CHAPTER-5

RECENT JUDICIAL APPRAOCH VIS-À-VIS THE LAW OF CONTEMPT

5.1 General

Contempt jurisdiction is a discretionary jurisdiction. It ought to be invoked extremely sparingly. A judge is not bound to take action for contempt even if contempt has, in fact, been committed. In a democracy there is no need for judges to vindicate their authority or display majesty or pomp rather than to punish those who are perceived to be violator of the statute. Their authority will come from the public confidence, and this, in turn, will be an outcome of their own conduct, their integrity, impartiality, learning, and simplicity. As observed by Lord Denning in R vs. Commissioner of Police (1968): "Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself." The best shield and armour of a judge is his reputation of integrity, impartiality, and learning. An upright judge will hardly ever need to use the contempt power in his judicial career. I submit that the law of contempt of court can be made certain once it is accepted that the purpose of the contempt power is not to vindicate or uphold the majesty and dignity of the court (for it is automatically vindicated and upheld by the proper conduct of the judge, not by threats of using the contempt power) but only to enable the court to function. The contempt power should only be used in a rare and exceptional situation where, without using it, it becomes impossible or
extremely difficult for the court to function. In such situations, the contempt power should not be used if a mere threat to use it suffices.\(^1\) In some democratic countries the courts have virtually given up the power to invoke contempt laws. In the U.K., the offence of contempt the court has become obsolete. The judiciary is vigorously criticised by the English press in a number of cases. In other European democracies such as Germany, France, Belgium, Austria, Italy, there is no power to commit for contempt for scandalising the court. The judge has to file a criminal complaint or institute an action for libel. Summary sanctions can be imposed only for misbehaviour during court proceedings. In the United States, contempt power is used against the press and publication only if there is a clear imminent and present danger to the disposal of a pending case. Criticism however virulent or scandalous after final disposal of the proceedings will not be considered as contempt.\(^2\) However, in India judges seem to be easily stung by the criticism and sometimes do not show the same latitude displayed by their judicial brethren elsewhere in the world.

The difficulty arises more due to not having settled objective criteria to say what kind of behaviour or action be levelled as scandalising a court. Similarly, it is also difficult to spell out what constitute interference in the administration of justice.

Contempt law permits a person to be punished even if the criticism he levels against the judiciary is true.\(^3\) Another remarkable feature about contempt proceedings is that the judge and the prosecutor are the very

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3. After the 2006 amendments made in the Contempt of Courts Act, 1971 “justification by truth” can be pleaded as a valid defence in case of contempt proceedings.
same. While it is arguable that some kind of contempt sanctions are required to preserve the authority of the court, the broad power to punish under this law should not be used to deter legitimate criticism or comment about the judiciary. The judiciary is obliged to display a high degree of restraint and balance in contempt cases. Gag orders are too high a price to pay for the supposed upholding of judicial dignity.⁴

In today’s democratic era, judges are no longer acting on behalf of the king, and the higher authority sought to be protected by contempt law is not clearly described. Indirectly, the judges in fact get their authority from the people, and so it follows that at some level, they must remain answerable to them. This transformation in the political and social structure has given the judiciary an indispensable role: to remain completely independent and unbiased in the administration of justice for all. Thus, it appears strange and illogical that the basis of contempt law lies in the fact that it must protect the authority of the courts in the eyes of people. It needs to be understood that in a democracy, the courts derive their ultimate authority from the people, and a law muzzling dissent and criticism from the people defies all logic. The court has in a number of cases have highlighted that the purpose of contempt law is to uphold the majesty and dignity of the law courts and the image of such majesty in the eyes of the public cannot be allowed to be distorted. It is clear from this statement that the judiciary has created in its own eyes, a self-satisfied image, and wishes to retain its ‘majesty’ in the eyes of the people. However, this seems to be

⁴ K.T. Thomas, “should the power to punish contempt of court be diluted?” The Hindu February 4, 2006. “(P)ower to punish contempt of courts have been proved to be a time tested safety valve for judges to perform the duties of their office without fear or favour, affection or ill will……. (I) have not come across sound reasoning for diluting the contempt of court jurisdiction……. (I) strongly feel that proposal for tinkering with the contempt of court jurisdiction…… will be perilous to the efficacy of the judicial function.”
delusionary when one looks at society today. In this age of information it is no longer necessary to try and create, or recreate the ‘majestic image of the court.’ Authority cannot come from alienating an institution from the people, but must be secured by instilling faith through its actions.

Of late, like the other organ of the State, judiciary has also been afflicted with nepotism, corruption, favouritism which anyhow has struck the credibility, respect and integrity of it. This kind of internal rot is being addressed through judicial reforms and efforts of Law commission and the Commission to review the working of the Constitution. It is also to mention here that there has been a gradual arrogation of powers by judiciaries across the free world. The Indian judiciary is carrying out some functions that are traditionally considered to be the domain of the legislature and executive. When judges have such vast powers, it is difficult to expect people to be silent about the exercise of such powers. Just as the decisions of other branches of government attract criticism, important and controversial decisions of the court will, too. As it is well known dictum that justice is not a cloistered virtue and should suffer the outspoken but respectful comment of ordinary men. The extent of outspokenness that is common elsewhere is surely missing in this country.

The advocates of contempt power of the court have presupposed the existence of the inherent powers of the court to punish contemptuous acts, and have advanced numerous theories and justifications to support their

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5 The Indian Express dated June 15 2015, P. 12, Article was the excerpt from a speech made by A.P.Shah J.(Retd.) at the Express Institute of Media Studies on May 29.

6 Lord Atkin in Ambard vs. Attorney- General of Trinidad and Tobago (1936) AC 322 at P. 335 (PC) has made observation: “The path of criticism is a public way…….. The wrong-headed are permitted to err therein ….. Justice is not a cloistered virtue …….. She must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of the ordinary men.”
views. An often cited ground for upholding the enormous power of contempt is that of the necessity to ensure ‘Rule of Law’. This is something the courts have been repeatedly relying on to justify their acts of punishing alleged contempt of their powers. However, it seems that the raison d’être behind the existence of such a power is the lack of confidence of the Courts in their own capacity to earn respect from the people. In fact, the need of any such power would be irrelevant if the Court realizes that it can have greater authority by winning the confidence and respect of the people rather than enforcing its authority with penalties.

Judicial credibility, dignity and respect accrue naturally through learning, fairness and certain reserve and distance from the society around. Further, press and media scrutiny cannot be blamed for the ills afflicting the judiciary. When a gag order is made restricting the reportage of investigation and judicial proceedings in open court, it is made merely to avoid the embarrassment of the judges and not taking consideration of the welfare of the rights of the litigants. A judge is expected to rise above any prejudice from out of his past once he becomes a judge. However, it is difficult to maintain the fiction that a judge can be totally cut off from his philosophical orientation or his background, that one judge is as good as another and that any judge can be expected to give absolutely unbiased judgment. There is an element of unfairness built into contempt proceedings as the judges often decides his own cause while a person hauled up is not allowed to offer any defence other than an apology, and their frequent invoking threatens to chill legitimate democratic debate. It is high time higher judiciary should rise up to occasion to look up the danger posed and restrain their fellow fraternity from invoking intermittent
contempt jurisdiction to shield themselves from legitimate criticism and public scrutiny.

The principle object of the Contempt of Courts Act, 1971 is to protect the authority and the dignity of the court; this can neither be used to silence or suppress the criticism of court judgment nor be used to discourage frank and free expression about the state of judicial system. The recent judicial trends in contempt law shows a very unfortunate and disturbing development where this extraordinary power is being used to punish the person for nothing more than speaking their mind.

It is important to note that judicial sensitiveness should not give way to judicial restraint. When, a contemner is punished it has to be seen that whether conviction of the same actually serves to preserve the dignity and authority of the judiciary. There is real risk that public confidence in the judiciary is likely to eroded rather than enhanced if an ever sensitive judiciary starts invoking the contempt power at the drop of hat. Overall progression of judicial attitude in this area raises issues which go beyond the hyper sensitive approach of the courts.

The authority of judiciary should rest on the firmer foundations of the quality and nature of its judgments rather than on respect extracted under the threat of penalty. A more vigorous public scrutiny has only served to strengthen the judiciary everywhere.

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7 Statement of Object and Reasons to the Contempt of Courts Act, 1971. The jurisdiction to punish for contempt touches upon two important fundamental rights of the citizen, namely, the right to personal liberty and the right to freedom of expression.

8 In India public criticism of the judges and their judgments can play a very crucial role in holding judiciary accountable as there is hardly any other effective mechanism under our constitutional scheme for the purpose.
A look at the past judgments gives at one side the liberal approach by the judiciary on the principle that judges are not immune from criticism and the shoulders of the judiciary are broad enough to shrug off any insult. At the other side Majesty of the court was used to enable the court to function and not to protect an individual judge, which cannot be allowed to be undermined by scurrilous writers in the name of criticism. However, recent judicial approach in this branch of law gives a highly intolerant view in regard to criticism of the judicial function. Here, are some of the recent judgment and their analysis to understand the approach of the judiciary in regard of contempt law which has in some other democratic country has become virtually a dead letter.

5.2 Judicial trends in recent days

Article 19(1)(a) of the Constitution gives the right of freedom of speech and expression to all citizens and this freedom of speech can legitimately be subjected to reasonable restriction on the ground of contempt of court. But Articles 129 and 215 give the power of contempt of court to the higher judiciary, and this power limits the freedom granted by Article 19(1) (a). But, between these two right balance is sharply tilted against the Press and others who seek to exercise their fundamental right to freedom of expression. The definition of the contempt is so elastic and open to subjective interpretation and the process itself is so unfair with the court acting as the complainant, prosecutor, and judge rolled into one. The

Also Iyer, V.R. Krishna, J. “contempt power- Cipherise its User” in Off the Bench (2006) at P. 237:
“India should welcome free speech especially on public issues, macro-projects and policies of deep import to the people. An informed criticism whether the President, Governors, judges or ministers or generals or technocrats are disparaged or not, uninhibited by any bogey or bully, is not desirable but must be encouraged.”
judges having the power to decide their own case also involves granting them a limitless flexibility in interpretation of key terms, and this essentially goes against the principle of fairness. In such a scenario, a person charged with contempt has very little chance of getting away with anything other than an apology. Thus, while reporting and commenting on matters related to judiciary, the Press and the media play safe and caution, which anyhow restricts the free and healthy discussion and debate.

Free speech and expression of a person or the media brings the whip of criminal contempt. The Contempt of Courts Act, 1971 prohibits any reporting or comment which would prejudice or interfere with the course of the judicial process. Another type of criminal contempt involves scandalising the court by any remark that tends to lower the authority of the court. It is fair to criticise any order, direction or the judgment even in harsh words. However, allegation of corruption, bias, nepotism or any statement relating to non-legal reasons including ideological orientation invites the wrath of contempt jurisdiction.

(i) In re Arundhati Roy

The facts of the case, which are not seriously disputed, are that an organisation, namely, Narmada Bachao Andolan filed a petition under Article 32 of the Constitution of India before Supreme Court. The petitioner was a movement or andolan, whose leaders and members were concerned about the alleged adverse environmental impact of the construction of the sardar Sarovar Reservoir Dam in Gujarat and the far-reaching and tragic consequences of the displacement of hundreds of

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9 AIR 2002 SC 1375.
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 of the dam 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 expressed its displeasure on the action of the respondent in making distorted writing or manner in which leaders of the petitioner Ms.Meda Patkar and one Dharmadikhari despite giving assurance to the court acted in breach of the injunction, 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."

Showing its magnanimity, the Court declared:

"After giving this matter our thoughtful consideration and keeping in view the importance of the issue of resettlement and rehabilitation of the PAFs, which we have been monitoring for the last five years, we are not
inclined to initiate proceedings against the petitioner, its leaders or Ms. Arundhati Roy. We are of the opinion, in the larger interest of the issues pending before us, that we need not 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.”

The third learned Judge 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 shrug off their comments and because the focus should not shift from the resettlement and rehabilitation of the oustees, no action in contempt be taken against them.

However, after the judgment was pronounced increasing the height of the dam, an incident is stated to have taken place on 30th December, 2000 regarding which Contempt Petition No.2 of 2001 was filed by J.R. Parashar, Advocate and others. According to the allegations made in that petition, the respondents named therein, led a huge crowd and held a Dharna in front of this Court and shouted abusive slogans against the court including slogans ascribing lack of integrity and dishonesty to this institution. It was alleged that when the petitioners therein protested, they were attacked and assaulted by the respondents. In the evening on the same

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10 Supra note 9 at P. 1381 Para 5.
11 Ibid at P. 1381 Para 6.
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 Tehelka scandal, even though it involves matters of national security and corruption in the highest places.

Yet when it comes to an absurd, despicable, entirely unsubstantiated petition 12 in which all the three respondents happen to be people who have publicly - though in markedly different ways - questioned the policies of the government and severely criticized a recent judgment of the Supreme Court, the Court displays a disturbing willingness to issue notice. 13"
It indicates a disquieting inclination on the part of the court to silence criticism and muzzle dissent, to harass and intimidate those who 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."\(^{14}\)

The assertions in the aforesaid contempt petition attributed that the contemnors shouted abusive slogans against the court including slogans ascribing lack of integrity and dishonesty to the institution undoubtedly made the action of the contemnor gross contemptuous and as such the court had initiated the contempt proceedings by issuing notice. But in view of the denial of the alleged contemnors to the effect that they had never shouted such slogans and used such abusive words as stated in the contempt petition, instead of holding an inquiry and permitting the parties to lead evidence in respect of their respective stand, to find out which version is correct, the court though it fit not to adopt that course and decided to drop the proceedings. But in the very show cause that had been filed by the Ms. Arundhati Roy, apart from denying that she had not used any such words as ascribed to her, she had stated in three paragraphs, as quoted earlier, after denying that she had never uttered the words ascribed to her and those paragraphs having been found \emph{prima facie} contemptuous, the \emph{suoo motu} proceedings had been initiated and notice had been issued. However, the Court felt that Ms. Arundhati Roy was found to have, \emph{prima facie}, committed contempt as she had imputed motives to specific courts for entertaining litigation and passing orders against her. She had accused

\(^{14}\) Supra note 9 at Pp. 1381,1382 Para 7.
courts of harassing her as if the judiciary were carrying out a personal vendetta against her. She had brought in matters which were not only not pertinent to the issues to be decided but has drawn uninformed comparisons to make statements about this Court which do not appear to be protected by law relating to fair criticism. It was stated by her in the court that she stood by the comments made by her even if the same are contumacious. For the reason recorded therein, the Court issued notice in the prescribed form to the respondent herein asking her to show cause as to why she should not be proceeded against for contempt for the statements in the offending three paragraphs of her affidavit, reproduced herein earlier.\textsuperscript{15}

