rao, \textit{The Framing of India's Constitution}, Tripathi, Bombay, 1968, p 219.
\textsuperscript{75} Section 153A of the Indian Penal Code, 1860 provides: "Whenever by words, either spoken or written, or by visible representation, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of the citizens of India shall be punished with imprisonment which may extend to two years, or with fine, or with both."
on the Rights to Freedoms, in situations of grave emergency and
danger to the security of the state.

It was suggested that there should be liberty for the exercise of
the Freedom of Speech and Expression subject to public order and
morality or to the existence of grave emergency declared to be such by
the Government of the Union or the Unit concerned whereby the
security of the Union or the Unit, as the case may be, is threatened.76

Dr. Alladi Krishnaswami Ayyar again emphasised the need for
including the phrase ‘class hatred’ as a ground of restriction. He
argued that since the words ‘defamation’, ‘sedition’ etc. used did not
cover "class hatred", the inclusion of the phrase was essential to stifle
any tendency on the part of the people to promote it. He was
supported by C.R. Rajagopalachari who emphasised that the
fundamental peace and orderly progress of the country depended
upon communal peace and harmony and, therefore, speeches and
utterances which were likely to foster communal hatred must
necessarily be prevented.

Dr. Munshi pointed out that the words ‘class or communal
hatred’ were omitted from the draft provision because these words
might permit the Units to make all kinds of drastic laws. The practice
of all civilized countries and the opinion of all constitutional experts
was in favour of permitting Freedom of Public Expression, even							
tending to class or communal hatred, up to the point where it led to a
breach of peace or public order.

The Drafting Committee considered the clause relating to
Freedom of Speech and Expression for eleven days. In the process, the
clause underwent many changes. As finalized by the Committee it
read77:

(1) Subject to the other provisions of this article, all citizens
    shall have the right-
        (a) To Freedom of Speech and Expressions.

77 Ibid. p 220.
(b) -- (g)...

(2) Nothing in sub clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the state from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the state.78

Jaya Prakash Narayan proposed the redrafting of the entire Article since he regarded it as "clumsily" drafted. The rights guaranteed by the Article were considerably taken away by the restrictive clauses. He suggested that it should be subjected to restrictions on the ground of public order or morality. The citizens should have guaranteed Freedom of the Press. They should be given secrecy of postal telegraphic and telephonic communications.

Dr. Bengal Narsing Rau argued that proposal of Jaya Prakash Narayan, in so far as it provided for Freedom of Speech and Expression was virtually the same as already contained in the draft Constitution. The Article further sought to provide for freedom of the press and secrecy of postal telegraphic and telephonic communication. On these points B.N. Rau observed:

"It is hardly necessary to provide specifically for freedom of the press as freedom of expression provided in sub clause (a) of clause (1) of Article 13 will include freedom of press. It is also necessary to include secrecy of postal, telegraphic and telephonic communications as a fundamental right in the Constitution itself might lead to practical difficulties in the administration of the posts and the telegraph department. The relevant law enacted by the legislature on the subject permit interception of communication sent through posts telegraph or telephony only in specified circumstances of an emergency and in the interest of public safety."79

The Drafting Committee recommended the replacement of the words 'or undermines the authority or foundation of the state' in

clause (2) by the words ‘or undermines the security of or tends to overthrow the state.’

Introducing the Draft Constitution for consideration in the Constituent Assembly on November 4, 1948, Dr. Ambedkar referred to the criticism that Draft Article was ‘riddled with so many exceptions that the exceptions had eaten up the rights altogether’ and observed that in support of every exception to the fundamental rights set out in the draft Constitution one can refer to at least one judgment of the United States Supreme Court. It would be sufficient to quote such judgment of the Supreme Court in justification of the limitation on the right of free speech contained in Article 13 of the Draft Constitution.

Citing the decision of the U. S. Supreme Court in Gitlow v. New York\textsuperscript{80}, in which the issue involved was the constitutionality of a New York ‘Criminal Anarchy’ law which purported to punish utterances calculated to bring about violent change, the U. S. Supreme Court said that it is a fundamental principle, long established that the Freedom of Speech and of the Press, which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishments of those who abuse this Freedom.

Dr. B.R. Ambedkar rightly pointed out that:

“What the Draft Constitution has done is that instead of formulating Fundamental Rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the Fundamental Rights. There is really no difference in the result what one does directly the other does indirectly. In both cases the Fundamental Rights are not absolute.”\textsuperscript{81}

When the Article was taken up for consideration more than a

\textsuperscript{80} 268 U.S. 652 (1925).
\textsuperscript{81} Constituent Assembly Debates, (9\textsuperscript{th} December, 1946 to 24\textsuperscript{th} January, 1950) VII, 40-41.
hundred amendments were tabled, Mihir Lal Chattopadhyay sought the omission of the words ‘subject to the other provision of this Article’ on the ground that they were unnecessary. Munshi proposed that clause (2) be redrafted so as to omit the word ‘sedition’ and replace the words ‘undermines the authority or foundation of the State’ by the words ‘undermines the security of or tends to overthrow the State’. The object of the amendment was to do away with the word ‘sedition’ which as used in the notorious Section 124-A of the Indian Penal Code, had been the bane of freedom fighters in pre-independence India. To put in other words which were considered ‘the gist of an offence against the State’ the Amendment in effect meant that an attack on the government could not be made an offence under the law except when the Freedom of Speech was so exercised as to tend to overthrow the State itself otherwise undermine its security. The Constitutional assurance was sought by some Muslim members that the personal law of community would not be disturbed by the State.

The Article, so amended was renumbered by the Drafting Committee at the stage of revision as Article 19 of the Constitution:

(1) All citizens shall have the right-
(a) to freedom of speech and expression;
(b)--- (g)....

(2) Nothing in sub-clause (a) of clause (1) shall effect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said clause in the interests of the security of the State, friendly relations with foreign States, Public order, decency or morality or in relation to contempt of court, defecations or incitement to an offence.82

(b) Post-Constitution Position

The Law of Contempt in India, therefore, after 1947 emancipation and more particularly after the Contempt of Courts Act,

---

82 Article 19 of the Constitution of India, 1950.
1952\textsuperscript{83}, is not on the Pre-Constitution pattern. One predominant reason for this statement is Article 19(1) (a) of our Constitution, under which every citizen has the right of Freedom of Speech and Expression. It does not imply that unrestrained language can always claim immunity from contempt proceedings.

It is submitted that leaders of the Freedom Movement knew the importance of Freedom of Speech and Expression. They also knew how the Fourth Estate suffered in the pre-independence period. Hence, the liberty of Freedom of Speech and Expression incorporated in the Indian Constitution.

The Right to Freedom of Speech and Expression as enshrined in Article 19(1) (a) Constitution is not an unlimited right. Its exercise is expressly subject to reasonable restrictions under clause (2) which may be imposed “in the interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.” The reasonableness of these restrictions is justiciable.

The Supreme Court was confronted with the conflict between freedom of speech and Contempt of court in the landmark case of *Bathina Ramakrishna Reddy v. The State of Madras*.\textsuperscript{84} In this case the appellant made allegations of bribery and corruption against one Sub-Magistrate in an article published in a Telugu Weekly. The appellant asserted that the article was published because of his anxiety to uphold the highest tradition of the judiciary in the land and to create popular confidence in courts. The High Court after hearing the parties came to the conclusion that the publication in question did amount to contempt of court, as it was calculated to lower the prestige and dignity of courts and bring into disrepute the administration of justice. The appellant, *inter alia*, took the plea that the allegations of taking bribery are true and made in good faith. Since the appellant

\begin{itemize}
\item \textsuperscript{83} The Contempt of Courts Act, 1952 (32 of 1952).
\item \textsuperscript{84} 1952 SCR 425 (hereinafter referred to as ‘Reddy’s case’).
\end{itemize}
could not substantiate the allegations made by him and also refused to offer an apology, delivering the judgment of the court Justice Mukherjee held the appellant guilty of contempt.

A year later again a bench of five judges dealt with the similar issue in Brahma Prakash Sharma v. U.P.\(^\text{85}\), The Supreme Court herein reversed the order of the High Court which had held the executive committee of the district bar association guilty of contempt of court on account of the following resolution:

“It was their considered opinion that the two officers are thoroughly incompetent in law, do not inspire confidence in their Judicial work, are given to state wrong facts when passing orders and are overbearing and discourteous to the litigant public and lawyers alike.”

The Supreme Court after referring to English authorities\(^\text{86}\) and also to Reddy's case\(^\text{87}\) observed that the resolution had been passed in camera, that very little publicity was given to the said resolution and that representations were made to four specified persons who were the official superiors of the officers concerned. Further, the court held that the association had asked in good faith with no intention to interfere with the administration of justice. After referring to some of the allegations, Justice Mukherjee, observed:

“It is undoubtedly a grave charge that the Revenue Officers hears two cases simultaneously and allows the court reader to do the work for him. If true, it is a patent illegality and is precisely a matter which should be brought to the notice of the District Magistrate who is then administrative head of these officers.”

The Court observed further that the above said remarks might be defamatory in nature; the question arises whether it can be held to amount to contempt of court. After observing that “it may be that pleas of justification privilege are not strictly speaking available to the defendant in contempt proceedings,” it held that in considering

\(^{85}\) 1953 SCR 1169 (hereinafter referred to as the 'Sharma's case).
\(^{86}\) Ambard v. Attorney General for Trinidad and Tobago (1936) A.C. 322, 335.
whether a defamatory statement amounted to contempt, the court had to consider all the surrounding circumstances and materials before the court, particularly the limited publication of libel. The Court held that contempt if any was of technical character. The judgment of the High Court was reversed.88

The two considerations lay down by this Court when dealings with contempt of court amounting to scandalisation of court deserve special attention. To quote Justice Mukherjee said “that there are two primary considerations which should weigh with court in such cases, viz.,

Firstly, whether the reflection on the conduct or character of the judge is within the limits of fair and reasonable criticism, and

Secondly, whether it is a mere libel or defamation of the judge, or amounts to a contempt of court. If it is a mere declamatory attack on the judge and is not calculated to interfere with the due course of justice or the proper administration of the law by such court, it is not proper to proceed by way of contempt.”

In E. M. S. Namboodripad v. T. Narayanan Nambiar’s89, case the conviction was based certain utterance of the appellant, E.M.S. Namboodripad when he was Chief Minister of Kerala. At a press conference, the appellant said that “judges are guided and dominated by class hatred, class interest and class prejudices”, instinctively favour the rich against the poor. He said that as part of the ruling classes the judiciary “works against workers, peasants, and other sections of the working classes” and “the law and the system of judiciary essentially seem the exploiting classes.”

The appellant’s counsel, U.K. Krishna Menon contentions were there fold namely:

1. That the law of contempt must be read without encroaching upon the guaranteed freedom of speech and expression in Article 19 (1) (a) of the Constitution of India, 1950.

89 (1970) 2 SCC 325.
2. That the intention of the contemner in making his statement at the press conference should the examined in the light of the political views as he was at lastly to put them before people.

3. Lastly the harm done to the court by his statement must apparent.

The court was not impressed with any of the contentions raised by the appellant's counsel. Referring to the 1st contention, the Court observed “while it is intended that there should be freedom of speech and expression, it is also intended that in exercise of the right, contempt of court shall not be committed. Freedom of speech and expression, observed the court, will always prevail except where contempt is manifest, mischievous or substantial. The question always is on which side of the line the case falls.

Referring to the 2nd and 3rd contention, the Court observe, that the occasion i.e., a press conference cannot be ignored, the belief of the people in his word as a CM and the ready ear which may many party and outside would give to him, further the Court said the mischief that his words would cause need not be assessed to find him guilty as the law punishes not only acts which do in fact interfere with the courts and but also close which have that tendency.

Chief Justice Hidayatullah while delivering the judgment held the appellant guilty of contempt of court. The sentence was reduced to a fine of Rs. 50 and in default of fine he would undergo simple imprisonment for one week.

In Baradakanta Mishra v. The Registrar of Orissa High Court\textsuperscript{90}, one of the issues which came up for consideration was whether the scandalisation of the court taken place only when the imputation has reference to the adjudicatory functions of a judge in the seat of justice?

In this case the appellant who was Additional District & Sessions Judge, Cuttack, was suspended by the High Court of Orissa under Article 235 of the Constitution of India because of his

\textsuperscript{90} (1974) 1 SCC 374 (hereinafter referred to as 'Baradakanita Mishra case').
unsatisfactory work and gross indiscipline. The contempt petition proceedings arose out of events, which took place after the suspension order. The appellant wrote various letters to the High Court and the Governor. One of the letters written to Registrar stated:

“...He would not submit any explanation to the charges framed against him until his representation to the governor was disposed of. He also stated herein that he may file a written application for the purpose and would take the matter to the Supreme Court, if necessary. He also stated that he cannot wait for the permission of the High Court for leaving the headquarters.”91

It is the content of these letters on which a show cause note for contempt was issued to the appellant under the orders of the full court on July 3, 1972.

The full Bench of the High Court on a full and prolonged consideration came to unanimous conclusion that Annexure 8, 13, 14, 16, and 20 contained matters which amounted to gross contempt of court since the appellant had not even offered an apology; the Court sentenced him to two months simple imprisonment.

One of the contentions raised by the counsel of the appellant was whether contemptuous imputations made with reference to the administration acts of amount to contempt of court.

