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LAW COMMISSION OF INDIA

Report No.274

**Review of the Contempt of Courts Act, 1971
(Limited to Section 2 of the Act)**

April 2018

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Dr. Justice B. S. Chauhan
Former Judge, Supreme Court of India
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Law Commission of India
Ministry of Law & Justice
Government of India

D.O. No.6(3)321/2018-LC(LS)

17 April 2018

Dear Shri Ravi Shankar Prasad Ji,

The Law Commission of India received a reference from the Department of Justice on 8th March 2018, asking the Commission to examine an amendment to the Contempt of Courts Act, 1971, to restrict the definition of the Act to only "wilful disobedience of directions/judgment of Court as Contempt of Court", at an early date.

The Commission examined the issues involved in the light of various existing Constitutional and legal provisions, judicial pronouncements, international scenario with regard to Contempt of Court, etc., and has finalised its recommendations in its **Report No.274** titled "**Review of the Contempt of Courts Act, 1971 (Limited to Section 2 of the Act)**", which is enclosed herewith for consideration of the Government.

The Commission would like to place on record the commendable assistance provided to it by Ms. Nidhi Arora and Ms. Preeti Badola, Consultants, in preparation of this Report.

Yours sincerely,

with warmest regards,

BS Chauhan
[Dr. Justice B S Chauhan]

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Report No. 274

Review of the Contempt of Courts Act, 1971 (Limited to Section 2 of the Act)

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Chapter – I

INTRODUCTION

A. History of Contempt of Court in India

1.1 The roots of contempt law in India can be traced back to the pre-independence period. The East India Company took over the territories in India, which required the King of England to issue the Charter of 1726 that provided for the establishment of a corporation in each Presidency Town. This Charter is considered to be an important landmark in the history of legal system in India as it introduced the English laws in the country. Mayor courts were constituted in each of the Presidency Towns and were made the Courts of Record, and authorised to decide all civil cases within the respective town and subordinate areas.¹

1.2 Subsequently, in the year 1774, the Mayor's Court at Calcutta was replaced by the Supreme Court of Judicature at Fort William, Calcutta under the Regulating Act 1773. The Mayor's Courts at Madras and Bombay were superseded by the Recorder's Courts, which were also later abolished and replaced by the Supreme Courts under the Government of India Act, 1800. While the Supreme Court at Madras came into existence in the year 1801 by the Charter of 1800, the Supreme Court at Bombay came into existence in 1824 by the Charter of 1823. The Recorder's Courts and Supreme Courts had the same powers in the matters of punishing for contempt as was exercised by the superior courts in England.² The Supreme Courts were in turn

¹ See M P Jain, "Outlines of Indian Legal and Constitutional History" (Lexis Nexis; Sixth edition (2010)).

² Report of the Committee on Contempt of Courts, February 1963. Available at <http://dSPACE.gipe.ac.in/xmlui/handle/10973/33748> (last accessed on April 16, 2018).

succeeded by the High Courts under the Indian High Courts Act of 1861. The three High Courts of Calcutta, Bombay and Madras had the inherent power to punish for contempt.³ In 1866, the High Court of Allahabad was established under the Indian High Courts Act, 1861 and was constituted as a court of record with the power to punish for contempt.⁴

1.3 In 1867, Peacock C.J. laid down the rule regarding the power to punish for contempt quite broadly *In Re : Abdool and Mahtab*, (*supra*) in the following words:

“there can be no doubt that every court of record has the power of summarily punishing for contempt.”

1.4 In *Legal Remembrancer v. Matilal Ghose & Ors.*, (1914) I.L.R. 41 Cal. 173, the Court observed that the power to punish for contempt was “arbitrary, unlimited and uncontrolled”, and therefore should be “exercised with the greatest caution: that this power merits this description will be realised when it is understood that there is no limit to the imprisonment that may be inflicted or the fine that may be imposed save the Court’s unfettered discretion, and that the subject is protected by no right of general appeal.”

1.5 The Division Bench of the Calcutta High Court considered this jurisdiction of the High Court in 1879 in *Martin v. Lawrence*⁵ and observed:

“The jurisdiction of the Court, under which this process (is) issued is a jurisdiction that it has inherited from the old Supreme Court, and was conferred upon that Court by the Charters of the Crown, which invested it

³ *Ibid*; See also *In Re: Abdool and Mehtab*, (1867) 8 W.R. (Cr.) 32.

⁴ K. Balasankaran Nair, “Law of Contempt of Court in India” (Atlantic Publishers and Distributors) 2004.

⁵ (1879) ILR 4 Cal 655.

with all the process and authority of the then Court of King's Bench and of the High Court of Chancery in Great Britain.”

1.6 Prior to the coming into force of the Contempt of Courts Act, 1926 there was a conflict of opinion among the different High Courts as to their power to punish for contempt of subordinate courts. Madras and Bombay High Courts expressed the view that the High Courts have jurisdiction to deal with contempt of the Mofussil Courts.⁶ But the Calcutta High Court expressed the view that the High Courts in India did not possess identical power in matters of contempt of their subordinate courts as possessed by the Court of King's Bench in England.

1.7 In *Sukhdev Singh Sodhi v. The Chief Justice S. Teja Singh and Judges of The Pepsu High Court*⁷, the aspect of contempt of court was broadly discussed –

“It is true the same learned Judges sitting in the Privy Council in 1883 traced the origin of the power in the case of the Calcutta, Bombay and Madras High Courts to the common law of England,..... but it is evident from other decisions of the Judicial Committee that the jurisdiction is broader based than that. But however that may be, Sir Barnes Peacock made it clear that the words “any other law” in section 5 of the Criminal Procedure Code do not cover contempt of a kind punishable summarily by the three Chartered High Courts....Apparently, because of this the Privy Council held in 1853 that the Recorder's Court at Sierre Leone also had jurisdiction to punish for contempt, not because that court had inherited the jurisdiction of the English courts but because it was a court of record.... The High Court of Allahabad was established in 1866 under the High Courts Act of 1861 and was thus constituted a court of record.... The Lahore

⁶ *Supra* note 4.

⁷ AIR 1954 SC 186.

High Court was established by Letter Patent in 1919 and was duly constituted a court of record.”

1.8 The Contempt of Court Act, 1926 (hereinafter referred to as the “Act 1926”) was the first statute in India with relation to law of contempt. Section 2 of this Act recognized the existing jurisdiction in all the High Courts to punish for contempt of themselves and conferred on the High Courts the power to punish for contempt of courts subordinate to it. The Act also specified the upper limit of the punishment that can be imposed for the said contempts.⁸

1.9 In 1927, a Five Judge Bench of the Lahore High Court re-examined the aforesaid position *in the matter of Muslim Outlook, Lahore*⁹ and affirmed its earlier decision in the case of *The Crown v. Sayyad Habib*¹⁰ observing that the contempt jurisdiction was inherent in every High Court and not only in the three Chartered High Courts. The Act 1926 was later amended in 1937 to clarify that the limits of punishment provided in the Act related not only to contempt of subordinate courts but of all courts.

1.10 It is to be noted that while the Act 1926 was applicable to the whole of British India, the princely states of Hyderabad, Madhya Bharat, Mysore, Rajasthan, Travancore-Cochin, Saurashtra and Pepsu had their own corresponding state enactments on contempt.

1.11 In 1948, the Pepsu High Court was established by an Ordinance, section 33 of which provided that it would be a court of record and would have power to punish for contempt.

⁸ Section 3, Act 1926.

⁹ A.I.R. 1927 Lah. 610.

¹⁰ (1925) I.L.R. 6 Lah. 528.

1.12 The Act of 1926 along with the aforementioned state enactments were repealed and replaced by the Contempt of Courts Act, 1952 (hereinafter referred to as the “Act 1952”), which made significant departures from the earlier Act. Firstly, the expression “High Court” was defined to include the Courts of Judicial Commissioner, which were not so included in the purview of the Act 1926; and secondly, the High Courts, which now included the Courts of Judicial Commissioner, were conferred jurisdiction to inquire into and try any contempt of itself or that of any court subordinate to it. This was 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 alleged contemnor was within or outside such limits.

1.13 Under the aforesaid legislation the Chief Courts were also vested with the power to try and punish for any contempt of itself. The legislation itself prescribed the nature, type, as well as the extent of punishment that could be imposed by the High Courts and the Chief Courts.

1.14 On April 1, 1960, a Bill was introduced in the Lok Sabha to consolidate and amend the law relating to contempt of court. Observing the law on the subject to be “uncertain, undefined and unsatisfactory”, and in the light of the constitutional changes in the country, the Government, to scrutinise the law on the subject and to further study the said bill, appointed a special committee in 1961, under the Chairmanship of Shri H.N. Sanyal, the then Additional Solicitor General of India. The Sanyal Committee examined the law relating to contempt of courts in general, and the law relating to the procedure for contempt proceedings including the punishment thereof in particular. The Committee submitted its report in 1963, which *inter alia* defined and limited the powers of certain courts in punishing for contempt of courts

and provided to regulate the procedure in relation thereto. It is to be noted that the Committee in its report made specific mention of criminal contempt, recommending specifically the “procedure (to be followed) in cases of criminal contempt”. The recommendations of the Committee were generally accepted by the Government after having wide consultation with the State Governments, Union Territory Administrations, and all other stakeholders.¹¹

1.15 The aforesaid Bill was also examined by the Joint Select Committee of the Houses of Parliament, which also suggested few changes in the said Bill; one of which was in respect of the period of limitation for initiating contempt proceedings.

1.16 After the aforesaid deliberations the Contempt of Courts Act, 1971 (70 of 1971) came to be enacted (hereinafter referred to as the “Act 1971”), which repealed and replaced the Act 1952. The said Act 1971 *inter alia* categorises contempt under two heads i.e. ‘civil contempt’ and ‘criminal contempt’, providing thereunder specific definitions for both (Section 2). It also carved out a few exceptions, prescribing guidelines for reporting and commenting on judicial proceedings that would not attract the provisions of the Act. For example, “fair and accurate report of a judicial proceeding” (Section 4) and “fair comment on the merits of any case which has been heard and finally decided” (Section 5) would not give rise to the proceedings under the Act. The Act also categorically provided that an alleged act would not be punishable thereunder unless it “substantially interferes or tends substantially to interfere with the due course of justice” (Section 13). The Act also provides for the period of limitation for initiating the contempt proceedings (section 20).