In her reply affidavit, the respondent has again reiterated what she had stated in her earlier affidavit. It is contended that as a consequence of the Supreme Court judgment the people in the Narmada Valley are likely to lose their homes, their livelihood and their histories and when they came calling on the Supreme Court, they were accused of lowering the dignity of the court which, according to her is a suggestion that the dignity of the court and the dignity of the Indian citizens are incompatible, oppositional, adversarial things. She stated:

"I believe that the people of the Narmada valley have the constitutional right to peacefully against what they consider an unjust and unfair judgment. As for myself, I have every right to participate in any peaceful protest meeting that I choose to. Even outside the gates of the Supreme Court. As a writer I am fully entitled to put forward my views, my reasons and arguments for why I believe that the judgment in the

\textsuperscript{15} Supra note 9 at P. 1382 Para 8.
Sardar Sarovar case is flawed and unjust and violates the human rights of Indian citizens. I have the right to use all my skills and abilities such as they are, and all the facts and figures at my disposal, to persuade people to my point of view."\(^{16}\)

She also stated that she has written and published several essays and articles on Narmada issue and the Supreme Court judgment. None of them was intended to show contempt to the court. She justified her right to disagree with the court's view on the subject and to express her disagreement in any publication or forum. In her belief the big dams are economically unviable, ecologically destructive and deeply undemocratic. In her affidavit she has further stated:

"But whoever they are, and whatever their motives, for the petitioners to attempt to misuse the Contempt of Courts Act and the good offices of the Supreme Court to stifle criticism and stamp out dissent, strikes at the very roots of the notion of democracy.\(^{17}\)

In recent months this Court has issued judgments on several major public issues. For instance, the closure of polluting industries in Delhi, the conversion of public transport buses from diesel to CNG, and the judgment permitting the construction of the Sardar Sarovar Dam to proceed. All of these have had far-reaching and often unanticipated impacts. They have materially affected, for better or for worse, the lives

\(^{16}\) Supra note 9 at P. 1382 Para 8. Emphasis supplied.
\(^{17}\) Ibid at P. 1383 Para 10. Emphasis supplied.
and livelihoods of millions of Indian citizens. Whatever the justice or injustice of these judgments, whatever their finer legal points, for the court to become intolerant of criticism or expressions of dissent would mark the beginning of the end of democracy.\textsuperscript{18}

An 'activist' judiciary, that intervenes in public matters to provide a corrective to a corrupt, dysfunctional executive, surely has to be more, not less accountable. To a society that is already convulsed by political bankruptcy, economic distress and religious and cultural intolerance, any form of judicial intolerance will come as a crippling blow. If the judiciary removes itself from public scrutiny and accountability, and severs its links with the society that it was set up to serve in the first place, it would mean that yet another pillar of Indian democracy will crumble. A judicial dictatorship is a fearsome a prospect as a military dictatorship or any other form of totalitarian rule.\textsuperscript{19}

The Tehelka tapes broadcast recently on a national television network show the repulsive sight of Presidents of the Bhartiya Janata Party and the Samata Party (both part of the ruling coalition) accepting bribes from spurious arms dealers. Though this ought to have been considered prima facie evidence of corruption, yet the Delhi High Court declined to entertain a petition seeking an enquiry into the defence deals

\textsuperscript{18} Supra note 9 at P. 1383 Para 10. Emphasis supplied.
\textsuperscript{19} Ibid. Emphasis supplied.
that were referred to in the tapes. The bench took strong exception to the petitioner approaching the court without substantial evidence and even warned the petitioner's counsel that if he failed to substantiate its allegations, the court would impose costs on the petitioner.²⁰

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 Tehelka scandal, even though it involves matters of national security and corruption in the highest places.²¹

Yet when it comes to an absurd, despicable, entirely unsubstantiated petition in which all the three respondents happen to be people who have publicly though in markedly different ways - questioned the policies of the government and severely criticized a recent judgment of the Supreme Court, the Court displays a disturbing willingness to issue notice.²²

It indicates a disquieting inclination on the part of the court to silence criticism and muzzle dissent, to harass and intimidate those who 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.²³

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²⁰ Supra note 9 at P. 1383 Para 10. Emphasis supplied.
²¹ Ibid. Emphasis supplied.
²² Ibid. Emphasis supplied.
²³ Ibid. Emphasis supplied.
In conclusion, I wish to reaffirm that as a writer I have right to state my opinions and beliefs. As a free citizen of India I have the right to be part of any peaceful dharna, demonstration or protest march. I have the right to criticize any judgment of any court that I believe to be unjust. I have the right to make common cause with those I agree with. I hope that each time I exercise these rights I will not dragged to court on false charges and forced to explain my actions."²⁴

Without filing a formal application, in the proceedings, a preliminary objection was raised by the respondent-contemnor, that the Hon'ble Judges who issued notice in Criminal Petition No.2 of 2001 should not be a party to the present proceeding and the case be transferred to some other Bench, allegedly on the ground that the respondent-contemnor had reasonable apprehension of bias on the part of the said Judges to whom she claims to have allegedly attributed motives. Such a prayer was made after the commencement of the proceedings which, the court feels, was not bonafide and the apprehension expressed by the respondent much less being reasonable in fact has no basis. The court held that in the instant case cognizance of the criminal contempt against the respondent has been taken by the Court, suo motu under section 15 of the Act. Whereas sub-section (2) of section 14²⁵ permits a person charged with the contempt to have

²⁴ Supra note 9 at Pp. 1383,1384, Para 10. Emphasis supplied.
²⁵ 14. Procedure where contempt is in the face of the Supreme Court or a High Court-
(1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the court may cause such person to be detained in custody, and, at any time before the rising of the court, on the same day, or as early as possible thereafter, shall –
(a) Cause him to be informed in writing of the contempt with which he is charged.
(b) Afford him an opportunity to make his defence to the charge,
charge against him tried by some Judge other than the judge or judges in whose presence or hearing the offence is alleged to have been committed and the court is of opinion that it is practicable to do so. No such provision is made under section 15 of the Act. Obviously for the reason that when action is at the instance of the Court, there is no question of any motive of and prejudice from any Judge. Accepting the plea raised by the respondent would amount to depriving all the Judges of the court to hear the matter and thus frustrate the contempt proceedings, which cannot be the mandate of law. The apprehension caused by the respondent is imaginary, without basis and not _bona fide_. The oral prayer made for one of us not to be a member of the Bench, hearing the matter, is rejected.\(^{27}\)

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(c) After taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge, and

d) Make such order for the punishment or discharge of such person as may be just.

(2) Notwithstanding anything contained in sub section (1) where a person charged with contempt under the sub section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the court is of opinion that it is practicable to do so and that in that interest of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub section (1) which is held, in pursuance of a direction given under sub section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub section (2) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify. Provided that the shall be released on bail, of a bond for such sum of money As the court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the court.

Provided further that the court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid.

\(^{27}\) Supra note 9 at P.1384, Para 13.
The aforesaid view of the Supreme Court is highly erroneous as the contempt in question was committed in the face of court, in as much as the offending affidavit was filed by the contemner before the Supreme Court and comes within the purview of section 14 of the Act which deals with the procedure of contempt in the face of the Supreme Court or a High Court.\(^\text{28}\) It clearly provides that a contempt in the face of Supreme Court or a High Court where a person charged with contempt under this section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the court is of opinion that it is practicable to do so and that in that interest of proper administration of justice the application should be allowed, the same has to be done. Thus, the view of the Supreme Court is highly convoluted in as much as \emph{suo motu} cognizance can be taken and in fact has been taken by the Supreme Court under section 14 of the Act and therefore to this extent, the judgment suffers from a serious infirmity. The observation made by the court while dealing the recusal of one of the judges from the proceeding, that if the plea of the contemner be taken then it will deprive all judges to hear the matter seems to be highly fallacious, as the plea of recusal was regarding one particular judge of the bench in whose presence the alleged contempt took place and not the whole bench who had taken up the matter. Even otherwise, the principle of natural justice requires that without even waiting for the contemner to take any steps for the recusal the learned judges by himself recused of the matter, because no one should be made a judge in his own cause. It is equally important to mention that “justice should not only be done but should manifestly and undoubtedly be seen to be done.” It

\(^{28}\) Supra note 9 at P.1384, Para 13.
is submitted that the procedural fairness is part and parcel of our constitutional scheme after the *Maneka Gandhi case*\(^ {29} \) and refusal from recuse by the judge can hardly be termed as procedurally fair. It is required under the principle of natural justice, due process requirement and ordinary notion of justice that judge should keep himself out of such matter. It is further submitted that there is an in built bias in the contempt proceedings in as much as the functions of the judge, the jury, the hangman and the pall bearers are all discharged by the same institution and it becomes more pronounced when the court takes *suo motu* cognizance in contempt proceedings and thus the *suo motu* jurisprudence further compounds the injustice the alleged contemner and the results into violation of cherished freedoms. The contemner made another endeavour to defer the proceeding, allegedly on the ground of reference made to the Constitution Bench in *Dr. Subramanian Swamy vs. Rama Krishna Hegde*\(^ {30} \). It is contended that as truth can be pleaded as a defence in contempt proceedings and that the decision of this Court in *Perspective Publications (P) Ltd. v. State of Maharashtra*\(^ {31} \) has been referred to be reconsidered, the present proceedings are required to await the judgment of the Constitution Bench. However, Supreme Court rejected such submission and found it without any substance inasmuch as the question of truth being pleaded as defence, in the present case, does not arise\(^ {32} \). Contempt proceedings have been initiated against the respondent on the basis of the offending and contemptuous part of the reply affidavit making wild allegations against the court and thereby scandalised its authority. There is no point or fact in

\(^{29}\) *Maneka Gandhi vs. Union of India* AIR 1978 SC 597.

\(^{30}\) 2000 (10) SCC 331. In the reference, the issue was whether the plea of truth can be set up in contempt proceedings.

\(^{31}\) 1969 (2) SCR 779.

\(^{32}\) After the amendment made in contempt Act of 1971 in 2006, section 13 now permits the contemner to take the plea of justification by truth. For detail Chapter IV and VI.
those proceedings which requires to be defended by pleading the truth.\textsuperscript{33} Thus, the Supreme Court was not even prepared to consider the plea of truth as the same was found to be irreverent and immaterial. It is stated that the alleged contemptuous paragraphs in the affidavit reflected some factual aspects and therefore it is quite surprising that the truth was held irrelevant in the proceedings. It is further stated that after the \textit{Maneka Gandhi case}\textsuperscript{34} any restriction on fundamental rights which is not just, fair and reasonable is blatantly unconstitutional and a procedure which does not recognise truth as a defence is, \textit{ex facie}, an unreasonable restriction on free speech and cannot be termed as reasonable by any notions of arguments and reasoning. Further, the respondent contemner argued relying upon the observations made by Supreme Court in \textit{P.N. Duda vs. P. Shiv Shanker & Ors.}\textsuperscript{35} that despite severe criticism and wild allegations made by P. Shiv Shanker against the institution of judiciary, no action was taken, the present proceedings also required to be dropped. In that case P. Shiv Shanker who, at the relevant time, was the Minister of Law, Justice and Company Affairs, delivered a speech before a meeting of the Bar Council at Hyderabad in which he made derogatory statement against the Supreme Court and its dignity attributing partiality towards economically affluent sections of the people by using language which is extremely intemperate, undignified and unbecoming of a person of his stature and position. The court observed that the criticism of the judicial system was made by a person who himself had been the Judge of the High Court and was the Minister at the relevant time. He had made studies about the system and expressed his opinion which, under the circumstances, was held to be not

\textsuperscript{33} Supra note 9 at Pp. 1384,1385 Para 14.
\textsuperscript{34} Supra note 29.
\textsuperscript{35} 1988 (3) SCC 167.
defamatory despite the fact that the court found that in some portion of the speech the language used could have been avoided by the Minister having the background of being the former Judge of the High Court. His speech, under the circumstances, was held to be not amounting to imminent danger of interference with the administration of justice nor of bringing the administration into disrepute.

The aforesaid observation of the Supreme Court that liability of the contempt proceedings differs from person who himself had been judge of the High Court and was the Minister at the relevant time and the person having no judicial background. Such observations clearly make two categories of citizens without any basis and render it susceptible to attack on the benchmark of right to equality guaranteed under the Constitution. It is further submitted that the observation made by the court that respondent contenner has not claimed to possess any special knowledge of law and the working of the institution of the judiciary and still further that she has not claimed to have made any study regarding the working of the Supreme Court or the judiciary in the country is highly shocking and surprising. A citizen of the country need no learning to exercise its fundamental right to freedom of speech and expression else the said right would become illusory, moonshine and a monopoly of few elites in this country of teeming illiterates. The observation of the Supreme Court that the “law punishes the archer as soon as the arrow is shot no matter if it misses to hit the target” reflects another anomaly in the law to the requirement of mens rea in a charge of contempt. It is submitted that the contempt proceedings being penal are quasi criminal in nature and therefore the offence of contempt must necessarily have mens rea as a necessary ingredients thereof.
The conviction of the respondent- contemner for the contempt of the Court, to simple imprisonment for one day and to pay a fine of Rs.2,000/- is deplorable. It is to be noted that quantum of punishment in such cases is per incurium in as much as section 13 (a) of the Contempt of Courts Act, 1971 states that no court shall impose sentences under the Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interfere or tends substantially to interfere with the due course of justice.  

It is submitted that imprisonment of one day to contemner was totally illegal, wrong and bad in law as there was no charge framed to this effect, nor any finding recorded thereon. The scheme of the Act makes it amply clear through section 13 that punishment in case of contempt has to be by way of fine and it is only when the court 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, a punishment by way of sentence is warranted. The Supreme Court did not looked upon the mandate of the section 13 and punished with the sentence which cannot be said to be sustainable in law. It is submitted that in a vibrant democracy for a better functioning and keep updating itself any citizen should not be sent to jail/prison for exercising his/her fundamental right of freedom of speech and expression even in some circumstances it amounts to contempt. It is urgently required to rectify this anomaly and do better the legal proposition.

36 Section 13 of the Contempt of Courts Act, 1971, inter alia, states that 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 interfere or tends substantially to interfere with the due course of justice.

