

CHAPTER – IV

THE CONTEMPT OF COURTS ACT, 1971: A CRITIQUE

1.1 INTRODUCTION

After discussing concept, historical background and constitutional aspect in the proceeding chapters, an attempt has been made in this chapter to discuss in detail the provisions of the Contempt of Courts Act, 1971.

Rule of Law is the basic principle of governance of any civilized and democratic society. The principle asserts supremacy of law bringing under its purview everyone, individuals and institutions at par without any subjective discretion. It connotes the meaning that, “Whoever the person may be, however High he or she is, no one is above the law notwithstanding how powerful and how rich he or she may be.” There can be no Rule of Law unless the bulwark of that grand concept ‘the Court of Justice’ are kept alive at institutions breathing freedom, openness and justice. No society can exist without laws and laws have no meaning, if they can not be enforced. It is through the Courts that the rule of law reveals its meaningful content. The Indian Constitution is based upon the concept of Rule of Law and for achieving this cherished goal, the framers of Indian Constitution has assigned the special task to the judiciary.¹

The judiciary is the guardian of the Rule of Law. Hence judiciary is not the third pillar but the central pillar of the democratic state. An independent or impartial Judiciary is the *sine qua non* of a healthy society. It is the last resort for the common people of a country, as they repose their ultimate faith in it to get justice. Therefore, it is

¹ Tek Chand, *The Law of Contempt of Court and of Legislature*, 2nd edition, the University Book Agency, Allhabad, 1949, p. 4.

essential for the Judiciary to be protected from all sorts of evil likely to affect the administration of justice. For better protection and preservation of prestige and dignity of the courts, the law on contempt of court has evolved. So, broadly speaking, this law helps the courts in discharging justice keeping its stand supreme in the eye of society. Actually this law aims at ensuring the administration of justice by courts in the society.

The essence of contempt is action or inaction amounting to an interference with or obstruction to or having a tendency to interfere with or to obstruct the due Administration of Justice. Lowering the dignity of the court or shaking confidence of the public in it is undoubtedly reprehensible. But if general remarks impugning the independence of a court are made, such remarks can tend to interfere with or obstruct the administration only indirectly and remotely. In such cases there can be no warrant for the exercise of the extraordinary powers which the courts possess to deal with contempt. The power to punish for contempt any one who interferes with the Administration of Justice is an inherent power vested in the judiciary.²

The law of contempt is based on the sound public confidence in the administration of justice. The purpose of contempt jurisdiction is to uphold the majesty and dignity of law courts and their image in the minds of the public at large. The object of the discipline enforced by the court in case of contempt of court is not to vindicate the dignity of the court or of the judge but to prevent undue interference with the administration of justice.

The House of Lords in **Attorney General v. Times Newspapers Ltd.**³, has rightly enumerated threefold purposes of the law of contempt: (i) to enable the parties to litigation and the witnesses to come before the Court without outside interference; (ii) to enable the Courts to try cases without such interference; and (iii) to ensure that authority and administration of law are maintained.

² Felix Frank, *Power of Congress over Procedure in Criminal Contempts in Inferior Federal Courts – A Study in Separation of Power's*, 37 Harvard Law Review, 1923, p. 1023.

³ 1974 AC 273.

The Privy Council in **Ambard v. Attorney General for Trinidad and Tobago**,⁴ held that contempt primarily signifies disrespect to that which ought to get legal regard. The origin of contempt jurisdiction traces back its history to the Monarchic Rule of England where contempt was an offence more or less direct against the Sovereign and its authority. So, the source of the law of contempt is the Common Law concept of the English Courts and their decisions. The judges derived their authority from the Monarch, and if disrespect was shown to a judge it followed that the Monarch had not been venerated, a serious matter calling for action in law. Perhaps it can be traced back to the Ecclesiastical Courts⁵, when ethics and law were not essentially distinct from each other, and any attack on the courts would be considered as malicious and mischievous. In England this power has been enjoyed by the Superior Courts. The power to commit summarily for contempt is considered necessary for the proper administration of justice. The English Courts have held that the summary jurisdiction by way of contempt proceedings in which the Court itself is attacked should be exercised with scrupulous care.

In the much celebrated judgment of **R. v. Almon**⁶, Wilmot J. observed that contempt power in the courts was for vindicating their authority, and it was coeval with their foundation and institution and was a necessary incident to a court of justice⁷. It was probably the first judgment in the legal history that marked the judicial interpretation of the contempt power in its true essence. The judiciaries across the globe where the courts have been entrusted with contempt jurisdiction follow the *dictum* of Wilmot J.

The origin of the law relating to contempt of court is buried in the debris of English Law which provided that the contempt of the

⁴ AIR 1936 PC 141.

⁵ The Ecclesiastical Court known as "Court Christian" or "Court Spiritual", is any of certain courts having jurisdiction mainly in spiritual or religious matters. In the middle ages in many areas of Europe these courts had much wider powers than before the development of nation states. They were experts in interpreting Canon law, a basis of which was the Corpus Juris Civilis of Justinian which is considered the source of the civil law legal tradition.

⁶ (1765) Wilm. 249 at p. 254.

⁷ Oswald's, *Contempt of Court*, 3rd edition, Butterworth, London, 1993.

judges was the contempt of the King which must be incited with condign punishment. The power in this jurisdiction is wholesome as long as it is geared to the legitimate object of defending the process of justice. The Court cannot behave lawlessly or secretively and its transparency as well as behavioural propriety is a necessary component of fair trial. The authority and dignity of those who administer justice between man and man by proper interpretation of the law of the land must be protected. In **State v. Rajeshwari Prasad**,⁸ the Apex Court observed that the freedom to seek justice and the satisfaction of the litigants by that justice delivering the term with the liberty of the persons who have seen or heard or known the contentions of the parties to give out their observations, information and knowledge without fear, are considered to be necessary factors for the well being and existence of the society, it is necessary that the law of contempt must exist. It may appear harsh, arbitrary, penal and evil but still it is necessary affording a protection to all judges, parties and witnesses and the public. Thus, the purpose of contempt proceedings is to safeguard the dignity of courts and the administration of justice.

The object of the law of contempt of court is to maintain the continuity of the crystal clear flow of the stream of justice. In **Ram Surat Singh v. Shiv Kumar Pandey**,⁹ the Court held that the object of the law of contempt is not to provide a cloak for judicial authorities to cover up their inefficiency and corruption, or to stifle criticism made in good faith against such officers. Administration of justice cannot be effective unless respect for it is fostered and maintained.

Butler J. in **King v. Watson**,¹⁰ had stated that the law of contempt of court in England has been conceived in the interest of the welfare of the public:

“Nothing can be of greater importance to the welfare of the public than to put a stop to animadversion and censures which are so

⁸ AIR 1966 All. 588.

⁹ AIR 1971 All. 170.

¹⁰ (1788) 1 TLR 205; cited in Aiyar's, *Law of Contempt of Court, Parliament, Legislatures and Public Servants*, Delhi Law House, Delhi, 1983, p. 349.

frequently made on courts of justice in our country. They can be of no service, and may be attended with the most mischievous consequences.”

1.2 LEGISLATIVE MEASURES RELATING TO CONTEMPT IN INDIA

In India, almost all the laws replicate the English Statutes and contempt law is no exception to it. The brief narration of legislative measures of the law of contempt of court in India from the Contempt of Courts Act, 1926 to the Contempt of Courts Act, 1971 is useful for the purpose of present study.

1.2.1 THE CONTEMPT OF COURTS ACT, 1926

In India there was no statutory law of contempt till 1926. Before 1926, the law of contempt in India followed in entirety, British corresponding law which regulated superior courts of record. The High Courts in India which were courts of record often adopted British legal principles enunciated in regard to contempt law. The first legislation to deal with contempt of courts in our country received statutory recognition in the form of the Contempt of Courts Act, 1926.¹¹ It was enacted to define and limit the powers of certain courts in punishing contempt of courts.

The Preamble to the Act¹² stated:

“whereas doubts have arisen as to the power of a High Court of judicature to punish contempt of court and whereas it is expedient to resolve these doubts and to define and limit the powers exercisable by High Courts and Chief Courts in Punishing contempt of court.”

The Contempt of Courts Act, 1926, gave statutory powers to the High Courts of Judicature established by *Letters Patent* to punish for the contempt of court of the courts subordinate to them in order to resolve and clarify doubts.¹³ It is important to note that when the Contempt of Courts Act, 1926, was in existence in British India,

¹¹ The Contempt of Courts Act, 1926 (Act No. XII of 1926).

¹² Preamble to the Contempt of Courts Act, 1926.

¹³ Section 2 of the Contempt of Courts Act, 1926.

various Indian States also had their corresponding enactments. These States were Hyderabad, Madhya Bharat, Mysore, Pepsu, Rajastha, Travancore-Cochin and Saurasjtra.

The Contempt of Courts Act, 1926, was subsequently amended in 1937¹⁴ to make it clear that the limits of punishment provided in the Act related not only to contempt of subordinate courts but also to all cases. The effect of which was to omit the word "subordinate" from the Preamble of the Contempt of Courts Act, 1926 and to add a new proviso to Section 3 of the latter Act in regard to sentence to be imposed. The Contempt of Courts Act, 1926 did not contain any provision with regard to contempt of courts subordinate to Chief Courts and Judicial Commissioner's Court and also extra territorial jurisdiction of High Courts in matters of contempt. So, the State enactments of the Indian States and the Contempt of Courts Act, 1926 were replaced by the Contempt of Courts Act, 1952.

1.2.2 THE CONTEMPT OF COURTS ACT, 1952

The Contempt of Courts Act, 1952¹⁵, repealed the Contempt of Courts Act, 1926¹⁶ and consolidated the provisions relating to the law of contempt so as to make it applicable to the High Courts. No new powers were vested in the Courts. It merely recognised, defined and limited the powers that already existed. This Act made two significant departures from the Contempt of Courts Act, 1926. First, the expression "High Court" was defined to include the Courts of Judicial Commissioner which had been excluded from the purview of the Contempt of Courts Act, 1926 and secondly, the High Courts, including the Court of a Judicial Commissioner, were conferred jurisdiction to inquire into and 'try contempt of itself or of any Court subordinate to it'. Irrespective of whether the contempt was alleged to have been committed within or outside the local limits of its jurisdiction and irrespective of whether the person alleged to be guilty of committing contempt was within or outside such limits.

¹⁴ The Contempt of Courts (Amendment) Act, 1937.

¹⁵ The Contempt of Courts Act, 1952 (Act No. 32 of 1952).

¹⁶ As amended by the Contempt of Courts (Amendment) Act, 1937.

Section 3 of the Contempt of Courts Act, 1952 conferred the power on the High Courts including that of the Judicial Commissioner's Court to punish contempt of subordinate court. But no High Court could take cognisance of an offence of contempt before subordinate Court which was punishable under the Indian Penal Code, 1860. Section 4 of the Act¹⁷ limited the punishment to be awarded in case of contempt. In the matter of imposition of punishment for contempt of Court, Section 4 of the 1952 Act provided:

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

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court provided further that:

Notwithstanding anything elsewhere contained in any law for the time being in force, no High Court shall impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a court subordinate to it.”

Under the Contempt of Courts Act of 1952 three classes of contempt were recognised (i) scandalising the court; (ii) abusing parties who are concerned in the case; and (iii) prejudicing against persons before the case is heard, it carried set meaning given to it by judicial pronouncements of English and Indian Courts. The validity of Contempt of Courts Act of the Contempt of Courts Act, 1952 was upheld by the Patna and Bombay High Courts.

However the scope of the Contempt of Courts Act, 1952 Act was not wide enough to define as to what constitutes contempt of the Court, apart from many other flaws in provisions of the Act. The Contempt of Courts Act, 1952, was repealed and replaced by the Contempt of Courts Act, 1971 upon the recommendation of the Committee set-up in 1961 that overhauled the law of contempt of

¹⁷ Section 4 of the Contempt of Courts Act, 1952.

courts in India.

1.2.3 THE CONTEMPT OF COURTS ACT, 1971

The law relating to contempt of court as existed prior to the Act of 1971 was somewhat uncertain and unsatisfactory. Moreover, the jurisdiction to punish for contempt touches two important fundamental rights including the right to freedom of speech and expression and right to personal liberty.¹⁸ It was, therefore, considered necessary to have the entire law on the subject scrutinised by a Special Committee. Hence, a Committee was set up in 1961 under the chairmanship of late H.N. Sanyal¹⁹.

(i) HISTORY OF THE CONTEMPT OF COURTS ACT, 1971

The Sanyal Committee made a comprehensive examination of the law and problems relating to contempt of court in comparison with various foreign countries. Evaluating the law relating to contempt, the doyen of the Indian Bar Mr. Fali Nariman in his speech²⁰ said the offence of scandalizing the court is a mercurial jurisdiction in which there are no rules and no constraints. He and other were perfectly correct in saying there should be certainty in the law, and not uncertainty. After all, the citizen should know where he or she stands. There are two reasons for the uncertainty in the law of contempt of court. First, In the Contempt of Courts Act, 1952 there was no definition of 'contempt.' Secondly, even when a definition was introduced by the Contempt of Courts Act, 1971²¹, there was no definition of what constitutes scandalizing the court or what prejudices, or interferes with the course of justice. What could be regarded as scandalous earlier may not be regarded as scandalous today and what could earlier be regarded as prejudicing or interfering with the course of justice may not be so regarded today.²²

¹⁸ Report of Committee on Contempt of Courts (1963).