Justice Palekar speaking for the Court (Chief Justice Ray, Chandrachud, P. N. Bhagwati and R. Krishna Iyer, J.J.) held that administrative acts fall within expression administration of justice and observing that administration of justice has nowhere been defined said:

“We have not been referred to any comprehensive definition of the expression “administration of justice”. But historically, and in the minds of the people, administration of justice is exclusively associated with the courts of justice constitutionally established. Such courts have been established throughout the land by several statutes. The Presiding Judge of a Court embodies in himself the Court, and when

engaged in the task of administering justice is assisted by a complement of clerks and ministerial officers whose duty it is to protect and maintain the records, prepare the Writs, serve the processes etc. The acts in which they are engaged are acts in aid of administration of justices by the Presiding Judge. The power of appointment of clerks and ministerial officer involves administrative control by the Presiding Judge over them and though such control is described as administrative to distinguish it from the duties of a judge sitting in the seat of justice, such control is exercised by the Judge as a judge in the course of judicial administration. Judicial administration is an integrated function of the judge and cannot suffer any dissection so far as maintenance of high standards of rectitude in judicial administration is concerned. The whole set up of a court is for the purpose of administration of justice, and the control which the judge exercises over his assistants has also the object of maintaining the purity of administration of justice. These observations apply to all courts of justice in the land whether they are regarded as superior or inferior courts of justice."

The Court further observed\(^\text{93}\) that in a country which has a hierarchy of Courts one above the other, it is usual to find that the one which is above is entrusted with disciplinary control over the one below it. Such control is devised with a view to insure that the lower Court functions properly in its judicial administration. A judge can foul judicial administration by misdemeanors while engaged in the exercise of the functions of a judge. It is therefore as important for the Superior Court to be vigilant about the conduct and behaviour of the Subordinate Judge as a Judge, as it is to administer the law, because both functions are essential for administration of justice. The judge of the Superior Court in whom this disciplinary control is vested functions as much as a judge in such matters as when he hears and disposes of cases before him. The procedures may be different. The

\(^{92}\) Baradakanta Mishra v. The Registrar of Orissa High Court, (1974) 1 SCC 374 at p. 393.

\(^{93}\) Ibid. p 394.
place where he sits may be different. But the powers are exercised in both instances in due course of judicial administration. If Superior Courts neglect to discipline Subordinate Courts, they will fail in an essential function of judicial administration and bring the whole administration of justice into contempt and disrepute. The mere function of adjudication between parties is not the wholes of administration of justice for any court. It is important to remember that disciplinary control is vested in the court and not in a judge as a private individual. Control, therefore, is a function as conducive to proper administration of justice as laying down the law or doing justice between the parties.

The Court after referring to a catena of cases\textsuperscript{94} held that there is no warrant for the narrow view that the offence of scandalisation of the court takes place only when the imputation has reference to the adjudicatory functions of a judge in the seat of justice. Justice Krishna Iyer speaking for himself delivered a separate but concurring judgment.

In \textbf{re S. Mulgaokar}\textsuperscript{95}, Chief Justice Beg delivered the order of the court whereas Justice Krishna Iyer and Justice Kailasam delivered a separate and concurring order each. Chief justice Beg taking a serious of the report published observed that

“The judiciary cannot be immune from criticism. But, when that criticism is based on obvious distortions or gross misstatement and made in a manner which seems designed to lower respect for the judiciary and destroy public confidence in it, it cannot be ignored.”

Justice Krishna Iyer after discussion various English and other foreign cases on the subject laid down broad guidelines as to how contempt cases should be dealt with. In ‘A concluding Note’ Krishna Iyer J. described his own judgment as “a long and in conclusive essay in contempt jurisprudence.”

One peculiar thing happened in this case. For reasons to be

\textsuperscript{94} Bahama Prakash Sharma v. U.P., 1953 SCR 1169; See also Debi Prasad’s case and Sharma’s case.

\textsuperscript{95} (1978) 3 SCC 43, (hereinafter referred to as ‘Mulgoakar’s case’).
recorded later the whole court decided to drop the proceedings. Under these circumstances was it proper for the court to go ahead without hearing the counsel for the parties remarks. Justice Kalisman, in his brief judgment rightly said that the judgment of Krishna Iyer J. need not be dealt with as it was admittedly obiter. As to the judgment of Beg C.J., once the court had decided to drop the contempt proceedings without calling upon counsel to deal with case, it is not right and proper to make any comments about the facts of the case.96 Beg C.J., fully agree with Mr. Serrvai, noted lawyer and jurist that a judgment delivered, after the Court had decided to drop the proceedings, and without hearing counsels for the parties, have very little value, if indeed it is not void for violating the principles of natural justice.

It would be interesting to revert back for a moment to the observation of justice Palekar in Barakanta Mishra v. The Registrar of Orissa High Court97, wherein he held that “administration of Justice” is a broad based term and includes both the adjudicatory as well as the administrative functions of a judge in the seat of justice. Now in the present case, letters were sent to the Chief Justice of various High Courts by the Chief Justice of India suggesting, inter alia, that the Chief Justices should meet and draft the Code of Ethics for themselves. This act of the Chief justice of India was a voluntary one. Neither the Constitution nor any Law imposed on the Chief Justice a duty of formulation a Code of Conduct. It is submitted that it was not proper for the Supreme Court to issue show cause notices. H. M. Serrvai holds the same view.

In P.N. Duda v. P. Shiv Shanker98, the Supreme Court adopted a different approach which if seen in the light of law laid down by this court cannot be called a good judgment. The matter was heard by a bench of two judges (Sabya Sachi Mukharji, S. Ranganathan, J.J.). The

---

98 (1988) 3 SCC 167, (hereinafter referred to as ‘Shiv Shanker case’).
judgment of the court was delivered by Sabya Sachi Mukharji J. The facts of the case are that Mr. P. Shiv Shanker (Respondent No.-1) who was formerly a High Court Judge and at the relevant time was Minister for Law, delivered as speech at a seminar on “Accountability of the Legislature, Executive and Judiciary under the Constitution of India” organised by the Bar Council of Hyderabad on November 23, 1987.

The offending portions of the said speech as detailed by Justice Mukharji are as follows:

“(a) The Supreme Court composed of the element from the elite class had their unconcealed sympathy for the haves i.e. the Zamindars....”

“(b)... Anti-social elements, i.e. FERA violators, bride burners and a whole horde of reactionaries have found their haven in the Supreme Court.”

A bare reading of relevant parts of the speech shows that it is well within definition clause of Contempt of court and within clause (c) of Section 2 of Contempt of courts Act, 1971.99

The Court, after discussing various English100 and Indian cases101 reiterated that administration of justice and judges are open to public criticism and public scrutiny. But the criticism must be fair and reasonable.

Regarding the speech of Law Minister, the Court, I would say adopted a lenient view. The Court stated “The Minister was making a study of the attitude of the Supreme Court” and such a study perhaps is important for the understands of the evolution of the constitutional development Justice Mukharji further observed that “the speech of the Minister read in its proper perspective, did not bring the administration of justice into dispute or impose administration of

---

101 Regina v. Commissioner of Police of Metropolis, (1968) 2 All ER 319 (CA). See also Attorney General v. Times Newspaper Ltd., (1973) 3 All ER 54.
The Court further observed that in some portions of the speech the language used could have been avoided by the Minister having the background of being a former judge of the High Court. The Minister perhaps could have achieved this purpose by making his language mild but his facts deadly.

Thus the Court with these observations held that there was no imminent danger of interference with administration of justice, hence the Minister not guilty of contempt of court.

In Justice Mukharji’s view the court failed to appreciate the essence of the law of contempt. Whenever it has to be seen whether the words complained of amount to contempt, it is necessary to have regard to the audience to which they are addressed. In present case, the Law Minister made a speech to a gathering of Lawyers, Judges but the media was also present there. Therefore the speech was not meant only for Lawyers and Judges. A Minister of Law who addresses a gathering of Judges and Lawyers, at which the press is also present, must know that the highlights of his speech would be published all over India and therefore his speech was ultimately addressed to hundreds of thousands of readers of the daily press.

Serrvai has very severely criticised the judgment and Justice Mukharji fully agree with him. It would be appropriate to quote Serrvai at this stage of discussion:

“All that Mudharji J., had to do was to apply well settled principles of the law of contempt to the words complained of as Constitutional contempt of the Superior Court. It is submitted that he has failed to do so. His judgment is discursive and badly organised the result, it would seem, of a failure to grasp well settled principles governing the law of contempt of court of India.”

---

103 Ibid, p 181.
The facts of case in re Vijay Kumar105, in brief are that on 10-03-1996 there was a news item captioned as “PUMPS FOR ALL” in The Sunday Tribune wherein it was alleged, inter-alia, that two sons of a Senior Judge of the Supreme Court have been allotted Petrol Pumps out of the discretionary quota of the Petroleum Minister.

A similar news item was also published in Hindi Newspaper Punjab Kesari dated 10-03-1996. The Supreme Court taking note of the two news items by order dated 13-03-1996 issued notice to the secretary, Ministry of Petroleum and Natural Gas to file an affidavit offering his comments and response to the facts stated in the aforesaid two news items. After verification of records it was found that the news item referred above were patently false. The Court issued show cause notices to both editors and publishers of the newspapers as to why they may no be punished for contempt of court.

The editors and publishers of both the papers admitted that the news item published with regard to the said allotment was not correct and therefore tendered unqualified apology and prayed for mercy and pardon. It was pleaded by the alleged contemnors that a highly reliable source who had earlier given much reliable information gave this information which was believed by them to be true but turned out to be incorrect.106

The Court observed that although freedom of press has always been regarded as an essential prerequisite of a democratic form of government but this freedom of press is not absolute. The Court relied on the observation of Justice Venkataramiah in Indian Express Newspapers v. Union of India case,107 wherein the right to freedom of press was described as a pillar of individual liberty which has been unfartemply guarded by the Courts.

The Court keeping in mind the unconditional apology offered by the publishers and editors of the said newspapers took a lenient view and accepted these apology, but at the same time directed that

106 Ibid. p 467.
107 (1985) 1 SCC 641.
contemnors will publish in the front page of their respective apology in specifically mentioning that the said news item was absolutely incorrect and false.

The important case of *re Arundhati Roy*\(^{108}\) has once again highlighted the crucial role Supreme Court has to play in maintaining a delicate balance between the conflicting public interest in fair and free administration of Justice on one hand and freedom of speech on the other.

The facts of the case are that one organisation, namely, Narmada Bachao Andolan filed a petition under Article 32 of the Constitution of India. The petitioner was a movement or a andolan, whose leaders and members were concerned about alleged adverse environmental impact of the construction of the Sardar Sarovar Reservoir Dam in Gujrat and the far reaching and tragic consequences of the displacement of hundreds of thousands of people from their ancestral homes that would result from the submerging of vast extents of land, to make up the reservoir. During the pendency of the Writ petition, this Court passed various orders. By one of the orders, the Court permitted to increase the height to RL 85 meters which was resented to and protested by the Writ petitioners and others including the respondent herein. The respondent Arundhati Roy, who is not a party to the Writ proceedings, published an article entitled “The Greater Common Good” which was published in Outlook Magazine and in some portion of a book written by her. Two judges of this Court, forming the three-judge bench felt that the comments made by her were prima facie, a misrepresentation of the proceedings of the court. It was observed that judicial process and institution cannot be permitted to be scandalised or subjected to contumacious violation in such a blatant manner, it had been done by her. The Court observed:

“We are unhappy at the way the leaders of NBA and Ms. Arundhati Roy have attempted to undermine the dignity of the Court. We expected better behaviour from them.”

“... we are not inclined to initiate proceedings against the petitioner, its leaders or Ms. Arundhati Roy. We are of the opinions in the larger interest of the issues pending before us, that we need pursue the matter any further. We, however, hope that what we have said above would serve the purpose and the petitioner and its leaders would hereafter desist from acting in a manner which has the tendency to interfere with the due administration of justice or which violates the injunctions issued by this Court from time to time.”

Justice S. P. Barucha, the third judge in this case, also recorded his disapproval of the statement made by the respondent herein and others and felt that as the court’s shoulders are broad enough to shrunk off their comments and because the focus should not shift from the resettlement and a rehabilitation of the ousters, no action in contempt be taken against them.

After the judgment was pronounced in IA No. 14 of 1999 on 15th October, 1999109, an incident is stated to have taken place on 30th October, 2000 regarding which contempt petition no. 2 of 2001 was filed by I.R. Prashar, advocate and others. According to the allegations made in that petition, the respondent named herein, led a huge crowd and held dharna in front of this Court and shouted abusive slogan against the Court including slogans ascribing lack of integrity and dishonesty to this institution. It was alleged that when the petitioner therein protested, they were attacked and assaulted by the respondents. In the evening on the same day, the respondents are stated to have attacked, abused and assaulted the petitioners. A complaint was stated to have been lodged with the Tilak Marg Police Station on the next day. In the aforesaid contempt proceeding notices were issued to the respondents in response to which they filed separate affidavits. All the three respondents therein admitted that there was a dharna outside the gates of this Court on 30th December, 2000 which was organised by Narmada Bachao Andolan and the gathered crowd were persons who lived in the Narmada Valley and

---

were aggrieved by the majority judgment of this Court relating to the building of the dam on the Narmada river. In her affidavit, the respondent, amongst other averments, had stated:

“On the grounds that judges of the Supreme Court were too busy, the Chief Justice of India refused to allow a sitting judge to head the judicial enquiry into the tehlka scandal, even though it involves matter of national security and corruption in the highest places. Yet when it comes to an absurd, despicable, entirely unsubstantiated petition in which the three respondents happen to be people who have publicly-though in markedly different ways-questioned the policies of the government and severely criticised a recent Judgment of the Supreme Court, the Court displays a disturbing willingness to issue notice.\textsuperscript{110}

It indicates a disquieting inclination on the part of the Court to silence criticism and muzzle dissent, to harass and intimidate those disagree with it. By entertaining a petition based on an FIR that even a local police station does not see fit to act upon, the Supreme Court is doing its own reputation and credibility considerable harm.”