37 Emphasis supplied.

38 Emphasis supplied.
Supreme Court Bar Association vs. Union of India

The question which arose in this petition was whether the Supreme Court can while dealing with Contempt Proceedings exercise power under Article 129 of the Constitution or under Article 129 read with Article 142 of the Constitution or under Article 142 of the Constitution can debar a practicing lawyer from carrying on his profession as a lawyer for any period whatsoever. Thus, the only question which the Supreme Court was called upon to decide in this petition is whether the punishment for established contempt of Court committed by an Advocate can include punishment to debar the concerned advocate from practice by suspending his licence (sanad) for a specified period, in exercise of its powers under Article 129 read with Article 142 of the Constitution. Previously, the Supreme Court found the contemner guilty of committing criminal contempt of court for having interfered with and obstructing the course of justice by trying to threaten, overawe and overbear the court by using insulting, disrespectful and threatening language. While awarding the punishment, keeping in view the gravity of the contumacious conduct of the contemner, the court said:

"The facts and circumstances of the Present Case justify our invoking the power under Article 129 read with Article 142 of the Constitution to award to the contemner a suspended sentence of imprisonment together with suspension of his practice as an advocate in the manner directed herein. We accordingly sentence the contemner for his conviction for the offence of the criminal contempt as under:

AIR 1998 SC 1895.
40 In re, Vinay Chandra Mishra 1995 (2) SCC 584.
(a) The contemner Vinay Chandra Mishra is hereby sentenced to undergo simple imprisonment for a period of six weeks. However, in the circumstances of the case, the sentence will remain suspended for a period of four years and may be activated in case the contemner is convicted for any other offence of contempt of court within the said period; and

(b) The contemner shall stand suspended from practising as an advocate for a period of three years from today with the consequence that all elective and nominated offices/posts at present held by him in his capacity as an advocate, shall stand vacated by him forthwith.41

Aggrieved by the direction that the "Contemner shall stand suspended from practising as an Advocate for a period of three years" issued by this Court by invoking powers under Articles 129 and 142 of the Constitution, the Supreme Court Bar Association, through its Honorary Secretary, has filed this petition under Article 32 of the Constitution of India, seeking the following relief:

“Issue and appropriate writ, direction, or declaration, declaring that the disciplinary committees of the Bar Councils set up under the Advocates Act, 1961, alone have exclusive jurisdiction to inquire into and suspend or debar an advocate from practising law for professional or other misconduct, arising out of punishment imposed for contempt of court or otherwise and further declare that the Supreme Court of India

41 Supra note 39 at P. 1898.
or any High Court in exercise of its inherent jurisdiction has no such original jurisdiction, power or authority in that regard notwithstanding the contrary view held by this Hon'ble Court in Contempt Petition (Crl.) No. 3 of 1994 dated 10.3.1995.\textsuperscript{42}

Describing various provision of the Constitution the Supreme Court held that the power of this court in respect of investigation or punishment of any contempt including contempt of itself, is expressly made 'subject to the provisions of any law made in this behalf by the parliament' by Article 142(2). However, the power to punish for contempt being inherent in a court of record, it follows that no act of parliament can take away that inherent jurisdiction of the Court of Record to punish for contempt and the Parliament's power of legislation on the subject cannot, therefore, be so exercised as to stultify the status and dignity of the Supreme Court and/or the High Courts, though such a legislation may serve as a guide for the determination of the nature of punishment which this court may impose in the case of established contempt. Parliament has not enacted any law dealing with the powers of the Supreme Court with regard to investigation and punishment of contempt of itself and the Supreme Court therefore exercises the power to investigate and punish for contempt of itself by virtue of the powers vested in it under Articles 129 and 142(2) of the Constitution of India.\textsuperscript{43}

The court observed further that the nature and types of punishment which a court of record can impose, in a case of established contempt, under the common law have now been specifically incorporated in the contempt of Courts Act, 1971 in so far as the High Courts are concerned

\textsuperscript{42} Supra note 9 at P. 1899.
\textsuperscript{43} Ibid at P. 1901 Para 16.
and therefore to the extent the contempt of Courts Act 1971 identifies the nature of types of punishments which can be awarded in the case of established contempt, it does not impinge upon the inherent powers of the High Court under Article 215 either. No new type of punishment can be created or assumed. It was stated that, the parliament by virtue of Entry 77, List I is competent to enact a law relating to the powers of the Supreme Court with regard to contempt of itself and such a law may prescribe the nature of punishment which may be imposed on a contemner by virtue of the provisions of Article 129 read with Article 142(2), Since, no such law has been enacted by the parliament, the nature of punishment prescribed, under the Contempt of Courts Act, 1971, may act as a guide for the Supreme Court but the extent of punishment as prescribed under that Act can apply only to the High Courts, because the 1971 Act ipso facto does not deal with the contempt jurisdiction of the Supreme Court, except that Section 15 of the Act prescribes procedural mode for taking cognizance of criminal contempt by the supreme Court also. Section 15, however, is not a substantive provision conferring contempt jurisdiction. The judgment in Sukhdev Singh's case as regards the extent of "maximum punishment" which can be imposed upon a contemner must, therefore, be construed as dealing with the powers of the High Courts only and not of this Court in that behalf. We are, therefore, doubtful of the validity of the argument of the learned solicitor General that the extent of punishment which the Supreme Court can impose in exercise of its inherent powers to punish for contempt of itself and/or of subordinate courts can also be only to the extent prescribed under the contempt of Courts Act, 1971. The court,

44 Supra note 9 at P. 1906 Para 34.
45 Emphasis supplied.
46 AIR 1954 SC 186.
however, do not express any final opinion on that question since that issue
strictly speaking, does not arise for our decision in this case. The question
regarding the restriction or limitation on the extent of punishment, which
the court may award while exercising its contempt jurisdiction was left to
be decided in a proper case, when so raised.47

It is apparent from above discussion of the court that the Supreme
Court claims the power to punish for contempt being inherent in a court of
record, and it therefore follows that no act of parliament can take away that
inherent jurisdiction of the Court of Record to punish for contempt and the
further the court held that the Parliament's power of legislation on the
subject cannot, therefore, be so exercised as to stultify the status and
dignity of the Supreme Court and/or the High Courts, though such a
legislation may serve as a guide for the determination of the nature of
punishment which this court may impose in the case of established
contempt. The Supreme Court was clearly in error in holding that the
Parliament has not enacted any law dealing with the powers of the Supreme
Court with regard to investigation and punishment of contempt of itself. A
bare perusal of the Contempt of Courts Act, 1971 through section 1548

47 Supra note 39 at P. 1906 Para 35.
48 15. Cognizance of criminal contempt in other cases-
(1) In the case of a criminal contempt, other than a contempt referred to in section 14, the
Supreme Court or the High Court may take action on its own motion or on a motion made
by—
(a) the Advocate-General, or
(b) any other person, with the consent in writing to the Advocate-General, or
(c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the
Central Government may, by notification in the Official Gazette, specify in this behalf, or
any other person, with the consent in writing of such Law Officer.
(2) In the case of any criminal contempt of a subordinate court, the High Court may take
action on a reference made to it by the subordinate court or on a motion made by the
Advocate-General or, in relation to a Union territory, by such Law Officer as the Central
Government may, by notification in the Official Gazette, specify in this behalf.
(3) Every motion or reference made under this section shall specify the contempt of which
the person charged is alleged to be guilty.
provides that for the purpose of investigation and punishment the Parliament has enacted such a law. Further, the power of the Supreme Court to punish for contempt under Article 129 r.w. article 142 (2) of the Constitution would indicate that the power of the Supreme Court for the punishment of any contempt of itself is subject to the provisions of any law made in this behalf by the Parliament. The Contempt of Courts Act 1971 is such law. Therefore, the observation of the Supreme Court to the effect that Parliament has not enacted any law flies in the face of Contempt of Courts Act 1971. It is also important to mention that the Contempt of Courts Act 1971 nowhere provides that this Act applies only to High Court and not to Supreme Court. In this view of matter, the Supreme Court’s observation are in ignorance of the reality, i.e. the Contempt of Courts Act 1971 enacted by the Parliament. It appears that the Supreme Court refused to take cognizance of the law as it curtailed the unfettered powers enjoyed by the Supreme Court hitherto in punishing for the contempt. It is stated that the aforesaid observation of the court are in complete defiance of the Parliamentary mandate and the Rule of law. The question which arises, if the Contempt of Courts Act 1971, is not to be applied to the Supreme Court, what is the ambit of the power of the Supreme Court to punish the contemner for its contempt? 6 months, 1 year, 2 year, 5 year or life or death or else? These are the issues which need immediate attention of the Supreme Court and the Parliament alike. It is a cardinal canon of criminal law and natural justice that a person cannot be convicted of an offence whose ingredients are not knowable. Further, holding of the Supreme Court

Explanatory.—In this section, the expression “Advocate-General” means—
(a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;
(b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;
(c) in relation to the Court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.
that as no law has been enacted by the Parliament in exercise of its power under Article 142 *qua* contempt and hence the Contempt of Courts Act 1971, may act as guide for the Supreme Court but the extent of punishment prescribed under the Act can apply only to the High Courts, because the 1971 Act, *ipso facto* does not deal with the contempt jurisdiction of the Supreme Court except that the section 15 of the Act prescribe procedural mode for taking cognizance of criminal contempt of the Supreme Court also, thus is clearly erroneous. It is submitted that Supreme Court committed gross error in holding that section 15 is not a substantive provision conferring contempt jurisdiction. The further reading of the judgment in *Sukhdev Singh vs. Hon’ble C.J. S. Teja Singh*,\(^{49}\) by the Bench in the present case restricting the extent of maximum punishment to the High Courts alone and not covering the Supreme Court is also illogical. It is stated that in *Sukhdev Singh’s case*,\(^{50}\) the Supreme Court while recognising that the power of the High Court to institute proceedings for contempt and punish the contemner when found necessary is a special jurisdiction which is inherent in all courts of record, the Bench opined that the maximum punishment is now limited to 6 months simple imprisonment or a fine of Rs. 2000/- or both because of the provisions of the Contempt of Courts Act 1971.

It is submitted that both the High Court and the Supreme Court are declared as court of record under the Constitution and thereby having the power to punish for their contempt respectively. It is thus clear that if the Parliament can regulate the punishment to be awarded by the High Court in the exercise of its contempt jurisdiction under the Constitution, there are no

\(^{49}\) 1954 SCR 454.
\(^{50}\) Ibid.
good reasons why the power of the Supreme Court to punish for its contempt cannot be so regulated. More so when the Parliament has the full legislative competence in the matter. The Supreme Court however realising the difficulty finally held that it did not express any final opinion on that question namely, extent of punishment which the Supreme Court can impose in the exercise of its inherent power to punish for contempt of itself and/or of the subordinate courts and held that as that issue, strictly speaking, does not arise for our decision in this case and thereafter the question regarding the restriction or limitation on the extent of punishment, which this Court may award while exercising its contempt jurisdiction may be decided in a proper case, when so raised. 51 Finally, the Supreme Court overruled its holding in In re Vinay Chandra Mishra’s case 52 by holding that the suspension of an Advocate from practice and his removal from the State roll of advocates are both punishments specifically provided for under the Advocates Act, 1961, for proven "professional misconduct" of an advocate. While exercising its contempt jurisdiction under Article 129, the only cause or matter before this Court is regarding commission of contempt of court. There is no cause of professional misconduct, properly so called, pending before the Court. This Court, therefore, in exercise of its jurisdiction under Article 129 cannot take over the jurisdiction of the disciplinary committee of the Bar Council of the State or the Bar Council of India to punish an advocate by suspending his licence, which punishment can only be imposed after a finding of 'professional misconduct' is recorded in the manner prescribed under the Advocates Act and the Rules framed thereunder. 53

51 Emphasis supplied.
52 Supra note 40.
53 Supra note 39 at P. 1906 Para 37.
The Supreme Court further observed in regard to its jurisdiction in case of contempt:

“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 covering 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. 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

54 Emphasis supplied. It is submitted that under our constitutional scheme there is broadly separation of powers among the three different organs of the State, viz, the legislature, the executive and the judiciary. The primary function of the legislature is to enact the laws. The executive is entrusted with the task of executing/ implementing/ enforcing the laws so made by the legislature. The judiciary is called upon to adjudicate the disputes arising out of the implementation of the laws. Thus, the role of the judiciary is limited to the adjudication of the disputes and while adjudicating the disputes, it may have to interpret the law. In the process of interpretation the judiciary may incidentally declare the law. However, it is totally erroneous to assume that the role of the Supreme Court has always been that of a law maker. Indira Gandhi vs. Raj Narain AIR 1975 SC 2299; Kesavananda Bharti vs. State of Kerala AIR 1973 SC 1461.

cannot, in any way, be controlled by any statutory provisions\textsuperscript{56} 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 statute dealing expressly with the subject."\textsuperscript{57}

It is submitted that if the powers under Article 142 cannot be controlled by any statutory provision, then it is doubtful as to whether the Parliament can ever enact the law controlling the contempt jurisdiction of the Supreme Court as it has so done in the case of High Courts. The Parliament has the ample and necessary legislative competence to deal with the matter and enact a law in this regard and it is therefore idle to contend that no statutory instrument can control the powers under Article 142 of the Constitution. The said Article suggests that it is subject to law made by the Parliament. Keeping all discussion in mind, and having regard to the Constitutional provision it can be easily stated that the observation made by the Supreme Court is in clear defiance of our constitutional scheme. The reluctance of the Supreme Court to be controlled by the law in this behalf is also highly disturbing.\textsuperscript{58}

\textsuperscript{56} Emphasis supplied. It is submitted that the Parliament has full legislative competence to enact a law on contempt qua Supreme Court. Therefore, such puerile assumption has no authority and is born out of sheer reluctance of the Supreme Court to submit its unfettered/uncontrolled/untrammelled powers to statutory regulation. Moreover, Article 142 (2) clearly nullifies such assumption and to that extent the observations are \textit{per in curium}.

\textsuperscript{57} Supra note 39 at Pp. 1908, 1909 Para 45.

\textsuperscript{58} Para 20 of the Twelfth Report of the Contempt of Courts (Amendment) Bill, 2004 of Department Related Parliamentary Standing Committee presented to the RajyaSabha on August 29, 2005. It states that provisions of the Contempt of Courts Act, 1971 shall apply to the Supreme Court of India and to the High Courts in exercise of their respective powers and jurisdiction under the Articles 129 and 215 of the Constitution of India.
This case has its matrix in an appeal filed by Zahira Habibullah and another namely, Teesta Setelwad and another appeal filed by the State of Gujarat. In the appeals filed before this Court, the basic focus was on the absence of an atmosphere conducive to fair trial. Zahira made a grievance that she was intimidated, threatened and coerced to depart from the truth and to make statement in Court which did not reflect the reality. The trial Court on the basis of the statements made by the witnesses in Court directed acquittal of the accused persons. The High Court did not accept the prayer highlighting the necessity for accepting additional evidence and that is why the appeals came to be filed in the Supreme Court. By judgment dated 12th April, 2004 the court directed that Keeping in view the peculiar circumstances of the case, and the ample evidence on record, glaringly demonstrating subversion of justice delivery system no congeal and conducive atmosphere still prevailing, and thus directed the re-trial, which shall be done by a Court under the jurisdiction of Bombay High Court. While the trial was on before a Court in Maharashtra pursuant to Supreme Court's direction, it appears Zahira gave a press statement in the presence of some government officials that what she had stated before the trial Court in Gujarat earlier was correct. A petition was thus filed before Supreme Court alleging that Zahira's statement amounts to contempt of this Court. In the backdrop of such scenario the Supreme Court directed an inquiry to be conducted by the Registrar General of the Supreme Court to ascertain as to which version of Zahira Habibullah Sheikh is a truthful version. For the purpose of inquiry, the Registrar General was allowed to

59 AIR 2006 SC 1367.
take assistance of a police officer\textsuperscript{60} of the rank of Inspector General of Police. The inquiry shall be conducted on the basis of affidavits to be placed before the Registrar General and if he deems fit, he may examine any witness or witnesses to substantiate the contents of the affidavits. We do not think it necessary to lay down any broad guidelines as to the modalities which the Registrar General will adopt. \textit{He is free to adopt such modalities as he thinks necessary}\textsuperscript{61} to arrive at the truth, and to submit the report for further consideration. Considering the materials placed before the Inquiry Officer, he has submitted his report. The Inquiry Officer recorded the following findings:

"\textit{In view of the all, as discussed above, the fact which can be accepted as highly probable, that money has exchanged hands and that was the main inducement responsible which made Ms. Zahira to state in a particular way in Trial Court, Vadodara although threat could have also played a role in reaching at an agreement. However, the element of threat cannot be altogether ruled out.}\textsuperscript{62} One cannot loose sight of the fact that first contact over cell phone was made by Sh. Madhu Srivastava and Sh. Bharat Thakkar and not by Sh. Nafitullah. The evidence of Sh. Abhishek Kapoor about presence of Sh. Madhu Srivastava, MLA, in the Court at the time of testimony

\textsuperscript{60} Emphasis supplied.
\textsuperscript{61} Emphasis supplied.
\textsuperscript{62} Emphasis supplied.