¹¹ *Supra* note 2; See also *Supreme Court Bar Association v. Union of India & Anr.*, AIR 1998 SC 1895.

1.17 It can be observed from a scrutiny that since the enactment of the Act 1926 and subsequently with that of the Acts of 1952 and 1971, the power of the court to impose punishment for contempt of the court ceased to be uncontrolled or unlimited.

1.17 Reference needs to be made here to the 200th Report of the Law Commission of India on “Trial by Media: Free Speech Vs. Fair Trial Under Criminal Procedure Code, 1973”, (2006), which made certain suggestions for amending the Act 1971. While none of these suggestions pertained to amending the definition of ‘criminal contempt’, particularly ‘scandalising the court’; the Report, in the draft bill annexed thereto, proposed an amendment to add an explanation to section 2(c), inclusively defining the term ‘publication’ so as to include “...publication in print, radio broadcast, electronic media, cable television network, world wide web.”. However, these recommendations for amendment of Contempt of Court Act were not accepted in view of various judgments of the Supreme Court.¹²

B. Reference to the Commission

1.18 The Ministry of Law and Justice, Department of Justice, *vide* its letter dated March 8, 2018, has asked the Law Commission of India to examine and consider an amendment to the Act 1971, to restrict the definition of Contempt to only “wilful disobedience of directions / judgment of Court”.

¹² Available at http://doj.gov.in/sites/default/files/Law-Commission-Reports_1.pdf (Last accessed on April 4, 2018).

Chapter – II

EXISTING PROVISIONS

A. What is “contempt of court”?

2.1 As long ago as 1742 Lord Hardwicke L. C., delved into the meaning of the term “contempt of court”, referring to three different kinds of actions that qualify as contempt of court: *“One kind of contempt is scandalising the court itself. There may be likewise a contempt of this court in abusing parties who are concerned in causes here. There may also be a contempt of this court in prejudicing mankind against persons before the cause is heard.”*¹³

2.2 Halsbury’s Law of England defining “contempt of court” states: *“Any act done or writing published which is calculated to bring a 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. Any episode in the administration of justice may, however be publicly or privately criticised, provided that the criticism is fair and temperate and made in good faith. The absence of any intention to refer to a court is a material point in favour of a person alleged to be in contempt.”*¹⁴

2.3 A contempt of court is a matter which concerns the administration of justice and the dignity and authority of judicial tribunals¹⁵. The law dealing with contempt of courts is for

¹³ *In re : Read v. Huggonson*, (1742) 2 Atk. 469.

¹⁴ *Halsbury's Laws of England* (3rd Edn., Vol. 8) at p. 7.

¹⁵ *A. Ramalingam v. V. V. Mahalinga Nadar*, AIR 1966 Mad. 21.

keeping the administration of justice pure and undefiled¹⁶; and, jurisdiction in contempt is not a right of a party to be invoked for the redressal of its grievances¹⁷.

B. Constitutional Provisions

2.4 It is well established that Rule of Law is a basic feature of the Constitution, and the Rule of Law is postulated in the Constitution in the sense of its supremacy¹⁸. It entails *inter alia* the right to obtain judicial redress through administration of justice, which is the function of the Courts, and is imperative for the functioning of a civilised society. To administer justice in an undefiled manner¹⁹, judiciary, as the guardian of Rule of Law, is entrusted with the extraordinary power to punish misconduct aimed at undermining its authority or bringing the institution into disrepute, whether outside or inside the courts.

2.5 The law for contempt, with power of imposing punishment, ensures respect for the courts in the eyes of the public by guaranteeing sanction against conduct which might assail the honour of the courts. Indeed, the courts must be able to discharge their functions without fear or favour²⁰.

¹⁶ *In re: Bineet Kumar Singh*, AIR 2001 SC 2018; *See also Shakuntala Sahadevram Tewari (Smt.) & Anr. v. Hemchand M. Singhania*, (1990) 3 Bom CR 82.

¹⁷ *A. Ramalingam (supra)*.

¹⁸ *His Holiness Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr.*, AIR 1973 SC 1461; *Smt. Indira Nehru Gandhi v. Shri Raj Narain & Anr.*, AIR 1975 SC 2299; *Supreme Court Advocates-on-Record Association & Anr. v. Union of India* (2016) 5 SCC 1; *State of Haryana & Ors. v. Bhajanlal & Ors*, AIR 1992 SC 604.

¹⁹ *In re : Bineet Kumar Singh (supra)*.

²⁰ *In Re : Vinay Chandra Misra*, AIR 1995 SC 2348; *In Re : S. K. Sundaram*, AIR 2001 SC 2374; *Mrityunjoy Das v. Sayed Hasibur Rahaman*, AIR 2001 SC 1293; *J. R. Parashar, Advocate & Ors. v. Prashant Bhushan, Advocate & Ors.*, AIR 2001 SC 3395; *Chotu Ram v. Urvashi Gulati & Anr.*, AIR 2001 SC 3468, AIR 2001 SC 3468.

2.6 In *Kapildeo Prasad Sah & Ors. v. State of Bihar & Ors.*, (1999) 7 SCC 569,²¹ the Supreme Court held that disobedience of court's order would be a violation of the principle of Rule of Law. The law of contempt can thus be considered to be the thread which holds together the basic structure of the Constitution. And, the maintenance of dignity of the Court is one of the cardinal principles of Rule of Law. The law of contempt must be judiciously pressed into service, and must not be used as a tool to seek retribution. However, any insinuation to undermine the dignity of the Court under the garb of mere criticism is liable to be punished.²²

2.7 The Contempt proceedings are intended to ensure compliance of the orders of the court and adherence to the Rule of Law. Once the essentials for initiation of contempt proceedings are satisfied, the Court would initiate an action uninfluenced by the nature of the direction, i.e., as to whether these directions were specific in a *lis* pending between the parties or were of general nature or were *in rem*.²³

i) *Courts of Record and Power to Punish for Contempt*

2.8 The Constitution of India designates the Supreme Court and the High Courts as the Courts of Record. It further grants the Supreme Court and every High Court the power to punish for contempt of itself. While Article 129, dealing with the said power of the Supreme Court, provides that "The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself"; Article 215 vests similar power with the High Courts.

²¹ (1999) 7 SCC 569; and *T.N. Godavarman Thirumulpad through the Amicus Curiae v. Ashok Khot & Anr.*, AIR 2006 SC 2007.

²² *In Re : Arundhati Roy*, AIR 2002 SC 1375.

²³ *Priya Gupta & Anr. v. Additional Secretary, Ministry of Health & Family Welfare & Ors.*, (2013)11 SCC 404.

2.9 The High Courts are also entrusted with the supervisory control over the subordinate courts under Article 235 of the Constitution. In this manner, a High Court is the guardian of the subordinate judiciary under its jurisdiction.

2.10 While the Constitution does not define the term “court of record”, its meaning is well understood across all jurisdictions. In *Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat*,²⁴ the Supreme Court applied the term to a court whose acts and proceedings are enrolled for a “perpetual memory and testimony”. Once a court has been declared to be a “court of record” by a statute, the power to punish for its own contempt automatically ensues.²⁵ Such a court also has the power to punish for the contempt of the courts and tribunals subordinate to it.²⁶ Additionally, a court of record has the power to determine the question of its own jurisdiction.²⁷

2.11 In terms of definitions in other sources, Words and Phrases²⁸ defines “court of record” as court where acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony. Such rolls are called the “record” of the court and are of high and super eminent authority, the truth of which is beyond question.²⁹ Black’s Law Dictionary (8th Edition) defines a “court of record” as:

²⁴ AIR 1991 SC 2176.

²⁵ *Delhi Development Authority v. Skipper Construction Co. (Pvt.) Ltd. & Anr.*, AIR 1996 SC 2005; *Supreme Court Bar Association v. Union of India*, AIR 1998 SC 1895; and *Vitusah Oberoi & Ors. v. Court of its own motion*, AIR 2017 SC 225.

²⁶ *Income Tax Appellate Tribunal through President v. V. K. Agarwal & Anr.*, AIR 1999 SC 452

²⁷ *Ravi S. Naik v. Union of India & Ors.*, AIR 1994 SC 1558.

²⁸ Permanent Edn. Vol. 10 at 429 cited in Durga Das Basu, *Commentary on the Constitution of India* 5616 (LexisNexis Butterworths Wadhwa, Nagpur, Vol. 5, 8th edn.).

²⁹ *Ibid.*

- i. A court that is required to keep a record of its proceedings. The court's records are presumed accurate and cannot be collaterally impeached;
- ii. A court that may fine and imprison people for contempt.

2.12 As the Supreme Court observed in the case of *Pallav Sheth v. Custodian & Ors.*, AIR 2001 SC 2763, that there is no doubt that the Supreme Court and High Courts are courts of record, and that the Constitution has given them the power to punish for contempt, which power cannot be “abrogated or stultified”

ii) *Law of Contempt vis-à-vis Article 19(1)(a):*

2.13 Freedom of speech and expression is regarded as the “lifblood of democracy”; Article 19(1)(a) of the Constitution guarantees this freedom to the citizens of India. This right, however, is not absolute, and is subject to certain qualifications i.e. reasonable restrictions on the grounds set out in Article 19(2). One such ground relates to the contempt of court. The Constitution, which has given its citizens right to freedom of speech and expression, has given certain powers to the Judiciary to guard against the misuse of the same, to prevent the right to freedom of speech and expression being so exercised that it damages the dignity of the Courts or interferes with the ‘administration of justice’.

2.14 In *Aswini Kumar Ghose & Anr. v. Arabinda Bose & Anr.*, AIR 1953 SC 75, the Supreme Court held that while fair and reasonable criticism of a judicial act in the interest of public good would not amount to contempt, it would be gross contempt to impute that Judges of the Court acted on extraneous considerations in deciding a case.

2.15 Right to freedom of speech and expression does not embrace the freedom to commit contempt of court³⁰. And, in the garb of exercising right to freedom of speech and expression, under Article 19(1)(a), if a citizen tries to assail the dignity of the court, or undermine its authority, the court may invoke the power to punish for contempt, under Article 129 or 215 as the case may be. Any law made by the Parliament or the application of any existing law in relation to contempt of courts, would tantamount to a reasonable restriction on the freedom of speech and expression³¹. The defence of fair comment is available even during the pendency of the proceedings³².

iii) Other Constitutional Provision

2.16 In addition to Article 129, the Supreme Court also draws power to investigate or punish any contempt of itself from Article 142(2), which reads as under:

“....