¹⁹ H.N. Sanyal, the then Additional Solicitor General of India.

²⁰ Speech delivered on the topic "*The Law of Contempt – is it being stretched too far?*"

²¹ Section 2 of the Contempt of Courts Act, 1971.

²² Justice Markandey Katju, Judge, Supreme Court of India, Vol. XII, 2007 Cri.L.J. , p. 16.

The H.N.Sanyal Committee submitted its report on February 28, 1963 to define and limit the powers of certain courts in punishing contempt of courts and to regulate their procedure in relation thereto. The recommendations of the Committee have been generally accepted by the government after considering the view expressed on those recommendations by the State Governments, Union Territory Administrations, the Supreme Court, the High Courts and the Judicial Commissioners. The Joint Select Committee of Parliament on Contempt of Courts²³ examined the issue in detail and the Committee prepared a new bill, the Contempt of Courts Bill, 1968. The Bill was to give effect to the accepted recommendations of the Sanyal Committee. The recommendations of the Committee made took note of the importance given to the freedom of speech in the Indian Constitution and of the need for safeguarding the status and dignity of courts and interest of administration of justice.²⁴

The recommendations of the Committee have been generally accepted by Government after considering the view expressed on those recommendations by the State Governments, Union Territory Administrations, the Supreme Court, the High Courts and the Judicial Commissioners. On the basis of these recommendations, the Contempt of Courts Act, 1971²⁵ was passed which can be described as a comprehensive legislation.

In a very practical move and in an effort to sanctify the ideal of justice, the Contempt of Courts Act, 1971, was enacted to identify and punish those very persons who, in any way, put an obstacle in the path of the judiciary to deliver justice to the people. One of the basic principles of a sound judiciary is that everyone is entitled to a free and fair trial without any prejudice whatsoever. Therefore, any action, either direct or indirect, which is detrimental to the judicial ideal of justice is sought to be punished under the Contempt of Courts Act.

²³ Report of Joint Committee on Contempt of Courts Act, 1971 at p. 22.

²⁴ Report of Joint Committee on Contempt of Courts Act, 1971.

²⁵ The Contempt of Courts Act, 1971 (Act No. 70 of 1971). It came into force w.e.f. December 24, 1971.

(ii) OBJECT AND PURPOSE OF THE CONTEMPT OF COURTS ACT

The people of India have a lot of faith in the judiciary which is primarily entrusted with the duty of administering justice. The primary purpose of giving courts contempt jurisdiction is then to uphold the majesty and dignity of the courts and their image in the minds of the public. If such confidence and faith were allowed to be shaken then this would have serious repercussions on the justice-delivery system of our country. The law of contempt provides the necessary tool to the courts to check unwarranted attacks or efforts at undermining the Rule of Law.

The Hadi Hussain J. in **re Nasir Uddin Haider**,²⁶ said that the Contempt of Courts Act, 1971 has been enacted in order to remove doubts which have arisen as to the powers of a High Court. The object and purpose of contempt jurisdiction is to uphold the majesty and dignity of law courts and their majesty in the minds of public and that this is in no way whittled down. If, by contumacious words or writing, the common man is led to lose his respect for the judge, acting in the discharge of its judicial duties, then the confidence reposed in the course of justice is rudely shaken and the offender must be punished. In essence, the law of contempt is the protector of the seat of justice more than a person of the judge sitting in that seat.

The Apex Court in **Mohammed Yamin v. Om Prakash Bansal**,²⁷ held that the law of contempt of court is not the law for the protection of judges or to place them in a position of immunity from criticism. It is law of the protection of the freedom of individuals. Everyone in a well versed community is entitled to the protection of a free and independent administration of justice. It is for the press to enlighten the public on what has been done in the branch of Government fairly and firmly, to criticise, what has been done where criticism appears to be warranted, but never attempt to influence the

²⁶ AIR 1926 All. 623 at 625.

²⁷ 1982, Cr. L.J. 322 (Raj.).

course of justice or to undermine the faith of those who live under protection of the law and the impartial authority of the courts. The press is justified in making free and fair criticism. The hall of justice is not a cloistered virtue. In fact, for justice, to shine with its pristine luster, it must be bold, free and subject to public scrutiny. So, if the press does criticize some public aspects of a judgment, e.g., in the realm of interpretation of law, severity of sentence, etc., it cannot be contempt. But if there is an attack on the integrity of judges by imputing motive dishonesty or incompetence, arbitrariness or want of independence to a judge, it would be exceeding free a fair criticism by the press.

The Supreme Court in **State v. Rajeshwari Prasad**²⁸, held that the aim of the law of contempt was to protect those whose duty it was to administer justice between man and man by true and proper interpretation of law, from insults, annoyance and even obstruction. Persons who seek justice and persons who help in the administration of justice are all entitled to be protected.

(iii) SCOPE OF THE CONTEMPT OF COURTS ACT

It is very much necessary to assess the scope of the Contempt of Courts Act, 1971, because the title of the Act often misleads people to think that this piece of legislation tends to protect the court and the fraternity of lawyers and judges, thereby keeping them above law. Given that the judiciary is both the prosecutor and the adjudicator, it often leads this legislation to be misconstrued as a veil of protection for the courts from external criticism. Infact, if it were so, then it would be nothing but an abuse of the powers of the judiciary and a neglect of the very ideal of justice that it wishes to protect. The punishment under the contempt law is inflicted not for the purpose of protecting either the court as whole or individual judges from a repetition of the attack but of protecting the public. Thus, contrary to the aforementioned common perception, this act in no way hands over superfluous power to the judiciary. Moreover, it must be remembered

²⁸ A.1.R.1966 All. 588.

that the power and jurisdiction of the courts under this act falls under extra-ordinary jurisdiction alone and this acts as a check on the judiciary.

1.3 PROVISIONS OF THE CONTEMPT OF COURTS ACT, 1971

The provisions of the Contempt of Courts Act, 1971, discuss in detail below:

1.3.1 Preamble

“An Act to define and limit the powers of certain Courts in punishing contempt of Courts and to regulate their procedure in relation thereto.”

This Act was enacted²⁹ to define and limit the powers of certain courts in punishing contempt of courts and to regulate their procedure in relation thereto. Thus, the new Contempt of Courts Act, 1971 has been enacted in order to remove doubts which had arisen as to the powers of a High Court.

1.3.2 Section 1: Short title and extent

“(1) This Act may be called the Contempt of Courts Act, 1971.

(2) It extends to the whole of India.

Provided that it shall not apply to the state of Jammu and Kashmir except to the extent to which the provisions of this Act relate to contempt of the Supreme Court.”

Section 1 of the Contempt of Courts Act, 1971 states the short title and extent of the Act. This Act may be called the Contempt of Courts Act, 1971 and it extends to the whole of India, provided that it shall not apply to the state of Jammu and Kashmir except to the extent to which the provisions of this Act relate to contempt of the Supreme Court.³⁰ In **Shakuntala Sahadevram Tewari v. Hemchand M.Singhania**,³¹ the Court held that the law of contempt of courts is for keeping the administration of justice pure and undefiled. While the

²⁹ The Contempt of Courts Act, 1971(No. 70 of 1971) enacted by Parliament in the Twenty Second Year (24th December, 1971) of the Republic of India.

³⁰ Article 370 of the Constitution of India: Temporary provisions with respect to the State of Jammu and Kashmir.

³¹ (1990) 3 Bom CR 82 (Bom).

dignity of the court is to be maintained at all costs, the contempt jurisdiction, which is of a special nature, should be sparingly used.

1.3.3 Section 2: Definitions

“In this Act, unless the context otherwise requires:

(a) 'Contempt of Court' means civil contempt or criminal contempt.

(b) 'Civil contempt' means willful disobedience to any judgment, decree, direction, order, writ or other process of a Court or willful breach of an undertaking given to a Court.

(c) 'Criminal contempt' means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which:

(i) Scandalises or tends to scandalise, or lowers or tends to lower the authority of, any Court, or

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

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

(d) 'High Court' means the High Court for a state or a union territory and includes the Court of the judicial commissioner in any union territory.”

(i) Contempt of Court

In Section 2 of the Contempt of Courts Act, 1971, there are four definitions viz., 'Contempt of Court', 'Civil Contempt' 'Criminal Contempt' and 'High Court'. It was for the first time that the words 'Contempt of Court' had been defined in the Contempt of Courts Act, 1971. Before the enactment of the present Act the term 'Contempt of Court' was not defined. It was considered proper that a definition may be assigned to the term and distinction may be made between civil contempt and criminal contempt. With this view the term 'Contempt of Court' was defined under Section 2(a) of the Contempt of Courts Act, 1971, mean civil contempt and criminal contempt. In **Queen v. Gray**,³² it was held that the law relating to contempt of court is well settled as act done or writing published which is calculated to bring a

³² 1900 (2) QBD 36 (40).

court or a judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the Court, is a contempt of court.

It would be appropriate to examine and analyse some landmark judgments of the Apex Court relating to contempt of court to know its scope and area. In **E.M.S. Namboodripad v. T.N. Nambiar**³³, the appeal was against the conviction for contempt of court. The conviction was based on certain utterances of the appellant, when he was Chief Minister, at a press conference. Mr. Chief Justice Hidayatullah with whom G.K. Mitter and A.N. Ray, JJ. agreed speaking for the Supreme Court explained the scope of law relating to contempt and observed:

“The law of contempt stems from the right of the courts to punish by imprisonment or fine to persons guilty of words or acts which either obstruct or tend to obstruct the administration of justice. This right is exercised in India by all courts when contempt is committed in *facie curiae* and by the superior courts on their own behalf or on behalf of courts subordinate to them even if committed outside the courts. Formerly, it was regarded as inherent in the powers of a Court of Record and now by the Constitution of India... There are many kinds of contempt's. The chief forms of contempt are insult to judges, attacks or fair comment on pending proceedings with a tendency to prejudice fair trial obstruction to officers of the courts, witnesses or the parties along with the process of the court, breach of duty by officer connected with the Court and scandalising the Judges or the courts. The last form occurs, generally speaking, when the conduct of a person tends to bring the authority and administration of laws into disrespect or disregard. This conduct included all acts which bring the Courts into disrepute or disrespect, or which offend its dignity, affront its majesty or challenge its authority.”

Mr Chief Justice Hidayatullah further observed:

“The law punishes not only acts which do in fact interfere with

³³ AIR 1970 SC 2015.

the courts and administration of justice but also those which have that tendency, that is to say likely to produce a particular result.”

The Supreme Court after citing several works and teaching of Marx and Engels upheld the sentence of contempt of court. It was that judging from the angle of the courts and administration of justice, there was not assemblage of doubt that the appellant was guilty of the contempt of court.

The Supreme Court of India speaking through Mr. Justice I. D. Dua in **Aligarh Municipality v. E.T. Majdoor Union**³⁴, has declared that a corporate body can be punished for Contempt of Court. The Court has held a corporation (Municipal Board in this case) is liable to be punished by imposition of fine and by sequestration for contempt for disobeying order of competent Court directed against them. It is command to those who are officially responsible for the conduct of its affairs.

The Supreme Court in **Baradakant v. Registrar, Orissa H.C.**³⁵, has held that the defamatory criticism of a Judge functioning as a judge even in purely administrative or non-adjudicatory matters amounted to criminal contempt. The imputations contained in the letters have grossly vilified the High Court and has substantially interfered with the administration of justice and therefore, the appellant was rightly convicted of the offence of the criminal contempt.

Where the Assistant Director Public Relations and Information of Madhya Pradesh, published a press release on the judgment of the Supreme Court conveying to the public that the order of the High Court has been reversed by the Supreme Court and thereby, impliedly conveying that the detention of petitioner has been upheld. The court although accepted unconditional apology because the said news was not published without knowing the correct implications of the High Court judgment. In accepting the unconditional apology, the Supreme

³⁴ AIR 1970 SC 1767.

³⁵ AIR 1974 SC 710.

Court on one hand took notice that the contemner had lack of knowledge or experience the publication of the press release of the judgment or order of the court, but the court also took notice of the fact that the contemner did not even take care to take necessary instructions from the persons who had experience in this area did not sought guidance from the law department of the state before releasing the version of the judgment. The Supreme Court in **Sadhvi Ritumbhara v. Digvijay Singh**,³⁶ considered this as a deliberate act on his part of misleading the public by making misstatement of the contents of the order. But the court rightly pointed out that it was not a deliberate act on his part with a view to undermine the order of the Supreme Court. The Supreme Court in this case applied the Doctrine of Respondent Superior and held the Director also responsible for the contempt of the Supreme Court when it declared:

“Being the Director, it is his duty to see that the directorate functions properly, particularly when it relates to the issuance of the public information of contents of an order of this court; unfortunately, he has not done it. It is not clear from this record whether it was brought to his notice before publishing or matters are passing without his knowledge from his Directorate side-tracking him. Even the Director himself as Director ultimately bears responsibility for the acts done by the Directorate.”

It is gratifying to note that superior officers have now been made responsible for their acts, omissions and commissions, if they commit contempt of court.

The Supreme Court in two leading judgments, **Rustom Cawasjee v. Union of India**,³⁷ and **E.M.S. Namboodiripad v. T.N. Nambiar**,³⁸ which were delivered as early as in 1970 has given very accurate, correct and well founded account of the law as far as criticism of the courts is concerned in relation with the Article 19(1) (a) of the Constitution of India and the contempt of court. It was held that

³⁶ AIR 1997 SC 1387.