The Supreme Court in view of the denial of the alleged contemnors to the effect at they had never shouted such slogans and used such abusive words as stated the contempt petition, instead of holding an inquiry and permitting the parties lead evidence in respect of their respective stands to find out which version is correct, the Court thought it fit not to adopt that course and decided to drop the proceedings.\textsuperscript{111}

The Court however found the contents of the three paragraphs in her (Arundhati Roy) affidavit as quoted earlier; \emph{prima facie contemptuous} and \emph{suo motu} initiated contempt proceedings against Arundhati Roy and issued noticed. In her reply affidavit, the respondent again reiterated what she had stated in her earlier affidavit.

\textsuperscript{111} Ibid. p 510.
Justice Sethi while delivering the judgment of the Court observed that the contemnor has scandalised the Court and lowered the dignity of the Court in the eyes of the public and hence guilty of contempt of court. The Court taking into account that the contemnor has refused to offer any apology sentenced her to imprisonment for one day and imposed a fine of Rs 2000. In case of default in the payment of fine, the respondent shall undergo simple imprisonment for three months.\textsuperscript{112} The conviction of Arundhati Roy disturbed and caused great concern amongst the leading legal personalities and more so the media. V. Venketesan Writes “...the right to freedom of speech and expression guaranteed by Article 19 (1) (a) of the Constitution of India, seemed to have suffered a serious below.”\textsuperscript{113}

Rajeev Dhawan, Senior Advocate of Supreme Court severely criticises the approach of the Supreme Court in this matter.\textsuperscript{114} The consent of the Attorney General or Solicitor General was not complied with. In such circumstances, no notices should have been issued at all. The matter should have ended then and there. But, in the meantime while Ms Roy filed a respectful affidavit expressing anguish and anger as to why she had been inveigled in these bogus proceedings when even the police station had not filed an FIR. When Ms Roy expresses anguish over her being dragged to the Court, then how can this amount to contempt.

How could it have been wrong for a bewildered Ms Roy to protest being dragged into a now admittedly case? Are the contents of the affidavit of Ms Roy more offending, if at all they are, than the speech of Shiv Shankar then the Law Minister who had made strong comments on the class bias of the Judges?

It is well established by now that the summary proceeding of contempt has to be used sparingly and with utmost care. In \textit{Queen v.}\textsuperscript{112} Re Arundhati Roy, (2002) 2 SC 508, p 510;\textsuperscript{113} Of Criticism and Contempt, Frontline, 29\textsuperscript{th} March, 2002, p. 27;\textsuperscript{114} Arundhati Roy’s Contempt, The Hindu, 5\textsuperscript{th} April, 2002, p.10.
Gray\textsuperscript{115}, it was observed that “the courts will have to consider the degree of harm caused as affecting administration of justice and if it is slight and beneath notice, courts will not punish for contempt.”

This salutary practice is adopted by Section 13 of the Contempt of Courts Act, 1971 which reads as under:

“Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under this act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes or tends substantially to interfere with the due course of justice.”

It seems that framers of the constitution had in mind that the court might at times overreact and misuse the contempt power. Therefore, as a matter the Section 13 is a parallel of the expression ‘substantial Risk’ appearing in Section 2 of the Contempt of Court Act, 1981 of England. The expression substantially interfere also comes very close to the test of ‘clear and present danger’ evolved by the Supreme Court of U.S. in \textbf{Schenck v. United States}\textsuperscript{116} Case and upheld and further develop in \textbf{Bridges v. State of California’s}\textsuperscript{117} Case.

It is very important that while punishing a person for contempt the court should not only be cautious but very certain because it directly curtails the personal liberty of a person, which is a fundamental right.

It is felt that the court has over reacted in the \textbf{re Arundhati’s}\textsuperscript{118} case and strictly speaking, if not by passed, has failed to appreciate the standards and measures not by this Court in the aforementioned cases. For example in \textbf{Gobind Ram v. State of Maharashtra}\textsuperscript{119}, the Court observed:

“A review of the cases in which a contempt committed by way of

\begin{itemize}
\item \textsuperscript{115}(1900) 2 Q.B. 36.
\item \textsuperscript{116}249 U.S. 47 (1919).
\item \textsuperscript{117}314 U. S. 252 (1941).
\item \textsuperscript{118}(2002) 2 SC 508.
\item \textsuperscript{119}(1972) 1 SCC 740.
\end{itemize}
scandalization of court has been taken not of for punishment shows clearly that the exercise of the punitive jurisdiction as confined to cases of very grave and scurrilous attach on the court or on the judges in their judicial capacity the ignoring of which could only result encouraging a repetition of the same with the sense of impurity which would thereby result in lowering the prestige and authority of the court.”

Krishna Iyer J. observed in Baradakanta Mishra v. The Registrar of Orissa High Court,120 that the special jurisdiction and jurisprudence bearing on contempt power must be delineated with deliberation and operated with serious circumspection by the higher judicial echelons. The Supreme Court and the High Court must vigilantly protect free speech even against umbrage - a delicate but sacred duty whose discharge demands tolerance and detachment of a high order.

Justice Mukherjee in Brahma Prakash Sharma v. State of U.P.,121 quoted with approval the observation of Lord Russel in Reg. v. Gray122 that “the summary jurisdiction by way of way of contempt proceedings in such cases where the court itself was attacked has to be exercised with scrupulous care and only wheat the case is clear and beyond reasonable doubt.”

In the last one and half decade the Supreme Court has shown a touchiness which is not becoming in the highest court in land, a selectivity in the application of law – witness the exoneration of P. Shiv Shankar – a total indifference to the limits of its power and with it, a cavalier disregard for the citizens rights when charged with contempt. A. G. Noorani123 said that the Supreme Court’s latest exercise of its contempt power is dangerous for 3 reasons, namely:

- It flouts the fundamental principle of jurisprudence that no person shall be put in peril on an ambiguity.

---

120 (1974) 1 SCC 381.
121 1953 SCR 1169.
122 (1900) 2 QB 36.
The offence of contempt of court by “scandalising the court” is notoriously vague. It is regarded as obsolete in Britain the country of its origin.

It makes the offended judge a judge in his own case.

If one is to compare the contents of the affidavits filed by Arundhati to what Alan Dershowitz, a Professor of Law at Harvard used about the US Supreme Court in the election case in which majority of the court dishonestly upheld George W. Bush’s election. His remarks on Chief Justice Rehnquist were abusive. The majority of the U.S. Supreme Court survived intact.

Compare also what Arundhati Roy said in her affidavit with what Bernard Levin wrote in The Times (London) on February 7, 1991. He accused judges of arrogance and hypocrisy and of impairing public confidence in the judiciary by their own conduct.

A discussion of cases shows that the Supreme Court has been adopting a ad-hoc approach compared to the approach followed by the Courts of UK and US. The freedom of speech has not been the importance it should be given.

(iii) FREEDOM OF SPEECH AND EXPRESSION VERSUS MAINTENANCE OF PUBLIC CONFIDENCE IN THE ADMINISTRATION OF JUSTICE

Some times a situation may arise where there can be a clash between freedom of speech and expression versus maintenance of public confidence in the Administration of Justice. It is submitted that whenever there is a clash of competing interests in constitutional contours, there is a need to strike a balance between the freedom of speech and expression, a salutary right in a liberal democratic society on the one hand and paramount countervailing duty to maintain public confidence in the administration of justice, on the other hand. Such a situation arose in re Dr. D.C. Saxena, who was held liable

---

125 AIR 1996 SC 2481.
for Contempt of court for his contumacious statements\textsuperscript{126}, and was sentenced to undergo simple imprisonment for a period of three months and to pay a fine of Rs. 2000/-. The Supreme Court ordered that in view of the conviction and sentence, the Court Marshal of the Court is directed to take the contemnor into custody and confine him to Tihar Jail for his undergoing the sentence as imposed in this case. The sequences of events leading to punishment are as under:

The petitioner had initiated public interest litigation under Article 32 of the Constitution to direct Sri. P.V. Narasimha Rao,\textsuperscript{127} to pay a sum of Rs. 8.29 lakes and odd said to be due to the Union of India for use of Indian Air Force aircraft or helicopters from October 1, 1993 to November 30, 1993.

When Writ petition was posted for hearing on July 17, 1995 before the learned Chief Justice of India and Justice S.C. Sen, the Solicitor General of India Sh. D.P. Gupta was sent for and the court directed him to have the averments verified to be correct and directed the petition to be listed after two weeks. On August 7, 1995, the Writ petition came up before the Bench comprising the learned Chief Justice of India, Justice S.C. Sen and Justice K.S. Paripoornan. It is not in dispute that the Solicitor General had placed the record before the Court and upon perusal thereof and after hearing the petitioner-in-person, the Bench summarily ‘dismissed, the Writ petition which had triggered the petitioner to file yet another Writ petitions this time against the learned Chief Justice of India, Justice A.M. Ahmadi.

The petitioner again appearing in person before three judges Bench persisted to justify the averments made against the learned CJI Justice A. M. Ahmadi in the Writ Petition. In spite of the Court having pointed out that the averments were scandalous, the proceedings of the Court did indicate that the petitioner reiterated that he “stood by the averments made therein” and sought for declaration:

\textsuperscript{126} Dr. D.C. Saxena, perhaps thought that his averments are covered within the scope of Article 19 (1) (a) of the Constitution of India.

\textsuperscript{127} The former President of Indian National Congress and Prime Minister of India.
that Justice A.M. Ahmadi is unfit to hold the office as Chief Justice of India;

(2) that he should be stripped off his citizenship;

(3) to direct registration of an FIR against him under various provisions of Indian Penal Code for committing forgery and fraud and under the Prevention of Corruption Act;

(4) to direct his prosecution under the Prevention of Corruption Act;

(5) to direct him to defray from his personal pocket the expenses incurred by the petitioner in filing the two Writ petitions i.e. W.P. No. 432/95 and the second Writ petition

(6) to direct Justice A.M. Ahmadi to reimburse from his pocket to the public exchequer the entire loss caused to the state as a consequence on non-payment of the dues by Sri P.V. Narasimha Rao with interest at 18% per annum and

(7) other consequential directions.

After hearing the petitioner, the Bench dismissed the Second Writ petition with the order as under:

“The several averments in the Writ petition are scandalous and it is surprising that the petitioner, who is said to be a professor in a University, has chosen to draft and file such a Writ petition. His understanding of the meaning of Article 32 of the Constitution is to say the least, preposterous. The allegations made are reckless and disclose irresponsibility on the part of the petitioner. This Writ petition is wholly misconceived and is an abuse of the process of the Court. The Writ petition has no merit. The Writ petition is, therefore, dismissed.

In view of the attitude of the petitioner even at the hearing when he persisted in his stand and on our asking him, reiterated that he stood by the scandalous averments made therein, we considered it our

128 Re Dr. D.C. Saxena, AIR 1996 SC 2481.
duty to issue to the petitioner a notice to show cause why proceedings to punish him for contempt of this court should not be initiated against him. The Registry was directed to take necessary steps for registering the matter as a contempt petition. The petitioner who is present-in-person is given notice of the contempt petition. He is required to file his reply within four weeks to show cause why proceedings for contempt should not be initiated against him. We request the learned Solicitor General to assist the court in this contempt matter.”\textsuperscript{129}

While dismissing the petition, this Court observed in the later part of the order “the petitioner’s conduct in his persistence to stand by the scandalous averments made against the learned Chief Justice of India. This Court was constrained to initiate contempt proceeding and enlisted 14 instances which would \textit{prima facie} constitute contumacious conduct of the petitioner to scandalise the Court.”\textsuperscript{130}

Pursuant to the notice issued by this Court the contemner Dr. D.C. Saxena is present today in person. He has stated that he would modify the offending portions noted in the show cause notice in items (ii), (iv), (vi), (vii), (x), (xii), (xiii) and wishes to withdraw unconditionally item (xiv), paras B and C.\textsuperscript{131}

The learned Solicitor General has pointed out that even if the contemnor withdraws or files statements made in the modified form what the court required to do is whether his statement made in the Writ petition originally filed constitute contempt of the court or not and his modification of the above statements would not be of material relevance for consideration. Since the contemnor seeks time to submit the show cause in the modified language which he wishes to place before the court, at his request the matter was adjourned to May 2, 1996 at 2:00 p.m. The Registry is directed to supply complete set of

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{129} Re Dr. D.C. Saxena, AIR 1996 SC 2481.
\item \textsuperscript{130} In the meanwhile, the petitioner wrote in a newspaper criticising justice J.S. Verma. Resultantly, justice J. S. Verma reclused himself from the Bench. Thus the matter was posted before this Bench.
\item \textsuperscript{131} Re Dr. D.C. Saxena, AIR 1996 SC 2481.
\end{enumerate}
\end{footnotesize}
When the case came up for hearing on May 2, 1996, the petitioner filed amended portions to substitute the averments made, at proper places, in the second unnumbered Writ petition. We have heard learned Solicitor General as amicus curiae and the petitioner-in-person. Before opening the case, the Solicitor General, in view of the seriousness of the averments made by the petitioner in the petition filed against the Chief Justice of India and, in view of his stand in both the preliminary submissions to the contempt notice and the revised averments made in the Writ petition, suggested that it would be advantageous for the petitioner to have consultation and legal assistance of any counsel of his choice and to revise his stand, but the petitioner remained silent and got along with the case.\textsuperscript{132}

The learned Solicitor General stated that on July 17, 1995, the court had sent for and called upon him to have the allegations made in the first Writ petition, verified and to place the factual position before the court. Pursuant thereto, on August 7, 1995, he had placed the record before the court which are confidential in nature. After their persual and hearing the petitioner, the court did not think it necessary to issue the directions as sought for. The court pointed out that when Sri. P. V. Narasimha Rao, as President of Indian National Congress or as the former Prime Minister, was alleged to have used the defence aircrafts, this court obviously was of the view that the relationship between the two wings of the Government or the political partly i.e., the Indian National Congress is of debtor and creditor and that, therefore, prerogative Writ under Article 32 of the Constitution would not lie to enforce contractual dues adjustable as per their practice. The exercise of the power under Article 32 was, therefore, obviously thought to be uncalled for Supreme Court being the Highest Judicial Forum. The need to record reasons is obviated since there is no further appeal against the order of this Court. Recording reasons is not, therefore, necessary nor is called for.