*(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the **investigation or punishment of any contempt of itself.**” [Emphasis added]*

2.17 This power of contempt under Article 142(2) lies outside the confines of the Act 1971 and remains unaffected by the

³⁰ *State of Bombay v. P.*, AIR 1959 Bom 182.

³¹ *J.R. Parashar v. Prashant Bhushan*, AIR 2001 SC 3395; and *Het Ram Beniwal & Ors. v. Raghveer Singh & Ors.*, AIR 2016 SC 4940.

³² *Rama Dayal Markarha v. State of M.P.*, AIR 1978 SC 921.

limitation under section 20 of the Act.³³ It has also been observed that while the jurisdiction to punish for contempt of court is different from the jurisdiction to punish an advocate for professional misconduct, Article 142 could also be invoked for punishing professional misconduct.³⁴

2.18 In *Supreme Court Bar Association v. Union of India*, AIR 1998 SC 1895, the Court made certain observations and partially set aside and modified its earlier order of *In Re : Vinay Chandra Mishra*, AIR 1995 SC 2348 on the issue of restraining an advocate from appearing in the Court as punishment for established contempt of court. It was held that “*Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available only to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142.*”

2.19 The above position changed in 2016 with the case of *Mahipal Singh Rana v. State of U.P.*, AIR 2016 SC 3302, where the Supreme Court held that in case the Bar Council fails to take action against an erring advocate, the Court can exercise its powers *suo motu* under Section 38 of the Advocates Act, 1961, and suspend the license of such an advocate for a particular period.. The Supreme Court further held:

“We may add that what is permissible for this Court by virtue of statutory appellate power Under Section 38 of the Advocates Act is also permissible to a High Court Under Article 226 of the Constitution in appropriate cases on failure of the Bar Council to take action after its attention is invited to the misconduct.”

³³ *Delhi Development Authority v. Skipper Construction Co. (Pvt.) Ltd. & Anr.*, AIR 1996 SC 2005.

³⁴ *In Re : Ajay Kumar Pandey*, AIR 1997 SC 260; See also, *Pritam Pal v. High Court of M.P. Jabalpur, Through Registrar*, AIR 1992 SC 904.

C. The Contempt of Courts Act, 1971

2.20 The Act 1971 was enacted to give effect to the recommendations contained in Sanyal Committee report of 1963. A perusal of the 'Statement of Objects and Reasons' of the Act 1971 shows that it was felt that the then existing law relating to Contempt of Courts was somewhat uncertain, undefined and unsatisfactory, and as the jurisdiction to punish for Contempt touches upon two important fundamental rights of the citizen, namely the right to personal liberty and the right to freedom of speech and expression, the subject required special scrutiny and consideration.

i) Section 2

2.21 Section 2 of the Act, defines "contempt of court", and distinguishes between "civil contempt" and "criminal contempt", reading as follows:

2. Definitions. In this Act, unless the context otherwise requires, -

- (a) "contempt of court" means civil contempt or criminal contempt;
- (b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful 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;

2.22 A disorderly conduct of a contemnor that causes serious damage to the institution of justice administration amounts to contempt. Such conduct can be categorised on the basis of its adverse effects and consequences under two heads: (i) one, where it has a temporary effect on the system and/or the person concerned, such that will fade away with time; (ii) other, where it causes permanent damage to the institution and to the administration of justice³⁵.

2.23 Any conduct attributing improper motive to a Judge or any scurrilous abuse to a Judge will amount to scandalising the court under Section 2(c)(i) of the Act 1971³⁶.

2.24 Any speech tending to influence the result of a pending trial - civil or criminal - is a conduct of grave contempt. Such comments on pending proceedings from the concerned parties or their lawyers are generally a more serious contempt than those from any independent sources³⁷.

(ii) Section 10

2.25 Section 10 of the Act deals with contempt of subordinate courts. It empowers the High Court to “*exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of courts subordinate to it as it has and exercises in respect of contempt of itself*”. Proviso to the section carves an exception for cases of

³⁵ *Kalyaneshwari v. Union of India & Ors.*, (2012) 12 SCC 599.

³⁶ *Rajesh Kumar Singh v. High Court of Judicature of M.P.*, AIR 2007 SC 2725; and *Het Ram Beniwal & Ors. v. Raghuvver Singh & Ors.*, AIR 2016 SC 4940.

³⁷ *State of Haryana & Ors. v. Bhajan Lal & Anr.*, AIR 1993 SC 1348.

contempt which amount to an offence punishable under the India Penal Code, barring the High Court from taking cognizance in such cases.

(iii) Section 12

2.26 This section prescribes the punishment for contempt of court and the limits thereto; also laying down specifics of punishment for when the contemnor is a company.

(iv) Sections 14 and 15

2.27 Section 14 of the Act lays down the procedure for when the contempt is in presence or hearing of the Supreme Court or a High Court. Section 15 explains the procedure for dealing with criminal contempt (other than those addressed under section 14) of the higher courts and the subordinate courts.

2.28 The whole object of prescribing procedural mode of taking cognizance is to prevent wasting of the valuable time of the Court from frivolous contempt petitions³⁸.

2.29 The consent of Advocate General is not necessary for the court to initiate contempt proceedings if the issue involved in the proceedings had greater impact on the administration of justice and on the justice delivery system³⁹.

2.30 Pressing into service the law of contempt, the court may proceed *suo motu* or on a petition of an advocate of the court.⁴⁰

³⁸ *Bal Thackery v. Haris Pimpalkhute & Anr.*, AIR 2005 SC 396.

³⁹ *Muthu Karuppan v. Parithi Ilamvazhuthi*, AIR 2011 SC 1645.

⁴⁰ *C. K. Daphtary v. O. P. Gupta & Ors.*, AIR 1971 SC 1132.

To ensure fairness in procedure of contempt proceedings⁴¹, a notice should be issued to the contemnor and an opportunity of being heard must be given to him.⁴² A formal charge may not be necessary, however, adequate and pertinent details must be provided. Further, in case the procedure to conduct contempt proceedings has been prescribed or rules have been formed in this regard, the same is to be given adherence⁴³.

2.31 In *L. P. Misra v. State of U.P.*, AIR 1998 SC 3337, the Supreme Court held that when the High Court invokes its extraordinary powers under Article 215 of the Constitution, it must give strict adherence to the procedure prescribed by law.

(v) Section 16

2.32 Section 16 of the Act deals with contempt by a Judge, Magistrate or other person acting judicially. A Judge can foul judicial administration by misdemeanours while discharging the functions of a Judge⁴⁴.

2.33 There has been a case of criminal contempt of gravest nature by the sitting judge of a High Court, bringing serious allegations against his colleagues on the bench and judges of the Supreme Court in public forums, but not substantiating nor contesting his stand when called upon to do so. In such an eventuality the contemnor judge was convicted and sentenced. (*In re: C. S. Karnan*, (2017) 2 SCC 756).

⁴¹ *Sukhdev Singh Sodhi v. Chief Justice S. Teja Singh & the Hon'ble Judges of the Pepsu High Court*, AIR 1954 SC 186.

⁴² J.R. Parashar, *supra* note 31.

⁴³ *Nagar Mahapalika of Kanpur v. Mohan Singh* (1966) All WR 179 (SC); and *Sahdeo @ Sahdeo Singh v. State of U.P. & Ors.*, (2010) 3 SCC 705.

⁴⁴ *Baradakanta v. The Registrar, Orissa High Court*, AIR 1974 SC 710.

(vi) Section 22

2.34 This section specifies that the provisions of the Act 1971 are supplemental to the provisions of any other existing law relating to contempt of courts.

2.35 The Act provides for a fair procedure and restricts the power of the courts in relation to contempt of courts, compared to the position that was prior to the Act 1926. The power of the court to impose punishment for contempt of the court ceased to be uncontrolled or unlimited with the enactment of specific contempt of courts legislation – beginning with the Act 1926, and subsequently with that of 1952 and of 1971. The quantum of punishment or that of fine for contempt had to be provided for, with a right to appeal. As is evident from the judgement of the Calcutta High Court in the case of *Legal Remembrancer (supra)*.

D. The Code of Criminal Procedure, 1973 (CrPC)

2.35 In contempt of courts proceedings under the Act 1971, admittedly the provisions of the CrPC have no application (Section 5, CrPC). The High Courts and the Supreme Court take actions in exercise of their constitutional power or inherent powers being the court of record (vide *Sukhdev Singh Sodhi (supra)*)

2.36 Section 345, CrPC: Procedure in certain cases of contempt, CrPC empowers any civil, criminal or revenue court to punish summarily a person who is found guilty of committing any offence under Section 175, 178, 179, 180 or Section 228 of the Indian Penal Code 1860 (IPC) in the view or presence of the court.

2.37 In *Arun Paswan, S.I. v. State of Bihar & Ors.*, AIR 2004 SC 721, the Supreme Court held that a perusal of Section 345 of CrPC shows that offences under Section 175, 178, 179, 180 or 228 of the IPC would constitute contempt only if they are committed in the view or presence of the Court. “*This would also show that offences under Sections 175, 178, 179, 180 or 228 per se do not amount to contempt. They are contempt only if they are committed "in the view or presence of the Court", otherwise they remain offences under the Indian Penal Code simpliciter.*” In this case where the slogan shouting and using abusive language against the Judge took place outside the court, the Supreme Court held that the contemptuous act, since not an offence punishable under the IPC, did not come within the ambit of the proviso to Section 10 of the Act 1971, and the jurisdiction of High Court was, therefore, not ousted.

E. Scope of the Power:

2.38 The power of the Supreme Court and the High Courts to punish for contempt does not solely depend upon Articles 129 and 215 of the Constitution of India. The authority to punish for contempt of court has always been exercised by the judiciary from times immemorial⁴⁵; essential to the execution of their powers and to the maintenance of their authority⁴⁶.

2.39 In the case of *Gilbert Ahnee v. Director of Public Prosecutions*,⁴⁷ the Privy Council had held that the source of this power can be traced to the primary function of the Courts, which is to dispense and administer justice. To perform this duty effectively, the Courts must have the power to enforce their orders

⁴⁵ *In re: C. S. Karnan (supra)*.

⁴⁶ *Cartwright's Case*, 114 Mass. 230.

⁴⁷ [1999] 2 AC 294.

and punish calculated acts of contempt aimed to undermine their authority.

2.40 The power to punish for contempt of court has always been recognized to be inherent in certain superior courts, and in others it was conferred by statutes.