³⁷ AIR 1970 SC 1318.

³⁸ AIR 1970 SC 2015.

the court like any other institution does not enjoy immunity from fair criticism. The court cannot claim to be always right, although it does not spare any effort to be right, according to the best of the ability, knowledge and judgment of the judges. The judge has to be conscious of his limitations and of all ability because his training and assistance, he gets from counsel. He has to apt to avoid mistake more than others. While fair and temperate criticism of the Court including of the Supreme Court even if strong, may not be actionable, attributing improper motives and tending to bring the judges or court in hatred would certainly come within the preview and contempt of court.³⁹

It has been rightly held by the Supreme Court⁴⁰ that the spirit underlying Article 19(1)(a) of the Constitution of India must have due play but we cannot overlook the provisions of the second clauses of the Article. While it is intended that there should be Freedom of Speech and Expression, it is also intended that in exercise of the right, contempt of the Court shall not be committed. These provisions are to be read with Articles 129 and 215 of the Constitution which specially confer on the Supreme Court and the High Courts the power to punish for contempt of themselves. Article 19 (1)(a) of the constitution guarantees complete Freedom of Speech and Expression but it also makes an exception in respect of Contempt of Court. The Supreme Court has held that the guaranteed right on which the functioning of our democracy rests, is intended to give protection to expression of free opinions, to change political and social conditions and to advance human knowledge. While this right is essential to a free society, the Indian Constitution has itself imposed restrictions in relation to contempt of court. It cannot, therefore, be said that the right abolishes the law of contempt or that attacks upon judges and courts will be condoned. However, it should also remember that the judiciary in India is an institution of democracy. We should have strict interpretation of law of contempt in India because we have written

³⁹ E.M.S. Namboodiripad v. T.N. Nambiar, AIR 1970 SC 2015.

⁴⁰ Rustom Cawasjee v. Union of India, AIR 1970 SC 1318.

Constitution in which freedom of speech and expression has been explicitly guaranteed.

(ii) Civil Contempt

Under Section 2(b) 'civil contempt', is defined to mean wilful disobedience to any judgment, decree, order, direction or any other process of court or wilful breach of an undertaking given to the court.⁴¹ It is basically a wrong to the person who is entitled to the benefit of a court order. It is a wrong for which the law awards reparation to the injured party; though nominally it is a contempt of court it is fact a wrong of a private nature. Civil contempt is a sanction to enforce compliance with an order. It means wilful disobedience to any judgement, decree, writ or other process of court.

(iii) Criminal Contempt

Criminal contempt involves defiance of the court revealed in conduct which amounts to obstruction or interference with the administration of justice.⁴² Criminal contempt as defined by Contempt of Courts Act 1971 means publication whether by words, spoken or written or by signs or by visible representations or otherwise of any matter or the doing of any other act whatsoever which scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court; or prejudices or interferes, or tends to interfere with, or obstructs or tends to obstruct the administration of justice in any other manner.⁴³

The present definition of criminal contempt is virtually the definition of contumacious contempt, which ordinarily requires punishment. Civil contempt is also called contempt of procedure in English Law and it bears two fold characters implying as between the parties to proceedings and the liability to submit to form of civil execution. In fact in the matters of contempt, courts exercise the

⁴¹ In *Vidya Sagar v. Additional District Judge, Dehradun*, 1991 All C.J. 586 at p. 588 the Court held that any wilful disobedience to the orders of the Court to do or abstain from doing any act or breach of any undertaking given to the Court is prima-facie civil contempt.

⁴² *State of Assam v. V.K.Vishnoi*, 1993 (23) A.T.C. 581.

⁴³ In *E. Venkaiak v. Government of A.P.*, 1992 (3) ALT 193 at p. 199, the Court held, "Non caring of the Warrant issued by the Criminal Court amounts to Criminal Contempt.

disciplinary jurisdiction and contemner can be directed to pay the fine, whereas, whenever there is a contumacious contempt as between the party and the court, the courts exercise penal jurisdiction and the contemner can be directed to undergo imprisonment. In civil contempt whenever wilful disobedience to the orders of the court is done, it is called contumacious contempt.

In **re Freston**⁴⁴, it was stated that all contempts are not the same, they are of different kinds. Some contempts are merely theoretical but others are wilful, such as disobedience to the injunction or to orders, delivery of documents. In this case there is no privilege from arrest. In this case attachment was granted for something more than a mere theoretical contempt and thereafter it was something more than merely civil process, there was therefore, no privilege.

In **re Hunt**⁴⁵, where a contemner failed to attend an appointment before the examiner of the court, it was held that the appellant was guilty of wilful disobedience to the order of the court. The committal was a punishment for that disobedience and not merely, as the appellant asserts an inducement to him to comply with the order and he could not by complying with the order claimed to be released at once *ex debito justitiae*.

(iv) Distinction Between Civil and Criminal Contempt

After careful consideration of the meaning of civil contempt and criminal contempt it becomes clear that both are differ from each other in different counts.

The Calcutta High Court in **Legal Remembrancer v. Motilal Ghose**⁴⁶, has explained the difference between civil contempt and criminal contempt. The distinction between civil and criminal contempt is of fundamental character. While criminal contempt offends the public and consists of conduct that offends the majesty of law and undermines the dignity of the Court, civil contempt consists

⁴⁴ (1883) II Q.B.D. 545.

⁴⁵ (1959) 2 Q.B. 69.

⁴⁶ ILR 41 Cal. 173.

in failure to obey the order, decree, direction, judgment, writ or process issued by courts for the benefit of the opposing party.

The Allahabad High Court in **Vijay Pratap Singh v. Ajit Prasad**⁴⁷, has held that a distinction between a civil contempt and criminal contempt seems to be that in a civil contempt the purpose is to force the contemner to do something for the benefits of the other party, while in criminal contempt the proceeding is by way of punishment for a wrong not so much to a party or individual but to the public at large by interfering with the normal process of law diminishing the majesty of the court. However, if a civil contempt is enforced by fine or imprisonment of the contemner for nonperformance of his obligation imposed by a court, it merges into a criminal contempt and becomes a criminal matter at the end. Such contempt, being neither purely civil nor purely criminal in nature, is sometimes called *suigeneris*.

It is submitted that the dividing line between civil and criminal contempt is sometimes very thin and may become indistinct. Where the contempt consists in mere failure to comply with or carry on an order of a court made for the benefit of a private party, it is plainly civil contempt. If, however, the contemner adds defiance of the court to disobedience of the order and conducts himself in a manner which amounts to abstraction or interference with the courts of justice, the contempt committed by him is of a mixed character, partaking of between him and his opponent the nature of a civil contempt.⁴⁸

(a) Cases on Civil Contempt

Putting an accused in hand cuffs before court in clear violation of the orders and directions of the court in an earlier decided case is civil contempt. A division Bench of Himachal Pradesh High Court has issued directions and laid down the law in **Philip John v. State of Himachal Pradesh**⁴⁹, following two decisions of the Supreme Court in

⁴⁷ AIR 1966 All. 305.

⁴⁸ Ibid. p. 306.

⁴⁹ 1985 Cr. L.J. 397.

Sunil Batra v. Delhi Administration,⁵⁰ and in **Prem Shankar v. Delhi Administration**,⁵¹ that a person in the prison is not completely denuded of his fundamental rights irrespective of the magnitude of the offence he may have committed. The Division Bench in **Court on its Own Motion v. State of Himachal Pradesh**⁵², held that in Philip John's case law was laid down that hand-cuffing is prima facie inhuman, and in cases of undertrial prisoners, the escorting officer whenever he handcuffs a prisoner produced in court, must show the reasons so recorded to the presiding judge and get his approval as this direction appears to be wilfully disobeyed and the officials of the respondent were liable for civil contempt.

It was also pointed out that civil contempt was committed when a court's order was wilfully disobeyed. Its main object was the enforcement of the order which was disobeyed. Where the husband filed petition for nullity of marriage against wife, interim maintenance and expenses of proceedings were granted against the husband but he did not pay. The wife filed a contempt petition against the husband who took the plea that no contempt was made out, and wife can take recourse to execution proceedings. Whereas in **Sarla Devi Bharat Kumar Rungta v. Bharat Kumar Shiv Prasad Rungta**⁵³, it was held that civil contempt was made out and the wife cannot be forced to take recourse to execution proceedings, if she is forced to recover the amount by taking out execution proceedings, the recovery of the amount may take years together and also the marriage petition to proceed further. In case the court directs to take execution proceedings, it shall result into great hardship and the administration of justice would be impeded.

(b) Cases on Criminal Contempt

Criminal contempt is very serious type of act. Handcuffing, arrest, roping and assault of a Judicial Officer by Police Officers

⁵⁰ A.I.R. 1978 S.C. 1675.

⁵¹ A.I.R. 1980 S.C. 1535.

⁵² 1988 Cr. L.J. 438.

⁵³ 1988 Cr. L.J. 558 (Bom.).

amount to criminal contempt. If any judicial officer is led into trap by unscrupulous police officers and is allowed to be assaulted, handcuffed and roped, the public is bound to lose faith in courts, which would be destructive of basic structure of an ordered society. If this is permitted rule of law shall be supplemented by police raj, viewed in this perspective any such incident shall not be a case of physical assault on an individual judicial officer instead it shall be an onslaught on the institution of the judiciary itself.

Such an incident shall be clear interference with the administration of justice, lowering its judicial authority. Its effect will not be confined to one District or State; it has a tendency to affect the entire judiciary in the country. Such incidents highlight a dangerous trend that if the police are annoyed with the orders of a presiding officer of a court, he would be arrested on flimsy manufactured charges, to humiliate him publically.⁵⁴ It is submitted that the summary power of punishment for contempt has been conferred on the courts to keep a blaze of glory around them, to deter people from attempting to render them contemptible in the eyes of the public. These powers are necessary to keep the course of justice free, as it is of great importance to society. The power to punish for contempt is vested in the judges not for their personal protection only, but for the protection of public justice, whose interest requires that decency and decorum is preserved in courts of justice. Those who have to discharge duty in a court of justice are protected by the law, and shielded in the discharge of their duties, any deliberate interference with the discharge of such duties either in court or outside the court by attacking the presiding officers of the court would amount to criminal contempt and the courts must take serious cognisance of such conduct.

In **Delhi Judicial Service Association Tis Hazari Court v.**

⁵⁴ V. G. Ramachandran, *The Contempt of Court under the Constitution*, 5th edition, Eastern Book Company, Lucknow, 1983, p.123.

State of Gujarat⁵⁵, Justice K.N. Singh observed, that the facts of the instant case demonstrate that a presiding officer of a court may be arrested and humiliated on flimsy and manufactured charges which could affect the administration of justice. In order to avoid any such situation in future, we consider it necessary to lay down guidelines which should be followed in the case of arrest and detention of a judicial officer. No person whatever his rank, or designation may be, is above law and he must face the penal consequences of infraction of criminal law. A magistrate, judge or any other judicial officer is liable to criminal persecution for an offence like any other citizen but in view of the paramount necessity of preserving the independence of judiciary and at the same time ensuring that infractions of law are properly investigated, we think and the following guidelines should be followed:

- (a) If a judicial officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.
- (b) If facts and circumstances necessitate the immediate arrest of a judicial officer of the subordinate judiciary, a technical or formal arrest may be effected.
- (c) The fact of such arrest should be immediately communicated to the District and Sessions Judge of the concerned district and the Chief Justice of the High Court.
- (d) The Judicial Officer so arrested shall not be taken to a police station, without the prior order or directions of the District and Sessions Judge of the concerned district, if available.
- (e) Immediate facilities shall be provided to the judicial officer for communication with his family members, legal advisers and Judicial Officers, including the District and Sessions Judge.
- (f) No statement of a judicial officer who is under arrest be

⁵⁵

1991 AIR SCW 2419.

recorded nor any *punchnama* be drawn up nor any medical tests be conducted except in the presence of the legal adviser of the judicial officer concerned or another judicial officer of equal or Higher rank, if available.

- (g) There should be no handcuffing of a judicial officer. If, however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be overpowered and handcuffed. In such case, immediate report shall be made to the District and Sessions Judge concerned and also to the Chief Justice of the High Court. But the burden would be on the Police to establish the necessity for effecting physical arrest and handcuffing the judicial officer and if it be established that the physical arrest and handcuffing of the judicial officer was as unjustified, the police officers causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally liable for compensation and/or damages as may be summarily determined by the High Court.⁵⁶

The above guidelines are not exhaustive but these are minimum safeguards, which must be observed in case of arrest of judicial officer. These guidelines should be implemented by the State Government as well as by High Courts. The court accordingly, directed that a copy of the guidelines shall be forwarded to the Chief Secretaries of all the State Governments and to all the High Courts with a direction that the same may be brought to the notice of the concerned officers for compliance.

Similarly in **D. K. Basu v. State of West Bengal**⁵⁷, the Supreme Court of India laid down certain rules to be followed at the time of the arrest of the person. Non adherence of the rules shall render the person liable for contempt of court. The Court observed:

⁵⁶ 1991 AIR SCW 2419.

⁵⁷ A.I.R. 1997 S.C. 610.