\textsuperscript{132} Re Dr. D.C. Saxena, AIR 1996 SC 2481 at p 2485.
The learned Solicitor General, therefore, contended that when the Court dismissed the Writ petition the petitioner, being a professor of English in Chandigarh University, should have exercised restraint and felt duty-bound not to proceed further in the matter. Instead, he filed the second Writ petition with allegations which are *ex facie* contumacious. The petitioner reiterated the same in his preliminary submissions to the notice of the contempt. His modified statement filed on April 24, 1996 itself is not relevant. What would be material and relevant for consideration is whether the allegations made against the learned Chief Justice of India in the second Writ Petition do constitute contempt of the Court. The modified stand, therefore, is not relevant.¹³³

(iv) **FREEDOM OF PRESS AND CONTEMPT**

Free Press is the foundation of all democratic societies. Without free political discussion, no public education an essential input for the proper functioning of the process of popular Government. In *Whitey v. California*,¹³⁴ it was held that free Press is an inbuilt requirement of democracy, in spite of the fact that a freedom of such amplitude may involve risks of abuse. Besides, their own bitter experience of the period of muzzling the free and nationalist press. The Framers of the Indian Constitution may be influenced by the views of Madison, who was the leading Spirit in the preparation of First Amendment of the United State Constitution¹³⁵ when he had rightly observed that it is better to leave a few of its noxious branches to their luxuriant growth rather than by pruning them away.¹³⁶ The First Amendment to the Constitution of the United States¹³⁷ lays down:

“The Congress shall make no laws . . . . . , abridging the freedom of speech or of the press. . . .”

The First Amendment of the U.S. Constitution guarantees an

---

¹³³ Re Dr. D.C. Saxena, AIR 1996 SC 2481 at p 2487.
¹³⁴ (1927) 247 U. S. 214.
¹³⁵ The First Amendment (Amendment I) of the United States Constitution, 1791.
absolute prohibition abridging the Freedom of Speech or of the Press. Therefore, a heavy burden lies on anyone transgressing it to justify such action. The Amendment contains no exceptions. It is not surprising that exceptions have had to be evolved by judicial decisions which have limited the scope of such exceptions. The Freedom of Speech in the United States is a part of Bill of Rights as held by the U.S. Supreme Court. It is that the freedom which is the matrix, the indispensable conditions, of nearly every other freedom. Accordingly, the First Amendment forecloses any public authority from assuming a guardianship of the public mind by means of regulating the press or speech. In West Virginia State Boards v. Barnett, Jackson J. observed:

“Compulsory education of opinion achieves only the unanimity of the graveyard . . . authority. . . . is to be controlled by public opinion, not public opinion by authority.”

In Douglas v. Jeanett, Court held that the Freedom of Speech and Expression is not confined to any particular field of human interest. It can be exercised not only for religious purposes but for political, economic, scientific, news or informational ends as well. It may further be stated that without fear of contradiction that the democracy can thrive not only under the vigilant eye of its legislature, but also under the care and guidance of public opinion, the free and indebted press is par excellence, vehicle through which opinion can become articulate.

It is because the press is one of the organs through which thoughts and ideas are expressed and discussed. The Freedom of Press under our Constitution is not higher than the Freedom of an ordinary citizen. It is subject to the same limitations as are imposed by Art 19(2) of the Indian Constitution.

Article 19(1)(a) of the Indian Constitution does not expressly

---

140 (1942) 319 U.S. 624(641).
141 (1943) 319 U.S. 157(179).
mention the Freedom of the Press, i.e. the freedom to print and to publish what one pleases without permission. However, it is settled law that the right to Freedom of Speech and Expression in Article 19(1)(a) includes the freedom of the Press also. Freedom of the Press, like Freedom of Speech, has many values to the editor or speaker, to the reader or listener and to the society as a whole.\textsuperscript{142} Greatest of these is freedom to read and learn. The book, speech and pamphlet open new horizons for people. They are essential for the informed and intelligent electorate, as well as for the scientist, the philosopher, or the administrator.

The Supreme Court in \textit{re Harijai Singh's case}\textsuperscript{143} stated importance, utility and role of Press in a democratic setup of the country. Mr. Justice Faizan Uddin with whom Kuldip Singh, J. agreed observed:

“Freedom of Press has always been regarded as an essential pre-requisite of a democratic form of Government. It has been regarded as a necessity for the mental health and the well being of a society. It is also considered necessary for the full development of the personality of the individual. It is said that without freedom of press truth cannot be attained.”

The Supreme has further held that the Freedom of Press is regarded as the mother of all other liberties in a democratic society. The importance and the necessity of having a free Press in a democratic country governed by Rule of Law, like has been correctly stressed and explained by the Apex Court.

Mr. Justice E.S. Verlkatarmiah observed in \textit{Indian Express Newspapers Pvt. Ltd. v. Union of India}\textsuperscript{144}, that

“in today's free world freedom of Press is the heart or social and political intercourse. The Press has now assumed the role of the public educator making formal and non-formal education possible in a

\textsuperscript{143} AIR 1997 SC 73.
\textsuperscript{144} AIR 1986 SC 515.
large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all Sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments.”

In *Express News Papers (Pvt.) Ltd. v. Union of India*¹⁴⁵, the Supreme Court has described the right to freedom of the press as pillar of individual liberty which the Supreme Court has always unfailingly guarded. The Freedom of Press is not coined to newspapers and periodicals but includes also pamphlets, leaflets, circulars and every sort of publication which affords a vehicle of information and opinion.¹⁴⁶ It also stands as a permanent means of communication and control between the people and their elected representatives in the Parliament and Government.¹⁴⁷

The press has to perform several important and delicate responsibilities. In democratic set up, it not only stands as a zealous defender of freedom but also as the voice of dissent and upholder of people’s rights. In the Indian context, the Press has a significant contribution to make in the task of nation building and upholding the Constitution.¹⁴⁸

The pronouncements of the Supreme Court in *Romesh Thapper v. State of Madras*,¹⁴⁹ known as Cross Road case and *Brij Bhushan v. State of Delhi*,¹⁵⁰ known as Organizer’s case, although were delivered before the First Amendment of the Indian Constitution¹⁵¹ and have been described only of academic value.¹⁵² However, these pronouncements continue to be highly relevant from the point of view of Freedom of Press in India.

---

¹⁴⁵ AIR 1986 SC 872.
¹⁴⁷ Journal of the International Commission of Jurists, 132, VIII.
¹⁴⁹ AIR 1950 SC 124.
¹⁵⁰ AIR 1950 SC 129.
¹⁵¹ The Constitution (First Amendment) Act, 1951.
The brief facts of the Cross Road case were that the petitioner was printer, publisher and editor of weekly titled Cross Road. The Government of Madras prohibited the entry of the journal in its jurisdiction. In Organizer Case, the Chief Commissioner of Delhi issued an order against the printer publisher and editor of the weekly, directing them to submit for scrutiny in duplicate before publication all matters, news and views including photographs and cartoons about Pakistan other than those received from official sources or supplied by news agencies. It seems that these two cases were decided by the Court together. The points involved in these cases may be summarized as follows:

(i) Whether Freedom of Speech and Expression under the Indian Constitution include freedom of the press also?
(ii) Whether freedom of Press includes freedom of circulation?
(iii) Whether pre-Censorship on newspapers is a restraint on Freedom of Speech guaranteed by Article 19 of the Constitution?

The Supreme Court unanimously held that Freedom of Press is part of Freedom of Speech and Expression under the Indian Constitution. However, it held that the Freedom of Press does not enjoy any higher footing than Freedom of Speech and Expression of the citizens. But, freedom of press includes right of circulation also. Pre-censorship of newspapers cannot be imposed unless justified at least on one of the grounds specified in Article 19(2) the Constitution.

Mr. Justice Patanjali Sastri with whom Kania C.J. Mahajan, B.K Mukerjee and Das J.J. agreed, held:

“There can be no doubt that Freedom of Speech and Expression includes freedom of propagation and ideas and that freedom is ensured by freedom of circulation.”

Relying on the U. S. Precedents the Supreme Court further held:

“Liberty of Circulation is an essential to freedom as the liberty of publication. Indeed, without circulation, the publication would be of

little value.”

The Supreme Court held that phrase matter which undermines the security of State, or tends to over throw the state is to be interpreted to exclude the possibility of restrictions on Freedom of Press being placed in the interest of public safety and public order. It could be restricted only to avoid the aggravated forms of public disorder which were calculated to endanger the security of state or overthrow the established order. Nothing less than an imminent threat to the foundation of the State and established legal order could provide a justification for regulation of Freedom of Press.

The majority judgment quoted a passage from Black Stone’s commentaries to conclude that press censorship was a restraint on Freedom of Speech and took the view:

“There can be little doubt that the importance of professorship on a Journal is a restriction on the liberty of press which is an essential part of the right to Freedom of Speech and Expression.”

In *Brij Bhushan’s v. State of Delhi Case* the Supreme Court rejected the contention of State that professorship of journal was saved under Article 19(2) of the Constitution. The Court held that the pre-censorship of a journal fell out the terms of that provision of the Constitution. Hence, not only the order of pre-censorship was declared unconstitutional but the Court also held that the law under which it was made void.

Under the Indian Constitution there is no separate guarantee of freedom of the press as provided in the U. S. Constitution. It is implied in the freedom of expression which is conferred on all Indian citizens. It follows that this freedom can not be claimed by a newspaper or other publication run by a non-citizens or group of a non-citizens. However, as submitted earlier, this right can not be denied merely on the ground that group of citizens have formed a

---

154 AIR 1950 SC 129.
155 Pt. M.S.M.Sharma v. Srikrishna, AIR 1959 SC 395; See also Express Newspapers v. Union of India, AIR 1958 SC 578.
corporation for publication of the newspaper.

However, the State is not empowered to subject the press to the laws which take away or abridge the Freedom of Expression or which would curtail circulation or thereby narrow down the scope and area of dissemination of information or fetter its freedom to choose.\textsuperscript{156} Secondly, to single out the press for laying upon it excessive and prohibitive burdens which would restrict the circulation, impose a penalty on its rights to choose the instruments for its exercise to seek an alternative media and thirdly, to impose a specific tax upon the press deliberately circulated to limit the circulation of information would not be sustained. Mr. Justice Patanjali Sastri rightly declared\textsuperscript{157}:

“Very narrow and stringent limits have been sent to permissible legislative abridgement of the right of free speech and expression, and this was doubtless due to the realization that freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible.”

It is submitted that to override the above judicial decision holding that the ground of ‘Public Order’ was a valid ground to curb Freedom of Press this phrase was inserted by the Constitution (First Amendment) Act 1951. After the amendment, the Apex Court itself in \textbf{State of Bihar v. Shaila Bala},\textsuperscript{158} explained the scope of \textbf{Romesh Thappar v. State of Madras},\textsuperscript{159} and \textbf{Brij Bhusan v. State of Delhi cases}\textsuperscript{160}. It held that freedom of the citizen could be restricted where the demand for such restriction was threat to Society was clear not too remote. It is submitted that retrospective nature of the

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{156} Express Newspaper v. Union of India, AIR 1958 SC 578.
\item \textsuperscript{157} Romesh Thappar v. State of Madras, AIR 1950 SC 124.
\item \textsuperscript{158} AIR 1952 SC 329.
\item \textsuperscript{159} AIR 1950 SC 124.
\item \textsuperscript{160} AIR 1950 SC 129.
\end{itemize}
\end{footnotesize}
amendment was who unjustified and misplaced.\textsuperscript{161}

The Supreme Court held that when in validity of the Punjab Special Powers (Press) Act, 1956 was challenged which prohibited, the printing and publication of any article, report, news item, letter or any other material of any character. Whatsoever related with or connected with Save Hindu Agitation, held that banning of publication in any newspapers, any matter relating to a particular subject or class of subject would be obnoxious to the light of Free Speech under our Constitution. It was held that restriction imposed on Press shall have to be reasonable from substantive as well as procedural stand points.\textsuperscript{162}

Mr. Chief Justice S.R. Das who delivered the judgment for majority pointed out:

“It is certainly a serious encroachment on the valuable and cherished right to freedom of speech if a newspaper is prevented from publishing its own view or the view of its correspondents relating to a concerning what may be the burning topic of the day.”

Accordingly, it is submitted that prepublication ban even under a Court Injunction can be justified in the interest of justice only when there clear an imminent danger to the administration of fair justice.

Right to Freedom of Speech is violated not only when there is a direct ban on circulation of a newspaper, but also when some action on the part of Government affects the circulation of paper. In \textit{Sakal Papers (P) Ltd. v. Union of India}\textsuperscript{163}, minimum price and number of pages which a newspaper was entitled to publish was challenged as unconstitutional by the petitioner on the ground that it infringed the liberty of the press. The petitioners were required to increase the price of their newspaper without increasing the pages. It was contended that increase in price without any increase in number of pages would

\textsuperscript{161} Tripathi, P.K., \textit{India's Experiment in Freedom of Speech: The First Amendment and there after}, (1955) SCJ 106. See also Tata Press v. the State, AIR 1 951 Punjab 27; Re Bharati Press, AIR 1951 Patna 12 (5B) and Shrinivasm v. Madras, AIR 1951 Madras 70(5B).