2.41 *In Re: C. S. Karnan*, (2017) 2 SCC 756, Justice Karnan, the judge of the Calcutta High Court, was restrained from taking up any judicial or administrative work. The Court observed that the authority of the courts to punish for contempt of court has always been there in the legal history.

2.42 In one of the earliest legal pronouncements dealing with the subject, Justice Wilmot in *Rex v. Almon* (1765) Wilmot's Notes, 243, explained the philosophy behind the power to punish for contempt of court. The passage now a classic exposition, reads as follows:

“And whenever men’s allegiance to the law is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice and in my opinion calls out for a more rapid and immediate redress than any obstruction whatsoever, not for the sake of the Judges as private individuals but because they are the channels by which the King’s justice is conveyed to the people”

2.43 The power to punish for contempt is not meant for giving protection to individual judges. On the contrary, it intends to inspire confidence “in the sanctity and efficacy of the judiciary, though they do not and should not flow from the power to punish for contempt”. Rather, such principles should lie on solid foundations of trust and confidence of the people – a reassurance to them that the judiciary is fearless and impartial. As rightly

observed by in *Helmore v. Smith*⁴⁸, “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 the person of the Judge, but to prevent undue interference with the administration of justice.”

2.44 The Supreme Court in *E.M. Sankaran Namboodripad v. T. Narayanan Nambiar*, AIR 1970 SC 2095, observed:

“The law of contempt stems from the right of the courts to punish by imprisonment or fines persons guilty of words or acts which either obstruct or tend to obstruct the administration of justice. 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, it is a part of the powers of the Supreme Court and the High Courts. ...”

2.45 In *High Court of Judicature at Allahabad through its Registrar v. Raj Kishore & Ors.*, AIR 1997 SC 1186, the Supreme Court held that contempt jurisdiction is an independent jurisdiction of original nature whether emanating from the Contempt of Courts Act or under Article 215 of the Constitution of India.

2.46 In *R. L. Kapur v. State of Madras*, AIR 1972 SC 858, the Supreme Court examined the question whether the power of the Madras High Court to punish for contempt of itself flows from the Contempt of Courts Act, 1952. The Court held:

“...Whether Article 215 declares the power of the High Court already existing in it by reason of its

⁴⁸ (1887) 35 Ch D 449, 455.

being a court of record, or whether the article confers the power as inherent in a court of record, the jurisdiction is a special one, not arising or derived from the Contempt of Courts Act, 1952 ... In any case, so far as contempt of the High Court itself is concerned, as distinguished from that of a court subordinate to it, the Constitution vests these rights in every High Court, and so no Act of a Legislature could take away that jurisdiction and confer it afresh by virtue of its own authority. ...”

2.47 In *Pritam Pal v. High Court of M.P. Jabalpur, Through Registrar*, AIR 1992 SC 904, the Apex Court opined

*“...Prior to the Contempt of Courts Act, 1971, it was held that the High Court has inherent power to deal with a contempt of itself summarily and to adopt its own procedure, provided that it gives a fair and reasonable opportunity to the contemnor to defend himself. But the procedure has now been prescribed by Section 15 of the Act in exercise of the powers conferred by Entry 14, List III of the Seventh Schedule of the Constitution. Though the contempt jurisdiction of the Supreme Court and the High Court can be regulated by legislation by appropriate legislature under Entry 77 of List I and Entry 14 of List III in exercise of which the Parliament has enacted the Act of 1971, the contempt jurisdiction of the Supreme Court and the High Court is given a constitutional foundation by declaring to be ‘Courts of Record’ under Articles 129 and 215 of the Constitution and, **therefore, the inherent power of the Supreme Court and the High Court cannot be taken away by any legislation short of constitutional amendment....” (Emphasis Added)***

2.48 However, it should be noted here that the power of the High Courts to punish for contempt of a subordinate court is derived from legislation and not from the Constitution.⁴⁹

2.49 The power to punish for contempt though inherent, its exercise has been subject to certain parameters. Members of the Judiciary have always been conscious of the fact that this power should be exercised with meticulous care and caution and only in absolutely compelling circumstances warranting its exercise⁵⁰. *“The countervailing good, not merely of free speech but also of greater faith generated by exposure to the actinic light of bona fide, even if marginally over-zealous, criticism cannot be overlooked. Justice is no cloistered virtue.”*⁵¹

2.50 The Supreme Court has also consistently held and reaffirmed that the powers of Supreme Court under Article 129 and that of the High Court under Article 215 could not be curtailed by a law made by the Parliament or by a State legislature⁵². Accordingly, even the power to punish for their own contempt which is derived from these Articles 129 and 215, as the case may be, cannot be abrogated or controlled by any legislation.⁵³

⁴⁹ Durga Das Basu, *Commentary on the Constitution of India* 5628 (LexisNexis Butterworths Wadhwa, Nagpur, Vol. 5, 8th Edition).

⁵⁰ *Shri Baradakanta Mishra v. The Registrar of Orissa High Court & Anr.*, AIR 1974 SC 710 (Hon. Iyer, J. – separate but concurring opinion) see para 65 and 67.

⁵¹ *Ibid* 82.

⁵² See: *Delhi Judicial Services Association v. Union of India*, 1998 (2) SCC 369; *The Income Tax Appellate Tribunal v. V.K Aggarwal & Anrs.*, AIR 1999 SC 452; *In Re : Vinay Chandar Mishra*, AIR 1995 SC 2348 and *Pallav Sheth v. Custodian & Ors.*, AIR 2001 SC 2763.

⁵³ *C. K. Daphtary v. O. P. Gupta & Ors.*, AIR 1971 SC 1132.

F. Power of Parliament to Legislate on Contempt Jurisdiction:

2.51 The Supreme Court in *Delhi Judicial Service Association, Tis Hazari Court, Delhi (supra)*, observed that Entry 77 of List I appended to VII Schedule to the Constitution, read with Art. 246 gives the Parliament the power to legislate upon subjects with respect to constitution, organisation, jurisdiction and powers of the Supreme Court. The Parliament possesses the competence to bring about a statute with regard to contempt of the Supreme Court, prescribe the procedure to be followed in such cases and set out the quantum of punishment for contempt. However, the Court held that “*the Central Legislature has no legislative competence to abridge or extinguish the jurisdiction or power conferred on this Court under Article 129 of the Constitution. The jurisdiction and power of a Superior Court of Record to punish contempt of subordinate courts was not founded on the court's administrative power of superintendence, instead the inherent jurisdiction was conceded to Superior Court of Record on the premise of its judicial power to correct the errors of subordinate courts.*”

2.52 In *Supreme Court Bar Association (supra)* the Court referred to Article 142(2) of the Constitution with regard to the power of the Court to investigate and punish any contempt of itself, observing that this power of the Court is ‘subject to the provisions of any law made in this behalf by the Parliament’. The Court concluded thus:

“However, the power to punish for contempt being inherent in a court of record, it follows that no act of Parliament can take away that inherent jurisdiction of the Court of Record to punish for contempt and the Parliament's power of legislation on the subject cannot, therefore, be so exercised as to stultify the status and dignity of the Supreme Court and/or the High Courts,

though such a legislation may serve as a guide for the determination of the nature of punishment which this court may impose in the case of established contempt. Parliament has not enacted any law dealing with the powers of the Supreme Court with regard to investigation and punishment of contempt of itself. and this Court, therefore, exercises the power to investigate and punish for contempt of itself by virtue of the powers vested in it under Articles 129 and 142(2) of the Constitution of India.”

2.53 *In Re : Ajay Kumar Pandey*, AIR 1997 SC 260, the Supreme Court observed that the Act 1971 cannot overarch the jurisdiction under Article 129 of the Constitution and this power of the Supreme Court cannot be denuded, restricted or limited by the said Act.

Chapter – III

INTERNATIONAL SCENARIO

A. PAKISTAN

3.1 In Pakistan, the Contempt of Court Act, 1926 was the primary law in the field until it was repealed and replaced by the Contempt of Courts Act, 1976.

3.2 Additionally, Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 read with Entry 55 of the Federal Legislative List (Schedule IV to the Constitution) conferred contempt jurisdiction on the Supreme Court to punish for contempt of itself, which includes ‘scandalizing of the court’ or otherwise tends to bring the court or judge in relation to office into hatred, ridicule or contempt.

3.3 In 2003, the Contempt of Court Ordinance, 2003 repealed the Contempt of Court Act, 1976. The said Ordinance was also later repealed and replaced by the Contempt of Courts Act, 2012. This Act 2012 made an exception that it shall not apply to the public office holders including the Prime Minister and other Ministers, and the expression ‘scandalising the court’ stood replaced by the expression ‘scandalising a judge in relation to his office’, among various other changes.

3.4 The Supreme Court of Pakistan in *Baz Muhammed Kakar & Anr. v. Federation of Pakistan etc. etc. etc.*⁵⁴, declared the Act 2012 as unconstitutional on various grounds *inter alia*:

⁵⁴ Judgment and Order dated August 3, 2012 in Constitution Petition number 77 of 2012 etc. etc. etc..

- i) *The acts of contempt liable to be punished under Article 204(2)(b) and some actions of contempt of court falling under Article 204(2)(c) were omitted from the definition of ‘contempt of court’ under section 3 of Act 2012.*
- ii) *Powers of the Court stood reduced by incorporating the expression ‘scandalising a judge in relation to his office’, whereas in Article 204(2) the word ‘court’ had been used.*
- iii) *Article 63(g) provided that if a person stood convicted/sentenced for ridiculing the judiciary, he would be disqualified to hold an office, while in section 3 of the Act 2012 such expression was omitted, and the expression ‘scandalising of a judge’ remained confined to ‘in relation to his office’.*
- iv) *Article 204(2) empowered the court to punish “any person” for its contempt without any exception, though section 3 of the Act 2012 granted exemption to the public office holders.*
- v) *The provisions of Act 2012 had been designed to facilitate delay in disposal of contempt cases, which would not only erode the dignity of the court, but was also inconsistent with the doctrine of independence of judiciary.*
- vi) *Moreover, section 8 of the Act 2012 regulated the transfer of proceedings in contempt matters which was in conflict with the prerogative of the Chief Justice being the administrative head of the court, and was violative of the principle of independence of judiciary.*

3.5 The Supreme Court held that the Act 2012 was unconstitutional, void and *non est*, and as a consequence the Contempt of Court Ordinance of 2003 stood revived automatically.