“Failure to comply with the requirements herein above mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of courts may be instituted in any High Court of the country, having territorial jurisdiction over the matter.”⁵⁸

(v) High Court

Besides contempt of court, civil contempt and criminal contempt, other definition in Section 2 of the Contempt of Courts Act, 1971 is that of High Court. The High Court is also defined to mean High Court for State or Union Territory which includes the Courts of Judicial Commissioner in any Union territory.⁵⁹

High Courts of India are at the top of the hierarchy in each State but are below the Supreme Court. These courts have control over a state, a union territory or a group of states and union territories.⁶⁰ Below the High Courts are secondary courts such as the civil courts, family courts, criminal courts and various other district courts. The High Courts are the principal courts of Original Jurisdiction in the state, and can try all offences including those punishable with death.⁶¹ Article 214 of the Constitution of India posits that there shall be a High Court for each of the states. In addition to that, Article 231 of the Constitution empowers the Parliament to set up one High Court for two or more states. For example, Gauhati High Court has jurisdiction over the State of Tripura and some other states of North- East India besides its jurisdiction over the State of Assam. However, works of most High Courts consists of appeals from lower Courts and summons, petitions in terms of Article 226 of the Constitution of India.⁶² The precise jurisdiction of each High Court varies from each other.

⁵⁸ D.K. Basu v. State of West Bengal, A.I.R. 1997 S.C. 610.

⁵⁹ It is important to note here that at present there is no Courts of Judicial Commissioner in any Union territory.

⁶⁰ Article 230 of the Constitution of India: Extension of Jurisdiction of High Courts to Union Territories.

⁶¹ Article 225 of the Constitution of India: Jurisdiction of existing High Courts.

⁶² Article 226 of the Constitution of India: Power of High Courts to issue certain Writs.

A High Court is composed of a Chief Justice and as many other judges as the President of India may from time to time deems it necessary to appoint.⁶³ The President can appoint additional judges also for a maximum period of two years.⁶⁴ The number of judges in a court is decided by the dividing the average institution of main cases during the last five years by the national average. The average rate of disposal of main cases per judge per year in that High Court is also taken into consideration. Ordinarily, the judges remain in office till the age of 62.⁶⁵ In appointing the chief Justice of High Court, the President consults the Governor and the Chief Justice of the Supreme Court. In appointing other Judges the President consults the Chief Justice of the Supreme Court and the Chief Justice of the High Courts of India.⁶⁶

Though the judges of the High Courts of India can remain in office till the age of sixty two, the judges may resign from their posts prematurely by applying in writing to the President.⁶⁷ Besides, the judges of a High Court can be removed from office on various grounds like misdemeanor and corruption.⁶⁸ The judges of the High Court may be transferred to another High Court of another State.⁶⁹ The judges of the High Court must be an Indian citizen and must have ten years of experience in adjudication or in legal practice.⁷⁰ To ensure independence of judiciary, a special mode of removal of the judge has been prescribed in the Constitution of India. The proposal of removal of the judges must be passed by a two thirds majority of the members present in the Legislature. The proposal then shall have to be sent to

⁶³ Article 216 of the Constitution of India: Constitution of High Courts.

⁶⁴ Article 224 of the Constitution of India: Appointment of additional and acting Judges.

⁶⁵ Article 217 of the Constitution of India: Appointment and conditions of the office of a Judge of a High Court.

⁶⁶ Re Presidential Reference, AIR 1999 SC 1; See also S.P. Gupta v. Union of India, AIR 1982 SC 149; Union of India v. Sankalchand Seth, AIR 1977 SC 2328.

⁶⁷ Article 217(1) (a) of the Constitution of India: a judge may, by writing under his hand addressed to the President, resign his office.

⁶⁸ Article 217(1) (b) of the Constitution of India: a judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a judge of the Supreme Court.

⁶⁹ Article 222 of the Constitution of India: Transfer of a judge from one High Court to another.

⁷⁰ Article 217 (2) and Article 217 (2) (a) of the Constitution of India.

the President for his assent. The President will then ask the judge to resign.⁷¹

The High Courts of India act as the Court of Original Jurisdiction and the Court of Appellate Jurisdiction at the same time. As a Court of original Jurisdiction the High Court can try original cases.⁷² The Constitution has vested the High Court with Power of trying revenue cases also. The High Court in every state is the Highest Court of appeal in respect of any criminal or civil cases of the State. The High Court may either give its verdict on constitutional point only or leave it to the lower court concerned to pass verdict on the other issues or try the cases as a whole.

The Union Parliament has been empowered to either enlarge or restrict the jurisdiction of the High Court. The High Courts of India have the power of superintendence over all the lower Courts of a State except the Military Tribunals.⁷³ The High Court can also issue various writs in order to safeguard the fundamental rights of the citizens of India.⁷⁴ The writs are in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari. Apart from all these, the High Court has the authority of making laws regarding the appointment of its own officials and other internal affairs. As the head of the judiciary in the state, the High Court has got administrative control over the subordinate in the state. The High Court is a Court of Record.⁷⁵ This means that all records regarding all cases that come to the High Court are kept with the extreme care possible and these records are later referred to in dealing with other cases. The 42nd Amendment⁷⁶, curtailed the jurisdiction of the High Courts in various

⁷¹ Article 217(1) (b) of the Constitution of India: a judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a judge of the Supreme Court.

⁷² High Court of Judicature at Allahabad v. Raj Kishore, AIR 1997 SC 1186.

⁷³ Article 227 of the Constitution of India: Power of superintendence over all courts by the High Courts.

⁷⁴ Article 226 of the Constitution of India: Power of High Courts to issue certain Writs.

⁷⁵ Article 215 of the Constitution of India: High Courts to be Courts of Record.

⁷⁶ The Constitution (42nd Amendment) Act, 1976.

spheres. However, the 44th Amendment⁷⁷, restored the Original Jurisdiction and position of the High Courts.

1.3.4 Section 3: Innocent publication and distribution of matter not contempt

(1) A person shall not be guilty of contempt of Court on the ground that he has published (whether by words, spoken or written, or by visible representations, or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at that time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

(2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of Court.

(3) A person shall not be guilty of contempt of Court on the ground that he has distributed a publication containing any such matter as is mentioned in sub section (1), if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid.

Provided that this sub section shall not apply in respect of the distribution of:

(i) Any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in section 3 of the Press and Registration of Books Act, 1867 (25 of 1867).

(ii) Any publication which is a newspaper published otherwise than in conformity with the rules contained in section 5 of the said Act.

Explanation

For the purposes of this section, a judicial proceeding --

- (a) is said to be pending,
- (b) in the case of a civil proceeding, when it is instituted by the filing of a plaint or otherwise,

⁷⁷ The Constitution (44th Amendment) Act, 1978.

- (c) **in the case of a criminal proceeding under the Code of Criminal Procedure, 1898 [5 of 1898 (Note: now see Code of Criminal Procedure, 1973 (2 of 1974)], or any other law -**
- (i) where it relates to the commission of the offence, when the chargesheet or challan is filed, or when the Court issues summons or warrant, as the case may be, against the accused, and**
 - (ii) in any other case, when the Court takes cognisance of the matter to which the proceeding relates, and**
 - (iii) in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired,**
 - (iv) Which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending.**

According to Section 3 of the Act,⁷⁸ which deals with certain exceptions, a person shall not be guilty of contempt of court on the ground that he has published⁷⁹ any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at the time of publication, if at the time he had no reasonable grounds for believing that the proceeding was pending.⁸⁰

Further a person shall be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned, if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid⁸¹:

⁷⁸ Section 3 of the Contempt of Court Act, 1971.

⁷⁹ Whether by words, spoken or written, or by signs, or by visible representations, or otherwise.

⁸⁰ Section 3(1) of the Contempt of Courts Act, 1971.

⁸¹ Section 3 (3) of the Contempt of Courts Act, 1971.

Provided that this provision shall not apply in respect of the distribution of –

(i) any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in Section 3 of the Press and Registration of Book Act, 1867⁸²;

(ii) any publication which is a newspaper published otherwise than in conformity with the rules contained in section 5 of the said Act.⁸³

Judicial proceedings treated to be pending

For the purposes of section 3 of the Act, a judicial proceeding:

(A) is said to be pending:

(i) in the case of a civil proceeding, when it is instituted by the filing of a plaint or otherwise,

(ii) in the case of a criminal proceeding under the Code of Criminal Procedure, 1973 or any other law

(a) Where it relates to the commission of an offence, when the chargesheet or challan is filed, or when the Court issues summons or warrant, as the case may be, against the accused, and

(b) in any other case, when the Court takes cognisance of the matter to which the proceeding relates, and in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, when no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired;

(B) which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending.

The Court in **M. R. Prashar v. Dr Farooq Abdullah**⁸⁴, held that the liberty of free expression is not to be compounded with a licence to

⁸² Section 3 of the Press and Registration of Book Act, 1867 (Act 25 of 1867).

⁸³ Proviso to Section 3 (3) of the Contempt of Courts Act, 1971.

⁸⁴ (1984) 1 Cr. LC 433.

make unfounded allegations of corruption against judiciary. The abuse of the liberty of free speech and expression carries the case nearer the law of contempt. In **Managing Director Vamin v. O. P. Bensal**,⁸⁵ it was held that a defence of truth or justification is not available to the publisher of a newspaper in proceedings for contempt of Court. The publication of reports of proceedings before a court of law must be true, accurate and without malice.⁸⁶

1.3.5 Section 4: Fair and accurate report of judicial proceeding not contempt

Subject to the provisions contained in section 7, a person shall not be guilty of contempt of Court for publishing a fair and accurate report of a judicial proceeding or any state thereof.

According to the Contempt of Courts Act, 1971 a person shall not be guilty of contempt of court for publishing a fair and accurate report of the judicial proceeding or any stage thereof. The words “judicial proceeding” means day-to-day proceedings of the court. In **Subhash Chand v. S.M. Aggarwal**,⁸⁷ the Court held that the media reports must represent a fair and accurate report of judicial proceeding and not be a one-sided picture. It is very essential that while reproducing the court proceedings, no words may be added, omitted or substituted.⁸⁸ In **re Progressive Port and Dock Workers Union**,⁸⁹ the Court held that fair and accurate reporting of the judgment is essential for the healthy administration of justice.

1.3.6 Section 5: Fair criticism of judicial act not contempt

A person shall not be guilty of contempt of Court for publishing any fair comment on the merits of any case which has been heard and finally decided.

The fair criticism of judicial act is not contempt. The nature and circumstances under which allegations are made, the extent and the character of the publications and similar other considerations have to be taken into account in order to determine whether the act

⁸⁵ (1982) Cr. LJ 322 (Raj).

⁸⁶ Wasuddeoraoji v. A D Mani, AIR 1951 Nag. 26.

⁸⁷ 1984 Cr. L.J. 481.

⁸⁸ E. T. Sen v. E. Narayanan, AIR 1969 Del. 201.

⁸⁹ 1984 Cr LJ 1061 (Ker).

complained of amounts to contempt. In **re Guljari Lal**,⁹⁰ it was held that no action is called for, if the criticism is reasonable and is offered for the public good.

The Privy Council in **State of Maharashtra v. Chandrakant Tripathi**,⁹¹ observed that a fair comment on the judgment of a court could not constitute contempt. In **Advocate General v. Abraham George**,⁹² it was held that judgments are open to criticism that must be done without casting aspersions on the judges and the judges and the Courts and without adverse comments amounting to scandalising the Courts. In **State of Uttar Pradesh v. Brahma Prakash**,⁹³ the Apex Court held that the criticism of a judge must take the form of reasonable argument or exploitation; must be made in good faith and free from the imputation of improper motives. In **State v. Bhavani Prasad**,⁹⁴ the Court held that the publication in newspaper of reports of proceedings before a Court of law must be true.

The Supreme Court on 15 July, 2010⁹⁵ dismissed a contempt petition filed against **Union Minister Kapil Sibal** for allegedly making contemptuous remarks against the judiciary. A Bench comprising Justices J M Panchal and A K Patnaik said the article in the newspaper, which had quoted Sibal's message on judiciary and legal fraternity published in a magazine, did not impair administration of justice or bring it to disrepute.

1.3.7 Section 6: Complaint against presiding officers of subordinate Courts when not contempt

A person shall not be guilty of contempt of Court in respect of any statement made by him in good faith concerning the presiding officer or any subordinate Court to -

- (a) Any other subordinate Court, or**
- (b) The High Court to which it is subordinate.**

⁹⁰ 1968 MPLJ 725.

⁹¹ AIR 1936 PC 141.

⁹² 1976 Cr. LJ 158.

⁹³ AIR 1950 All 556.

⁹⁴ AIR 1954 Nag 36.

⁹⁵ www.zeenews.com/news/641275.html.

Explanation - In this section, 'subordinate Court' means any Court subordinate to a High Court.

A complaint or report about a judicial officer of his dishonesty, partiality or other conduct unbecoming of a court, made to an authority to which it is subordinate, is not contempt of court if all reasonable care is taken by the makers to keep it confidential.⁹⁶ In **re Court on its Own Motion**,⁹⁷ the Court held that immunity is provided to a citizen making a complaint to the High Court against a presiding officer of a subordinate court so long as the complaint is made in good faith.

Meaning of Subordinate Courts

States are divided into districts (*zillas*), and within each a judge presides as a district judge over civil cases. A Sessions Judge presides over criminal cases. The judges are appointed by the Governor in consultation with the state's High Court. District Courts are subordinate to the authority of their High Court.