\textsuperscript{162} Virendra v. State of Punjab, AIR 1957 SC 896.

\textsuperscript{163} AIR 1962 SC 305.
reduce the volume of circulation. On the other hand, any decrease in the number of pages would reduce the column, space for news, views or ideas.

The Supreme Court held that the right of a newspaper to publish news and views and to utilize as many pages as it likes for that purpose is made to depend upon the price charged to the reader. Earlier to the order every newspaper was free to charge whatever price it choose, and thus had right unhampered. The liberty of petitioner is obviously interfered with the order which provides for the maximum number of pages for the particular price charged.

It is submitted that Freedom of Speech and Expression is not only in the volume of circulation but also in the volume of news and views. The Press has the right of free circulation without any previous restraint, if a law were single out the Press for laying down prohibitive burdens on it that would restrict the circulation, prevent newspapers from being started and compel the press to seek Government aid. In **B.C. and Co. v. Union of India**164, import policy for Newsprint for the year April, 1972 to March 1973 was challenged before the Supreme Court. The newsprint policy was impeached as an infringement of Fundamental Rights to Freedom of Speech and Expression in Article 19(1) (a) of the Constitution.

The Supreme Court held that the newsprint policy is not a reasonable restriction within the ambit of Article 19(2) of the Constitution. If the newspapers are not allowed their right of circulation and the newspapers are not allowed right of page growth it would violate Article 19(1) (a) of the Constitution. The Court held that in the grab of distribution of newsprint the government has tended to control the growth and circulation of newspapers. Freedom of the press is both qualitative and quantitative.

It was declared that the newsprint policy which permits newspapers to increase circulation by reducing the number of pages, page area and periodicity, prohibits them to increase the number of

---

164 AIR 1973 SC 106.
pages, page area and periodicity by reducing circulation was unconstitutional. The news print policy should allow the newspapers that amount to freedom of discussion and information which is needed or will appropriately enable the members of the society to preserve their political expression of comment not only upon public affairs but also upon the vast range of views and matters needed for free society. Thus, it was held that the newsprint policy for 1972-73 violates Article 19(1) (a) of the Constitution.

1.2.2 SUPREME COURT AS COURT OF RECORD: ARTICLES 129

Judiciary is the bedrock of democratic society. If people would lose faith in justice imparted by the Courts in India then the entire democratic set up would crumble down. Thus it will pose a great threat to the existence of democracy itself. Chinappa Redy J, speaking for the Bench in Asharam M. Jain v. A. T. Gupta, rightly said:

“The strains and mortification of litigation cannot be allowed to lead litigants to tarnish, terrorise and destroy the system of administration of justice by vilification of judges. It is not that judges need be protected; judges may well take care of themselves. It is the right and interest of the public in the due administration of justice that has to be protected.”

We find that there are two such Articles 129 and 215 enshrined in the Constitution of India, wherein it has been specifically declared that the Apex Court and the High Courts have inherent power to punish any person who interferes in the administration of justice.

Article 129 posits that the Supreme Court shall be a Court of Record and shall have all the power of such a court including the power to punish for contempt of itself.

(i) POSITION PRIOR TO THE COMMENCEMENT OF CONSTITUTION OF INDIA

Prior to the commencement of the constitution of India the

---

165 Article 129 of the Constitution of India, 1950: The Supreme Court shall be a Court of Record and shall have all the power of such a Court including the power to punish for contempt of itself.

166 AIR 1983 S.C. 1151.
power of the superior Courts to punish for their contempt was recognised by Section 220(1) of the Government of India Act, 1935\textsuperscript{167}.

It is submitted that in the Draft Constitution there was no Article defining the status of the Supreme Court. Article 129 was added to the Draft Constitution at the instance of Dr. Ambedkar. He said:

“The Article 108(now Article 129\textsuperscript{168}) is necessary because we have not made any provision in the Draft Constitution to define the status of the Supreme Court. If the House will turn to Article 192(now Article 215\textsuperscript{169}) they will find exactly a similar article with regard to the High Courts in India. It seems, therefore, necessary that a similar provision should be made in the Constitution in order to define the position of the Supreme Court. A Court of Record is a court, the records of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any court. Then, the second part of Article 108(now Article 129) says that the Court shall have the power to punish for contempt of itself. As a matter of fact, once you make a court a Court of Record by statute, the power to punish for contempt necessarily follows from that position. But, it was felt that in view of the fact that in England this power is largely derived from Common Law and as we have no such thing as common Law in this country, we felt it better to state the whole position in the statute itself. That is why Article 108(now Article 129) has been introduced.\textsuperscript{170}

(ii) **SCOPE OF ARTICLE 129 OF THE CONSTITUTION OF INDIA**

The true scope of Article 129 of the Constitution of India cannot be better explained in the words of Justice K.N. Singh. His Lordship in *Delhi Judicial Service Association, Tis Hazari Court v. State of* 

\textsuperscript{167} Section 220(1) of the Government of India Act, 1935, provides that every High Court shall be a court of record and shall consist of a Chief Justice and such other Judges as His Majesty may from time to time deem it necessary to appoint.

\textsuperscript{168} Article 129 of the Constitution of India, 1950.

\textsuperscript{169} Article 215 of the Constitution of India, 1950

\textsuperscript{170} Constituent Assembly Debates, Vol. VII, p. 382. The figures in brackets indicate the numbers of the corresponding Articles in the final Constitution.
Gujarat\textsuperscript{171}, interpreted the Article 129 of the Constitution of India in the following words:

“Article 129 of the Constitution of India declares the Supreme Court a Court of record and it further provides that the Supreme Court shall have all the powers of such a court including the power to punish for contempt of itself. The expression used in Article 129 of the Constitution of India is not restrictive instead it is extensive in nature. If the framers of the Constitution intended that the Supreme Court shall have power to punish for contempt of itself only, there was no necessity for inserting the expression “including the power to punish for contempt of itself.” The Article confers power on the Supreme Court to punish for contempt of itself and in additions it confers some additional power relating to contempt as would appear from the expression “including”. The expression “including” has been interpreted by courts to extend and widen the scope of power. The plain language of article clearly indicates that this court as a Court of Record has power to punish for contempt of itself and also something else which could fall within the inherent jurisdiction of a Court of Record.

In interpreting the Constitution, it is not permissible to adopt a construction which would render any expression superfluous or redundant. The Courts ought not to accept any such construction. While construing Article 129 of the Constitution of India, it is not permissible to ignore the significance and impact of the inclusive power conferred on the Supreme Court. Since the Supreme Court is designed by the Constitution as a Court of Record and as the founding fathers were aware that a superior Court of Record had inherent power to indict a person for the contempt of itself as well as of Courts inferior to it, the expression "including" was deliberately inserted in the Article 129 of the Constitution of India, which recognised the existing inherent power of a Court of Record in its full plenitude including the power to punish for the contempt of inferior courts. If

\textsuperscript{171} AIR 1991 SCW 2419.
Article 129 of the Constitution of India is susceptible of two interpretations it would prefer to accept the interpretation which would preserve the inherent jurisdiction of this court being the superior Court of Record, to safeguard and protect the subordinate judiciary, which forms the very backbone of administration of justice. The Subordinate Court administer justice at the grass root level their protection is necessary to preserve the confidence of people in the efficacy of courts and to ensure unsullied flow of justice at its base level.

(iii) **POWER TO PROTECT THE SUBORDINATE JUDICIARY**

So far as power to protect the subordinate judiciary under Article 129 of the Constitution of India is concern the Supreme Court in *Sukhdev Singh v. Chief Justice S. Teja Singh and Judges of Pepsu High Court*,¹⁷² known as Sukhdev Singh’s Case has been reiterated the principle laid down in *Pritam Pal v. High Court of Madhya Pradesh*.¹⁷³

The Supreme Court and the High Court both exercise concurrent jurisdiction under the constitutional scheme in matters relating to fundamental rights under Articles 32 and 226 of the Constitution of India, therefore this Court’s jurisdiction and power to take action for contempt of subordinate courts would not be inconsistent to any constitutional scheme. There may be occasions when attack on judges and magistrates of subordinate courts may have wide repercussions throughout the country, in that situation it may not be possible for a High Court to contain the samba as a result of which the administration of justice in the Country may be paralysed, in that situation the Apex Court must intervene to ensure smooth functioning of Courts. The Apex Court is duty bound to take effective steps within the constitutional provisions to ensure a free and fair administration of justice throughout the country, for that purpose it must wield the requisite power to take action for contempt of

---

Subordinate Courts. Ordinarily the High Court would protect the Subordinate Court from any onslaught on their independence, but in exceptional cases, extraordinary situation may prevail affecting the administration of public justice or where the entire judiciary is affected, Supreme Court may directly take cognizance of contempt of subordinate Courts. Hon’ble K.N. Singh, J. Observed:

We would like to strike a note of caution that this Court will sparingly exercise its inherent power in taking cognizance of the contempt of Subordinate Courts, as ordinarily matters relating to contempt of Subordinate Courts must be dealt with by the High Courts, The instance case is of exceptional nature, as the incident created a situation where functioning of the subordinate Courts all over the country was adversely affected, and the administration of justice was paralysed, therefore, this Courts took cognizance of the matter.

This Court being the Apex Court and a Superior Court of Record has power to determine its jurisdiction under Article 129 of the Constitution, and as discussed earlier it has jurisdiction to initiate or entertain proceedings for Contempt of Subordinate Courts. This view does not run counter to any provision of the Constitution.174

1.2.3 HIGH COURT AS COURT OF RECORD: ARTICLE 215175

Article 215 posits that every High Court is a Court of Record with all powers attendant thereto including the power to punish contempt of itself.

Just as Article 129 of the Constitution of India, 1950, refers to Supreme Court this is the analogous provision for High Courts. The High Courts had from their very inception as Courts of Record by Letters Patent, possessed the inherent power to punish contempt of themselves. This inherent power was recognised in Section 3 of the Contempt of Courts Act, 1952. The said statute also yielded the power

---

175 Article 215 of the Constitution of India, 1950: Every High Court is a Court of Record with all powers attendant thereto including the power to punish contempt of itself.
to the High Court to punish contempt’s of subordinate courts also in the same degree as it had to punish contempt of itself. Such a jurisdiction to punish contempt of subordinate court was negative in cases where the offence was also punishable under the Indian Penal Code.\textsuperscript{176} Section 5 of the Contempt of Courts Act, 1952, conferred on the High Court the power to punish contempt committed beyond its territorial jurisdiction. In \textbf{Mehdi v. Frank Moraes},\textsuperscript{177} the Court held that the contempt may be of itself or of a subordinate court, by a person in or outside the territorial Jurisdiction of the High Court. In \textbf{Lakhan Singh v. Balbir Singh},\textsuperscript{178} the Court observed that the phrase ‘the power to punish for contempt or itself’ in Article 215 of the Constitution of India does by no means limit such powers of the High Court which powers include those of a Court of Record and any further powers invested in it by law. Apart from the power conferred by the Contempt of Courts Act, 1952, the High Court can as a Court of Record exercise its inherent powers to punish contempts of subordinate Court.\textsuperscript{179} In \textbf{Maloji Rao Shitole v. Matkan},\textsuperscript{180} it was held that the jurisdiction in respect of contempt should be sparingly used and that only in clear and proper cases. Thus in the absence of any Interim prohibitory order or of an undertaking by a party it is not contempt if the party's act render some pending proceedings in fructuous. To constitute contempt no attack on the Court is necessary. It is the public that should be protected from attacks on the administration of Justice.

\textbf{(i) POWER OF HIGH COURT TO PUNISH FOR CONTEMPT}

Though press is the fourth Estate of Democracy but no extraordinary privilege can be claimed by the press. In \textbf{Bijoynanda Patnaik v. Balkrishnakar},\textsuperscript{181} the Apex Court observed that if a journalist does not take reasonable care to ascertain the accuracy of

\begin{itemize}
  \item \textsuperscript{176} Section 3, Clause (2) of the Contempt of Courts Act, 1952.
  \item \textsuperscript{177} AIR 1954 Assam 201 (F.B.).
  \item \textsuperscript{178} AIR 1953 All 342.
  \item \textsuperscript{179} Rattan Lal v. Ghisu Lal, AIR 1952 Ajmer 33.
  \item \textsuperscript{180} AIR 1953 Madhya Bharat 245 (F.B.).
  \item \textsuperscript{181} AIR 1953 Orissa 249.
\end{itemize}
facts which he broadcasts, or if he tortures facts and vilifies the individual he commits contempt as he exceeds the limit of fair comment. Though he does not refer in particular to the subject matter of the pending proceeding, it is enough if the comment tends to prejudice the trial of the action.

The Supreme Court in State v. Mahaptra, held that any act which is calculated to undermine the authority of the court and disturb the confidence of the citizen in the unquestioned effectiveness of its orders as against any executive authority however high would be contempt. When the validity on an order of detention is pending consideration by the High Court, a fresh but illegal order of detention on revocation of the prior order would amount to contempt of court. This would be equally so if that fresh order was passed not during the actual pendency of an application questioning the prior detention but in anticipation of such an application being made by detune. The basis of jurisdiction for contempt arises not merely from the actual flouting of the court’s authority but from the clear tendency that the particular act may have to under-mine the authority of the court.

Words or acts which obstruct or tend to obstruct administration of justice would always amount to criminal contempt in as much as they offend the majesty of law whereas contempt of procedure consisting of unintentional disobedience of orders, processes of court and involving a private injury are classified as civil contempt. Mere intention or preparation to resist taking possession by Receiver is not contempt but if circumstances are clear that the obstructer was aware of the appointment of Receiver and refused to hand over possession on demand, it is contempt.