3.6 It is evident that the expression ‘scandalising the court’ appears in Article 204(2) of the Constitution of Pakistan, which empowers the Court to punish ‘any person’ for committing its contempt.

B. ENGLAND AND WALES

3.7 Under the English law, the primary legislation relating to contempt of courts is the Contempt of Court Act, 1981, which deals with civil and criminal contempt, places a maximum limit on the power to imprison a contemnor for two (2) years. The Act, under section 1, provides for the ‘strict liability rule’, where conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.⁵⁵

3.8 In 2012, the Law Commission of United Kingdom published a paper on contempt powers, in which it expressly recommended abolishing the offence of ‘scandalising the Court’ as a ground for criminal contempt. Its recommendations were accepted, and the said offence stood abolished in 2013, by an amendment to the Crime and Courts Bill. The Commission while making the recommendation noted that the basic purpose of powers of contempt was similar to that of seditious libel, i.e. to ensure the good reputation of the State (or, in the case of scandalising, the judges) by controlling what could be said about them. With the abolition of seditious libel, the *raison d’être* of scandalising the Court was also – now – weakened. In England and Wales, there were only two prosecutions in the 20th century, and that too prior to 1931. Thus, the provision had become redundant.⁵⁶

⁵⁵ Available at <https://www.legislation.gov.uk/ukpga/1981/49> (last accessed on April 2, 2018).

⁵⁶ The Law Commission (Law Comm No. 335) “Contempt of Court: Scandalising the Court”, (2012) [London: (The Stationery Office)], Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/246860/0839.pdf (last accessed on April 2, 2018); See also *In re: C. S. Karnan (supra)*

3.9 The Law Commission further noted that if the action is sufficiently offensive or threatening, it could in principle be covered under the Public Order Act, 1986 or the Communications Act, 2003⁵⁷.

C. UNITED STATES OF AMERICA

3.10 Under the law of contempt in the United States, a ‘contempt of court’ is defined as an act of disobedience or disrespect towards the judicial branch of the government, or an interference with its orderly process. It is an offense against a court of justice or a person to whom the judicial functions of the sovereignty have been delegated (**9-39.000 - Contempt Of Court**)⁵⁸.

3.11 The power of a court to punish for contempt of itself flows from Title 18 of the United States Code⁵⁹, which is the main criminal code of the federal government of the United States law; also, dealing with other aspects of law of contempt i.e. contempts constituting crimes, criminal contempt, amongst others.⁶⁰ Referring to the inherent power of the Federal Courts to punish for contempt in *Ex parte Robinson*, 19 Wall. 505, the Supreme Court said:

“The moment the courts of the United States were called into existence and invested with jurisdiction over any subject they became possessed of this power.”

⁵⁷ *Ibid*

⁵⁸ Available at <https://www.justice.gov/usam/usam-9-39000-contempt-court> (Last Accessed on April 4, 2018)

⁵⁹ 18 U.S. Code § 401 - Power of court, Available at <https://www.law.cornell.edu/uscode/text/18/part-I/chapter-21>; (Last Accessed on April 4, 2018).

⁶⁰ 18 U.S. Code Chapter 233 – Contempts, Available at <https://www.law.cornell.edu/uscode/text/18/part-II/chapter-233> (Last Accessed on April 4, 2018).

3.12 The law in the United States also categorises contempt of court under the heads of civil and criminal - where if a contemnor is to be punished criminally, then the contempt must be proven beyond a reasonable doubt; While also distinguishing between direct and indirect contempt: direct contempt being the one that occurs in the presence of the court; and, indirect contempt being the one that occurs outside the immediate presence of the court and consists of disobedience of a court's prior order. With the longest imprisonment on a charge of contempt extending to fourteen (14) years in the case.⁶¹

3.13 Further, in the United States, discussing the inter-relation between contempt of court laws and protections under the First Amendment, including the freedom of speech, the American jurisprudence appears to be placing greater emphasis on freedom of speech: “*United States law traditionally regards freedom of speech, as enshrined in the First Amendment, as the paramount right that prevails over all others in case of conflict unless there is a clear and present danger that will bring about the substantive evils that Congress has a right to prevent*”⁶²

⁶¹ *Chadwick v. Janecka* (3d Cir. 2002).

⁶² *Schenck v. United States* 249 US 47 (1919); See also *Supra* note 56.

Chapter – IV

JUDICIAL APPROACH ON “CONTEMPT”

4.1 A powerful judicial system is a condition precedent *sine que non* for a healthy democracy. If browbeating the court, flagrant violation of professional ethics and uncultured conduct is tolerated that would result in ultimate destruction of a system without which no democracy can survive⁶³. When there is deliberate attempt to scandalise the court, it shakes the confidence of the litigant public in the system, the damage is caused to the fair name of the judiciary⁶⁴. If a litigant or a lawyer is permitted to malign a Judge with a view to get a favourable order, administration of justice would become a casualty and the rule of law could receive a setback. The judge has to act without any fear thus no one can be allowed to terrorise or intimidate the judges with a view to secure orders of one's choice. In no civilised system of administration of justice, this can be permitted.⁶⁵

4.2 The power vested in the High Courts as well as Supreme Court to punish for contempt is a special and rare power available under the Constitution as well as the Act. It is a drastic power which, if misdirected, could result in curbing the liberty of the individual charged with commission of an act amounting to contempt. The very nature of the power casts a sacred duty on the Courts to exercise the same with the greatest care and circumspection. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-

⁶³ *R. K. Garg v. State of H.P.*, AIR 1981 SC 1382; and *Mahipal Singh Rana v. State of U.P.*, AIR 2016 SC 3302.

⁶⁴ *M. B. Sanghi, Advocate v. High Court of Punjab and Haryana*, AIR 1991 SC 1834.

⁶⁵ *L. D. Jaikwal v. State of U.P.*, AIR 1984 SC 1374; *Chetak Construction Ltd. M/s. v. Om Prakash & Ors.*, AIR 1998 SC 185; *Radha Mohan Lal v. Rajasthan High Court*, AIR 2003 SC 1467; and *Arun Kumar Yadav v. State of U.P.*, (2013) 14 SCC 127.

determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or order, violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident, ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened nor can the plea of equities be considered. Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising contempt jurisdiction; such an exercise will be appropriate in other jurisdictions vested in the Court.⁶⁶

4.3 That being so, a refusal to obey the final order of a court and/or attempt to overreach the same has been held by the Supreme Court to be a contempt of court with legal malice and arbitrariness as it is not permissible to scrutinise the order of court which has attained finality.⁶⁷

4.4 The Supreme Court, considering punishment for established contempt of Court, in *Supreme Court Bar Association (supra)*, held as under:

⁶⁶ *Jharieswar Prasad Paul v. Tarak Nath Ganguly*, AIR 2002 SC 2215; *V.M. Manohar Prasad v. N. Ratnam Raju*, (2004) 13 SCC 610; *Bihar Finance Service H.C. Co-op. Soc. Ltd. v. Gautam Goswami & Ors.*, AIR 2008 SC 1975; *Union of India & Ors. v. Subedar Devassy PV*, AIR 2006 SC 909; and *Sudhir Vasudeva & Ors. v. M. George Ravishekar & Ors.*, AIR 2014 SC 950.

⁶⁷ *Union of India & Anr. v. Ashok Kumar Aggarwal*, (2013) 16 SCC 147.

The power that courts of record enjoy to punish for contempt is a part of their inherent jurisdiction and is essential to enable the courts to administer justice according to law in a regular, orderly and effective manner.... The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law.
[Emphasis added]

4.5 In *Leila David v. State of Maharashtra & Ors.*, AIR 2009 SC 3272 the Supreme Court observed that the basis of law of contempt does not lie exclusively on Common law principles but is also regulated in accordance with the provisions of the Act. The Court observed that “*apart from the power conferred on it under the said Act, it has inherent power under Article 129 of the Constitution to punish for contempt of itself.*” The Court further said that it had the power to punish a contemnor under Article 142 also. [See also: *C. K. Daphtary v. O.P. Gupta & Ors*, AIR 1971 SC 1132]

4.6 In *Vishram Singh Raghubanshi v. State of U.P.*, AIR 2011 SC 2275, the Supreme Court reiterated that the contempt jurisdiction is to uphold the majesty and dignity of the courts as majesty and image of the courts cannot be allowed to be disdained. The Court observed:

“The superior courts have a duty to protect the reputation of judicial officers of subordinate courts, taking note of the growing tendency of maligning the reputation of judicial officers by unscrupulous practising advocates who either fail to secure desired orders or do not succeed in browbeating for achieving ulterior purpose. Such an issue touches upon the independence of not only the judicial officers but brings the question of protecting the reputation of the Institution as a whole.”

4.7 In *Rustom Cowasjee Cooper v. Union of India*, AIR 1970 SC 1318, the Constitution Bench of the Supreme Court observed:

“We are constrained to say also that while fair and temperate criticism of this Court or any other Court even if strong, may be actionable, attributing improper motives, or tending to bring Judges or courts into hatred and contempt or obstructing directly or indirectly with the functioning of Courts is serious contempt of which notice must and will be taken. Respect is expected not only from those to whom the judgment of the Court is acceptable but also from those to whom it is repugnant. Those who err in their criticism by indulging in vilification of the institution of Courts, administration of justice and the instruments through which the administration acts, should take heed for they will act at their own peril.”

4.8 The power to punish for contempt is a rare species of judicial power which by the very nature calls for its exercise with great care and caution. Such power ought to be exercised only where “silence is no longer an option.”

4.9 Scurrilous abuse of a judge or court, or attacks on the personal character of a Judge, are punishable contempt. Punishment is inflicted to prevent mischief which undermines or impairs the authority of the court. That is why the court regards with particular seriousness the allegations of partiality or bias on the part of the Judge or a court⁶⁸.

4.10 In *E. M. Sankaran Namboodiripad (supra)*, the Court laid down that expressions like ‘description of judiciary as an instrument of oppression, the judges as guided and dominated by class hatred’ and ‘instinctively favouring the rich against the poor’ are expressions amounting to contempt of court.

⁶⁸ *C. Ravichandran Iyer v. Justice A. M. Bhattacharjee & Ors.*, (1995) 5 SCC 457; *In Re : Vinay Chandra Mishra*, AIR 1995 SC 2348; *In Re: Arundhari Roy*, (2002) 3 SCC 343.