There is a hierarchy of judicial officials below the district level. Many officials are selected through competitive examination by the state's public service commission. Civil cases at the sub-district level are filed in Sub-District Courts⁹⁸. Lesser criminal cases are entrusted to the Courts of subordinate magistrates functioning under the supervisory authority of a district magistrate. All magistrates are under the supervision of the High Court. At the village level, disputes are frequently resolved by *panchayats* or *lok adalats*.⁹⁹

1.3.8 Section 7: Publication of information relating to proceeding in chambers or in camera not contempt except in certain cases -

(1) Notwithstanding anything contained in this Act, a person shall not be guilty of contempt of Court for publishing a fair and accurate report of judicial

⁹⁶ re Guljari Lal, 1968 MPLJ 725 (MP).

⁹⁷ 1973 Cr LJ 1106 (P & H).

⁹⁸ Sub-District Courts also known as *Munsif*.

⁹⁹ Panchayats or Lok Adalats also known as People's Courts. It is very relevant to mention here that now the Gram Nayala Act, 2009, has been passed under which more Judicial Powers have been given to Village Panchayats.

proceedings before any Court sitting in chambers or in camera except in the following cases, that is to say –

(a) Where the publication is contrary to the provisions of any enactment for the time being in force.

(b) Where the Court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published.

(c) Where the Court sits in chambers or in camera for reason connected with public order or the security of the state, the publication of information relating to those proceedings,

(d) Where the information relates to secret process, discovery or invention which is an issue in the proceedings.

(2) Without prejudice to the provisions contained in sub section (1) a person shall not be guilty of contempt of Court for publishing the text or a fair and accurate summary of the whole, or any part, of an order made by a Court sitting in chambers or in camera, unless the Court has expressly prohibited the publication thereof on grounds of public policy, or for reasons connected with public order or the security of the state, or on the ground that it contains information relating to secret process, discovery or invention, or in exercise of any power vested on it.

Section 17 of the Act¹⁰⁰ deals with the situation where a person publishes a fair and accurate report of a judicial proceeding before any court sitting in chambers or in camera it shall not be contempt of court except under the following cases:

(a) where the publication is contrary to the provisions of any enactment for the time being in force;

(b) where the court on ground of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published;

(c) where the Court sits in chambers or in camera for reason connected with public order or the security of the State,

¹⁰⁰ Section 17 of the Contempt of Courts Act, 1971.

the publication of information relating to those proceedings;

- (d) where the information relates to a secret process, discovery or invention which is an issue in the proceedings.

1.3.9 Section 8: Other defences not affected –

Nothing contained in this Act shall be construed as implying that any other defence which would have been a valid defence in any proceedings for contempt of Court has ceased to be available merely by reason of the provisions of this Act.

Since a proceeding in contempt is a quasi-judicial proceeding, the precise nature of contempt must be set out in the motion.¹⁰¹

1.3.10 Section 9: Act not to imply enlargement of scope of contempt –

Nothing contained in this Act shall be construed as implying that any disobedience, breach, publication or other act is punishable as contempt of Court which not be so punishable apart from this Act.

The scope of contempt of Courts has not been enlarged. What was not contempt so far is not contempt of Court even now. The contempt of Court should not be resorted to only for the purpose of enforcing interpretive rights.¹⁰²

1.3.11 Section 10: Power of High Court to punish contempts of subordinate Courts -

Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of Courts subordinate to it and it has and exercise in respect of contempts of itself.

Provided that no High Court shall take cognisance 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 (45 of 1860).

Section 10 of the Act authorises the High Court to punish contempts of subordinate Courts in accordance with the same procedure and practice as it has the power to punish for its contempt.

¹⁰¹ Nazamunnissa Shaukat Ali v. Municipal Corporation of Greater Bombay, (1990) 1 Mah LR 329 (Bom).

¹⁰² State of West Bengal v. N.N. Bagchi, AIR 1966 SC 447.

The proviso takes away the power of the High Court to punish for contempt in respect of the subordinate Courts where such contempt is an offence punishable under the Indian Penal Code, 1860. The phrase 'Courts subordinate to it' used is wide enough to include all Courts which are judicially subordinate to the High Court even though administrative control over them under Article 235 of the Constitution does not vest in the High Court.¹⁰³ In **E. Chandra v. Member Secretary, MMDA**,¹⁰⁴ It is further submitted that the power of committal for contempt must be wielded with the greatest reluctance and the greatest anxiety and only with the object of seeing that the dignity and authority of the Court are not imposed.

The Apex Court in **The Emperor v. J.P. Swadhin**,¹⁰⁵ held that If the act is punishable under the Indian Penal Code, 1860, as contempt of Court then that act cannot form the subject of contempt proceedings by the High Court. In **N. K. Gupta v. Umraomal Agarwalla**,¹⁰⁶ the Court observed that the High Court cannot take cognisance of 'contempt' which is punishable under the Indian Penal Code.

1.3.12 Section 11: Power of High Court to try offences committed or offenders found outside jurisdiction -

A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any Court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits.

This section provided for the extra-territorial jurisdiction of High Courts to commit a person for contempt even though the alleged act was committed outside its territorial jurisdiction of the concerned High Court.¹⁰⁷ This section expands the ambit of the authority beyond with was till then considered to be possible but it does not confer a

¹⁰³ S. K. Sarkar, Member, Board of Revenue, U.P. Lucknow v. Vinay Chandra Mishra, 1981 Cr. L.J. 283 at p. 286.

¹⁰⁴ (1990) 1 MLJR 537.

¹⁰⁵ AIR 1938 All 358.

¹⁰⁶ AIR 1951 Cal 489.

¹⁰⁷ State v. V. Adilakshmi Amma, 1954 Cr. LJ 988 (Ori).

new jurisdiction. In **Sukhdev Singh v. Teja Singh**,¹⁰⁸ the Apex Court held that it merely widens the scope of existing jurisdiction of a very special kind.

1.3.13 Section 12: Punishment for contempt of Court -

(1) Save as otherwise expressly provided in this Act or in any other law, 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. Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

Explanation -

An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no Court shall impose a sentence in excess of that specified in sub section for any contempt either in respect of itself or of a Court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the Court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of Court in respect of any undertaking given to a Court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the Court, by the detention in civil prison of each such person.

Provided that nothing contained in this sub section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub section (4) where the contempt of Court referred to therein has been committed by a company and it is provided

¹⁰⁸ AIR 1954 SC 186 (190).

that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manger, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the be contempt and the punishment may be enforced, with the leave of the Court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation - For the purpose of sub sections (4) and (5) -

(a) 'Company' means any body corporate and includes a firm or other association of individuals, and

(b) 'Director' in relation to a firm, means a partner in the firm.

Ordinarily the punishment prescribed under the Act is simple imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both. There is a proviso appended to Section 12 which provides that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.¹⁰⁹ The apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.¹¹⁰ Previously apology if conditional was not accepted. Now the law has been amended by this provision which says that an apology shall not be rejected merely because it is conditional. This was necessary because often it was felt that the alleged contemner was convinced that he had not committed any contempt of court, and yet he did not want to contest the finding to the contrary given by the court. In such circumstances, if the contemner explained his point of view and then submitted that if the court was of the opinion that contempt was committed, he apologised. Similarly, many other situations could arise in which conditional apology was offered.

Now the position is made clear that apology will not be rejected for the simple reason of being conditional. Facts have to be examined before the same can be rejected. Another important feature of the

¹⁰⁹ Section 12(1) of the Contempt of Courts Act, 1971.

¹¹⁰ Explanation to Section 12(1) of the Contempt of Courts Act, 1971.

section is that in civil contempt's, sentence of imprisonment is to be inflicted only when it is considered that sentence of fine will not meet ends of justice. Corporations have also been declared as capable of being punished.

Sometimes personal considerations affect the award of punishment under contempt matters. In **Hoshiam Shavaksha Dolikuka v. Thrity Hoshie Dolkuka**¹¹¹, the Court felt that imposition of any kind of punishment on the father for whom daughter has a lot of affection is likely to upset her and cause her mental distress. In the unfortunate and acrimonious dispute between the husband and the wife, the main concern in the instant case has been the welfare of the child. Only taking into consideration the fact that the welfare of the child is likely to be affected, the court was of the opinion that under the present circumstances and in the situation now prevailing one should let off the father with a reprimand and a warning, although he has been rightly found guilty of having committed contempt of court by the Bombay High Court, in the hope that the appellant in future will not do any such act as may constitute contempt of court and will try to serve the cause of welfare of the minor daughter by carrying out the directions given by the court.

The Supreme Court in **R. K. Garg v. State of H.P.**¹¹², held that the contemner had suffered enough in mind and reputation and no greater purpose was going to be served by subjecting the contemner to a long bodily suffering. The punishment in this case was reduced to one month imprisonment from six months whereas the fine was enhanced from Rs. 200/- to Rs. 1000/-.

(i) Meaning of Apology

According to the Oxford Pocket Dictionary of Current English the term apology means a regretful acknowledgment of an offense or failure.¹¹³

¹¹¹ (1982) 2 SCC 577 at p. 582.

¹¹² (1981) 3 SCC 166 at p. 167.

¹¹³ Lucinda Coventry, *Oxford Pocket Dictionary of Current English*, Oxford University Press, Oxford, 2009, p. 134.

As stated earlier the accused or contemner may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court. But in serious matters the apology cannot be accepted. Where statements were an intentional assault on the integrity and impartiality of a learned Judge of High Court and on the fair name of the High Court, and irreparable damage had already been done; no apology could undo it. The journalistic restraint, which should be inherent in a columnist of the Illustrated Weekly, was thrown into the winds. He cannot take cover under an apology, tendered later when proceedings in contempt are initiated under the Contempt of Courts Act.

The Apex Court in **State v. Radhagobinda Das**,¹¹⁴ held that if the law finds one to be guilty of contempt and he bows down to the judgment of the court that is not any adequate expression of apology.

Apology is an act of contrition and it must not be shorn of penitence. Tendering of apology cannot be a panacea in every case of contempt. In **State of Orissa v. R. N. Patra**,¹¹⁵ the Court held that no apology could undo gross contempt and serious cases of contempt. In **Rupert J. Bamabas v. N Bharani**,¹¹⁶ it was held that the court can, even when accepts the apology, commit an offender to prison or otherwise punish him. In **State of Punjab v. Raddha Krishan Khanna**,¹¹⁷ the Apex Court held that an unreserved apology, in less serious cases, has the asset of taking the stringent of contempt.

(ii) Nature of Apology

Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, apology is shorn of penitence. Tendering of apology cannot be a panacea in every case of contempt. If that were so, cases of gross contempt would go unpunished and serious mischief would remain unchecked in spite of the fact that provision has been made under the Contempt of Courts Act. Thus the

¹¹⁴ AIR 1954 Orissa 7.

¹¹⁵ (1975) 41 Cut LT 329.

¹¹⁶ 1990 LW (CrI) 27 (Mad).

¹¹⁷ AIR 1961 Punj 113.

purpose of the Statute would be frustrated.¹¹⁸

Apology cannot be a weapon of defence forged always to purge the guilty. It is intended to be evidence of real contribution, the manly consciousness of a wrong done, of an injury inflicted and the earnest desire to make such reparation as lies in the wrong doer's power. Only then it is of any avail in a court of Justice. But before it can have that effect, it should be tendered at the earliest possible stage, not the latest. Even if wisdom dawns only at a later stage, the apology should be tendered unreservedly and unconditionally, before the Judge has indicated the trend of his mind. Unless that is done, not only is the tendered apology robbed of all grace but it ceases to be an apology. It ceases to be the full, frank and manly confession of a wrong done, which it is intended to be.¹¹⁹ Apology must be voluntary, unconditional and indicative of remorse and contrition and it should be tendered at the earliest opportunity.¹²⁰

(iii) Apology, when cannot be accepted

It is not necessary that every apology is to be accepted by the court. A court can refuse to accept an apology which it does not believe to be genuine, it can, even when it accepts the apology, commit an offender to prison or otherwise punish him.

The Court in **Lal Behari v. State**,¹²¹ held that what may appear to a sophisticated mind as harsh, rough, rude and uncouth, may not be so to unsophisticated and even to angry irritated, and brooding. There is nothing to hold that the opponent was actuated by desire to disrepute not sure about his ability to express what he feels just or unjust. Under these circumstances, there is no hesitation in accepting his apology.

The Court may or may not accept an apology goes to sentence

¹¹⁸ State v. R.N. Patra, (1976) 1 Cr. L.J. at p. 445 (Orissa); see also Mulk Raj v. State of Punjab, A.I.R. 1972 S.C. 1197.

¹¹⁹ In the matter of Hiren Bose, 1969 Cr. L.J. 40 at p. 43 (Cal.).

¹²⁰ Bhalchandra Gangadhar Ghate v. Pralhad Sadhuji Raghute, 1976 Mah. 711 at p. 712; see also Engineering Projects (P.) Ltd. v. Ishwari Prasad Ganeriwala, 40 (1990) D.L.T. 567 at p. 575.