The Apex Court in Mehdi v. Frank Moraes, held that when criticism of a judgment of a High Court transcends fairness and attributes bias or unfair motive to Judges so as to tend to impair or diminish their authority as courts, or create a general impression in

---

182 AIR 1953 Orissa 33.
184 AIR 1954 Assam 201 (F.B.).
the public mind destroying its faith in the administration of justice, it is punishable as contempt.

Disobedience to an injunction order of court and refusing to accept service of the order without just cause is clear contempt.\textsuperscript{185} In \textbf{Suretennassa Bibi v. Chintaharan Das},\textsuperscript{186} the Court observed that breach of a clear undertaking given to court by a tenant that he will vacate the premises within a particular time is contempt.

In \textbf{The Nizam v. B.G. Keskar},\textsuperscript{187} the Supreme Court held that the judge must not feel shy of all criticism. Indeed it is not by shifting criticism, can confidence in Courts be created. Justice is not a cloistered virtue and it should face all fair criticism.

While the High Court can exercise jurisdiction to punish contempt of subordinate tribunals over which it has supervisory jurisdiction, yet, where in a statute like the Industrial Disputes Act, 1947, there is a provision dealing with contempt of the Tribunal, the High Court cannot intervene in its inherent jurisdiction.\textsuperscript{188} The Supreme Court of India pointedly emphasised that “a court should never forget that the power to punish for contempt, large as it is must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation, would not help to sustain the dignity or status of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity 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. What is true of the Judicature is equally true of the Legislature.” These are indeed golden words worthy of constant remembrance by the Judiciary as well as the Legislature who exercised the power of contempt in their respective fields. Unless the

\begin{footnotesize}
\begin{itemize}
  \item\textsuperscript{185} Ramcharan Bibi v. Debi Dayal Durey, AIR 1955 All 483.
  \item\textsuperscript{186} AIR 1955 Cal 182.
  \item\textsuperscript{187} AIR 1955 Hyd 265.
  \item\textsuperscript{188} In the matter of Hayles, Editor of the Madras Mail, AIR 1955 Mad. 1.
\end{itemize}
\end{footnotesize}
standard of outlook, objectivity, fairness and observance of the rules of natural justice exhibited by them in their daily routine of Judicial and Legislative work, is of a fairly high standard, it may not be possible to attract the respect of the common man. One way of compounding respect is to refuse to exercise the contempt power unless the situation richly warrants it.

The Court will refuse to exercise its contempt power which the allegations of disobedience of courts order are vague. The contempt alleged cannot be spelt out from the allegations made nor can the person charged be left to guess what exactly was alleged against him. For the instant case a Municipal bye-laws prohibited issue of fresh licenses was struck down by the High Court. But there was an interim stay order waken tile Writ was moved. The Mukhya Nagar Adhikari issued stamped receipts for licence fees noting the licence number or item instead of issuing licenses. The Supreme Court held there was disobedience to Court’s order clearly proved, that the Municipality did not adopt any subterfuge, that its officers cannot be held to have committed any contempt.

(ii) TRANSFER OF CONTEMPT PROCEEDINGS

The power of High Court to institute proceedings for contempt is of a special nature and is therefore not governed by the Code of Criminal Procedure. Hence the Supreme Court has no power to order transfer under Section 527 of the Code of Criminal Procedure, 1898. of such proceedings from one High Court to another. In Sukhdeo Singh Sodhi v. Hon’ble J.S. Teja Singh, the Supreme Court held that neither the Supreme Court nor the Legislature can deprive a High Court of the right vested in it under Article 215 of the Constitution of India to punish contempt of itself.

Further the proceedings cannot be transferred from one judge to another, there being no original jurisdiction which the Supreme Court can exercise. It is not a fundamental right to attract the operation of

189 The Nagar Mahapalika of City of Kanpur v. Mohan Singh, Cr. A. 27/64 SC Notes Case No. 123, p. 82.
190 AIR 1954 SC 186.
Article 32. In this case the Supreme Court, however, observed as obiter: - “It is desirable in 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 judges should bear in mind the maxim that ‘justice must not only be done but must seen to be done’ to all concerned but most particularly to an accused person who should always be given as far is possible, a feeling of confidence that he will receive a fair, just and impartial trial by judges who have no personal interest or concern in this case.

As the proceeding in contempt is to the nature of a proceeding in personum against the contemnor by the Court, where the contemnor is an officer, the State Government is quite an unnecessary party.191

(iii) JURISDICTION OF HIGH COURT

Every High Court in India has jurisdiction to punish contempt. This special jurisdiction is inherent in a Court of record from the very nature of the Court itself. It may be noted that Section 1 (2) of the Code of Criminal Procedure, 1973, expressly excludes special jurisdiction from its scope. That scans the Code of Criminal Procedure cannot apply in matters of contempt triable by the High Court, which can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure must be fair and the contemnor is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. Section 3 of the Contempt of Courts Act, 1952, which is similar to Section 2 of the Contempt of Courts Act, 1926, far from conferring a new jurisdiction, assumes as did the old Act, the existence of a right to punish for contempt in every High Court and further assumes the existence of a special practice and procedure, which has nothing to do with the Code of Criminal Procedure. In any case, so far as contempt of a High Court itself is concerned as distinct from that of a subordinate Court, Article 215 of the Constitution of India vests these rights in every High Court. Hence

191 Sundaram v. Laisram A Chow Singh, AIR 1956 Manipur 44.
no Act of a Legislature could take away that jurisdiction and confer it afresh by virtue of its own authority. Neither the Supreme Court nor the Legislature can deprive a High Court of the right which is so vested in it.\textsuperscript{192}

Article 215 of the Constitution of India vests the High Court with all the powers of a Court of record including the power to punish for contempt of itself. In \textit{Lakhan Singh v. Balbir Singh},\textsuperscript{193} it was held that the phrase ‘the power to punish for contempt of itself’ does not limit such powers of the High Court as it possesses as a court of Record or other powers with which it may be invested by law.

The power to commit for contempt’s of subordinate Courts has been expressly conferred upon it by the Contempt of Courts Act, 1956. In \textit{Maloji Rao Shitole v. Matkan C.G.},\textsuperscript{194} the Court held that the special jurisdiction of the High Court in respect of contempt should be used only when necessary in the interest of administration of justice. It can be exercised only when the case is clear and beyond reasonable doubt. It can not be invoked for a decision on the important and complicated collateral question such as, as to when a certain notification became operative. In \textit{Mehdi v. Frank Moraes},\textsuperscript{195} the Court held that any lavish use of the power will destroy its effectiveness. The jurisdiction extends to punish contempt of itself and also that of the subordinate Court and this is specifically so stated in Section 5 of the Contempt of courts Act, 1956.

The power under Article 215 of the Constitution of India is vested in the High Court. A judge of the High Court can exercise that power only as judge of that Court. So if a Judge of the High Court is appointed to an Industrial Tribunal under Section 7 of the Industrial Disputes Act, 1947, any contempt committed before the Tribunal can only be contempt of that Tribunal. It cannot become contempt of the High Court simply because a Judge of the High Court is a member of

\begin{itemize}
  \item \textsuperscript{192} Sukhdeo Singh Sodhi v. Hon’ble J.S. Teja Singh, AIR 1954 SC 186.
  \item \textsuperscript{193} AIR 1953 All 342.
  \item \textsuperscript{194} AIR 1953 M B 245 (F.B.).
  \item \textsuperscript{195} AIR 1954 Assam 201 (F.B.).
\end{itemize}
the Tribunal. So the latter cannot use the powers of the High Court in dealing with contempt’s of the Tribunal.196

In re Horniman,197 the Apex Court observed that the High Court as a Court of Record can punish for contempt committed outside its territorial jurisdiction if the contemnor happens to be within its jurisdiction. But there is no power to arrest a person who is outside in jurisdiction.

In Yudishthir Kumar Dutt v. Commissioner of Corporation of Calcutta198, it was pointed out that reading together Articles 215 and 227 of the Constitution there can be no doubt that the order of a High Court is binding on all authorities and tribunals including Commissioner of Corporation over which the High Court exercises powers of superintendence. In that case the High Court construed Section 363 of the Calcutta Municipal Act,1951, as vesting discretion in the Municipal Magistrate to order or refuse to make an order for demolition of a building. So when the High Court in revision upholds the Magistrate’s refusal it is binding on all the relevant authorities including the Commissioner of Corporation. So the Commissioner’s order for demolition was held quite illegal. His failure to appreciate that he has under Section 414 of the Municipal Act discretion to condone even unauthorized structure was illegal. The Municipal Magistrate’s order refusing an order for demolition was therefore binding on the commissioner. Any failure on his part to obey the Court’s order would entail proceedings in contempt.

(iv) CONTEMNOR’S POWER TO QUESTION JURISDICTION OF HIGH COURT

As stated already in re Horniman,199 a High Court can punish contempt’s committed outside its territorial jurisdiction. A person in Allahabad may write in a newspaper that the Madras High Court Judge is biased against him. If he does so and if his cause is pending

---

196 In the matter of Hayles, Editor of the Madras Mail, AIR 1955 Mad 1.
197 (1943) Bom. L.R. 94.
199 (1943) Bom. L.R. 94.
before the Madras High Court he can bit hauled up for contempt of that Court. So far as arresting him is concerned the warrant of the Madras High Court can be served on him when he steps into Madras State. If he is fined or imprisoned after due hearing or ex parte, that order of the court is executable anywhere in India. Suppose a Court had no territorial jurisdiction in respect of a cause. The defendant in that cause can question that jurisdiction. But if an ex parte injunction has been passed he cannot flout it for that will be contempt. He can appear in court and contest the order of injunction by asking the court to vacate it. Contempt of court arises on the willful disobedience of a court order, whether it is passed with or without jurisdiction.

In **N. Senapathy v. Sri Ambal Mills**, Anantanarayanayyar, Offg. C. J. held that a “distinction should be made between a lack of jurisdiction which does not go to the root of the power of the court, such as an absence of territorial or pecuniary jurisdiction or an alleged absence in these respects and a lack of jurisdiction which is basic to the very organisation of court, or to the scope of its power. Authorities are available for the view that a mere absence of territorial or pecuniary jurisdiction does not proceed to the root of the matter of jurisdiction and is capable of cure by acquiescence by order of Court, or in other respects as provided by law.”

In the above case the suit was instituted in the court of the District Munsif, Coimbatore for injunction restraining respondent’s 1 and 2 from convening an extraordinary general meeting of the company on a particular day. The eleventh respondent was the young legal adviser of only a few years standing who appears to have advised the company that the court had no jurisdiction to entertain the suit. In the words of the learned Chief Justice: “It seems to be abundantly clear that the question whether a court has territorial jurisdiction or not, when one defendant indisputably resides within such jurisdiction and the other ex facie does not, is primarily a question of fact for the court to decide. For instance, it may depend on such a matter of

---

200 AIR 1966 Mad 53 at p. 55.
evidence, as the location of a particular milestone in relation to a
house of business or the house of a private individual. Even if such
jurisdiction were altogether lacking, it could be easily cured under
Section 20 (b), of the Code of Civil Procedure either by an order of
special leave of Court or by the acquiescence of the concerned party.”

The result is an order of injunction in such a case has
necessarily to be obeyed. It will be so also in cases where there is total
lack of jurisdiction. May be ultimately the entire proceeding may
become a nullity by decision of that Court or by the superior Court in
appeal. Yet so long as the order is by a Court, a bona fide litigant
must obey it and can later challenge it or any ground inclusive of the
issue as to jurisdiction. Oswald201 put it tritely thus: “An order
irregularly obtained cannot be treated as a nullity, but must be
implicitly obeyed until by a proper application it is discharged.”

In the instant Madras case,202 the Court held that the 11th
respondent was guilty of Contempt. But since he tendered an
unconditional apology, taking into consideration his youthful
inexperience, merely admonished him and accepted his apology. The
other respondents were also discharged on their tendering apology.

Justice Desai’s observations in State of U.P. v. Ratan
Shukla203, is pertinent in this connection:

“It is not the law that court dealing with a matter which beyond
its jurisdiction can be contemned with impunity or that the liability of
a person to be punished for contempt of court depends upon whether
the court was acting within its jurisdiction at the time when it is
alleged to have been contemned.”

Objections as to local jurisdiction can be waived but if there is
inherent lack of jurisdiction decrees and orders in such proceedings
can be challenged as nullity. Thus a Commissioner appointed without
jurisdiction under Section 151 of the Code Civil Procedure, 1908,
cannot be a public servant within the meaning of Section 21 Indian Penal Code, 1860, and disobedience to Commissioner's orders can therefore be no offence. Anantanarayanayyar, Ofg. C.J. therefore characterised such an instance as ‘in inherent lack of jurisdiction’ to be “segregated from the quite different case of a mere lack of pecuniary or territorial jurisdiction, which does not proceed to the root of the power of the court.”

(v) COGNIZANCE BY THE SUPREME COURT OF CONTEMPT OF THE HIGH COURT

The question whether the Supreme Court of India can take contrivance of the contempt of the High Court when the High Court itself is a Court of Records came up for consideration before the Supreme Court in re Vinay Chandra Mishra204. In this case the plea was taken by the contemner and the State Bar Council of U.P. that the Supreme Court cannot take cognizance of the contempt of the High Courts under Article 129 of the Constitution of India. The contention is based upon two grounds:

(i) that Article 129 vests this Court with the power to punish only for the contempt of itself and not of the High Courts; and

(ii) that the High Court is also another Court of record vested with identical and independent power of punishing for contempt of itself.