4.11 In *Chandra Shashi v. Anil Kumar Verma*, (1995) 1 SCC 421 the Supreme Court observed that “*if recourse to falsehood is taken with oblique motive, the same would definitely hinder, hamper or impede even flow of justice and would prevent the courts from performing their legal duties as they are supposed to do.*”

4.12 In *re : Bineet Kumar Singh (supra)*, a forged/fabricated order of Supreme Court was used for the purpose of conferring some benefits on a group of persons. Supreme Court took a strict view of the matter and observed that “*the law of contempt of court is essentially meant for keeping the administration of justice pure and undefiled*”.

4.13 The sanctity of law which is sustained through dignity of courts cannot be allowed to be marred by errant behaviour by any counsel or litigant⁶⁹. The Supreme Court in *In re: Sanjiv Datta, Dy. Secy., Ministry of Information & Broadcasting*, (1995) 3 SCC 619, dealing with the issue of errant behavior by a counsel in terms of incomplete and inaccurate pleadings, held as under:

“Some members of the profession have been adopting perceptibly casual approach to the practice of the profession as is evident from their absence when the matters are called out, the filing of incomplete and inaccurate pleadings - many times even illegible and without personal check and verification, the non-payment of court fees and process fees, the failure to remove office objections, the failure to take steps to serve the parties, et. al. They do not realise the seriousness of these acts and omissions. They not only amount to the contempt of the court but do positive disservice to the litigants and create embarrassing situation in the court leading to avoidable unpleasantness and delay in the disposal of matters. This augurs ill for the health of our judicial system.”

⁶⁹ *Arun Kumar Yadav v. State of Uttar Pradesh Thru Distt. Judge*, (2013) 7 SCALE 542.

4.14 Access to justice is a valuable fundamental and human right. And, expeditious disposal of criminal cases is an integral part of fundamental right to life under Article 21 of the Constitution. The Supreme Court has persistently, consistently and repeatedly held that advocates resorting to strike for any reason whatsoever violate the aforesaid rights of the citizens, and such strikes are always illegal. (vide *M. H. Hosket v. State of Maharashtra*, AIR 1978 SC 1548; *Hussainara Khatoon v. Home Secretary., State of Bihar*, AIR 1979 SC 1360; *State of Maharashtra v. Champalal Punjaji Shah*, AIR 1981 SC 1675; *Rudul Sah v. State of Bihar & Anr.*, AIR 1983 SC 1086; *Kishore Chand v. State of Himachal Pradesh*, AIR 1990 SC 2140; *Moses Wilson & Ors. v. Kasturiba & Ors.*, AIR 2008 SC 379; *L.I.C. of India v. R. Suresh* (2008) 11 SCC 319; *Vakil Prasad Singh v. State of Bihar*, AIR 2009 SC 1822; *Tamilnad Mercantile Bank Share Holders Welfare Association (7) v. S. C. Sekar & Ors.*, (2009) 2 SCC 784; and *Babubhai Bhimabai Bokharia v. State of Gujrat*, AIR 2013 SC 3648)

4.15 On similar lines, in the case of *Hussain & Anr. v. Union of India & Ors.*, AIR 2017 SC 1362, looking into the issue of interference with justice, the Supreme Court directed the high courts to take stringent measures against the erring advocates who violate the directions issued by the Courts to the lawyers, from time to time, not to proceed on strike, as “...denial of speedy justice is a threat to public confidence in the administration of justice.”

4.16 Very recently on March 28, 2018, the Supreme Court in Criminal Appeal No. 470 of 2018, *Krishnakant Tamrakar v. State of Madhya Pradesh*, addressing the issue of violation of the right

of access to justice, observed that every resolution of advocates to go on strike and abstain from work is per se contempt, and that the matter is therefore included within the contempt or inherent jurisdiction of this Court. The Court held that in such a case, the court may direct that the office bearers of the Bar Association/Bar Council who passed such resolution for strikes etc. to be restrained from appearing before any court for a specified period or till they purge themselves of contempt to the satisfaction of the Chief Justice of the concerned High Court based on an appropriate undertaking/conditions. The Court in its order also made reference to the 266th Report of The Law Commission of India on 'The Advocates Act, 1961 (Regulation of the Legal Profession)', noting from the report that such conduct of the advocates affects functioning of courts and particularly it contributes to pendency of cases.

4.17 That being said, it may be noted that the Supreme Court made a distinction between a mere libel or defamation of a Judge and a contempt of court or 'scandalising of a judge in relation his office', and laid down a test of "whether the wrong is done to the judge personally or it is done to the public."⁷⁰ Expounding on it further, in *Shri Baradakanta Mishra v. The Registrar of Orissa High Court & Anr.*, AIR 1974 SC 710, the Court observed:

"...the key word is "justice", not "judge"; the key-note thought is unobstructed public justice, not the self-defence of a judge; the corner-stone of the contempt law is the accommodation of two Constitutional values-the right of free speech and the right to independent justice. The ignition of contempt action should be substantial and mala fide interference with fearless judicial action, not fair comment or

⁷⁰ *Perspective Publications (Pvt.) Ltd. v. State of Maharashtra*, AIR 1971 SC 221; and *Gobind Ram v. State of Maharashtra*, AIR1972 SC 989.

trivial reflections on the judicial process and personnel.”

4.18 Even internationally, the distinction between libel / defamation of a Judge and a contempt of court has been well recognized. For instance, in the United States, the Supreme Court in *Craig v. Harney*, 331 US 367 (1947), observed that “*the law of contempt is not made for the protection of Judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate.*”

Chapter – V

CRIMINAL CONTEMPT

5.1 Criminal Contempt of court is disobedience of the Court by acting in opposition to the authority, justice and dignity thereof. It can be defined as a “conduct that is directed against the dignity and authority of the Court⁷¹”.

5.2 Criminal Contempt signifies conduct which tends to bring the authority of the court and administration of law into disrepute. The Supreme Court also laid down that “*vilificatory criticism of a Judge functioning as a Judge even in purely administrative or non-adjudicatory matters*” amounts to criminal contempt⁷².

5.3 There are various forms of contumacious action recognized to be constituting criminal contempt. ‘Scandalising the court or a judge in relation his office’ is one of them. “*There are many kinds of contempt. The chief forms of contempt are insult to Judges, attacks upon them, comment on pending proceedings with a tendency to prejudice fair trial, obstruction to officers of courts, witnesses or the parties, abusing the process of the court, breach of duty by officers 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 the law into disrespect or disregard. In this conduct are included all acts which bring the court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority. Such contempt may be committed in respect*

⁷¹ P. Ramanathan Aiyer, Major Law Lexicon (4th Ed., 2010), Vol. II, Lexis Nexis.

⁷² *Baradakanta Mishra v. Bhimsen Dixit*, AIR 1972 SC 2466.

of a Single Judge or a single court but may, in certain circumstances, be committed in respect of the whole of the judiciary or judicial system.”⁷³

5.4 In *Hari Singh Nagra & Ors. v. Kapil Sibbal & Ors.*, (2010) 7 SCC 502, the Supreme Court explained the term ‘scandalising the court’ as under:

“Scandalising in substance is an attack on individual Judges or the Court as a whole with or without referring to particular cases casting unwarranted and defamatory aspersions upon the character or the ability of the Judges. ‘Scandalising the Court’ is a convenient way of describing a publication which, although it does not relate to any specific case either post or pending or any specific Judge, is a scurrilous attack on the judiciary as a whole which is calculated to undermine the authority of the Courts and public confidence in the administration of justice.”

5.5 In *Amit Chanchal Jha v. Registrar High Court of Delhi*, (2015) 13 SCC 288, wherein the lady advocate had allegedly been slapped and abused by the opposite counsel, the Court held that such acts during judicial proceedings by another advocate in presence of the presiding officer amounted to criminal contempt.

5.6 In *Sukhdev Singh (supra)*, the Supreme Court placed reliance upon the judgment of the Privy Council in *Andre Paul Terence Ambard v. The Attorney - General of Trinidad and Tabago*, AIR 1936 PC 141, and held that the proceedings under the Contempt of Courts Act are quasi-criminal in nature, and, therefore, the orders passed therein will be treated as the orders passed in criminal cases.

⁷³ *E.M. Sankaran Namboodripad v. T. Narayanan Nambiar*, AIR 1970 SC 2015.

5.7 In *Ram Kishan v. Sh. Tarun Bajaj & Ors.*, (2014) 16 SCC 204, the Supreme Court held that the purpose of the contempt proceedings is to protect the respect and majesty of the court of law in a democratic society.

5.8 With respect to the procedure to be followed in criminal contempt, the Supreme Court has consistently held that criminal contempt proceedings are essentially quasi-criminal in nature with the requirement of standard of proof similar as in any other criminal proceeding.⁷⁴ In the case of *Sahdeo @ Sahdeo Singh v. State of U.P. & Ors.*, (2010) 3 SCC 705, the Supreme Court while reaffirming that the High Court can *suo motu* initiate contempt proceedings, once again, emphasized on the need for the standard of proof in criminal contempt to be similar to that of criminal cases. In *Ashok Kumar Aggarwal v. Neeraj Kumar & Anr.* 2014 3 SCC 602, the Court further held that a breach alleged to be criminal contempt shall have to be established beyond reasonable doubt.

A. False Affidavit

5.9 False affidavit is construed as a positive assertion, made with definite intent to pass off a falsity and if possible to gain advantage⁷⁵. If an affidavit filed before a Court is untrue, it amounts to obstructing and interfering with the due course and administration of justice, because the Judge, going by the affidavit filed, can deliver / pass a wrong judgment / order. The

⁷⁴ *S. Abdul Krim v. M. K. Prekash*, AIR 1976 SC 859; *Chhotu Ram v. Urvashi Gulati & Anr.* (2001) 7 SCC 530; *Anil Ratan Sarkar & Ors. v. HIRAK GHOSH & Ors.*, AIR 2002 SC 1405; *Daroga Singh & Ors. v. B.K. Pandey*, AIR 2004 SC 2579; *All India Anna Dravida Munnetra Kazhagam v. L.K. Tripathi & Ors.*, AIR 2009 SC 1314; *R S Sujatha v. State of Karnataka*, (2011) 5 SCC 689; and *Ashok Kumar Aggarwal v. Neeraj Kumar & Anr.*, (2014) 3 SCC 602.

⁷⁵ *Murray & Co. v. Ashok Kr. Newatia & Anr.* AIR 2000 SC 833.

Supreme Court has held in its pronouncements that filing of false affidavit amounts to criminal contempt⁷⁶.