A recent trend in contempt jurisdiction is to lower the standard of proof from ‘beyond reasonable doubt’ to ‘preponderance of probabilities’. More on it under the discussion on the next case.
of Ms. Zahira can also be treated as an indication of this factor.  

The Supreme Court directed the parties to file affidavit indicating their views so far on the report submitted by the Inquiry Officer.

Zahira has objected to acceptance of the Inquiry Officer’s report. The grounds on which the objections have been raised essentially as follows:

(1) The Inquiry Officer has tailored facts to fit into his pre-conceived conclusions. There has been deliberate omissions and distortion of facts.

(2) No cross examination of the witnesses whom the Inquiry Officer has examined was permitted.

(3) There was no transparent procedure adopted and the agreed procedure was never followed.

(4) There was lack of fair objective and reasonable approach. The pre-requisites of an objective enquiry were missing. There was no intelligent appreciation of facts.

(5) The Inquiry Officer appeared to be guided by Teesta Setalwad. The conclusion that Zahira had approached this Court for a fresh trial is wrong.

(6) The request for examining the Chairman, NHRC was not accepted without indicating any reason.

(7) Zahira was not only the person who had made departure from her stand purportedly recorded during investigation, there were others but no effort was made to take any action.

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\[^{63}\text{Supra note 59 at P. 1375 Para 7.}\]
against them. Though many persons had died or injured, Citizen for Justice and Peace and its functionaries never bothered to take up their cases. It is surprising why they only chose Zahira.

(8) The petition filed before this Court was not in fact signed by Zahira but was signed by Teesta and the mere fact that she had filed a Vakalatnama would not make her responsible for the statements made in the affidavit.

(9) Up to the point of time of the Press Conference Zahira was under the control of Teesta and she was a mere puppet in her hands and whatever statement was purportedly made by Zahira was in fact made by Teesta. Teesta’s role in the whole episode is very suspicious. She had spent lot of money taking advantage of the helplessness of Zahira and has used her for her machination. Zahira was tutored to make statements on different occasions. Teesta has given different versions as to when she has come in contact with Zahira and decided to take up her issues. 64

On the other hand, the State of Gujarat has adopted a peculiar stand stating that in view of conclusions of the Inquiry Officer it is not in a position to simpliciter accept or deny the report.

On behalf of Mrs. Teesta it has been submitted that report deserves to be accepted.

64 Supra note 59 at Pp. 1375,1376 Para 9.
Accepting the report of the Inquiry Officer, the Supreme Court observed:

“Above being the position, there is no reason to discard the report given by the Inquiry Officer which is accordingly accepted. Further, what remains to be done is what is the consequence of Zahira having made such conflicting statements and the effect for changing her stand from the statements made at different stages, particularly in this Court.” 65

And thereupon, the court concluded that Zahira's role in the whole case is an eye-opener for all concerned with the administration of criminal justice. As highlighted at the threshold the criminal justice system is likely to be affected if persons like Zahira are to be left unpunished. 66 The court finally found that Zahira has committed contempt of this Court. 67

The court proceeded to punish her by passing the following order as to quantum of punishment:

“In the aforesaid background, we direct as follows:

(1) Zahira is sentenced to undergo simple imprisonment for one year 68 and to pay cost of Rs.50,000/- and in case of default of

65 Supra note 59 at Pp. 1377 Para 15.
66 Emphasis supplied. Ibid at P. 1377 Para 16.
67 Emphasis supplied. Ibid at P. 1377 Para 18.
68 Emphasis supplied.
payment within *two months*,\(^6^9\) she shall suffer *further imprisonment of one year*\(^7^0\);

(2) Her assets including bank deposits shall remain attached for a period of *three months*\(^7^1\). The Income Tax Authorities are directed to initiate proceedings requiring her to explain the sources of acquisition of various assets and the expenses met by her during the period from 1.1.2002 till today.\(^7^2\)

The Supreme Court observation that Zahira by changing her version has lied before the Supreme Court and thus has committed contempt of court requires a detail examination of the facts which could not have been gone into under the summary procedure conveniently and consequently, the same could have been examined under the ordinary criminal law pertaining to perjury etc. Section 10 of the Contempt of Courts, Act 1971 clearly provides that every High Court has the jurisdiction in respect of contempt of courts subordinate to it, provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code. By parity of reasoning it is submitted that it would be appropriate for the High Court and the Supreme Court in case a contempt petition is brought before them which is committed in respect of themselves and which is also an offence under the Penal Code to not to

\(^6^9\) Emphasis supplied.  
\(^7^0\) Emphasis supplied.  
\(^7^1\) Emphasis supplied.  
\(^7^2\) Supra note 59 at Pp. 1382,1383 Para 41.
proceed. More so, when the facts are highly disputed and cannot be gone into summary manner.\textsuperscript{73}

The reports of the Inquiry Officer states that “…the element of threat cannot be altogether ruled out.”\textsuperscript{74} It is submitted that the report cannot be said to be definite in nature, even though the report be accepted, it leads much less to a conclusion as to the guilt of Zahira. Thus, the judgment is nothing but miscarriage of justice.

The Supreme Court direction to conduct the inquiry to the Registrar General of the Supreme Court into the matter is serious lacunae. It made further error in directing that for the purpose of inquiry, the Registrar General was allowed to take assistance of a police office of the rank of Inspector General of Police. It is submitted that the court has virtually abdicated its judicial functions by directing the Registrar General to adopt such modalities as he thinks necessary to arrive at the truth and desisting to lay down any broad guidelines as to the modalities which they will adopt. By ordering such a course, the court created a procedure not sanctioned and known to the law and left the modalities to be decided in the hands of administration and police officers throwing all the rules framed by it to deal with such matters to the winds. The court completely ignored the procedure established by law, viz., the Contempt of Courts, Act 1971.

\textsuperscript{73} It is submitted that such classification does not seem to be based on any intelligible differentia and has no nexus with the objects of the Act to be achieved. A contempt is contempt. And therefore the classification of law whereby all the safeguards of a criminal trial are made available to one category of contemners whereas the contemners belonging to another category are dealt with in a summary manner without practically any safeguards whatsoever. Not only that procedure is summary but even punishment may be higher than the statutory minimum. Hence the provision may offend Article 14 of the Constitution of India. State of West Bengal vs. Anwar Ali, AIR 1952 SC 75. Special Court Bills, In re AIR 1979 SC 478 etc.

\textsuperscript{74} Emphasis supplied.
Sections 14 &15 of the Act give the procedure to be adopted in dealing with such matter. Thus, it is to state that judgment deprived Zahira of her liberty under a procedure not established and sanctioned by the law.\(^75\)

The Supreme Court made a further dubious method in ordering her to file an affidavit indicating details of her bank accounts, advances, and other deposits, amounts invested in moveable or immovable properties and advances or security deposits.

It is submitted that the Supreme Court ignored the constitutional mandate as enshrined in Article 20 (3) of the Constitution. It may be noted that under the said Article, no person accused of any offence shall be compelled to be a witness against himself.\(^76\) It is submitted that if for a petty offence punishable with a small fine, the Constitutional safeguard is available; it stands no reason as to why such safeguard is not available to a contemner facing contempt proceedings entailing penal consequences, viz., sentence and fine. It is stated that if the courts have not considered ‘contempt’ as ‘offence’, due to it being *sui juris*, then by the same analogy no safeguard will be available to a contemner. It is stated that in such a view of the matter even rule against double jeopardy as contained in Article 20 (2) of the Constitution will not be applicable. And a contemner can be repeatedly tried and punished. It is submitted that contempt proceedings being *quasi-criminal* entailing penal consequences, there are no good reason as to why such constitutional safeguard are not extended to

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\(^75\) *Maneka Gandhi vs. Union of India*, AIR 1978 SC 597. Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law.

\(^76\) However the Supreme Court in *Capt. Dushyant Somal vs. Smt. Sushma Somal* AIR 1981 SC 1026 has held that protection against self-incrimination in Article 20 of the Constitution is not available in contempt proceedings.
contemners. Such a procedure can hardly qualify as just and would fail the test of *due process* as laid down in *Maneka Gandhi’s Case*.\(^{77}\)

Thus, the Supreme Court by directing her to file an affidavit to disclose details of bank accounts etc. violated the fundamental right of Zahira against self-incrimination. Even apart from contempt proceedings, such direction could have exposed her to criminal liability under other law, hence the course adopted by the Supreme Court is not only grossly improper but outright unconstitutional.

The Supreme Court did not give proper attention to the objection raised by the Zahira. Her objection about the denial of opportunity for the cross-examination of the witnesses examined by the Inquiry Officer should be given careful look. Such denial is gross violation of the principle of natural justice. Even in administrative proceedings such opportunity is accorded to the persons. Thus the denial of such opportunity is a violation of principle of natural justice and to this extent the judgment suffers from infirmity.\(^{78}\)

As regards the quantum of punishment also the order of Supreme Court raises serious distinction. Under section 12 (1) of the Contempt of Courts, Act 1971 it is expressly provided that a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both. Further, in sub-section (2) it is mandated that no court shall impose a sentence in excess of that specified in sub section (1) for any contempt

\(^{77}\) Supra note 29.
\(^{78}\) Cross-examination is very powerful weapon to elicit and establish the truth. The right to cross-examination is an important ingredient of fair hearing. *State of J&K vs. Bakshi Gulam Mohammed AIR 1967 SC 122, Town Area Committee vs. Jagdish Prasad AIR 1978 SC 1407.*
either in respect of itself or of a court subordinate to it. Even this imprisonment is further conditioned under section 13 (a) of the Contempt of Courts, Act 1971 in as much as it mandates that 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\(^{79}\), or tends substantially to interfere\(^{80}\) with the due course of justice. Thus the legislative anxiety is writ large in circumscribing the discretion of the courts in handing out punishment.

However, this legislative mandate was given a lethal blow by the court by holding to the following effect:

\[\text{Parliament by virtue of Entry 77 List I is competent to enact a law relating to the powers of the Supreme Court with regard to contempt of itself and such a law may prescribe the nature of punishment which may be imposed on a contemner by virtue of the provisions of Article 129 read with Article 142(2) of the Constitution of India, 1950. Since, no such law has been enacted by Parliament, the nature of punishment prescribed under the Contempt of Courts Act, 1971 may act as a guide for the Supreme Court but the extent of punishment as prescribed under that Act can apply only to the High Courts, because the 1971 Act ipso facto does not deal with the contempt jurisdiction of the Supreme Court, except that Section 15 of the Act prescribes procedural mode for taking cognizance of criminal contempt by the Supreme Court also. Section 15, however, is not a substantive provision conferring contempt}\]

\(^{79}\) Emphasis supplied.

\(^{80}\) Emphasis supplied.
jurisdiction. The judgment in Sukhdev Singh Sodhi vs. Chief Justice and Judges of the PEPSU High Court\(^81\) as regards the extent of "maximum punishment" which can be imposed upon a contemner must, therefore, be construed as dealing with the powers of the High Courts only and not of this Court in that behalf. In Supreme Court Bar Association vs. Union of India\(^82\) this Court expressed no final opinion on that question since that issue, strictly speaking, did not arise for decision in that case. The question regarding the restriction or limitation on the extent of punishment, which this Court may award while exercising its contempt jurisdiction, it was observed, may be decided in a proper case, when so raised. We may note that a three Judge Bench in SuoMotu Contempt Petition 301 of 2003 by judgment dated 19.12.2003 in re, Sri Pravakar Behera\(^83\) imposed cost of Rs.50,000/-.\(^84\)

Supreme Court in the case cited above did not decided the issue regarding maximum sentence that could be inflicted upon the contemner on the ground that this issue is not raised for decision in this case and left the matter to be decided in a proper case, when it be raised for the decision. It is submitted that this issue should have been decided in the present case as the same squarely fell for decision in view of the proposed order sentencing Zahira for one year, which is in excess of six month and costs of Rs. 50,000/- which is in excess of Rs. 2,000/-.. It is shocking to note that the Supreme Court without deciding the issue proceeded to impose

\(^81\) AIR 1954 SC 186.
\(^82\) AIR 1998 SC 1895.
\(^83\) 2003 (10) SCALE 1726.
\(^84\) Supra note 59 at Pp. 1377,1378 Para 19.
punishment far beyond the maximum provided under the Contempt of Courts, Act 1971. It is submitted that as the Parliament has full legislative competence to legislate on the issue and, in fact, the same has been legislated in the Contempt of Courts, Act 1971. The Act applies to Supreme Court as well. The Act nowhere excludes the Supreme Court from its preview. Any contrary view would enable the Supreme Court with the power to sentence a contemner upto infinite limits. A proposition, so absurd, needs to be avoided. The court’s reliance to a judgment in which it imposed a cost of Rs. 50,000/- to base its conclusion in awarding sentences beyond the maximum is plainly bogus. It is submitted that as the court had awarded costs without deciding the issues, no reliance can be placed thereon. Two wrongs cannot make a right. The issue deserves to be decided judicially. Moreover, the judge failed to make a distinction between ‘cost’ and ‘fine’. In the case cited, the court awarded costs and not fine.

Further, resting upon the sentencing part it is submitted that the court direction to Zahira to pay cost of Rs. 50,000/- and in case of default of payment within two months she shall suffer further imprisonment of one year suffers from impossibility to implement. It further directed that her assets including bank deposits shall remain attached for a period of three months. It is not understood how; such an order can be complied with by a contemner in such a situation. Moreover, order attaching her assets and further direction to the Income Tax Authorities to initiate proceedings requiring her to explain the sources of acquisition of various assets and the

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85 Emphasis supplied.
86 Emphasis supplied.
87 Emphasis supplied.
88 Emphasis supplied.
89 Emphasis supplied.
expenses met by her during the period from 1.1.2002 till today lacks any jurisdiction. It is doubtful as to whether Zahira was heard on this issue. It seems principles of natural justice were given a quite burial in the present case at every stage.