¹²¹ A.I.R. 1953 All 153 at p. 158; See also Rupert J. Barnabas v. Mrs. Josephine Bharani Fatimson alias N. Bharani, 1990 L.W. (Cr.) 27 at pp. 29- 39 (Mad).

and cannot, therefore, be accepted without a finding that contempt has been committed. However, apology, though not a weapon of defence forged always to purge the guilty, should be tendered out the earliest possible stage, unreservedly and unconditionally and it must be indicative of remorse and contrition as well as free, full, frank and manly confession of a wrong done.¹²² A hauling, hesitating and vacillating apology deserves to be rejected.¹²³

(iv) Punishment Primarily a Matter of Discretion

To award punishment for contempt is a matter sole discretion of the court. It has been seen in some cases where a contemner has been sufficiently punished for disobeying a court order he may not be punished further for continuing to do the same thing, even though in a sense he is continuing to be contumacious. In doing so the court takes the view that the contemner has been punished enough for the original contempt, and he is not going to comply with the original order however long he stays in custody, therefore, there is no justification for continuing to keep him in prison.¹²⁴

The Court in **Peart v. Stewart**,¹²⁵ held that in England generally an inferior court commits a contemner for a maximum period of one month, a period which coincides with the maximum period for which a County may make a committal order for a criminal contempt of court.

(v) Quantum of Punishment

Ignorance of law is no excuse. A person who inflicts an injury upon another in contravention of law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law.¹²⁶

It is not open to accept the easy and ready solution of accepting the apology and imposing a fine in the case of a contumacious disregard of all decencies, which can only lead to a serious

¹²² Re Hirenn Bose, AIR 1969 Cal 1.

¹²³ State of Uttar Pradesh v. Krishna Madho, AIR 1952 All 86.

¹²⁴ Enfield London Borough Council v. Mahoney, (1983) 2 All E.R. 901 at p. 907.

¹²⁵ (1983) 1 All E.R. 859 at p. 862.

¹²⁶ Balkrishna Narayan Saoji v. Col. N.S. Jatar, Inspector General of Prisons, C.P. & Berar, Nagpur, A.I.R. 1945 Nag. 33 at p. 47; See also Shearer v. Shields, (1914) A.C. 808.

disturbance of the system of administration of justice unless duly repaired at once by inflicting an appropriate punishment on the contemner which must be to send him to jail to atone for his misconduct and therefore to come out of prison a chastened and a better citizen.¹²⁷

In **Bhimarao Raghunath Karandikar, Lt. Col. (read.) v. Advocate Madhukar Yeshwant Joshi's**¹²⁸ case the record shows that he had slandered Additional Sessions Judge, Behere, Judicial Magistrate First Class, Wagholikar, Assistant Gursahani; Additional District Magistrate, Deodhar and Judicial Magistrate First Class Satonkar who had at some time or the other worked as Judicial Officers at Pune where the contemner resides and has been practising as an Advocate. He forgets that he is member of noble profession of law and that he owes a duty in maintaining the dignity of judicial officers and the judiciary as a whole. Since the contemner had intentionally carried on warfare against the Judges and the members of the lower judiciary, he was liable to be punished. In **Nawal Kishore Singh v. Rajendra Prasad Singh**,¹²⁹ it was held that the order of detention in the civil prison is intended to be passed in addition to the attachment of the property of the guilty person.

(vi) Impact of conduct of contemner on Quantum of Punishment

An important question relating to quantum of punishment arises that whether the conduct of contemner affect the quantum of punishment i.e., good conduct help in reducing the punishment of imprisonment and fine and vice versa. When the Court reaches the conclusion that there is a punishable contempt, the conduct of the respondents and the subsequent events, may have effect and impact upon the quantum of punishment. Such matters may not have a direct relevance on the question whether a particular passage which had been the subject-matter of a specific charge does or does not

¹²⁷ Ashram M. Jain v. A.T. Gupta, (1983) 2 Cr. L.J. 1499 at p. 1500.

¹²⁸ 1984 Cr.L.R. 56 at pp. 60, 61 (Bom.).

¹²⁹ A.I.R. 1976 Pat. 56 at p. 57.

amount to criminal contempt.¹³⁰

The Apex Court in **Shyam Sundar v. Satchidananda Rakshit**,¹³¹ held that the punishment should be primarily for upholding the dignity of the court and maintaining due respect for the administration of justice. There should be no element of vindictiveness in it and it should not be allowed to be used for feeding a private grudge or as an offensive weapon to satisfy private vendetta.

1.3.14 Section 13: Contempts not punishable in certain cases –

Notwithstanding anything contained in any law for the time being in force, no Court shall impose a sentence under this Act for a contempt of Court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice.¹³²

The law does not take into consideration the trivial matters even though such matters in the technical sense may be covered under law. The contempt law is also developed on this cardinal rule of law that minor matters must be ignored.

It is submitted that every infraction of court's order is not contempt of court.¹³³ Thus, this section in unambiguous and in clear terms declares that only wilful and deliberate disobedience of court's order or substantial interference in courts order is to be punished. A party (or person) can be committed for contempt only owing to any willful or deliberate or reckless disobedience of the order of the court.¹³⁴ Technical contempt's are to be ignored.¹³⁵ But the contempt by a senior lawyer could not be ignored. The vituperative language was the outcome of a defeated Advocate which appeared to be a very serious matter to the High Court. The matter becomes more serious when it has happened in a *mofussil* place where there are one or two courts and a few lawyers, and the litigating public is mostly illiterate

¹³⁰ Guruvayur Devaswom Managing Committee v. Pritish Nandy, 1987 Cr.L.J. 192 (Ker.).

¹³¹ A.I.R. 1955 Cal. 351 at p. 353.

¹³² Section 13 of the Contempt of Courts Act, 1971 has been amended and new provision have been discussed in the later part of this Chapter under the heading of the Contempt of Courts (Amendment) Act, 2006.

¹³³ H.S. Butalia v. Subhas Saksena, 1974 Cr LJ 828 (Cal).

¹³⁴ Jiwani Kumari v. Satyabrata Chakraborty, AIR 1991 SC 326.

¹³⁵ Baradakanta Mishra v. The Registrar, Orissa High Court, AIR 1974 SC 710.

or poorly educated, therefore under such circumstances contempt is not to be ignored or allowed to pass by.¹³⁶

1.3.15 Section 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,

(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

¹³⁶ Rama Dayal, Markarha v. The State of Madhya Pradesh, A.I.R. 1978 SC 921 at p. 929.

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 he 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.

Section 14 of the Ac¹³⁷t deals with procedure where contempt is in the face of the Supreme Court or a High Court. Where contempt -

(a) is committed in the presence or hearing of the Supreme Court or the High Court, or

(b) is not committed in the presence or hearing of the Supreme Court or the High Court, but a complaint is made immediately before the alleged contemner leaves the precincts of that court, then the procedure laid down in this section has to be adopted.¹³⁸

1.3.16 Section 15: Cognisance 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 of the advocate-general, (Note:- Ins. by Act 45 of 1976, sec.2)

(c) [(Note:- Ins. by Act 45 of 1976, sec.2)] 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 persons, with the consent in writing of such law officer.

¹³⁷ Section 14 of the Contempt of Courts Act.

¹³⁸ Mansiha Mukherjee v. Aashoke Chatterjee, 1985 Cr LJ 1224.

(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 charge is alleged to be guilty.

Explanation - In this section, the expression 'advocate-general' means -

(a) In relation to the Supreme Court, the attorney 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.

Section 15 of the Act, 1971, deals with cognisance of criminal contempt in certain cases. The Court can take action - (a) On motion by the Advocate-General himself; or (b) On motion by anyone with the consent of the Advocate-General; or (c) On report by a subordinate court, in cases not covered by Section 14 of the Act. In **Berealy v. Xavier**,¹³⁹ it was held that procedure of making a reference cannot apply in a case when the presiding officer of a subordinate court himself is guilty of contempt of court.

Nobody has a right to compel the subordinate Court to make a reference to the High Court.¹⁴⁰ In **re K. L. Gauba**,¹⁴¹ it was held that contemner has no right to produce defence to establish the truth of his allegations. In **V. K. Kanade v. Mandho Godkari**,¹⁴² it was held that a negative fact cannot be proved.

Section 15(2) of the Contempt of Courts Act, 1971, empowers the High Court in the case of any criminal contempt of a subordinate court, to take cognizance on a reference made to it by the subordinate

¹³⁹ 1988 Cr LJ 90.

¹⁴⁰ Jomon v the state of Kerala, (1987) IJ Reports 273 (Kerala).

¹⁴¹ AIR 1942 Lah 105; see also Re Ram Mohanlal, AIR 1935 All 38.

¹⁴² (1990) I Mah LR 544 (Bom).

court, or on a motion made by the Advocate-General, or in relation to a Union Territory by the notified Law Officer.

The respondent-advocate in **Mohd. Ikram Hussain v. The State of U.P.**,¹⁴³ as a counsel appeared in a proceeding under the U.P. Zamindari and Land Reforms Act 1950, before the appellant who was a Member of the Board of Revenue to oppose the vacation of a stay order filed before the Board.

The respondent, in his petition to the High Court under the Contempt of Courts, 1971 alleged that in the course of arguments before the appellant in the aforesaid proceeding, the appellant got infuriated, lost his temper and abused him saying "*Nalayak Gadhe Salle ko Jail Bhijwadunga; kis Idiot Ne Advocate Bana Diya Hai*", and that thereby the appellant had committed contempt of his own court as well as that of the High Court as provided in sections 15 and 16 of the Contempt of Courts Act which was punishable under section 12 of the said Act.

Before the High Court, the appellant raised a preliminary objection stating that the High Court was not competent to take cognizance of the alleged contempt without any reference from the subordinate court or without a motion by the Advocate-General as envisaged by section 15(2) of the Act. The High Court rejected the preliminary objection and held that the application was maintainable.¹⁴⁴

In the appeal to Apex Court, on the question whether the High Court can take *suo motu* cognizance of contempt of subordinate/inferior Court when it is not moved in either of the two modes mentioned in section 15(2) of the Act. The Court held:¹⁴⁵

1. Sub-section (2) of section 15 of the Act 1971¹⁴⁶, does not restrict the power of the High Court to take cognizance of and punish contempt of a subordinate court, on its own motion.

¹⁴³ A.I.R. 1964 S.C. 1625.

¹⁴⁴ Mohd. Ikram Hussain v. The State of U.P., A.I.R. 1964 S.C. 1625.

¹⁴⁵ Ibid. p. 1628.

¹⁴⁶ Section 15 (2) of the Contempt of Courts Act 1971.

2. In the facts of the instant case the High Court has not acted improperly or illegally in taking *suo motu* cognizance, on the petition of the respondent-advocate.

3. Articles 129¹⁴⁷ and 215¹⁴⁸ preserve all the powers of the Supreme Court and the High Court, respectively, as a Court of Record which includes the power to punish the contempt of itself. Parliament has, by virtue of Entry 77 of List I of the Seventh Schedule, and Entry 14 of List III of the Seventh Schedule, power to define and limit the power of the courts in punishing contempt of court and to regulate their procedure in relation thereto.

4. Section 15 does not specify the basis or the sources of the information on which the High Court can act on its own motion. If the High Court acts on information derived from its own sources, such as on a perusal of the records of a subordinate court or on reading a report in a newspaper or hearing a public speech, without there being any reference from the subordinate court or the Advocate-General, it can be said to have taken cognizance on its own motion. But if the High Court is directly moved by a petition by a private person feeling aggrieved, not being the Advocate-General, the High Court, has, a discretion to refuse to entertain the petition, or to take cognizance on its own motion on the basis of the information supplied to it in that petition. If the petitioner is a responsible member of the legal profession, it may act *suo motu*.¹⁴⁹

5. If the High Court is *prima facie* satisfied that the information received by it regarding the commission of contempt of a subordinate court is not frivolous, and the contempt alleged is not merely technical or trivial, it may, in its discretion, act *suo motu* and commence the proceedings against the contemner. However, this mode of taking *suo motu* cognizance of contempt of a subordinate court should be

¹⁴⁷ Article 129 of the Constitution of India posits that the Supreme Court shall be a Court of Record and shall have all the power of such a court including the power to punish for contempt of itself.

¹⁴⁸ Article 215 of the Constitution of India posits that every High Court is a Court of Record with all powers attendant thereto including the power to punish contempt of itself.

¹⁴⁹ Mohd. Ikram Hussain v. The State of U.P., A.I.R. 1964 S.C. 1625.

resorted to sparingly where the contempt concerned is of a grave and serious nature.

6. If the intention of the Legislature was to take away the power of the High Court to take *suo motu* cognizance of contempt, there was no difficulty in saying so in unequivocal language, or in wording subsection (2) of Section 15 in a negative form.

So, the whole object of prescribing procedural modes of taking cognizance in Section 15 is to safeguard the valuable time of the High Court or of the Supreme Court from being wasted by frivolous complaints of contempt of court.

1.3.17 Section 16: Contempt by judge, magistrate or other person acting judicially –

(1) Subject to the provisions of any law for the time being in force, a judge, magistrate or other persons act in judicially shall also be liable for contempt of his own Court or of any other Court in the same manner as any other individual is liable and the provisions of this Act, so far as may be, apply accordingly.

(2) Notwithstanding in this section shall apply to any observations or remarks made by a judge, magistrate or other person act in judicially, regarding a subordinate Court in an appeal or revision pending before such judge, magistrate or other person against the order or judgment of the subordinate Court.