The Supreme Court observed205, “The contention ignores that the Supreme Court is not only the highest Court of Record, but under various provisions of the Constitution is also charged with the duties and responsibilities of correcting the lower Courts and tribunals and of protecting them from those whose misconduct tends to prevent the due performance of their duties, The latter functions and powers of this Court are independent of Article 129 of the Constitution India. When therefore, Article 129 of the Constitution India vests this Court with the powers of the Court of record including the power to punish

---

204 AIR 1995 SC 2348.
for contempt of itself, it vests such powers in this Court in its capacity as the highest Court of record and also as a Court charged with the appellate and superintending powers over the lower Courts and tribunals as detailed in the Constitution. To discharge its obligations as the custodian of the administration of justice in the country and as the highest Court imbued with supervisory and appellate jurisdiction over all the lower Courts and tribunals, is inherently deemed to have been entrusted with the power to see that the stream of justice in the country remains pure, that its course is not hindered or obstructed in any manner, that justice is delivered without fear or favour and for that purpose all the Courts and tribunals are protected while discharging their legitimate duties. To discharge this obligation, this Court has to take cognizance of the deviation from the path of justice in the tribunals of the land, and also of attempts to cause such deviations and obstruct the course of justice to hold otherwise would mean that although this Court is charged with the duties and responsibilities enumerated in the Constitution. It is not equipped with the power to discharge them.

(vi) **MEANING OF COURT OF RECORD**

Article 129 of the Constitution India vests the Supreme Court with all the powers of Court of Record including the power to punish for contempt of itself.

(a) **Term Court of Record not defined in the Constitution**

It is important to note that the expression Court of Record has not been defined in the Constitution of India. Article 129 of the Constitution India however, declares the Supreme Court to be a Court of Record, while Article 215 of the Constitution India declares a High Court also to be a Court of Record. A Court of Record is a Court, the records of which is admitted to be of evidentiary value and is not to be questioned when produced before any Court. The power that Courts of Record enjoy to punish for contempt is a part of their inherent jurisdiction and is essential to enable the Courts to administer justice.

---

according to law in a regular, orderly and effective manner and to uphold the majesty of law and prevent interference in the due administration of justice.

(b) Dictionary Meaning and Other View Points

i) Jowitt Dictionary of English Law

According to Jowitt, Dictionary of English Law, a Court of Record has been defined as: “A Court whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, and which has power to fine and imprison for contempt of its authority.”

ii) Wharton's Law Lexicon

Wharton's Law Lexicon, explains a Court of record as: “Record, Courts of, those whose judicial acts and proceedings are enrolled on parchment, for a perpetual memorial and testimony; which rolls are called the Records of the Court; and are of such high and super eminent authority that their truth is not to be called in question. Courts of Record are of two classes - Superior and Inferior.

Superior Courts of Record include the House of Lords, the Judicial Committee, the Court of Appeal, the High Court, and a few others. The Mayor’s Court of London, the County Courts, Coroner's Courts and other are inferior Courts of Record, of which the County Courts are the most important. Every Superior Court of record has authority to fine and imprison for contempt of its authority: an inferior Court of Record can only commit for contempts committed in open Court, in facie curiae.”

iii) Words and Phrases

In Words and Phrases “Court of Record” is defined as “Court of Record is a Court where acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony, which rolls are called the ‘record’ of the Court and are of such high and super eminent authority that their truth is not to be questioned.”

iv) Halsbury's Laws of England

---


Halsbury’s Laws of England\textsuperscript{209} states: “Another manner of division is into Courts of Record and Courts not of record. Certain Courts are expressly declared by statute to be Courts of Record. In the case of Courts not expressly declared to be Courts of Records, the answer to the question whether a Court is a Court of Record seems to depend in general upon whether it has power to fine or imprison, by statute or otherwise, for contempt of itself or other substantive offences; if it has such power, it seems that it is a Court of record...The proceedings of a Court of Record preserved in its archives are called records, and are conclusive evidence of that which is recorded therein.”

\textbf{v) Treaties on Law of Contempt by Nigel Lowe and Brenda Sufrin}

Nigel Lowe and Brenda Sufrin\textsuperscript{210}, in their treatise on the Law of Contempt while dealing with the jurisdiction and powers of a Court of Record in respect of criminal contempt say:

“The Contempt jurisdiction of Courts of Record forms part of their inherent jurisdiction. The power that Court of record enjoy to punish contempts is part of their inherent jurisdiction. The juridical basis of the inherent jurisdiction has been well described by Master Jacob as being:

‘The authority of the judiciary to uphold, to protect and to fulfill the judicial function of administering justice according to law in a regular, orderly and effective manner.’

Such a power is not derived from statute nor truly from the common law but instead flows from the very concept of a Court of law.”

All Courts of Record have an inherent jurisdiction to punish contempts committed in their face but the inherent power to punish contempts committed outside the Court resides exclusively in Superior Courts of Record. Superior Courts of Record have an

\begin{footnotes}
\item[210] Nigel Lowe and Brenda Sufrin, 3\textsuperscript{rd} edition, Butterworths: London, 1996.
\end{footnotes}
inherent superintendent jurisdiction to punish contempts committed in connection with proceedings before inferior Courts.

**vi) Blackstone's Definition**

Blackstone in his Commentaries on English Law\(^{211}\) explains Court of Record as follows: “A Court of Record is one whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, which rolls are called the Records of the Court and are of such high and super eminent authority that their truth is not to maxim that nothing shall be averred against a record nor shall any plea or even proof be admitted to the contrary. And if the existence of the record shall be denied it shall be tried by nothing but itself; that is, upon bare inspection where there be any such record or not else there would be no end of disputes. All Courts of Records are the Courts of sovereign in right of the Crown and royal dignity, and therefore any Court of Record has authority to fine imprison for contempt of its authority."

**vii) Coke’s Definition**

According to Sir Edward Coke\(^{212}\): "Recordum is memorial of remembrance in rolls of parchment of the proceedings and acts of a Court of Justice which have power to hold plea according to the course of the common law, of a real or personal action whereof the damage amounts to forty shillings or above, which we call Courts of Record and are created by Parliament, Letters Patent or prescription. But legally records are restricted to the rolls of such only as the Courts of Record and not the rolls of inferior Courts."

From the above mentioned definitions and other view points it is felt that Court of Record is a power under which superior Courts of Record have an inherent superintendent jurisdiction to punish contempts committed in connection with proceedings before inferior Courts.

**1.2.4 SUPERINTENDENCE OF HIGH COURTS: ARTICLE 227**


Article 227 of the Constitution of India posits that

“(1) Every High Court shall have superintendents over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

(a) call for returns from such Courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Court.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such Courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court power of superintendence over any Court or tribunal constituted by or under any law relating to the Armed Forces.”

The power of the High Court as a superior Court of Record for supervision over the Courts and Tribunals within its territories is contained in Article 227 of the Constitution which posits. “Every High Court shall have superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction.” The inherent power of a Court of Record arises apart from Article 227 of the Constitution of India.

Historically adverting, Section 15 of the High Courts Act, 1861, and Section 107 of the Government of India Act, 1915, recognised this power of Superintendence of the High Court. The Supreme Court in
Waryam Singh v. Amarnath\textsuperscript{213}, said: “The material part of Article 227 substantially reproduces the provision of Section 107 of the Government of India Act except that the power of superintendence has been further extended by the Article to Tribunals.”

The majority opinions of the Supreme Court in \textit{East India Commercial Co. Limited v. Collector of Customs, Calcutta}\textsuperscript{214}, clearly posits that an administrative tribunal is bound by the law laid down by the Highest Court in the State. When the provisions in Articles 215, 226 and 227 of the Constitution of India are together considered it would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its provisions should conform to the law laid down by it.

\textbf{(i) HIGH COURT’S POWERS TO PUNISH CONTEMPT OF INDUSTRIAL TRIBUNALS}

In \textit{re Hayles}\textsuperscript{215}, it was pointed out that “neither Section 15 of the High Courts Act, 1861 nor Section 107 of the Government of India Act, 1915 nor Article 227 of the Constitution specifically vested in the High Court power to punish contempt of the Courts and Tribunals subordinate to it. Nor was there any statutory recognition in these enactments of such a power. The distinction between the statutory power of superintendence and the inherent power of the High Court to punish contempt of inferior courts subordinate to it was brought out in sharp relief by the Court and it was held that the High Court had an inherent common law jurisdiction with reference to contempt and secondly it had no such statutory jurisdiction under Section 15 of the High Courts Act. The High Court refused to recognise that it had such statutory supervisory power over the subordinate Courts so as to punish contempt of subordinate Courts in its supervisory capacity. In

\footnotesize{\textsuperscript{213} AIR 1954 SC 215.  
\textsuperscript{214} AIR 1962 SC 1893.  
\textsuperscript{215} 1955 (1) MLJ 375.}
re Hayles this principle was accepted and it was pointed out “while Article 227 of the Constitution which replaced Section 15 of the High Courts Act, 1861, extended the power of superintendence of the High Court to tribunals also, Article 227 did not itself vest in the High Court any power to punish contempt of subordinate Courts and tribunals. The inherent power of the High Court to punish contempt of such Courts and tribunals was not, however, touched by Article 227 even as Section 15 of the High Courts Act left it untouched.”

It is, therefore, clear that while the inherent power to punish contempt of subordinate Courts exists in the High Court a question may be posited if such power can be exercised when the statute governing such subordinate tribunal contains the power of such tribunal to punish contempt of itself. In re Hayles that was the position. Section 30 of the Industrial Dispute (Appellate Tribunal) Act 1950, yielded the power to punish any such contempt to the tribunal itself. In the instant case it was clearly enunciated:-

“The inherent power of the High Court to punish contempt of a tribunal like the Industrial Tribunal subordinate to it was based on what was described as correlative duty of the High Court, correlated to the power of superintendence which a High Court had over tribunals. William, J., quoted the observations of Wilmot, C.J. in Rex v. Almon\(^{216}\), and said “with a few verbal alterations these eloquent observations will apply with equal force to Writings, the direct tendency of which is to prevent a fair and impartial trial or at least one that can be so considered from being had in Courts of inferior jurisdiction which have not the power of protecting themselves from such encroachment and upon their independence.”

The assumption and the exercise of the power to punish contempt of inferior Courts and tribunals were based on the recognition of the fact, that the subordinate tribunal had no power to protect itself and that there was no Court other than the King’s Bench that could afford that protection. That was why contempt of other

\(^{216}\) (1765) Wilmot, p. 243.
superior Courts did not come within the jurisdiction of the King’s Bench in England. When an inferior Court can protect itself or when any other statutory provision is made for the protection of the tribunal from contempt, the correlative duty of the superior Court, like the King’s Bench in England and the High Court in India ceases. When that duty ends the basis for the exercise of the inherent power to punish contempt of a subordinate Court disappears.

In Rex v. Almon’s case,\textsuperscript{217} Act 1950 gave statutory power to protect an industrial tribunal from contempt to the industrial tribunal itself under Section 30 (1) of the Act and to the Labour Appellate Tribunal under Section 30 (2) of the Act.

1.2.5 ARTICLES 142 AND 129 OF THE CONSTITUTION OF INDIA

Article 142 of the Constitution of India\textsuperscript{218} provides that 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 so passed or order so made shall be enforceable throughout the territory of India in such manner as may 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.

Under Article 142 (2) of the Constitution of India, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

The object of Article 142 is that the Supreme Court must not be obliged to depend on the executive for the enforcement of its decrees and orders. Such dependence would violate the principles of independence of the judiciary and separation of powers, both of which were held to constitute the basic structure of the Constitution. The

\textsuperscript{217} (1765) Wilmot, p. 243.

\textsuperscript{218} Article 142 of the Constitution of India: Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.
interpretation of complete justice by the Apex Court has given it a
different dimension which was not intended by the founding fathers.

The question whether the Supreme Court can suspend the
license of an advocate to practice in exercise of its jurisdiction under
Articles 142 and 129 has come up before the Supreme Court in
number of cases. Let us examine the latest position in the light of
decisions of the Hon’ble Court. In the year 1995 in re Vinay Chandra
Mishra\(^\text{219}\), the Supreme Court imposed the punishment of simple
imprisonment (though suspended it for the time being) and punished
the contemner also by suspending his license to practice as an
advocate for a specified period.

The Bench dealing with that aspect opined:

It is not disputed that suspension of the advocate from practice
and his removal from the State roll of advocates are both
punishments. There is no restriction or limitation on the nature of
punishment that this Court may award while exercising its contempt
jurisdiction and the said punishments can be the punishments the
Court may impose while exercising the said jurisdiction.