(iv) Rajendra Sail vs. Madhya Pradesh High Court Bar Association\textsuperscript{90}

In the murder trial of Shankar Guha Niyogi, a trade union leader, the accused were found guilty and sentenced to imprisonment for life except one who was awarded death sentence. On appeal, the High Court reversed the trial court judgment and acquitted the accused. A news report was published in newspaper 'Hitavada' on 4th July, 1998 under the caption 'Sail terms High Court decision in Niyogi murder case as rubbish'.\textsuperscript{91} That report was based on the speech delivered by appellant Rajendra Sail in a rally organized to commemorate the death of Shankar Guha Niyogi and interview given by him soon after the speech to appellant Ravi Pandey, the correspondent of the newspaper.

The news report termed the decision as rubbish and commented that a Judge who was on verge of retirement should not have been entrusted with the responsibility of dealing with such a crucial case. It was also alleged that the Judges who decided the matter have belittled the respect for judiciary by pronouncing biased and rubbish judgment. The news report also quoted Rajendra Sail as saying that he was a key witness in the murder trial and in spite of engaging a well-known advocate as public prosecutor nobody could have made much difference when the judges were already prejudiced and that he had substantial evidence to prove that one of

\textsuperscript{90} 2005 (4) SCALE 295.
\textsuperscript{91} Emphasis supplied.
the judges who decided the matter was bribed and that the judge possessed properties disproportionate to his income.

The aforesaid news item led to initiation of contempt action on an application filed by Madhya Pradesh High Court Bar Association.

The contemptuous portions of the transcript as extracted by the High court in its judgment contains statements which go to say that,

(a) Judgment of the murderers of Niyogi was rendered within a year and the murderers have been acquitted because they were moneyed and wealthy people.

(b) Judgment has been read by him, which is rubbish and is fit to be thrown in dust bin

(c) He would also get an enquiry held as regard to the conduct of one of the judges who delivered the judgment, as that particular judge is to retire within a month.

(d) A judge of High Court or Supreme Court who is about to retire should not be assigned any important case since two years before his retirement, as a judge who is to retire is for sale.

(e) Judiciary has no guts, no honesty and is not powerful enough to punish wealthy people.\(^\text{92}\)

The High Court found that there was 'inkling' in Rajendra Sail's speech about his thoughts regarding the judgment and the judges. The High Court also concluded that the comments made by him did not amount to

\(^{92}\) Supra note 90 at P 301 Para 7, Emphasis supplied.
fair and reasonable criticism of the judgment and that the contents of the news report scandalized the court.\textsuperscript{93}

The High Court, by the impugned judgment and order, refused to accept the apology tendered by the contemnors and held the appellants guilty of contempt of court and sentenced each of them to undergo simple imprisonment for six months. On appeal being preferred to Supreme Court by the contemner the sentence of six month was reduced to sentence of one week simple imprisonment but the finding of contempt was upheld.

The holding of the Supreme Court that “\textit{the speech that judgment is rubbish and deserves to be thrown in a dustbin cannot be said to be a fair criticism}”\textsuperscript{94} raises new issues as to selection of words in criticising a judgment. It may be noted that the comment may be outspoken, however, the same can hardly be contempt \textit{per se}.\textsuperscript{95} Such an intolerant attitude is destructive of democratic edifice as the same stifles with the rights of the citizenry as to criticism of judgments. It may be stated that under our constitutional scheme, there are hardly any effective mechanism of judicial accountability. Coupled with this lack of mechanism, such wielding of \textit{danda} of contempt by the courts is to place judiciary beyond the pale of any semblance of accountability. \textit{It is stated that citizens have fundamental right to free speech in criticising the judgments in a language, however stringent and trenchant it may be. One should not blur the boundaries between acts illegal and undesirable. In a democratic set up the public}

\textsuperscript{93} Supra note 90 at P. 301 Para 6,7& 8.
\textsuperscript{94} Emphasis supplied.
\textsuperscript{95} The oft-quoted exposition of the right of criticism by Lord Atkin in \textit{Ambard vs. Attorney General of Trinidad and Tobago} (1936) AC 322 at P. 335 (PC). Also the observation of Lord Denning in \textit{Regina vs. Commissioner of Police of the Metropolis, ex parte Blackburn} (1968) 2 WLR 1204.
have right and duty to comment upon judgments which affect them in a manner consistent with law. The language may be intemperate, outspoken, uncivil, uncouth and foul. It must be left for the public to choose the words in criticising a judgment. It is clear example of judicial highhandedness.

It is pertinent to notice here that in these days of judicial overreach and over activism where every matter of public importance is being examined by the courts; such an overbearing view of the court reflects that judges are still behaving as if they are judges of the Queen than the judges of Republic, Independent and Democratic India. Practically every issue of public life finds scrutiny of courts including policy and projects. If free discourse on such issues pending scrutiny before the courts is shut, that will be death of democracy.

The reason for passing such an order and judgment seems to be the effect of reach of media in present times of 24X7 channels which can be looked into the observation made by the court. To quote from the judgment:

*The reach of media, in present times of 24 hours channels, is to almost every nook and corner of the world. Further, large number of people believes as correct which appears in media, print or electronic. It is also necessary to always bear in mind that the judiciary is the last resort of redressal for resolution of disputes between State and subject, and high and low. The confidence of people in the institution of judiciary is necessary to be preserved at any cost. That is its main asset. Loss of*

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96 Emphasis supplied.
confidence in institution of judiciary would be end of Rule of law. Therefore, any act which has such tendency deserves to be firmly curbed. For rule of law and orderly society, a free responsible Press and independent judiciary are both indispensable. Both have to be, therefore, protected.\(^97\)

If that is so, it baffles one’s mind as to how the contemner can be meted out sentence whereas the media which took the matters to every nook and corner was let off after acceptance of their apologies.

It is submitted that the judgment on this court is self-contradictory. If the media is responsible for spreading the alleged contemptuous speech, as stated by the court and if that is the anxiety of the courts then logically the media (editor, reporter, printer and publisher) deserved to be dealt with sternly than the contemner. However, the contemner was picked out for handing out sentence and the media was exonerated after accepting their apologies.

Further the Supreme Court seemed to belittle the intelligence of the public by starting that such publications are likely to be believed:

Regarding the institution like judiciary which cannot go public, media can consider having an internal mechanism to prevent these types of publications. There can be an efficient and stringent mechanism to scrutinize the news reports pertaining to such institutions which because of the nature of their office cannot reply to publications which have tendency to bring disrespect and disrepute to those institutions. As

\(^97\) Supra note 90 at Pp. 307,308 Para 32.
already noted such publications are likely to be believed as true. Such a mechanism can be the answer to pleas like the one in the present case by Editor, Printer and Publisher and correspondent that either they did not know or it was done in a hurry and similar pleas and defences.

With respect, such intellectual arrogance reflected by the court smacks of gross contempt for public opinion which is not justified looking at the history of this great country replete with public movements in the freedom struggle and even thereafter in kicking out despotic government.

Further, the following obiter of the court has dangerous overtones suggesting a mechanism to check the publication:

The judgments of courts are public documents and can be commented upon, analysed and criticized, but it has to be in dignified manner without attributing motives. Before placing before public, whether on print or electronic media, all concerned have to see whether any such criticism has crossed the limits as aforesaid and if it has, then resist every temptation to make it public. In every case, it would be no answer to plead that publication, publisher, editor or other concerned did not know or it was done in haste. Some mechanism may have to be devised to check the publication which has the tendency to undermine the institution of judiciary.

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98 Emphasis supplied.
99 Supra note 90 at P. 308 Para 36.
100 Ibid at P. 308 Para 33.
It is further argued that the Supreme Court while accepting the apologies of the printer, editor, publisher etc. observed that in “future they should be more careful and responsible in exercise of their duty towards the public, in providing fair, accurate and impartial information.”\textsuperscript{101} To quote the judgment:

\begin{quote}
Reverting to the present case, we have noted hereinbefore the stand of Editor, Printer and Publisher and Chief Sub-editor including the fact that they had accepted their mistakes at the earliest and tendered unconditional apologies, Reporter has also tendered his unconditional apology pleading that as a trainee, he was not aware of the legal implications. Having regard to the facts and legal principles above noticed, their apologies deserve to be accepted with a caution that in future they should be more careful and responsible in exercise of their duty towards the public, in providing fair, accurate and impartial information. In this view, sentence awarded to them is set aside.\textsuperscript{102}
\end{quote}

With respect, the court seemed to have completely in error in the above holding. The basis for contempt proceedings was the alleged speech of the Rajendra Sail. He was found guilty of contempt by the court and sentenced therefore. The media was exonerated after acceptance of their apologies. One wonders where was the question of providing \textit{fair, accurate and impartial information}.\textsuperscript{103} If reports were not reported \textit{fairly, accurately}

\begin{footnotes}
\footnote{101}{Emphasis supplied.}\footnote{102}{Supra note 90 at P. 309 Para 40.}\footnote{103}{Emphasis supplied.}
\end{footnotes}
and impartially,\(^{104}\) then Sail was wrongly condemned. If that is not so, where was the occasion to deliver the homily as quoted above and the context thereof. The Press report matters everyday. How it can fulfil the benchmark set up by the court in providing information to the public in ‘fair, accurate and impartial’ manner. What is the machinery to achieve that accuracy? Who is going to decide that? Or, is the court suggesting pre-censorship?

It is submitted that currents and tides of life move at a very fast pace. The Press have to report daily within very limited time. Thus, the high benchmark of accuracy of judicial proceedings where the evidence is led, arguments heard and decision given thereafter is utterly inapplicable in these matters. Public itself would ignore any malicious attempt. Let us not treat the public intelligence with contempt.

The Supreme Court sentenced the contemner one week of simple imprisonment. It is respectfully submitted that by the mandate of section 13 (a) of the Contempt of Courts Act, 1971 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*\(^{105}\), or *tends substantially to interfere*\(^{106}\) with the due course of justice.

It is to be mentioned that the court framed no issue on this count and not even any finding recorded on this matter. The court only observed that the effect of speech was to lower the dignity and authority of the court and the speech was an affront to the majesty of justice.\(^{107}\) Thus, the judgment,

\(^{104}\) Emphasis supplied.

\(^{105}\) Emphasis supplied.

\(^{106}\) Emphasis supplied.

\(^{107}\) Supra note 90 at P. 311 Para 46.
to this extent, i.e., on the quantum of punishment, is *per in curium* and creates mischief and needs to be overruled. It is submitted that an uninformed individual opinion can hardly undermine the majesty of justice. It can easily be believed that the majesty of justice is not so weak as to be affronted by a casual speech.

Further, the court observed as follows:

*The news report was based on the speech delivered by Rajendra Sail and the subsequent interview given to the correspondent. The correspondent has asserted that the news report was based on the speech delivered by Rajendra Sail and the subsequent interview. Rajendra Sail has, however, denied having made the statement or having given interview to the correspondent. There are preponderant circumstances, ¹⁰⁸ which objectively compel us to conclude that the said statements were in fact made by Rajendra Sail and the news report has reported the same. Whether Rajendra Sail gave interview to the correspondent or not, the speech itself, seen in the light of the audio and video recording of the speech and the transcript of the speech speaks for itself and has the effect of lowering the dignity and authority of the court and an affront to the majesty of justice.¹⁰⁹*

The above observation made by the court is against the settled law as the contempt proceedings are *quasi criminal* in nature having penal consequences and thus the standard of proof requires in such case as

¹⁰⁸ Emphasis supplied.
¹⁰⁹ Supra note 90 at P. 311 Para 46.
required in criminal trial. By convicting the contemner by lowering the standard of proof on the basis of *preponderant circumstances* is totally bad in law and thus the judgment suffers from infirmities on this count. It is stated that the standard of proof required under civil proceedings cannot be brought for the trial of contempt proceedings and thus the court seems to have devised a procedure unknown, nay, contrary to settled law. Such a procedure is also against the proposition of *due process* enunciated in the *Maneka Gandhi Case*.110

(v)  *In re, Harijai Singh*111

When the Supreme Court was seized of, Writ Petition filed by the "Common Cause, a Registered Society" with regard to the alleged misuse and arbitrary exercise of discretionary power by the Petroleum and Natural Gas Ministry in relation to the allotment of retail outlets for Petroleum products and L.P.G. Dealership, from discretionary quota, a news item in box with a caption "Pumps for all" was published in the daily newspaper "The Sunday Tribune" dated March 10, 1996 which is reproduced hereunder:

"Pumps for all! Believe it or not, Petroleum Minister Satish Sharma has made 17 allotments of petrol pumps and gas agencies to relatives of Prime Minister Narashimha Rao out of his discretionary quota. Allotments in this category can only be made to members of the weaker sections of society and war widow....... Two children of Lok Sabha Speaker Shivraj Patil have also been favoured as have the two sons of a Senior

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110 Supra note 29.
111 AIR 1997 SC 73.
Judge of the Supreme Court. Interestingly, the Supreme Court had recently asked the government to supply a list of all discretionary allotments made by the Ministry. However, the minister has so far managed to withhold this crucial document. But is has hardly helped as the list has been leaked by Sharma's own men."112

A similar news item was also published in the Hindi Newspaper "Punjab Kesari" dated March 10, 1996 the English translation of which is as follows:

"Out of the short cut ways of becoming rich, one way is to obtain Petrol Pump or Gas Agency. But the power to allot the same lies with the Petroleum Minister. He has the discretionary powers to allot petrol pump or gas agencies in charity. This power of doing such charities has been entrusted in some special cases which include the people belonging to the poor, backward classes and the wives of those who were killed in the war. But all those persons to whom these agencies have been allotted by the Petroleum minister Capt. Satish Sharma turned out to be a scam in itself. ......You should not be astonished if you find the names of two sons of Mr. Ahmadi, Chief Justice of India in the list of the discretionary quota. Otherwise the names of such poor and backward persons are also available in this list".113

112 Supra note 111 at P.75 Para 1.
113 Ibid at P.76 Para 2.
The Supreme Court in the backdrop of aforesaid news items which contained an allegation that two sons of a senior judge of the Supreme Court and two sons of the Chief Justice of India were also favoured with the allotments of petrol outlets from the dictionary quota of Ministry issued a 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. Pursuant to the said notice, Secretary in the Ministry of Petroleum and Natural Gas, Government of India, filed his affidavit stating that since the allegation regarding allotment under the discretionary quota in favour of two sons of a senior judge of the Supreme Court are vague and in the absence of specific names, it is difficult to deal with the same. Thereafter again one more affidavits were filed specifying that the news items referred to above were patently false and, therefore, contempt proceedings were initiated against the Editors and Publishers of the daily "The Sunday Tribune", Chandigarh and "The Punjab Kesari" Jalandhar and issued notices to them to show cause why they may not be punished for the contempt of this Court.114

All the contemner tendered their unqualified apologies for the lapse they had committed. The Supreme Court, accepting their apologies made observation that the 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 the society. It is also considered necessary for the full development of the personality of the individual. It is said that without the freedom of Press truth cannot be attained. The freedom of Press is a part of the freedom of the speech and expression as envisaged in Article 19(1) (a) of the

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114 Supra note 111 at P.76 Para 3.
Constitution of India. Thus, the freedom of the Press is included in the fundamental right of freedom expression. The freedom of Press is regarded as "the mother of all other liberties’ in a democratic society.\textsuperscript{115}

The Supreme Court further referring to the role of Press observed that, it is thus needless to emphasise that a free and healthy press is indispensable to the functioning of true democracy. In a democratic set-up, there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State. It is their right to be kept informed about current political, social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider and form broad opinion about the same and the way in which they are being managed, tackled and administered by the Government and its functionaries. To achieve this objective the people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and view-points on such matters and issues and select their further course of action. The primary function, therefore, of the Press is to provide comprehensive and objective information of all aspects of the country’s political, social, economic and cultural life. It has an educative and mobilizing role to play. It plays an important role in moulding public opinion and can be an instrument of social change.\textsuperscript{116}

\textsuperscript{115} Supra note 111 at P.77 Para 8. The importance and the necessity of having a free press in a democratic Constitution like ours was immensely stressed in several landmark judgments of Supreme Court. The case of Indian Express Newspaper vs. Union of India 1985(1) SCR 641, is one of such judgments rendered by Venkataramiah, J. Again in another case of Indian Express Newspaper vs. Union of India AIR 1986 SC 872. A.P. Sen J described the right to freedom of the Press as a pillar of individual liberty which has been unfailingly guarded by the Courts.