Section 16 of the Contempt of Courts Act, 1971, deals with contempt by judge, magistrate or other person acting judicially. It is not only that an outsider or a third person is to be held liable for contempt of court. The Presiding Judge of the Court can also be held liable for contempt under the contempt law. To establish contempt it would depend upon the facts and circumstances of each case. In **B. N. Choudhary v. S.M. Singh**,¹⁵⁰ the Court held that steps in contempt should only be taken when there is real and grave danger which may result in the obstruction of justice or scandalising the court.

¹⁵⁰ (1967) Cr.L.J. 1141 (Pat).

In **Harish Chandra v. Justice S. Ali Ahmed**,¹⁵¹ it was held that in respect of Supreme Court or High Court there is no question of any judge being liable for contempt of his 'Own Court', in other words, the Court-room should be where such Judge is presiding. Thus a Judge of Subordinate Court can be said to have committed contempt of his own Court i.e. the court in which such Judge is presiding. If the framers of the Act wanted to include even the Supreme Court and High Court Judges under Section 16, then in normal course it was expected that it should have been specifically mentioned that a Judge of the Supreme Court or a High Court can be held liable for contempt of the Supreme Court or the High Court. It has been made clear in Sub-Section 2 of Section 16 that nothing in this Section shall apply to any observations or remarks made by a judge, magistrate or other person acting judicially, regarding a subordinate court in an appeal or revision pending before such judge, magistrate or other person against the order or judgment of the subordinate court.

The Supreme Court in **Baradakanta v. The Registrar, Orissa High Court**,¹⁵² held that a judge can foul judicial administration by misdemeanors while engaged in the exercise of the functions of a judge. In **B.N. Choudhary v. S.M. Singh**,¹⁵³ the Apex Court held that the magistrates should be conscious of their heavy responsibilities and should not act in a manner prejudicial to the litigants.

1.3.18 Section 17: Procedure after cognisance –

(1) Notice of every proceeding under section 15 shall be served personally on the person charged, unless the Court for reasons to be recorded directs otherwise.

(2) The notice shall be accompanied -

(a) In the case of proceedings commenced on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded and,

¹⁵¹ 1987 Cr. L.J. 320 at p. 328.

¹⁵² AIR 1974 SC 710.

¹⁵³ (1967) Cr.L.J. 1141 (Pat).

(b) In case of proceedings commenced on a reference by a subordinate Court, by a copy of the reference.

(3) The Court may, if it is satisfied that a person charged under Section 15 is likely to abscond or keep out of the way to avoid service of the notice, order the attachment of his property of such value or amount as it may deem reasonable.

(4) Every attachment under sub section (3) shall be effected in the manner provided in the code of civil procedure, 1908 [5 of 1908 (Note: now see code of criminal procedure, 1973 (2 of 1974)], for the attachment of property in execution of a decree for payment of money, and if, after such attachment, the person charged appears and shows to the satisfaction of the Court that he did not abscond or keep out of the way to avoid service of the notice, the Court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit.

(5) Any person charged with contempt under Section 15 may file an affidavit in support of this defence, and the Court may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary, and pass such order as the justice of the case requires.

Section 17 of the Act, 1971, deals with procedure after cognizance. Contempt proceedings are quasi criminal in nature.¹⁵⁴ The Supreme Court in **M.R. Parashar v. Dr Farooq Abdullah**,¹⁵⁵ held that the position of a contemner is that of an accused person. Notice of every proceeding under the Act shall be served personally on the person charged, unless the court for reasons to be recorded directs otherwise.¹⁵⁶ The notice shall be accompanied¹⁵⁷ (a) in the case of proceedings commenced on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded; and (b) in case of proceedings commenced on a reference by a subordinate court, by a copy of the reference. The court may if it is satisfied that a person charged under the Act is likely to abscond or keep out of the way avoiding service of the notice, order the attachment of his

¹⁵⁴ Sheoraj v. A.P. Batra, AIR 1955 All 638.

¹⁵⁵ 1984 Cal LJ 337 (SC).

¹⁵⁶ Section 17(1) of the Contempt of Courts Act, 1971.

¹⁵⁷ Section 17(2) of the Contempt of Courts Act, 1971.

property of such value or amount as it may deem reasonable.¹⁵⁸

Every attachment shall be effected in the manner provided in the Code of Civil Procedure, 1908, for the attachment of property in execution of a decree for payment of money, and if, after such attachment, the person charged appears and shows to the satisfaction of the court that he did not abscond or keep out of the way to avoid service of the notice, the court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit.¹⁵⁹

Any person charged with contempt under the Act may file an affidavit in support of his defence, and the court may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary, and pass such order as the justice of the case requires.¹⁶⁰

The criminal contempt of court undoubtedly amounts to an offence but it is an offence *sui generis* and hence for such offence, the procedure adopted both under the common law and the statute law even in this country has always been summary. However, the fact that the process is summary does not mean that the procedural requirement, viz., that an opportunity of meeting the charge, is denied to the contemner. The degree of precision with which the charge may be stated depends upon the circumstances. So long as the gist of the specific allegations is made clear or otherwise the contemner is aware of the specific allegation, it is not always necessary to formulate the charge in a specific allegation. The consensus of opinion among the judiciary and the jurists alike is that despite the objection that the Judge deals with the contempt himself and the contemner has little opportunity to defend himself, there is a residue of cases where not only it is unjustifiable to punish on the spot but it is the only realistic way of dealing with certain offenders. This procedure does not offend against the principle of

¹⁵⁸ Section 17(3) of the Contempt of Courts Act, 1971.

¹⁵⁹ Section 17(4) of the Contempt of Courts Act, 1971.

¹⁶⁰ Section 17(5) of the Contempt of Courts Act, 1971.

natural justice, viz., *nemo judex in sua causa*¹⁶¹ since the prosecution is not aimed at protecting the Judge personally but protecting the administration of justice. The threat of immediate punishment is the most effective deterrent against misconduct. The Judge has to remain in full control of the hearing of the case and he must be able to take steps to restore order as early and quickly as possible, the time factor is crucial. Dragging out the contempt proceedings means a lengthy interruption to the main proceedings which paralyses the court for a time and indirectly impede the speed and efficiency with which justice is administered. Instant justice can never be completely satisfactory yet it does provide the simplest, most effective and least unsatisfactory method of dealing with disruptive conduct in Court. So long as the contemner's interests are adequately safeguarded by giving him an opportunity of being heard in his defence, even summary procedure in the case of contempt in the face of the Court is commended and not faulted.

In **Supreme Court Bar Association v. Union of India**,¹⁶² it was held that although the contempt is in the face of the court, the procedure adopted is not only summary but has adequately safeguarded the contemner's interests.

1.3.19 Section 18: Hearing of cases of criminal contempt to be by benches –

(1) Every case of criminal contempt under section 15 shall be heard and determined by a bench of not less than two judges.

(2) Sub section (1) shall not apply to the Court of a Judicial Commissioner.

According to Section 18 of the Contempt of Courts Act, every case of criminal contempt under Section 15 of the Act shall be heard and determined by a Bench of not less than two Judges. It is relevant to point out that this provision shall not apply in case of the Court of

¹⁶¹ *Nemo judex in sua causa* means no one can be a judge in one's own case. It is a principal of Natural Justice.

¹⁶² Writ Petition (civil) 200 of 1995, dated 17/4/1998.

a Judicial Commissioner¹⁶³.

It is submitted that the intention of the proceedings is different from the hearing of the contempt case; therefore, there is nothing unlawful if the proceedings under the Act are initiated by a single judge. In **Court on its Own Motion v. Kasturi Lal**¹⁶⁴, the Punjab and Haryana High Court held that a single Judge of the High Court is in no way barred from initiating proceedings for criminal contempt and Section 18 of the Contempt of Courts Act present no impediment to the exercise of the limited power.

Section 18 has no bearing or relevance to either the taking of cognisance under Section 15 or to the initiation of proceedings and issuance of notice under Section 17. The words 'heard and determined' as used in Section 18 are not to be read as individual isolated words, but conjointly as a phrase. The legal phrase 'heard and determined' is not to be applied to any and every step taken in the contempt jurisdictions but has obvious relevance only to the final trial and adjudication of criminal contempt. It would be manifest that this phrase would have little relevance to the preliminaries of procedure laid out in Sections 15 and 17. It is only when the contemner has appeared and a final adjudication of the matter is to be made then the provisions of Section 18 and the phrase 'heard and determined' is attracted. It is at this stage only that the Legislature in its wisdom has provided that the same should be heard and determined by a Bench of two or more Judges. The proceedings under Section 15 involve no determination as such nor do the proceedings under Section 17 decide anything till the contemner appears and makes his defence. Mere cognisance of criminal contempt under Section 15 and the initiation and notice to the contemner under Section 17 are thus obviously different from and in essence distinct from the final hearing and determination, which has been provided for under section 18 of the

¹⁶³ It is important to point out that now there was no Court of a Judicial Commissioner.
¹⁶⁴ AIR 1980 P&H 72.

Act, 1971.¹⁶⁵

1.3.20 Section 19: Appeals –

(1) An appeal shall lie as of right from any order to decision of High Court in the exercise of its jurisdiction to punish for contempt -

(a) Where the order or decision is that of a single judge, to a bench of not less than two judges of the Court.

(b) Where the order or decision is that of a bench, to the Supreme Court.

Provided that where the order or decision is that of the Court of the judicial commissioner in any union territory, such appeal shall lie to the Supreme Court.

2) Pending any appeal. The appellate Court may order that -

(a) The execution of the punishment or order appealed against be suspended

(b) If the appellant is in confinement, he be released on bail, and

(c) The appeal be heard notwithstanding that the appellant has not purged his contempt.

3) Where any person aggrieved by any order against which an appeal may be filed satisfied the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub section (2).

(4) An appeal under sub section (1) shall be filed-

(a) In the case of an appeal to a bench of the High Court, within 30 days.

(b) In the case of an appeal to the Supreme Court, within 60 days, from the date of the order appealed against.

Section 19 of the Contempt of Courts Act, 1971, deals with appeals. Right to appeal to higher court against the decision of lower court has been specifically given in the present Act. Prior to this, the position was not clear. Appeals were heard by the Privy Council on the ground that the action in the contempt of court cases was made in the name and on behalf of the Sovereign hence the Privy Council could hear the appeal.

¹⁶⁵ Court on its Own Motion v. Kasturi Lal, AIR 1980 P&H 72, at p. 73.

The Apex Court in **S. P. Wahi v. Surendra Singh**,¹⁶⁶ held that it is not each and every order passed during the contempt proceedings that is appealable. In **Subhash Chandra v. B.R. Kakkar**,¹⁶⁷ it was held that when the High Court acquits the contemner, no appeal lies.

If the order of committal for contempt of court is made -

- (a) By a single judge of the High Court, an appeal lies to a division bench thereof; or
- (b) By a division bench of the High Court, an appeal lies to the Supreme Court, as of a statutory right.¹⁶⁸

1.3.20 Section 20: Limitation for actions for contempt -

No Court shall initiate any proceedings if contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

It has been clearly laid down in Section 20 of the Contempt of Courts Act, 1971 that it is a time bound programme. In **V. R. Kanade v. Madhao Gadhari**,¹⁶⁹ it was held that no Court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. In **Golcha Avertising Agency v. The State of Maharashtra**,¹⁷⁰ the Court observed that no intervening event or order stops the running of time specified in this section. In **Abdul Hamed v. S. Radhakrishnan**,¹⁷¹ it was observed that the delay in initiating contempt proceedings cannot be condoned. In **Krishanlal Chhoteylal**,¹⁷² it was held that the Contempt of Courts Act, 1971, had its own provisions relating to limitation and the provisions of the Limitation Act, 1963, did not apply.

Article 215 of the Constitution of India, no doubt, empowers every High Court to punish contempt of court subordinate to it, but

¹⁶⁶ 1983 Cr LJ 1426.

¹⁶⁷ (1992) 2 Punj LR 46 (P & H).

¹⁶⁸ (1984) 2 Crimes 880 (SC).

¹⁶⁹ (1990) 1 Mah LR 544 (Bom); See also *The State of Bihar v. Ambika Roy*, 1991 Cr. L.J. 82.

¹⁷⁰ (1990) 2 Bom CR 262 (Bom).

¹⁷¹ 1989 LW (Cri) 237.

¹⁷² (1987) 13 AIR 44.

the Contempt of Courts Act lays down how that power has to be exercised. Article 215 of the Constitution of India and relevant provisions of the Contempt of Courts Act has to be read together. In **Om Prakash jaiswal v. D.K.Mittal**,¹⁷³ it was held that the High Court cannot take cognizance of contempt of itself if the period of one year has already elapsed.

1.3.22 Section 21: Act not to apply to Nyaya Panchayatas or other Village Courts –

Nothing contained in this Act shall apply in relation to contempt of Nyaya Panchayats or other village Courts, by whatever name known, for the administration of justice, established under any law.

According to Section 21 of the Contempt of Courts Act, 1971, this Act not applies to *Nyaya Panchayats*¹⁷⁴ or other Village Courts. These primary courts give justice at the earlier stages and cheaply. Justice in regular courts is often defeated by lapse of time and complications of procedural law. In *Panchayat* Courts, truth comes out effortlessly. If people do not have fear of being punished for disobedience of orders of these Courts, or if they are allowed to scandalize these courts, administration of justice will suffer at the primary stages. It will, therefore, be proper to extend the provision of the Act to *Nyaya Panchayats* also.