5.10 In *Dhananjay Sharma v. State of Haryana & Ors.*, AIR 1995 SC 1795, the Supreme Court took a serious view of filing of false affidavit or making false statement in Courts and held that it is an assault on the rule of law and such conduct cannot be left unnoticed as this can shake public confidence in the fair administration of justice. The Court observed:

The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the concerned party in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. [Emphasis added]

5.11 In *Mohan Singh v. Amar Singh Through The Lrs.*, AIR 1999 SC 482, taking note of the fact that a false affidavit has been filed, the Court directed initiation of criminal proceedings against the appellant observing that “*tampering with the record of judicial proceedings and filing of false affidavit, in a court of law has the tendency of causing obstruction in the due course of justice*”.

5.12 In *The Secretary, Hailkandi Bar Association v. State of Assam & Anr.*, AIR 1996 SC 1925, the Supreme Court came to a

⁷⁶ See: *M. C. Mehta v. Union of India & Ors.*, AIR 2003 SC 3469.

conclusion that filing false affidavit amounts to contempt of court and punished the contemnor, a police officer, for deliberately forwarding an inaccurate report, followed by a false affidavit, with a view to mislead the Court and thereby interfere with the due course of justice, by attempting to obstruct the Court from reaching a correct conclusion. The Supreme Court took a serious view of the issue and observed that such an act cannot be taken lightly and that producing false documents and placing them as part of record of the Court are matters of serious concern⁷⁷.

5.13 In *Advocate-general, State of Bihar v. Madhya Pradesh Khair Industries & Anr.*, AIR 1980 SC 946, the Supreme Court opined:

*“While we are conscious that every abuse of the process of the Court may not necessarily amount to Contempt of Court, abuse of the process of the Court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice, we must say, is a contempt of Court. it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process The Court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for Contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression **“Contempt of Court” may seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with.**” [Emphasis added]*

⁷⁷ *Afzal & Anr. v. State of Haryana & Ors.*, 1994 (1) SCC 425; and *Murray & Co. v. Ashok Kr. Newatia*, AIR 2000 SC 833; See also: *Bank of India v. Vijay Transport & Ors.*, (2000) 8 SCC 512.

B. Ex facie contempt

5.14 It is specifically provided in the Constitution that an order of the Supreme Court is law of the land. Anyone against such order tantamounts to ex-facie contempt. In *Advocate General, State of Bihar v. M/s. Madhya Pradesh Khair Industries*, AIR 1980 SC 946, the Supreme Court observed that “*Judiciary is the bed rock and hand-maid of orderly life and civilised society. If the people would lose faith in justice imparted by the highest court of the land, woe be to orderly life. The fragment of civilised society would get broken up and crumble down.*”

5.15 Taking a serious note of the contempt committed by the respondent in *Delhi Development Authority v. Skipper Construction Co. (Pvt.) Ltd. & Anr. (supra)*, the Supreme Court observed that apology cannot be used as an instrument to purge the contempt and held that “*The conduct of the contemnors tends to bring the authority and administration of law into disrespect or even disregard.... Abuse of the process of court calculated to hamper the due course of judicial proceeding the orderly administration of justice is a contempt of court.*”

5.16 Further, in *Shri Baradakanta Mishra v. The Registrar of Orissa High Court & Anr. (supra)*, the Supreme Court observed:

“Judges and Courts have diverse duties. But functionally, historically and jurisprudentially, the value which is dear to the community and the function which deserves to be cordoned off from public molestation, is judicial. Vicious criticism of personal and administrative acts of judges may indirectly mar their image and weaken the confidence of the public in the judiciary but the countervailing good, not merely of free speech but also of greater faith generated by exposure to the actinic light of bona fide, even if marginally overzealous, criticism cannot be overlooked.”

5.17 In *Dr. D.C. Saxena v. Hon'ble the Chief Justice of India*, AIR 1996 SC 2481, the Court considered serious allegations made by the contemnor against the then Chief Justice of India, as an impulse to the order of the Supreme Court disallowing a writ petition filed by him. The Court observed that “*any act done, or writing published, which is calculated to bring a court or a judge into contempt or to lower his authority or to interfere with the due course of justice is a contempt of the Court: scurrilous abuse of a judge or court, or attacks on the personal character of a judge are acts of contempt*”.

C. Circumventing the Judgment / Order of the Court

5.18 Criminal contempt in the most general sense of the term includes contemptuous actions that interfere or tend to with the due course of justice, in turn including any action that circumvents a judgment or order of the Court.

5.19 Emphasizing on the foregoing, the Supreme Court in *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. & Ors.*, AIR 1989 SC 190, observed that the public interest demands that there should be no interference with judicial process and the effect of the judicial decision should not be pre-empted or circumvented by public agitation or publications. The Court in this case also emphasized on the importance of assessing contempt in the light of the facts of the case, opining that while ensuring that the due course of justice remains unimpaired, the question of contempt must be judged in a particular situation.

D. Misinterpretation of Court's Proceedings

5.20 Any speech or writing misrepresenting the proceedings of the Court or prejudicing the public for or against a party or

involving reflections on parties to a proceeding amount to contempt. As observed by the Supreme Court *In Re: P.C. Sen*, AIR 1970 SC 1821, the question is not so much of the intention of the contemnor, but whether it is calculated to interfere with the administration of justice or whether it would have baneful effects. “*To make a speech tending to influence the result of a pending trial, whether civil or criminal is a grave contempt... The question in all cases of comment on pending proceedings is not whether the publication does interfere, but whether it tends to interfere with the due course of justice.*”

5.21 The Court further emphasized on the duty of the courts to preserve their proceedings from being misrepresented, because prejudicing the minds of the public against persons concerned as parties in causes before the cause is finally heard may have “pernicious consequences”.⁷⁸

5.22 Reflecting on the effects of misinterpretation of the court’s proceedings, in *The William Thomas Shipping Co., in re. H. W. Dhillon & Sons Ltd. v. The Company, In re. Sir Robert Thomas and Ors.*, [1930] 2 Ch. 368, the Court observed that the publication of injurious misrepresentations concerning the parties to proceedings also amounts to contempt of court, because it may cause those parties to discontinue or to compromise, and because it may deter persons with goods causes of action from coming to courts, and was thus likely to affect the course of justice.

⁷⁸ *In Re : P.C. Sen*, (*supra*).

Chapter – VI
WHAT DOES NOT AMOUNT TO CONTEMPT

6.1 Section 13 of the Act 1971 postulates no punishment for contemptuous conduct in certain cases. As a general guideline, it provides for no punishment unless the court is satisfied that the contempt is of such a nature that “substantially interferes, or tends substantially to interfere with the due course of justice”. In fact, Section 13, as amended in 2006, under its sub-section (b) allows for justification by truth to be raised as a valid defence against contempt, if the court is satisfied that it is in public interest and the request for invoking the said defence is *bona fide*.⁷⁹

6.2 In *M.V. Jayarajan v. High Court of Kerala & Anr.* (2015) 4 SCC 81, the Court held that right to freedom of speech and expression postulates a temperate and reasoned criticism and not a vitriolic, slanderous or abusive one. Such right certainly does not extend to inciting public directly or insidiously to disobey Court order. But, no one can scandalise the Court using abusive and pejorative language against the judiciary.

6.3 In *B.K. Kar v. Hon'ble the Chief Justice and his companion Justices of the Orissa High Court & Anr.*, AIR 1961 SC 1367, the Supreme Court observed that where the order of the Court is not complied with, mistakenly, inadvertently or by misunderstanding the meaning and object of the judgment, charges of contempt cannot be levelled, because it is quite possible that the disobedience is accidental.

⁷⁹ See also *Subramanian Swamy v. Arun Shourie*, AIR 2014 SC 3020.

6.4 The Supreme Court while striking a balance in relation to the invoking of provisions of contempt held that a mere allegation of social intimacy between a party in litigation and a judicial officer does not amount to an act of criminal contempt (vide *Gobind Ram v. State of Maharashtra*, AIR 1972 SC 989).

A. Judgment / Order – if capable of different interpretations

6.5 A non-compliance of an order, which can be interpreted in more than one way, raising a variety of consequences, has been held not to be a willful disobedience so as to make a case of contempt allowing serious consequences including imposition of punishment (vide *Dinesh Kumar Gupta v. United India Insurance Co. Ltd. & Ors.*, (2010) 12 SCC 770) The Supreme Court in the said case, emphasizing on the element of willfulness in civil contempt, also observed that even though there may be disobedience, yet if the same does not reflect that it has been conscious and willful, a case for contempt cannot be held to have been made out.

6.6 In *Mrityunjay Das & Anr. v. Sayed Hasibur Rahaman & Ors.*, AIR 2001 SC 1293, the Court according the benefit of doubt to the alleged contemnor in this case, where the order was capable of two interpretations and one of which was adopted by the alleged contemnor, noted that “*exercise of powers under the Contempt of Courts Act shall have to be rather cautious and use of it rather sparingly after addressing itself to the true effect of the contemptuous conduct*”.

B. Execution of Order Not Possible

6.7 Where an alleged contemnor is able to place before the Court sufficient material to establish that it is impossible to obey an order, the Court will not be justified in punishing such alleged contemnor (vide *Capt. Dushyant Somal v. Smt. Sushma Somal &*

Anr., AIR 1981 SC 1026). A person is not to be punished for contempt of Court for disobeying an order of Court except when the disobedience is established beyond reasonable doubt, “*the standard of proof being similar, even if not the same, as in a criminal proceeding*”.⁸⁰

6.8 Similarly, in *Mohd. Iqbal Khanday v. Abdul Majid Rather*, AIR 1994 SC 2252, the Court held that where the appellant has genuine difficulties with regard to implementation of the order, the insistence of the courts on implementation may not meet with realities of the situation and the practicability of implementation of the court's direction. Enforcing obedience to such orders through contempt proceedings hardly lends credence to judicial process and authority. While the court must always be zealous in preserving its authority and dignity, but at the same time it will be inadvisable to require compliance of an order impossible of compliance.

C. Order Difficult to Comply being Unclear in Terms

6.9 A non-compliance of an order owing to an omission in such order rendering it unclear in terms of the required compliance, i.e. difficult to comply with, has been held to be not a contempt of such order. As in the case of *Dravya Finance Pvt. Ltd. & Ors. v. S. K. Roy & Ors.*, (2017) 1 SCC 75, the Supreme Court closed a contempt petition, treating it as a limited review petition, on account of an apparent omission in the final order, which while ordering the payment of interest failed to specify the date from which it is to be calculated and paid.