\textsuperscript{116} Ibid at P. 78 Para 9.
The court observed further that the freedom of Press is not absolute, unlimited and unfettered at all items and in all circumstances as giving an unrestricted freedom of the speech and expression would amount to an uncontrolled license. If it were wholly free even from reasonable restraints it would lead to disorder and anarchy. The freedom is not to be misunderstood as to be a Press free to disregard its duty to be responsible. Infact, the element of responsibility must be present in the conscience of the journalists. In an organized society, the rights of the Press have to be recognised with its duties and responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded. The protective cover of Press freedom must not be thrown open for wrong doings. If a newspaper publishes what is improper, mischievously false or illegal and abuse its liberty it must be punished by Court of Law. The Editor of a Newspaper or a journal has a greater responsibility to guard against untruthful news and publications for the simple reason that his utterances have a far greater circulation and impact than the utterances of an individual and by reason of their appearing in print, they are likely to be believed by the ignorant. That being so, certain restrictions are essential even for preservation of the freedom of the Press itself. It is the duty of a true and responsible journalist to strive to inform the people with accurate and impartial presentation of news and their views after dispassionate evaluation of the facts and information received by them and to be published as news item. The presentation of the news should be truthful, objective and comprehensive without any false and distorted expression.117

It is submitted that Supreme Court in this case very rightly highlighted the role and responsibility of the Press in an independent

117 Supra note 111 at P. 78 Para 10.
democracy and laid down the rule in the proper perspective, but one aspect needs a proper analysis. Criminal contempt, in particular, ‘scandalising the court’ is strictly limited to the judges’ conduct in ‘court’. It means any hostile criticism of the judge as judge. Any personal attack upon him, unconnected with the office he holds, is dealt with under the ordinary rules of libel and slander. Thus, it is submitted that in such later cases, the courts should not invoke the contempt jurisdiction and rather leave it to the judge to pursue his remedies under the ordinary laws of the land.\textsuperscript{118}

There cannot be two different remedies in law for the defamed judge and the defamed minister. The law of contempt should not be used as a tool to vindicate the defamed judge.

The issuance of court notice on the contemners to ‘\textit{show cause why they may not be punished for the contempt of this Court}’ highlights that court had \textit{ex-parte} ascertained the veracity of the reports and on that basis already concluded the guilt of the contemners, the only thing left after issuing such show cause notice was the quantum of punishment which could have been inflicted upon the contemners. If this is so, the Supreme Court committed a serious error in not giving an opportunity to the contemners at the initial stage when the court was ascertaining the veracity of the news reports by issuing the notice to the Ministry. These proceedings were \textit{ex-parte}. It is another matter that the contemners also admitted the mistake. Hence, no prejudice was caused. Be that as it may, it however, remains that the court did not follow a semblance of natural

\textsuperscript{118} In European countries such as Germany, France, Belgium, Austria, Italy, the judges has to file a criminal complaint or institute an action for libel.
justice in straightway issuing a notice to the contemners requiring show cause as to why they may not be punished.

Such a procedure can hardly be termed as fair, more so, when the court initiates proceedings *suo motu*. Thus, the court did not follow the normal procedure in the present matter. In these matters firstly the notice is issued to the alleged contemners as to why contempt proceedings be not initiated and it is only when the court forms an opinion that a *prima facie* case for initiating proceedings for contempt is made out, the contemners should be called upon to show cause why they should not be punished.\(^{119}\)

The court in the instant case, proceeded with an assumption of guilt of the contemners and thus exposed itself to the charge of pre-conceived bias.

The observation of the court, while dealing with the plea of editors and publishers that the news items were based on the information supplied by a very senior journalist of long standing, raise another issue:

“This cannot be accepted as a valid excuse. It may be stated that at common law, absence of intention or knowledge about the correctness of the contents of the matter published (for examples in the present case, on the basis of information received from the journalist/reporter) will be of no avail for the editors and publishers for contempt of Court but for

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determining the quantum of punishment which may be awarded.”

It is submitted that reliance on common law by the court when the Parliament has enacted the Contempt of Courts, Act 1971 is highly unwarranted. Even in Britain, the contempt law has been codified and to this extent judges need not refer to, much less, rely upon the common law. It seems our judges are more willing to follow common law than the provisions of our Constitution and laws enacted by the Parliament. If intention or knowledge is irrelevant in these proceedings at common law and which our judges have accepted in the present case then by the same logic every hawker and vendor who sold and distributed the papers containing the alleged offending remarks should be put behind the bars. A proposition so horrendous and absurd thus needs to be discarded. After Maneka Gandhi’s judgment the fairness of the proceeding includes both substantive as well as procedural.

The direction of the court to the contemners to publish an apology in the newspaper and on the front page and in the box seems beyond its jurisdiction. The apology has to be tendered to the court and not to the public. Moreover, by issuing such direction the apology loses its value. Apology should be voluntary and not forced. And thus, the directions of the court, to this extent, are not supported by sound legal logic. Moreover, apologies should be accepted or rejected after the finding of guilt is recorded. The practice of the courts to deal with the apologies tendered by the contemners at the outset out of the fear (and certainly not respect)

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120 Supra note 111 at P. 79 Para 12.
121 Section 3 of the Contempt of Courts Act, 1971 which provides innocent distribution of matter as not contempt.
without examining and deciding the issue as to whether the contemners are in contempt of court is highly pernicious. Such approach virtually forecloses defence of the contemner. This practice must stop and contemner must be given an effective and meaningful opportunity to meet the charge.

(vi)  *Narmada Bachao Andolan vs. Union of India*\(^\text{122}\)

A petition was filed by the State of Gujarat bringing to the notice of the court how Narmada Bachao Andolan had been reacting to the interim order of the court permitting the increase of the height of the dam and about the threats of protest, public meetings and of undertaking satyagrahas on account of that order. Attention was also drawn on the article which appeared in magazine ‘*Outlook*’ and to some portions of a book titled ‘*The Greater Common Good*’ by Ms. Arundhati Roy.

After going through the article/book, the court was, *prima facie*, of the view that a deliberate attempt has been made to undermine the dignity of the court and to influence the course of justice.

Thereupon, the court came to an abrupt conclusion that the NBA and its leader Ms. Medha Patkar have knowingly made comments on pending proceedings and have *prima facie* disobeyed the interim injunctions issued by the court.

And thereafter, the court pointed out the *objectionable passages* in the book ‘*The Greater Common Good*’ by Ms. Arundhati Roy. Finding her comments *prima facie* a misrepresentation of the proceedings of a

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\(^{122}\) AIR 1999 SC 3345.
pending matter in which she was not a party, the court proceeded to censor her by holding that while hypersensitivity and peevishness have no place in judicial proceedings, vicious stultification and vulgar debunking cannot be permitted to pollute the stream of justice. Indeed under our Constitution there are positive values like right to life, freedom of speech and expression, but freedom of speech and expression does not include freedom of distort orders of the court and present incomplete and a one sided picture deliberately, which has the tendency to scandalise the court.\textsuperscript{123}

Further, the court said that under the cover of freedom of speech and expression no party can be given a licence to misrepresent the proceedings and orders of the court and deliberately paint an absolutely wrong and incomplete picture which has the tendency to scandalise the court and bring it into disrepute or ridicule. The right of criticising in good faith in private or public, a judgment of the court cannot be exercised, with malice or by attempting to impair the administration of justice. Indeed, freedom of speech and expression is ‘life blood of democracy’ but this freedom is subject to certain qualifications. An offence of scandalising the court \textit{per se} is one such qualification, since that offence exists to protect the administration of justice and is reasonably justified and necessary in a democratic society. It is not only an offence under the Contempt of Courts Act but is \textit{sui generis}. Courts are not unduly sensitive to fair comment or even outspoken comments being made regarding their judgments and orders made objectively, fairly and without malice, but no one can be permitted to distort orders of the court and deliberately give a slant to its

\textsuperscript{123} Supra note 122 at Pp. 3346,3347 Para 6 to 8.
proceedings, which have the tendency to scandalise the court or bring it to ridicule, in the larger interest of protecting administration of justice.\textsuperscript{124}

The court after giving the matter ‘thoughtful consideration’ did not initiate contempt proceedings in the larger interest of the issues pending before it, viz., the issue of Resettlement and Rehabilitation of the oustees.

At the outset, it is submitted that Ms. Arundhati Roy was not served with any notice and thus the observation \textit{qua} her are \textit{ex-parte}. Thus the court animadverted her through such dubious procedure whereby principles of natural justice were given a quite burial. It is settled law that before censoring, admonishing or otherwise animadverting a person, the person affected should be given a chance to defend and explain one’s conduct. However, the Supreme Court in its supreme arrogance has formed an \textit{ex-parte} opinion and virtually made comments against a citizen which are highly obnoxious and uncalled for. If a notice had been given to her, she could have defended, explained or admitted her conduct and acts. That, however, was never done. It is also beyond one’s comprehension as to how the court came to a \textit{prima facie} conclusion of her comments as misrepresentation of proceedings of the court in the absence of a single specific instance cited in this behalf. Citizen can do well without such magnanimity of the court.

S.P. Bharucha J. in his separate and concurring judgment while disapproving the statement complained of, was also not inclined to take action in contempt saying “because the court’s shoulder are broad enough

\begin{footnote}
\textsuperscript{124} Supra note 122.
\end{footnote}
to shrug off their comments and because the focus should not shift from the Resettlement and Rehabilitation of the oustees.”

Such judicial benevolence means nothing in the light of the infirmities cited above.

(vii)  *Surya Prakash Khatri vs. Madhu Trehan*¹²⁶

An article was published, in a journal named "Wah India" under the caption ‘Judged Out’, scornfully denigrating Judges putting question marks on their integrity and competence. Contempt petition were filed before Delhi High Court alleging that in the name of freedom of Press and fair journalism, borders of decency and respect for the judiciary have been overstepped and a distorted version has been presented which has lowered the image of judiciary and therefore attracts stringent action. In the article in question, certain statements have been made which tend to cause aspersions on the integrity and capability of Hon'ble Judges of this Court. It is highlighted that without any material to support or even proper verification of the statements purported to have been made by some members of the Bar, the article has been published which tends to show members of judiciary in a very poor light and it would result in consumer of justice losing faith on the members of judiciary and corrode credibility of the institution. It is pointed out that the article is full of mis-statements. The lack of accuracy and truth, it is pointed out, is apparent from the fact that fifty "senior counsel" have been described as one-tenth of the total strength of the Delhi High Court Bar. As to who the so-called senior lawyers are have not been indicated and how they have been described as

¹²⁵ Supra note 122 at P. 3348.
"senior lawyers" is shrouded in mystery. It is emphasized that even if any lawyer(s) gave any statement of expressed his/her opinion; the same cannot be stated to be view of the Bar.

Unqualified apology has been tendered by the Editor-in-chief and other respondents who are Printer, Publisher and Editor, Creative Director, Sub Editor and Special Correspondent of the magazine by filing affidavits. It has been indicated in the affidavits of apology that there was no intention to show slightest disrespect to the members of the judiciary; that it was now meant to cause any aspersion on the institution or the Hon'ble Judges and it was then not realised that it would be regarded as derogatory to the judiciary, but that it is not realised to be a serious error on their part and therefore unconditional apology has been tendered.

The full Bench of High Court through majority accepted the apologies and directed the contemnners to publish the apology within two weeks in five national dailies. However, two judges who were in minority refused to accept the apologies.

It is submitted that judgment makes copious reference to the case law on the subject, however the offending article was not quoted therein thus making it difficult to analyse the same in order to decide whether the same amounts to contempt of court, nor a finding has been arrived at as to how the article has constituted contempt of court. It seems the courts are hypersensitive to any criticism of their working and are not willing to introspect.127

127 “The new trend in England is to overlook even intemperate criticism….. We must, worthy of our republic and the glory of the Preamble, expand people’s freedom and ignore barricading
It is appropriate to quote the observation made in this case by the court to the following effect:

“There can be no quarrel with the proposition that anyone who intends to tarnish the image of judiciary should not be allowed to go unpunished. By attacking the reputation of Judges, the ultimate victim is the institution. The day the consumer of justice loss faith in the institution that would be the darkest day for mankind. The importance of judiciary needs no reiteration. It was fairly accepted at the Bar that in the past whenever there was any attack on the Press, they have rushed to the Courts and have described the judiciary as their saviour. It is strange that the very institution which has come to its rescue, has been attacked thereby corroding its credibility. A messiah suddenly finds himself treated as a pariah. A common man may start losing confidence in judiciary by saying that the judgment delivered in his case is not above board, and "condonable limit" of publication would be exceeded. Ultimate sufferer would be the society.”

It is strange how the credibility of the institution can be corroded by an article. If the article is true and reflects some weakness of the system, the same will help the courts in correcting themselves. If it is false then it can hardly affect a robust system. It appears the judiciary has some inherent weakness in as much as it stands easily scandalised by any publication. Moreover, the courts even do not bother in these proceedings

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128 Supra note 126 at 679 Para 25.
to ascertain the veracity of the contents of the publication. An institution with such fossilised approach only runs the risk of being marginalised in the public eyes. Moreover, the suggestion of the court that the Press have rushed to the courts whenever there was any attack on it and therefore the Press should have refrained from attacking the judiciary is highly objectionable. The courts are only discharging their duty in protecting the rights of the Press and not doing any favour, hence, courts cannot demand any favour in lieu thereof.