1.3.23 Section 22: Act to be in addition to, and not in derogation of, other laws relating to contempt –

The provisions of this Act shall be in addition to, and not in derogation of the provision of any other law relating to contempt of Courts.

According to Section 22 of the Contempt of Courts Act, 1971, the provisions of the Act are in addition to and not in derogation of the provisions of any other law relating to contempt of Courts. The provisions incorporated in the Act are supplemental to already existing law of contempt.

An act or action which was not contempt of court before the Act

¹⁷³ 1990 All. L.J. 116 at p. 120.

¹⁷⁴ The Nyaya Panchayats Act, 2009.

came in force shall not be punishable as contempt of court under the Act. The provisions incorporated in the Act are supplement to already existing law of contempt as interpreted by the Supreme Court and different High Courts.¹⁷⁵

1.3.24 Section 23: Power of the Supreme Court and High Court to make rules –

The Supreme Court or, a case may be, any High Court, may make rules, not inconsistent with the provisions of this Act, providing for any matter relating to its procedure.

The Supreme Court and High Courts may make rules, in consonance with the provisions of the Contempt of Court Act for any matter relating to its procedure. In **Mohammed Yamin v. O.P. Bansal**,¹⁷⁶ it is submitted that the court is guided, by its own procedure to be followed in the facts and circumstances of each individual case and to see that the contemner is getting full opportunity to make defence.

(i) Rules to regulate proceedings for contempt to the Supreme Court, 1975

In exercise of the powers under Section 23 of the Contempt of Courts Act, 1971 read with Article 145 of the Constitution of India and all other powers enabling it in this behalf, the Supreme Court hereby makes, with the approval of the President, the following rules¹⁷⁷ -

1. (i) these rules may be called the rules to regulate proceedings for contempt of the Supreme Court, 1975.

(ii) They shall come into force on the date of their publication in the official gazette.¹⁷⁸

2. (i) Where contempt is committed in view or presence or hearing of the court, the contemnor may be punished by the court before which it is committed either forthwith or on such date as may be appointed by the court in that behalf.

¹⁷⁵ Harish Chandra Misra v. S. Ali Ahmed, AIR 1986 Pat 65.

¹⁷⁶ 1982 Cr.L.J. 322 (Raj.).

¹⁷⁷ These rules came into force with affect from 1st February, 1975.

¹⁷⁸ Rules published in the Gazette of India, dated February 1, 1975 and came into force from that date

(ii) Pending the determination of the charge, the court may direct that the contemnor shall be detained in such custody as it may specify.

Provided that the contemnor may be released on bail on such terms as the court may direct.

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.

4. (a) Every petition under Rule 3 (b) or (c) shall contain:

(i) The name, description and place of residence of the petitioner or petitioners and of the persons charged.

(ii) Nature of the contempt alleged, and such material facts, including the date or dates of commission of the alleged contempt, as may be necessary for the proper determination of the case.

(iii) If a petition has previously been made by him on the same facts, the petitioners shall give the details of the petition previously made and shall also indicate the result thereof.

(b) The petition shall be supported by an affidavit.

(c) Whether the petitioner relies upon a document or documents in his possession or power, he shall file such document or documents or true copies thereof with the petition.

(d) No court-fee shall be payable on the petition, and on any documents filed in the proceedings.¹⁷⁹

5. Every petition under rule 3 (b) and (c) shall be posted before the court for preliminary hearing and for orders as to issue of notice. Upon such hearing, the court, if satisfied that no prima facie case has been made out for issue of notice, may dismiss the petition, and, if not

¹⁷⁹ Rules came into force with affect from 1st February, 1975.

so satisfied direct that notice of the petition be issued to the contemnor.

6. (i) Notice to the person charged shall be in Form 1. The person charged shall, unless otherwise ordered, appear in person before the Court a directed on the date fixed for hearing of the proceeding, and shall continue to remain present during hearing till the proceeding is finally disposed of by order of the court

(ii) When action is instituted on petition, a copy of the petition along with the annexure and affidavits shall be served upon the person charged.

7. The person charged may file his reply duly supported by an affidavit or affidavits.

8. No further affidavit or document shall be filed except with the leave of the court.

9. Unless otherwise ordered by the court, seven copies of the paper book shall be prepared in the registry, one for the petitioner, one for the opposite party and the remaining for the use of the court. The paper book in case shall be prepared at the expense of the central government and shall consist of the following documents:

(i) Petition and affidavits filed by the petitioner,

(ii) A copy of, or a statement relating to, the objectionable matter constituting the alleged contempt.

(iii) Replay and affidavits of the parties.

(iv) Documents filed by the parties.

(v) Any other document which the registrar may deem fit to include.

10. The court may direct the attorney-general or solicitor-general to appear and assist the court.¹⁸⁰

11. (i) The court may, if it has reason to believe, that the person charged is absconding or is otherwise evading service of notice, or if he fails to appear in person or to continue to remain present in person in pursuance of the notice, direct a warrant bailable or non-bailable

¹⁸⁰ These rules came into force with affect from 1st February, 1975.

for his arrest, addressed to one or more police officers or may order attachment of property. The warrant shall be issued under the signature of the registrar. The warrant shall be in Form II and shall be executed, as far as may be in the manner provided for execution of warrants under the code of criminal procedure.

(ii) The warrant shall be execute by the officer to officers to whom it is directed, and may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

(iii) Where a warrant is to be executed outside the union territory of Delhi, the court may instead of directing such warrant to police officer, forward it to the magistrate of the district or the superintendent of police or commissioner of police of the district within which the person charged is believed to be residing. The magistrate or the police officer to whom the warrant is forwarded shall endorse his name thereon, and cause it to be executed.

(iv) Every person who is arrested and detained shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding the time necessary for the from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

12. The court may, either *suo motu*, or on motion made for that purpose, orders the attendance for cross-examination, for a person whose affidavit has been filed in the matter.

13. The court may make orders for the purpose of securing the attendance of any person to be examined as a witness and for discovery of production of any document.

14. The court may pass such orders as it thinks fit including orders as to costs which may recover as if the order were a decree of the Court.¹⁸¹

¹⁸¹ These rules came into force with affect from 1st February, 1975.

15. Save as otherwise provided by the rules contained herein, the provisions of the Supreme Court Rules, 1966 shall, so far as may be, apply to proceedings in relation to proceedings in contempt under this part.

16. Where a person charged with contempt is adjusted guilty and is sentenced to suffer imprisonment, a warrant of commitment and detention shall be made out in Form IV under the signature of the registrar. Every such warrant shall remain in force until it is cancelled by order of the court on until it is executed. The superintendent of the jail shall in pursuance of the order receive the person so adjusted and detain him in custody for the period specified therein, or until further orders.

(ii) Relevant pronouncements of Supreme Court with respect to jurisdiction of courts regarding contempt proceedings

The following are the important and relevant pronouncements of Supreme Court in **re Vinay Chandra Mishra,s case**¹⁸² with respect to jurisdiction of courts regarding contempt proceedings:

1. Where jurisdiction of a court is conferred by a statute, the extent of jurisdiction is limited to the extent prescribed under the statute. But there is no such limitation on a superior court of record (Supreme Court and High Court) in matters relating to the exercise of constitutional powers which includes contempt proceedings. While the Supreme Court has an appellate jurisdiction under Section 19 of Contempt of Courts Act 1971, that does not divest it of its inherent power under Article 129 of the Constitution i.e. to take *suo motu* cognizance of contempt of a subordinate court. That means it is wrong to interpret Supreme Court's powers under Article 129 that Supreme Court can deal only with appeals covering contempt proceedings; Supreme Court can deal with use its inherent jurisdiction to initiate any contempt proceedings *suo-motu* or otherwise.

2. (i) Even in the absence of any express provisions under the Contempt of Courts Act, High Court being a court of record has

¹⁸² (1995) 2 SCC 584.

inherent power in respect of contempt of itself as well as of subordinate courts.

(ii) The Supreme Court being the Apex Court of the country and superior court of record possesses the same inherent jurisdiction and power for taking action for contempt of itself, as well as for the contempt of subordinate and inferior courts.

3. Any submission that the Supreme Court has no supervisory jurisdiction over High Court or other subordinate courts, so it does not possess the power which High Court have under Article 215¹⁸³ is a misconceived notion. Supreme Court's power to correct judicial orders of subordinate courts under Article 136 is much wider and more effective than that of High Courts under Article 227 (Power of superintendence over all courts by High Court). Absence of administrative power of superintendence over the High Court and subordinate courts does not affect Supreme Court's wide powers of judicial superintendence.

4. High Courts have power to punish for contempt of subordinate courts under Article 215 but that does not affect or abridge the inherent power of Supreme Court under Article 129¹⁸⁴. The Supreme Court and High Court both exercise concurrent jurisdiction under the constitutional scheme of punishing for contempt of any subordinate court including contempt of itself.

5. Ordinarily matters relating to contempt of subordinate courts must be dealt with by High Courts. In exceptional cases extraordinary situation may prevail affecting the administration of justice or where the entire judiciary is affected, in that case Supreme Court may directly take cognizance of contempt of subordinate courts.

6. Under Article 215, every High Court being a court of record has all the powers of such a court including the power to

¹⁸³ Article 215 of the Constitution of India posits that every High Court is a Court of Record with all powers attendant thereto including the power to punish contempt of itself.

¹⁸⁴ Article 129 of the Constitution of India posits that the Supreme Court shall be a Court of Record and shall have all the power of such a court including the power to punish for contempt of itself.

punish for contempt of itself. The jurisdiction is a special one, not arising or derived from Contempt of Courts Act and therefore not within the purview of either the Penal Code or Code of Criminal procedure. The law to contempt of court is a special law and since such a special law does not prescribe any period of limitation for collecting a fine imposed there under, no question of limitation period under Limitation Act would arise for collection of fine as punishment under Section 12 of Contempt of Courts Act 1971.

7. The Code of Criminal Procedure does not apply in matters of contempt triable by High Courts. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemnor is made aware of the charge against him and given a fair and reasonable opportunity to defend himself.

8. Partial non-compliance of a court order also amounts to contempt. Order of any court whether interim or final has to be totally complied with and the intention of the court should be carried out in its strict sense.

1.3.25 Section 24: Repeal -

The Contempt of Courts Act, 1952 (32 of 1952) is hereby repealed.

This Section repealed the Contempt of Courts Act, 1952¹⁸⁵ with effect from 24-12-1991 which had already repealed the Contempt to Courts Act, 1926¹⁸⁶ with effect from 14-3-1952.

The present Act repeals the earlier Act only so far as procedure is concerned. The offence of Contempt of Court remains punishable today, as it was in the past.

1.4 THE CONTEMPT OF COURTS (AMENDMENT) ACT, 2006

Recently, the Contempt of Courts Act, 1971 has been amended and Section 13 has been substituted by a new Section. This Act may be called the Contempt of Courts (Amendment) Act, 2006.¹⁸⁷

¹⁸⁵ The Contempt of Courts Act, 1952 (Act No. 32 of 1952).

¹⁸⁶ The Contempt to Courts Act, 1926 (Act No. 12 of 1926).

In the Contempt of Courts Act, 1971, for Section 13¹⁸⁸, the following Section shall be substituted, namely:-

"Section 13: Contempts not punishable in certain cases-

Notwithstanding anything contained in any law for the time being in force,-

(a) no Court shall impose a sentence under this Act for a contempt of Court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;

(b) 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 bona fide."

New Section 13 (b) states: "The courts may permit, in any proceedings 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 bona fide." With this statutory amendment now **defence of truth** can be pleaded in contempt of Court proceedings if such an assertion of fact was in the public interest and is bona fide. This initiative by the legislature though a small step in a move to change the pre-judge notion approach of the judiciary, is a right step, for it recognized the need for balance in excising the power of contempt jurisdiction by the courts and the right of the citizen to express and hold ideas.

1.5 CONCLUSION

The contempt power in a democracy is only to enable the court to function effectively, and not to protect the self-esteem of an individual judge. The foundation of judiciary is based on the trust and the confidence of the people in its ability to deliver fearless and

¹⁸⁷ It is enacted by Parliament in the fifty-seventh Year of the Republic of India (17th March, 2006), Act no. 6 of 2006.

¹⁸⁸ Section 13: Contempts not punishable in certain cases – Notwithstanding anything contained in any law for the time being in force, no Court shall impose a sentence under this Act for a contempt of Court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice.

impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by disrupting its working, the edifice of the judicial system gets eroded. Judiciary by punishing the guilty infuses faith in the supremacy of law and omnipotence of justice. Every offender is to be punished for contumacious acts under the relevant contempt laws, but it is extremely important to make it sure by the judiciary that these provisions are not to be misused.

It can be adequately inferred that the Contempt of Courts Act, 1971 is of paramount importance in the context of sustaining the concept of justice. It aides to make the process of administering justice expeditious as well as upholds the dignity and faith the people have bestowed in the judicial system of the country. In itself, it abstains from any form of arbitrariness. It gives every organization or individual charged under the act reasonable grounds to defend it or himself, as the case may be. The restrictions, it imposes, is just and fair in them. Moreover, it recognizes the equal footing of all people in the country by bringing the judiciary and its officials within its ambit.

During the course of discussion it has been found several loopholes/contradictions in the provisions of the Contempt of Courts Act, 1971. So it is submitted that for the desired results these loopholes should be pleased by making necessary amendments in the Contempt of Courts Act, 1971.