In taking this view, the Bench relied upon Articles 129 and 142
of the Constitution besides Section 38 of the Advocates Act, 1961. The
Bench observed\(^\text{220}\):

“Secondly, it would also mean that for any act of Contempt of
court, if it also happens to be an act of professional misconduct under
the Bar Council of India rules, the Courts including this Court, will
have no power to take action since the Advocates Act confers exclusive
power for taking action for such conduct on the disciplinary
committees of the State Bar Council and the Bar Council of India, as
the case may be. Such a proposition of law on the face of it deserves
rejection for the simple reason that the disciplinary jurisdiction of the
State Bar Council and the Bar Council of India to take action for
professional misconduct is different from the jurisdiction of the Courts

\(^{219}\) AIR 1995 SC 2348.
\(^{220}\) Re V. C. Mishra, AIR 1995 SC 2348 at p. 2370.
to take action against the advocates for the contempt of court. The said jurisdiction co-exists independently of each other. The action taken under one jurisdiction does not bar an action under the other jurisdiction.\textsuperscript{221}

The contention is also misplaced for yet another and equally, if not more, important reason. In the matter of disciplinary under the Advocates Act, this Court is constituted as the final Appellate authority under Section 38 of the Act as pointed out earlier. In that capacity this Court can impose any of the punishments mentioned in Section 35(3) of the Act including that of removal of the name of the Advocate from the state roll and to suspending him from practice. If that be so, there is no reason why this Court while exercising its contempt jurisdiction under Article 129 read with Article 142 cannot impose any of the said punishments. The punishment so imposed will not only be not against the provisions of any statute, but in conformity with the substantive provisions of the Advocates Act and for conduct which are both a professional misconduct as well as the Contempt of court. The argument has, therefore, to be rejected."\textsuperscript{222}

It is submitted with utmost respect that the above stated observations do not bear closer scrutiny. After recognising that the disciplinary jurisdiction of the State Bar Council and the Bar Council of India to take action for professional misconduct is different from the jurisdiction of the Courts to take action against the advocates for the Contempt of court, how could the Court invest itself with the jurisdiction of the disciplinary committee of the Bar Council to punish the concerned Advocate for "professional misconduct" in addition to imposing the punishment of suspended sentence of imprisonment for committing Contempt of court.\textsuperscript{223}

The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to

\begin{flushright}
\begin{tabular}{l}
\textsuperscript{221} Re V. C. Mishra, AIR 1995 SC 2348 at p. 2371. \\
\textsuperscript{222} Ibid. p. 2372. \\
\textsuperscript{223} Re V. C. Mishra, AIR 1995 SC 2348 at p. 2372.
\end{tabular}
\end{flushright}
those powers which are specifically conferred on the court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction, apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. There is no doubt that it is an indispensable adjunct to all other powers and it free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent “clogging or obstruction of the stream of justice”. It, however, needs to be remembered that the powers conferred on the court by Article 142 being curative in nature cannot be construed as powers which authorise 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 expression statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Punishing a contemner advocate, while dealing with a Contempt of court case by suspending his license to practice a power otherwise statutorily available only to the Bar Council of Indian on the ground that the contemner is also an advocate, is therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be unintionally informed by the
salutary purposes of the Article viz. to do complete justice between the parties. It cannot be otherwise. As already noticed in a case of contempt of court, the contemner and the Court cannot be said to be litigating parties.224

The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice “between the parties in any cause or matter pending before it.” The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by “ironing out the creases” in a cause or matter before it. Indeed this Court is not a Court of restricted jurisdiction of only dispute settling. It is well recognised and established that this Court has always been a law maker and its role travels beyond merely dispute settling. In K. Veeraswami v. Union of Indian,225 the Court held that it is a problem solver in the nebulous areas but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject.

Again, in Bonkya alias B.S. Mane v. State of Maharashtra226, the Supreme Court observed: “The amplitude of powers available to this Court under Article 142 of the Constitution of India is normally speaking not conditioned by any statutory provision but it cannot be lost sight of that this Court exercises jurisdiction under Article 142 of the Constitution with a view to do justice between the parties but not

---

224 Re V. C. Mishra, AIR 1995 SC 2348 at p. 2374.
226 AIR 1995 SCW 4029.
in disregard of the relevant statutory provisions.”

While dealing with the power of the Supreme Court under Article Art. 142 it was said by the constitution Bench, in **Prem Chand Garg v. Excise Commissioner, U.P. Allahabad**\(^{227}\): “In this connection, it may be pertinent to point out that the wide powers which are given to this Court for doing complete justice between the parties, can be used by this Court for instance. In adding parties to the proceedings pending before it, or in admitting additional evidence, or in remanding the case or in allowing a new point to be taken for the first time. It is plain that in exercise these and similar other powers, this Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary to do complete justice between the parties.

In **re Vinay Chandra Mishra’s Case**\(^{228}\), the three Judge Bench did notice the observations in **Prem Chand Garg’s v. Excise Commissioner, U.P. Allahabad Case**\(^{229}\), but opined:

“In view of the observations of the latter Constitution Bench on the point, the observations made by the majority in Prem Chand Garg’s case are no longer a good law. This is also pointed out in the case of **Mohammed Anis v. Union of India**\(^{230}\), by referring to the decisions of **Delhi Judicial Services v. State of Gujarat**\(^{231}\), and **Union Carbide Corporation v. Union of India**\(^{232}\), by observing that statutory provisions cannot override the constitutional provisions and Article 142(1) being a constitutional power it cannot be limited or conditioned by any statutory provision. The Court has then observed that it is, therefore, clear that the power of Apex Court under Article 142(1) of the Constitution cannot be diluted by statutory provisions and the said position in law is now well settled by the Constitution Bench decision in Union carbide’s case.”

\(^{227}\) AIR 1963 SC 996.
\(^{228}\) AIR 1995 SCW 3488.
\(^{229}\) AIR 1963 SC 996.
\(^{231}\) AIR 1991 SCW 2419.
\(^{232}\) AIR 1992 SC 248.
In *Delhi Judicial Service Association Tis Hazari v. State of Gujarat*\(^{233}\), the following questions fell for determination:

“(a) Whether the Supreme Court has inherent jurisdiction or power to punish for contempt of subordinate or inferior Courts under Art. 129 of the Constitution, (b) whether the inherent jurisdiction and power of the Supreme Court is restricted by the Contempt of courts Act, 1971, (c) whether the incident interfered with the due administration of justice and constituted Contempt of court, and (d) what punishment should be awarded to the condemners found guilty of contempt.

The Court observed:

“Article 142(1) of the Constitution provides that Supreme Court in 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. The expression ‘cause’ or ‘matter’ would include any proceeding pending in Court and it would cover almost every kind of proceeding in Court including civil or criminal. The inherent powers of this Court under Article 142 coupled with the plenary and residuary powers under Articles 32 and l36 embraces power to quash criminal proceedings pending before any Court to do complete justice in the matter before this Court.”

This Court’s power under Article 142(1) to do “complete justice” is entirely of different level and of a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court. Once this Court has seisin of a cause or matter before it, it has power to issue any order or direction to do “complete justice” in the matter. This Constitutional power of the Apex Court cannot be limited or restricted by provisions contained in statutory law.”

The Bench went on to say: “No enactment made by central or State Legislature can limit or restrict the power of this Court under Article 142 of the Constitution, though while exercising power under

\(^{233}\) AIR 1991 SCW 2419.
Article 142 of the Constitution, the Court must take into consideration the statutory provisions regulating the matter in dispute. What would be the need of “complete justice” in a cause or matter would depend upon the facts and circumstances of each case and while exercising that power the Court would take into consideration the express provisions of a substantive statute. Once this Court has taken seisin of a case, cause or matter, it has power to pass any order or issue direction as may be necessary to do complete justice in the matter.234

Thus, a perusal of the judgments in Union Carbide Corporation v. Union of India235, the Delhi Judicial Services Association Case236 and Mohd. Anis’s Case237, relied upon in V. C. Mishra's Case238, show that the Court did not actually doubt the correctness of the observations in Prem Chand Garg’s v. Excise Commissioner, U.P. Allahabad Case239. As a matter of fact, it was observed that in the established facts of those cases, the observations in Prem chand Garg’s case had ‘no relevance’. This Court did not say in any of those cases that substantive statutory provisions dealing expressly with the subject can be ignored by this Court while exercising powers under Article 142.

As a matter of fact, the observations on which emphasis has been placed by us from in the Union Carbide Corporation v. Union of India240, A. R. Antulay v. R.S. Nayak’s Case241 and Delhi Judicial Services Association Case242, go to show that they do not strictly speaking come into any conflict with the observations of the majority made in Prem Chand Garg’s v. Excise Commissioner, U.P.

236 AIR 1991 SCW 2419.
237 1994 supp (1) SCC 145.
238 1995 AIR SCW 3488.
239 AIR 1963 SC 996.
241 AIR 1988 SC 1531.
242 1991 AIR SCW 2419.
**Allahabad Case**\(^{243}\). It is one thing to say that ‘prohibitions or limitations in a statute’ cannot come in the way of exercise of jurisdiction under Article 142 to do complete justice between the parties in the pending ‘cause’ or ‘matter’ arising out of that statutes but quite a different thing to say that while exercising jurisdiction under Article 142, this Court can altogether ignore the substantive provisions of a statute, dealing with the subject and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. This Court did not say so in Union Carbide's case either expressly or by implication and on the contrary in has been held that the Apex Court will take note of the express provisions of any substantive statutory law and regulate the exercise of its power and discretion accordingly. We are, therefore, unable to persuade ourselves to agree with the observations of the Bench in **V. C. Misra's Case**\(^{244}\) that the law laid down by the majority in Prem Chand Garg's case is “no longer a good law”.

### 1.3 RESTRICTIONS BY AN ORDINARY LEGISLATION ON CONSTITUTIONAL POWER TO PUNISH FOR CONTEMPT

In relation to punishment for contempt an important question arises. Can the power to punish for contempt as envisaged under the Constitution of India be controlled or restricted by any legislation passed by the Legislature has come up before the Indian Courts a number of times? This question has become quite pertinent after the passing of the Contempt of Courts, Act, 1971, whose preamble declares: “An Act to define and limit the powers of certain Courts in punishing contempt of courts and to regulate their procedure in relation thereto.”

Prior to the Contempt of Courts Act, 1971, it was held that the High Court has inherent power to deal with contempt of itself summarily and to adopt its own procedure, provided that it gives a fair and reasonable opportunity to the contemner to defend himself. But the procedure has now been prescribed by Section 15 of the Contempt

---

\(^{243}\) AIR 1963 SC 996.

\(^{244}\) 1995 AIR SCW 3488.
of Courts Act in exercise of the powers conferred by Entry 14, List III of the Seventh Schedule of the Constitution. Though the contempt jurisdiction of the Supreme Court and the High Courts can be regulated by legislation by appropriate Legislature under Entry 77 of List I and Entry 14 of List III in exercise of which the Parliament has enacted the Act, but the contempt jurisdiction of the supreme Court and the High Court is given a Constitutional foundation by declaring to be ‘Court of Record’ under Articles 129 and 215 of the Constitution. And, therefore, the inherent power of the Supreme Court and the High Court cannot be taken away by any legislation short of Constitutional Amendment. In fact, Section 22 of the Contempt of Courts Act lays down that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law relating to Contempt of courts. It necessarily follows that the Constitutional Jurisdiction of the Supreme Court and the High Court under Articles 129 and 215 cannot be curtailed by anything in the Contempt of Courts Act, 1971. The above position of law has been well settled by the Supreme Court in *Sukhdev Singh Sodhi v. The Chief Justice and Judges of the Pepsu High Court*\(^\text{245}\), holding thus: “In any case, so far as contempt of a High Court itself is concerned, as distinct from one of a subordinate Court, the Constitution vests these rights in every High Court, so no Act of a legislature could take away that jurisdiction and confer it afresh by virtue of its own authority.”

In *R. L. Kapur v. State of Madras*\(^\text{246}\), a question arose did the power of the High Court of Madras to punish contempt of itself arise under the Contempt of courts Act, 1952 so that under Section 25 of the General Clauses Act, 1897, Sections 63 to 70 of the Indian Penal Code, 1860 and the relevant provisions of the Code of Criminal Procedure, 1973 would apply. This question was answered by the Supreme Court in the following words.

“The answer to such a question is furnished by Article 215 of

\(^{245}\) AIR 1954 SC 186.

\(^{246}\) AIR 1972 SC 858.
the Constitution and the Provisions of the Contempt of Courts Act, 1952 themselves. Article 215 declares that every High Court shall be a Court of Record and shall have all powers of such a Court including the power to punish for contempt of itself. Whether Article 215 declares the power of the High Court already existing in it by reason of its being a Court of Record, or whether the Article confers the power as inherent in a Court of Record, the jurisdiction is a special one, not arising or derived from the Contempt of Courts Act, 1952, and therefore, not within the purview of either the Indian Penal Code or the Code of Criminal Procedure.”

After giving the above answer to the quarry raised, the Supreme Court has reiterated the view held in *Sukhdev Singh Sodhi’s Case*247. The View expressed in Sukhdev Singh Sodhi’s case, has been referred with approval in *Delhi Judicial Service Association v. State of Gujarat*248, holding that the view of this Court in Sukhdev Singh Sodhi’s case is “that even after the codification of the law of contempt in India, the High Court’s jurisdiction as a Court of Record to initiate proceedings and take seisin of the matter remained unaffected by the Contempt of Courts Act, 1926.”

Beg, C.J. in *re S. Mulgaokar*249, has explained the special power of the Supreme Court under Article 129 of the Constitution stating: “This Court is armed, by Article 129 of the Constitution, with very wide and special powers, as a Court of Record, to punish its contempts.”

In *Delhi Judicial Service Association v. State of Gujrat*250, it has been pointed out as follows: “Article 129 of the Constitution provides that the Supreme Court shall be a Court of Record and shall have all the powers of such a Court including the power to punish for contempt of itself. Article 215 of the Constitution contains similar provisions in respect of High Court. Both the Supreme Court as well

247 AIR 1954 SC 186.
249 AIR 1978 SC 727.
250 AIR 1991 SCW 2419.
as High Courts is Courts of Record having powers to punish for contempt including the power to punish for contempt of itself.”

1.4 CONCLUSION

From the above discussion it is clear that taking in to consideration the seriousness of the matter of contempt several provisions of the Constitution of India patently or latently deals with the contempt of court etc.

Under Article 19(2) of the Constitution of India contempt of court is a restriction on freedom of speech and expression which in different facets protect the Indian Judiciary from unjustified attack. Article 129 of the Constitution of India clearly indicates that Supreme Court as a Court of Record has power to punish for contempt of itself and also something else which could fall within the inherent jurisdiction of a Court of Record.

Article 215 of the Constitution of India vests the High Court with all the powers of a Court of record including the power to punish for contempt of itself. Under Article 142 of the Constitution powers of the Supreme Court are inherent and are complementary to those powers which are specifically conferred on the court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties.

It is submitted that to protect the dignity of the court etc., the above mentioned provisions should be applied in proper perspective.