In his minority judgment, Anil Dev Singh J. observed that I have not been able to persuade myself to accept the apologies of the contemners. He further held that the publication is a scurrilous attack on the credibility and competence of the judges of this Court. It undermines the majesty, respect and dignity of the court and tends to create an apprehension in the minds of people regarding the integrity and ability of the judges. The publication also tends to erode the authority of the court. It, therefore, clearly constitutes contempt of the court. The publication in question scandalises the judges. It attempts to rob the High Court of its honour and prestige and thus tends to shatter the faith and confidence of the public in the judiciary and the administration of justice and majesty of law. The contemners cannot be allowed to tamper with the stream of justice which must flow pure and unhindered. Therefore, the conduct of the contemners cannot be ignored. At this stage it may be pointed out that the power of contempt is not being exercised to vindicate the honour of the individual judges who are attacked or scandalised, but is being exercised to uphold the majesty of law.
He further observed: the contemners have acted as if they are above law. They cannot be allowed to commit contempt of court in the garb of criticism. In case such a trend is allowed to grow, the respect and authority commanded by the courts of law, which is essential for dispensation of justice and smooth functioning of the courts, will suffer. Such publications have the lethal effect of discrediting the courts and destabilising the system of administration of justice thereby adversely affecting the rights and freedoms enshrined in the Constitution. If the judiciary is to protect and promote rule of law and resolve disputes effectively, the dignity and authority of the courts must be upheld otherwise the rule of law will perish giving way to the rule of the jungle. The duties and functions of the court are of a very delicate nature. When parties and their counsel seek the intervention of a court for resolution of a dispute, each side may think it has a cast iron case. But both the sides cannot win. The side which finds the decision to be against its interests cannot be allowed to ascribe motives to the court. Disgruntled elements cannot be permitted to tarnish the image of the judiciary. In order to protect the rule of law we cannot allow the trust and confidence of people in the judiciary to be forfeited in this manner.\textsuperscript{129}

It is submitted that as the ‘offending’ article was not even quoted, much less analysed in the judgment (as in the case normally in such matter) and therefore it is difficult to hazard any guess as to how the same amounted to contempt of court. Such practice deprives the readers from making an intelligent and informed opinion about the article and the judgment. Rather the public is left with the \textit{ipse dixits} of the court as to finding of guilt. Further it may be debatable whether the impugned article conforms to the standard of good journalism. There is a feeling that this

\textsuperscript{129} Supra note 126 at P.682 Para 6.
question is best left to be settled within the media, or between the media and the public, and is not a matter to be decided by the judiciary. In plural society, the media are bound to reflect a plurality of journalistic standard, or even the lack of them. Can the courts use their contempt power to teach journalist professional ethics? The judgment fails to show how the impugned article interferes with or is likely to or tends to interfere with the administration of justice or lowers the court’s authority. The worrying aspect of this judgment is that it has sought to legitimise the practise of extracting ‘apologies’ for alleged contempt of court rather involuntarily by the contemners. No doubt, the contemners in this case offered ‘unqualified’ and ‘unconditional’ apologies before the hearings. However, even such an apology offered at the outset was found to be not genuine by the dissenting judges and this too when the law permits even conditional and qualified apologies. It is stated that such a hyper sensitive approach borders on sheer arrogance and reflects utter lack of knowledge of legal principles.

The judgment of the court is further assailed on the ground that court’s order to publish the apologies in five national dailies is nothing but heightened anarchy. It is submitted that the apology has to be tendered to the court and not to the public. Moreover, the interim directions given in the case to the Delhi Police to seize and confiscate copies of particular issue of the journal from wherever they were being sold betray sheer judicial terror. Such a direction is without any jurisdiction in these matters. Also there was an order from the court banning the media from reporting and commenting on the proceedings in the case. The same was withdrawn after the media protested. Such gagging attitude is truly galling. The judgment highlights the need for some sort of institutional mechanism to
rate the conduct of judges. Judges themselves should take appraisal from the lawyers.

(viii) All India Non- SC/ST Employees Association (Rly.) vs. V.K. Agarwal\textsuperscript{130}

In this case, Supreme Court dropped the contempt proceedings against the contemner after perusing the affidavit. However, Rs. 10,000/- was imposed as cost for making incorrect statement.

It is submitted that if the contempt proceedings were dropped, then what is the rational to impose punitive costs far in excess of maximum statutory limit. By doing so, the court at one side has apparently reflected its magnanimity and at other side overreached the statutory provisions.

(ix) In the matter of, Anil Panjwani\textsuperscript{131}

In this case, the Supreme Court while dealing with the question as to right of contemner to participate in the proceedings till the contempt is purged observed that the rule as to denying hearing or withholding right of participation in the proceedings to the contemner may briefly be summed up and so stated. It lies within the discretion of the court to tell the contemner charged with having committed contempt of court that he will not be heard and would not be allowed participation in the court proceedings unless the contempt is purged. This is a flexible rule of practice and not a rigid rule of law. The discretion shall be guided and governed by the facts and circumstances of a given case. Where the court may form an opinion that the contemner is persisting in his behaviour and

\textsuperscript{130} 2003 (6) SCALE 683.
\textsuperscript{131} AIR 2003 SC 2177.
The initiation of proceedings in contempt has had no deterrent or reformatory effect on him and/or if the disobedience by the contemner is such that so long as it continues it impedes the course of justice and/or renders it impossible for the court to enforce its orders in respect of him, the court would be justified in withholding access to court or participation in the proceedings from the contemner. On the other hand, the court may form an opinion that the contempt is not so gross as to invite an extreme step as above, or where the interests of justice would be better served by concluding the main proceedings instead of diverting to and giving priority to hearing in contempt proceedings the court may proceed to hear both the matters simultaneously or independently of each other or in such order as it may deem proper.\textsuperscript{132}

This of course, is a small step in the right direction. However, it is stated that contempt action should be separately dealt with and thereafter the contemner may be dealt with in accordance with law without withholding access to court from the contemner.

The right to participation in the judicial proceeding running against him is principle enshrined in our Constitution and any denial of such thing till the contempt is purged is nothing but double jeopardy of the contemner. Such practise must be avoided.

\textit{(x) ABL International Ltd. vs. Export Credit Guarantee Corpn. Ltd.}\textsuperscript{133}

\textsuperscript{132} Supra note 131 at P. 2180 Para 9.
\textsuperscript{133} (2005) 10 SCC 495.
In this case, the Supreme Court observed that mere fact that the
contemnor in a contempt petition has some explanation to offer, does not
absolve him of the liability under the Contempt of Courts Act, 1971.

It is submitted that such a peremptory approach is highly
unwarranted and smacks of utter intolerance. It is said that contemners
must be given a full and effective opportunity to meet the charge of
contempt and must not be driven to submit an unqualified and
unconditional apology right at the outset on mere issue of notice for
initiating contempt proceedings. Such an approach does not help the
judiciary in maintaining the majesty of law or its own perceived dignity. It
must be mentioned that such an overbearing attitude of the court does least
to protect their dignity.

(xi) Court on its own Motion vs. M.K. Tayal

The facts of the case was that on 21.5.2007, a Senior Advocate of
Delhi High Court, Sh. R.K. Anand, placed before court a copy of the
Newspaper "Mid Day" dated 18.5.2007 (Friday) in which he alleged that a
scandalous article maligning the former Chief Justice of India and tending
to lower the image of the judiciary in the eyes of common man has been
published. The Newspaper was placed before the court and on-going
through the news items, the court were prima facie of the view that the
publication did tend to lower the image of the judiciary in the eyes of
public. Consequently, the court issued show cause notice to Sh. M.K.
Tayal, Editor and its Printer and Publisher. On 25.5.2007, Sh. R.K. Anand,

\[134\] 2007(98) DRJ 41.

\[135\] However the same senior advocate was convicted for contempt of court in R.K.Anand vs. Registrar, Delhi High Court (2009) 8 SCC 106.for influencing the witness in BMW case.
learned Senior Advocate filed yet another copy of the Newspaper "Mid Day" dated 19.5.2007 which carried a cartoon by Mr. Md. Irfaan Khan, Cartoonist. The cartoon depicted the former Chief Justice of India in his robes holding a bag with currency flowing out. It also depicted a man sitting on the side walk saying "Help! The mall is in your court" which the court thought was also aimed at lowering the image of the judiciary. Consequently, show cause notice was issued to cartoonist also.

The contemners filed their affidavits in which they took up a defence that sons of the former Chief Justice of India have benefited by orders made by the Supreme Court and that they were operating their businesses from the official residence of Justice Y.K. Sabharwal. They claimed that whatever has been stated in the publications is the truth which, according to them, is a permissible defence.

The contemners also contended that the attack in the Press was focused on the Ex-Chief Justice of India at a time when he has ceased to be in office and therefore, cannot be termed as denigrating the authority of the Supreme Court. It was also contended that propriety demanded that the Chief Justice of India ought not to have been on the Bench which passed orders concerning sealing of properties where non-conforming activities were going on and further that it is the duty of a journalist to expose the corruption in the judiciary at the highest level. He also contends that the material on record is ample proof of the fact that the sons of the former Chief Justice of India were beneficiaries of sealing of commercial premises. Contemner further contends that he is not challenging the correctness of the order of the Supreme Court but the order of former Chief Justice of India, who was presiding member of the Bench and who by his
impropriety passed orders sealing premises in which commercial activities were being conducted in Delhi in order to benefit his sons' business.

The High Court finds them guilty of contempt and held as follows:

“We have carefully gone through the articles published as also the cartoon. We find the manner in which the entire incidence has been projected appears as if the Supreme Court permitted itself to be led into fulfilling an ulterior motive of one of its members. The nature of the revelations and the context, in which they appear, though purporting to single out former Chief Justice of India, tarnishes the image of the Supreme Court. It tends to erode the confidence of the general public in the institution itself. The Supreme Court sits in divisions and every order is of a Bench. By imputing motive to its presiding member automatically sends a signal that the other members were dummies or were party to fulfil the ulterior design. This we find most disturbing. There is sufficient case law\textsuperscript{136} on the subject and we need hardly add any further material to it. The publications in the garb of scandalizing a retired Chief Justice of India have, in fact, attacked the very institution which, according to us, is nothing short of contempt. We, therefore, hold Mr. M.K. Tayal, Editor, Publisher, Resident Editor and the Cartoonist, guilty of contempt of court.”

\textsuperscript{136} The High Court cited the Supreme Court judgment of \textit{Haridas Das vs. Smt. Usha Rani Banik and Ors.} Civil Appeal No. 7948 of 2004 which has clearly laid down the 'Laxmanrekha' for publication and the High Court in the present case feels that the publications have crossed that delimited 'Laxmanrekha'.
On a later date, the contemners were sentenced to four months of imprisonment.

At the outset, the very title of the case *Court on its own Motion vs. M.K. Tayal* brings out the inherent incongruity and oddity of this anachronistic jurisdiction of the courts. The *lis* is between the court and the citizens and travesty of the proceeding is that it is decided by the court. (a party itself)

The judgement of the Delhi High Court in this case is without jurisdiction in as much as the contempt powers of a High Court can be traced to Article 215 of the Constitution which states that every High 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. Section 11 of the Contempt of Courts Act, 1971 specifically says that a High Court shall have jurisdiction to *inquire into or try a contempt of itself or any court subordinate to it*. And the judgment left no room for any doubt as to whose majesty and dignity it was upholding when it observed as stated earlier, that the nature of revelations and context in which they appear tarnishes the image of the *Supreme Court*. Thus, the judgment is *coram non judice*\(^\text{137}\) as by no stretch of imagination the Supreme Court of India is said to be a court subordinated to Delhi High Court. Thus, the judgment is a nullity on this ground alone.

Even otherwise, the judgment is *per incurium*\(^\text{138}\) in not giving effect to the mandatory statutory requirements. Section 13 (a) of the Contempt of

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\(^{137}\) Before a judge or court that is not the proper one or that cannot take legal cognizance of matter.

\(^{138}\) A judicial decision wrongly decided because the judges were ill informed about the applicable law.
Courts Act, 1971 states that no court shall impose sentences under the Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interfere or tends substantially to interfere with the due course of justice. Thus, in contempt jurisdiction fine is the rule and sentence is an exception in case of substantial interference. In the present judgment there was no allusion to this aspect much less a clear finding of substantial interference. Thus the judgment is clearly in ignorance of statutory bar on the quantum of punishment.

The court made another error when it fell to recognise the amendment made in section 13 of the Contempt of Courts Act, 1971 in 2006, whereby the Act permits justification by truth as a valid defence in any proceeding for contempt of court. The amended section 13 of the Act states in clause (b) thereof that the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is \textit{bona fide}. It is submitted that the contemners, specifically took this plea, however the court failed to consider the plea and thus committed a gross contempt of Parliament in ignoring the mandate of the legislature and subverted the motto embossed on the national emblem, viz., ‘satyamevjayate’ or the truth always triumphs which ironically keeps hanging just over the head of every judge of the High Court constantly reminding them of the very existence and ultimate goal of any judicial process. Thus, the judgment seems to in defiance of law which was consciously dictated.

The court observation that imputing motive to presiding member of the Supreme Court sends a signal that the other members were dummies or
were party to fulfil the ulterior design. It is submitted that if that logic be accepted then it becomes near to impossible for any citizen to expose the wrong doings of a judge in a Bench unless one has a case and can be able to prove that all of them are corrupt or that all of them have a conflict of interest and all of them have a trail of evidence in their wake. Even this is not enough. One must also be able to state one’s case without casting any aspersion on the court.

(xii) R.K. Anand vs. Registrar, Delhi High Court\textsuperscript{139}

The present is a fall out from a criminal trial arising from a hit and run accident on a cold winter morning in Delhi in which a car travelling at reckless speed crashed through a police check post and crushed to death six people, including three policemen. Facing the trial, as the main accused, was a young person called Sanjeev Nanda coming from a very wealthy business family. According to the prosecution, the accident was caused by Sanjeev Nanda who, in an inebriated state, was driving a black BMW car at very high speed. The trial, commonly called as the BMW case, was meandering endlessly even after eight years of the accident and in the year 2007, it was not proceeding very satisfactorily at all from the point of view of the prosecution. The status of the main accused coupled with the flip flop of the prosecution witnesses evoked considerable media attention and public interest. It was in this background that a well-known English language news channel called New Delhi Television (NDTV) telecast a programme on May 30, 2007 in which one Sunil Kulkarni was shown meeting with I.U. Khan, the Special Public Prosecutor and R.K. Anand, the Senior Defence Counsel (and two others) and negotiating for his sell out in

\textsuperscript{139} 2009(8) SCC 106: 2009 (10) SCALE 164.
favour of the defence for a very high price. Kulkarni was at one time considered the most valuable witness for the prosecution but afterwards, at an early stage in the trial, he was dropped by the prosecution as one of its witnesses. Nearly eight years later, the trial court had summoned him to appear and give his testimony as a court witness. The telecast came a few weeks after the court order and even as his evidence in the trial was going on. According to NDTV, the programme was based on a clandestine operation carried out by means of a concealed camera with Kulkarni acting as the mole. What appeared in the telecast was outrageous and tended to confirm the cynical but widely held belief that in this country the rich and the mighty enjoyed some kind of corrupt and extra-constitutional immunity that put them beyond the reach of the criminal justice system. Shocked by the programme the Delhi High Court *suo moto* initiated a proceeding (Writ Petition (Criminal) No.796 of 2007). It called for from the news channel all the materials on which the telecast was based and after examining those materials issued show cause notices to R.K. Anand, I.U. Khan and Bhagwan Sharma, an associate advocate with R.K. Anand why they should not be convicted and punished for committing criminal contempt of court as defined under section 2 (c) of the Contempt of Courts Act.\(^{140}\)

In response to the notice R.K. Anand, instead of filing a show cause, first filed a petition asking one of the judges on the Bench, namely, Manmohan Sarin J. to recuse himself from the hearing of the matter. The recusal petition and the review petition arising from it were rejected by the High Court.

\(^{140}\) Supra note 139 Para 1
On considering their show cause and after hearing the parties the High Court expressed its displeasure over the role of Bhagwan Sharma but acquitted him of the charge of contempt of court. As regards R.K. Anand and I.U. Khan, however, the High Court found and held that their acts squarely fell within the definition of contempt under clauses (ii) & (iii) of section 2(c) of the Contempt of Courts Act. It, accordingly, held them guilty of committing contempt of Court prohibiting them, by way of punishment, from appearing in the Delhi High Court and the courts subordinate to it for a period of four months from the date of the judgment. It, however, left them free to carry on their other professional work, e. g., ‘consultations, advises, conferences, opinion etc.’ It also held that R.K. Anand and I.U. Khan had forfeited their right to be designated as Senior Advocates and recommended to the Full Court to divest them of the honour. In addition to this the High Court also sentenced them to fine of rupees two thousand each.\textsuperscript{141}

Against this background two appeals were filed before the Supreme Court. Thus, the two appeals gave rise to the following main questions:\textsuperscript{142}

1. Whether the conviction of the two appellants for committing criminal contempt of court is justified and sustainable?
2. Whether the procedure adopted by the High Court in the contempt proceedings was fair and reasonable, causing no prejudice to the two appellants?
3. Whether it was open to the High Court to prohibit the appellants from appearing before the High Court and the

\textsuperscript{141} Supra note 139.
\textsuperscript{142} Ibid Para 59.
courts sub-ordinate to it for a specified period as one of the punishments for criminal contempt of court?

4. Whether in the facts and circumstances of the case the punishments awarded to the appellants can be said to be adequate and commensurate to their misdeeds?

The Supreme Court held *inter alia* in the following words after considering the submission made by the parties:

1. The appeal filed by I.U. Khan is allowed and his conviction for criminal contempt is set aside. The period of four month's prohibition from appearing in Delhi High Court and the courts sub-ordinate to it is already over. The punishment of fine given to him by the High Court is set aside. The Full Court of the Delhi High Court may still consider whether or not to continue the honour of Senior Advocate conferred on him in light of the findings recorded in this judgment.

2. The appeal of R.K. Anand is dismissed subject to the notice of enhancement of punishment issued to him. He is allowed eight weeks’ time from the date of service of notice for filing his show-cause.¹⁴³

The judgment of the Supreme Court in this case is assailed on the following point:

(a) *The Standard of Proof*

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¹⁴³ Supra note 139 Para 206.
One of the striking issues in the judgment by the Supreme Court is the manner in which the Court decided whether the charge of criminal contempt had been established or not. The standard applied was not different from the precedent case law. The Court spelt it out clearly that there is a difference between the manner of proof in a contempt proceedings and that in a criminal trial. While the standard of proof in both was said to be the same, namely, that of proving a fact “beyond reasonable doubt”, the manner of proof in both was contended to be different. The settled position of law was noted to be that proceeding of contempt of court was *sui generis*. The provisions of the Criminal Procedure Code and the Indian Evidence Act were not applicable in such a proceeding. Instead, the principles of natural justice was said to apply. It is submitted that, the established position of law is that the standards that need to be met in a contempt of court proceeding are those of fairness and objectivity, absence of prejudice to the person facing the charge of contempt and provision of the opportunity to the person to defend himself. R.K. Anand contended that the audio and the video recording on the basis of which the NDTV telecast was based and that was produced before the High Court was done by Kulkarni and it was he who was the maker of those materials. The Court never got Kulkarni brought before it either for the formal proof of the electronic materials or for cross-examination by the contemnor. The finding of the High Court was thus *based on materials of which neither the authenticity was proved nor the veracity of which was tested by cross-examination*. He further submitted that the affidavit of the NDTV reporter (Poonam Agarwal) doesn't cure this basic flaw in the proceedings. The recordings were not done by the TV channel's reporter her participation in the process was only to the extent that she `wired' Kulkarni and received
from him the recorded materials. What she received from Kulkarni was also not identified, much less formally proved before the High Court.

R.K. Anand’s request to cross examine Poonam Agarwal was turned down by the High Court, the reasoning behind denial of the opportunity to cross examine was that what had transpired between the parties were already there on the microchips and the CDs. It was stated that no statement by Poonam Agarwal would change this state of affairs. But the point to be noted is that it was the reliability of these CDs that was being questioned by R.K. Anand.

The Supreme Court held on this issue that after careful consideration of the materials on record we don’t have the slightest doubt that the authenticity and integrity of the sting recordings was never disputed or doubted by R.K. Anand. In the facts and circumstances of the case, therefore, there was no requirement of any formal proof of the sting recordings. Further, so far as R.K. Anand is concerned there was no violation of the principles of natural justice inasmuch as he was given copies of all the sting recordings along with their transcripts. He was fully made aware of the charge against him. He was given fullest opportunity to defend himself and to explain his conduct as appearing from the sting recordings. The sting recordings were rightly made the basis of conviction and the irresistible conclusion is that the conviction of R.K. Anand for contempt of court is proper legal and valid calling for no interference.144

The court further held that Lapses in regard to CD have no effect on R.K. Anand's case. The court observed:

144 Supra note 139 Para 95.
“We have recounted here some of the noticeable lapses committed by NDTV in the proceedings that were overlooked by the High Court. Having regard to seriousness of the proceeding we should have wished that it was free from such lapses. But it needs to be made absolutely clear that the irregularities pointed out above were in regard to the first sting concerning I.U. Khan. These in no way affect R.K. Anand or alter his position. The discussions and findings recorded above in respect of R.K. Anand thus remains completely unaffected by the mistakes pointed out here.”

Again, IU Khan was let off the hook on the ground that the tape, containing his recording, submitted to the Court was incomplete and hence its veracity was not adequately established. However, it doesn’t seem that the veracity of R.K. Anand’s sting tape was proved either. Attempts to do so were struck down by the Court. For instance, the request by R.K. Anand to send the CDs to the Central Forensic Science Laboratory to determine whether it had been tampered was turned down. So it seems that different standards were applied to judge I.U. Khan and R.K. Anand.

The judgment made by the Supreme Court states that R.K. Anand did not deny the recording, which was broadcasted by the news channel, in the first instance. This fact seems to have weighed against him, especially since, as is mentioned in the judgment, that I.U. Khan had, right at the beginning, claimed that the recording had been doctored. However, the fact of the matter is that the judges should not have referred to statements made by the persons, in interviews to television channels, in the first place. Such observations do not have any place in the judgment. These faux pas which

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145 Supra note 139 Para 102.
have been pointed out would not have taken place at all if the Criminal Procedure Code and the Indian Evidence Act procedural standards had been followed. There is no overarching reason as to why a contempt of court charge should be made subject to a different manner of proof as opposed to a criminal trial. This is especially since it is in the same genre as a criminal proceeding. The defence that, nevertheless, a “beyond reasonable” standard is being applied doesn’t hold well either. The problem is that by adopting a different manner of proving contempt of court charges, the courts seem to be ready to come to a conclusion that the “beyond reasonable doubt” standard has been satisfied more readily than in the case of criminal trials. Then the standard of proof in criminal contempt of court charges doesn’t continue to be the rigorous “beyond reasonable doubt” standard as the courts are claiming it to be. Thus, the court in this case is effectively bringing in a new manner of proving contempt of court charges.

(b) Professional misconduct vis à vis Criminal Contempt of Court

The Supreme Court observed, on a careful consideration of evidence it came to the conclusion that although I.U. Khan’s conduct was inappropriate for a lawyer in general and a prosecutor in particular. But there was a wide gap between professional misconduct and criminal contempt of court. The Supreme Court felt that I.U. Khan’s behaviour only amounted to criminal contempt of court. A major factor that influenced the court was that the transcript of the conversation between Khan and Kulkarni was incomplete and it was difficult to ascertain with certainty that “Bade Sahab” was a reference to Anand. The Court stated that what needs

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146 Supra note 139 Para 116.
147 Ibid Para 118.
to be given weightage was what I.U. Khan understood by the reference and not what Kulkarni meant by it. Since it was difficult to determine this, Court acquitted Khan but gave the final discretion to the Full Court of the Delhi High Court on the question of whether or not to continue the honour of Senior Advocate conferred on him.

Further, it is pertinent to mention here that while, Anand was given a period of eight weeks from the date of service of notice for filing his show-cause by the Supreme Court as to why punishment awarded to him should not be enhanced, whereas Khan’s case was directed back to the Delhi High Court for consideration and he had no prior notice as to the action of the Supreme Court. It is submitted that after, the decision of In re Vinay Mishra, the Supreme Court was vesting in itself the power to try cases of professional misconduct by advocates which was actually vested in the Bar Council as per section 35 of the Advocates Act, 1961. But this decision was overruled in Supreme Court Bar Association v. Union of India where it was held that the Supreme Court must not exceed its jurisdiction and it must act with restraint while exercising its powers under Article 142 of the Constitution. Thus, it was unacceptable for the Court to "take over" the role of the statutory bodies or other organs of the State and "perform" their functions. While the Bar Council is considering cases relating to professional misconduct, follows a fixed procedure where a Disciplinary Committee is set up, the advocate is allowed to defend himself and most importantly an appeal to the decision of the Committee lies with the Supreme Court. This procedure as contrasted with the contempt proceedings seems much fairer as the advocate is allowed one appeal. It is

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149 Supra note 39
surprising that Criminal Contempt of Court which is a graver offence does not have either a fixed procedure or a process of appeal. With reference to this case in hand, if IU Khan is dissatisfied with the decision of the Delhi High Court, then it is highly unlikely that his appeal will be successful since the Supreme Court has already prejudged the matter. Wouldn’t this amount to unfairness?

(c) Public Prosecutors vs. other lawyers

Another question that arises from this case is whether the court expects a higher standard of behaviour from the Public Prosecutors as opposed to other lawyers? If yes, is the court correct in its approach? An interesting thing to note is that it seemed to have influenced the Court that in the interview immediately after the sting operation was aired, Khan said that the footage had been doctored while Anand had not questioned the credibility of the footage itself and gone on to defend himself. This brings in the issue of trial by media and how judges may be affected by it.

(d) On the Issue of Recusal

On the application of R.K. Anand asking Sarin J. one of the member of the Bench of High Court to recuse himself was disallowed. The Supreme Court observed that it agrees with the stand that R.K. Anand’s petition is a brazen attempt to browbeat the High Court and while condemning the action deeply, it asks R.K. Anand to show cause why his punishment must not be increased. The Supreme Court emphasizes that R.K. Anand has not shown any regret for his gross misdemeanour and the petition is an indication of him defying the High court’s authority. One can connect this stand of the Supreme Court with their statements earlier as to how a
motivated application for recusal is bound to cause “hurt” to the judges. Agreed that such senior members of the judiciary must be shown respect, but does this attitude show us that these judges, who have been placed on such a high pedestal, can never be accused of bias? Both Sarin’s J. response to the application as well as Alam’s J. comments on the recusal petition are an indication of how aghast they are by this allegation. And while R.K. Anand’s attempt at Bench fixing must be condemned, an allegation of bias is taken to be akin to doubting the integrity of the judges and questioning the neutrality and freedom of the judiciary. In the State of West Bengal & vs. Shivananda Pathak\(^\text{150}\), the Supreme Court notes that “Much harm is done by the myth that, merely by taking the oath of office as a judge, a man ceases to be human and strips himself of all predilections, becomes a passionless thinking machine.” It is interesting to note both Alam J. and Sarin J. were shocked and outraged over allegation of bias.

So what should be the standard for allegation of bias? When does it can be thought of as a genuine concern and when is it an attempt at thwarting the court? It would be apt to mention the principles laid down in Ranjit Thakur vs. Union of India\(^\text{151}\), “As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the judge is not to look at his own mind and ask himself, however, honestly, “Am I biased”; but to look at the mind of the party before him.”

\(^{\text{xiii}}\) Amicus Curiae vs. Prashant Bhushan\(^\text{152}\)

\(^{151}\) AIR 1987 SC 2386.
\(^{152}\) (2010) 7 SCC 592.
Prashant Bhushan, senior advocate of the Supreme Court in an interview to Tehalka magazine made allegation of corruption against some Supreme Court judges. The court initiated contempt proceeding against Prashant Bhushan as well as Managing Editor of Tehalka for publishing the interview. In this case Supreme Court after considering the earlier judgment held that in a rare case even if the cognizance is deemed to have been taken in terms of Rule 3(c) of the Rules to Regulate Proceedings for contempt of the Supreme Court, 1975 without the consent of the Attorney General or the Solicitor General, the proceeding must be held to be maintainable in view of the fact that the issues involved in the proceedings had far reaching greater ramifications and impact on the administration of justice and on the justice delivery system and the credibility of the court in the eye of general public.

It is submitted that the Supreme Court was failed to follow even its own rule and regulation in regard to contempt proceedings before itself. The observation that in rare case the contempt proceedings can be taken even without the consent of the Attorney General or the Solicitor General shows utter disregard to follow the Rule 3(c) of the Rules to Regulate Proceedings for contempt of the Supreme Court, 1975 made under Contempt of Courts Act, 1971. Further, the notice was not given in the proper form as required under the above said rule. Thus, it seems that the court innovated such a course apparently devising new ways to convict a person on this law, and not following its dictated Rules.

Section “3. In case of contempt other than the contempt referred to in rule 2, the Court may take action:
(a) *suo motu*, or
(b) on a petition made by Attorney General, or Solicitor General, or
(c) on a petition made by any person, and in the case of a criminal contempt with the consent in writing of the Attorney General or the Solicitor General.”