6.10 In *Jhareswar Prasad Paul & Anr. v. Tarak Nath Ganguly & Ors.*, AIR 2002 SC 2215, the Court noted that the court exercising contempt jurisdiction does not function as an original or

⁸⁰ *Capt. Dushyant Somal v. Smt. Sushma Somal & Anr.*, AIR 1981 SC 1026.

appellate court for determination of the disputes between the parties, and if there is any ambiguity in the judgement or order then it is better to direct the parties to approach the court which disposed of the matter, for clarification of the order, instead of the court exercising contempt jurisdiction. That the power to punish for contempt of courts is a special power and needs to be exercised with care and caution; that it should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct⁸¹.

D. Technical Contempt

6.11 Emphasising on initiating contempt proceedings with utmost reserve and greatest caution, courts have on various occasions distinguished between a mere technical contempt and a contempt of court which interferes or tends to interfere with the due course of justice. As was noted by the Apex Court *In Re : P.C. Sen*, AIR 1970 SC 1821, a Court will not initiate proceedings for commitment of contempt where there is a mere technical contempt.

6.12 Further, in the case of *Murray & Co. v. Ashok Kr. Newatia*, AIR 2000 SC 833, the Supreme Court underlining the precondition of substantial interference with the due course of justice under Section 13 of the Act 1971, held “*It is not enough that there should be some technical contempt of court but it must be shown that the act of contempt would otherwise substantially interfere with the due course of justice which has been equated with “due administration of justice”*”. Substantial interference with the course of justice being an essential requirement for imposition of punishment under the statute.

⁸¹ See also: *Dravya Finance (P) Ltd. v. S. K. Roy*, (2017) 1 SCC 75.

Chapter - VII

CONCLUSIONS AND RECOMMENDATION

7.1 The Supreme Court of India has recently published a report with respect to the cases relating to contempt of courts in respective High Courts⁸². The abstract of the report (may kindly see Annexure I) shows the number of cases from July 1, 2016 to June 30, 2017. A total number of 568 criminal contempt cases and 96,310 civil contempt cases were found pending in the High Courts. The Orissa High Court leads in criminal contempt cases with 104 pending matters, and the Allahabad High Court is having 25,370 pending civil contempt cases.

7.2 So far as the Supreme Court is concerned, as of April 10, 2018, a total number of 683 civil contempt cases and 15 criminal contempt cases have been shown as pending (may kindly see Annexure II).

7.3 These cases in civil and criminal contempt matters represent the high number of incidents of interference with 'due course of justice' - by wilful disobedience of judgments or orders as well as by other means of lowering the authority of court, such as 'scandalising the court', among others. In general, these numbers reflect on the tendency of contemnors to act derogatorily with reference to the judiciary and interfere with the administration of justice, which cannot be acceptable. The discussion in the preceding chapters and the aforesaid figures emphasise on the glaring occurrences of criminal contempt, which unabatedly continue and establish the relevance of the provisions concerned in the Act 1971.

⁸² "Indian Judiciary", Annual Report 2016-17, published by the Supreme Court of India.

7.4 The above figures also highlight the situation which is in contrast in the case of India when compared to the situation obtaining in the United Kingdom, which prompted them, in 2013, to abolish the offence of ‘scandalising the court’ as a ground for criminal contempt. The reported incidents and the dimensions thereof, which can be gathered from the available data, clearly distinguish the circumstances, and therefore, it may not be appropriate to draw a comparison between the two without delving in to such circumstances. In England and Wales, prior to its abolition, the offence of ‘scandalising the court’ had almost fallen into disuse by the end of the nineteenth century, only to be revived in two cases in the 20th century with the last prosecution of the offence occurring as long ago as in 1931.⁸³ Therefore, by virtue of doctrine of desuetude the law pertaining to offence of ‘scandalising the court’, with its long and continued non-use, stood to be insignificant.

7.5 In India, on the other hand, the number of cases of criminal contempt (disposed of and pending) highlight a different picture. Furthermore, the amendment in the United Kingdom, deleting the words ‘scandalising the court’ did not change the situation *vis-à-vis* such offences as they continue to be punishable under other existing statutes - the Public Order Act, 1986, and the Communications Act, 2003; which is not the case in India, where deletion of ‘criminal contempt’ from Act 1971 will leave a palpable legislative gap.

7.6 With respect to the power of contempt under the Constitution, Articles 129 and 215 vest the Superior Courts with the power to punish for their contempt. Therefore, even in the absence of any legislation outlining the procedural powers of the

⁸³ *Supra* Note 56.

Supreme Court and High Courts with regard to investigation and punishment of their contempt, these Courts are empowered to investigate and punish a contemnor by virtue of the powers conferred on them by the Articles aforesaid. Additionally, Article 142(2) also enables the Supreme Court to investigate and punish any person for its contempt. Thus, the suggestion to delete the provision relating to ‘criminal contempt’ *inter alia* ‘scandalising of courts’ will have no impact on the power of the Superior Courts to punish for contempt (including criminal contempt) in view of their inherent constitutional powers, as these powers are independent of statutory provisions.

7.7 The Act 1971 is, therefore, not the source of ‘power to punish for contempt’ but a procedural statute that guides the enforcement and regulation of such power. The reason being that even prior to the commencement of Act 1926 these inherent powers were being exercised by the Superior Courts. Thus, the powers of contempt of the Supreme Court and High Courts are independent of the Act 1971, and, therefore, by making any such amendment, the power of the superior courts to punish for contempt under Articles 129 and 215 of the Constitution cannot be tinkered or abrogated.

7.8 Entry 77 of the Union List of the Seventh Schedule enables Parliament to *inter alia* legislate on “.. jurisdiction and powers of the Supreme Court, (including contempt of such Court) ..”. However, with respect to contempt, this power has been interpreted by the Supreme Court in various pronouncements, as limited to only defining and laying down the procedure to be followed in contempt proceedings. In other words, the power of Superior Courts, which are vested in them by the Constitution, cannot be fettered by any legislation. As the sanctity of Articles 129 and 215 has been upheld by the Supreme Court on several

occasions, any amendment to the Act 1971 that goes against the spirit of these Articles is undesirable.

7.9 As noted in Pakistan, the Contempt of Courts Act, 2012 was struck down by the Supreme Court of Pakistan for being violative of the Constitutional mandate providing for access to justice, and for the substitution of the expression ‘scandalising the court’ with ‘scandalising a judge in relation to his office’, among other grounds. The Court observed that the Act 2012, as it stood, tantamounts to amending the Constitution itself.

7.10 Circling back to the legislation itself, the Act 1971 was enacted with the objective of regulating the power and procedure for contempt cases, and it does exactly that by putting limits on this power, and prescribing procedures et.al. The Act 1971 after defining civil and criminal contempt prescribes its contours as well, such as under sections 3 and 13 - laying down cases that do not amount to contempt and the cases where contempt is not punishable. Similarly, sections 14, 15 et. al. laying down the procedural requirements to be complied with in contempt cases. In this manner, the Act 1971 contains adequate safeguards to exclude such instances which may not amount to criminal contempt as defined under section 2(c) of the Act 1971, thereby restricting instances of misapplication. There is also no denial that the Act 1971 has very well stood the test of the judicial scrutiny for about five decades, as is evident from the case law discussed in the preceding chapters.

7.11 A change to limit the ambit of ‘contempt’ only to ‘wilful disobedience of directions / judgement of Court’ will effectively demote the expressions ‘contempt’ and ‘contempt of court’ as used in and referred to under the Act 1971. Such limitation will not affect the powers of the Supreme Court and High Courts to

punish for their contempt (as discussed earlier); but will largely expose the subordinate courts to increased instances of unaddressed ‘contempt of court’, particularly ‘scandalising’, because of the narrowed scope of Section 10 i.e. the power of High Court to punish for ‘contempt’ of subordinate court.

7.12 Further, any amendment to the Act 1971 to amend the already existing definition of ‘contempt’ will also lead to ambiguity because the same is bound to give rise to more occasions for spontaneous and multiple definitions and interpretations as the Superior Courts exercise their inherent powers of contempt. In the interest of consistency and coherency, it is suggested to continue with the existing definition, which has stood the test of judicial scrutiny.

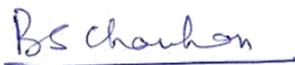
7.13 More so, curtailing the scope of contempt to only include ‘wilful disobedience of directions / judgment of Court’ seems undesirable because of the continuing need for deterrence against contemptuous elements. If the provisions are so narrowed in scope, there will be a reduction in impact. Such a change in the law of contempt could potentially lessen the respect for or fear of the courts and their authority and functioning; and, there is a possibility that this may lead to an undesired increase in the instances of deliberate denial and blasphemy of the courts.

7.14 It is also noteworthy that the definition of ‘contempt’ under consideration here was first introduced in the Act 1971, with no such definitions in the earlier Acts. It was only in 1971 that a legislation not only defined ‘contempt’, but also categorised it under ‘civil’ and ‘criminal’ contempt, providing succinct definitions for the same. It is evident from the ‘Statement of Object and Reasons’ of the Act 1971 that the preexisting law on contempt was found to be “**uncertain, undefined...**”. A decision

to now roll back on this definition will take us back to the uncertainties of the past, undoing a lot of progress that has been achieved in this field since the Act 1971.

7.15 The reference received by the Commission from the Government is confined only to section 2(c) of the Act 1971. The said Act has been amended twice, once in the year 1976 and then in 2006 as per the need of the time. The suggested amendment to section 2(c) would not be a meaningful exercise and would not be in the larger public interest, for the reasons adduced in the foregoing chapters. Further, viewed from the angle of the frequent indulgence of unscrupulous litigants and lawyers alike with administration of justice, it would not be in the interest of litigants and the public at large to minimise the effect of the exercise of powers of contempt as and when the need arises. Therefore, the Commission does not consider it necessary to make any amendment therein for the present.

The Commission recommends accordingly.



[Justice Dr. B.S. Chauhan]
Chairman



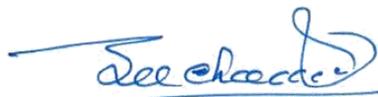
[Justice Ravi R. Tripathi]
Member



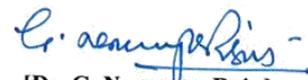
[Prof. (Dr.) S. Sivakumar]
Member



[Dr. Sanjay Singh]
Member-Secretary



[Suresh Chandra]
Ex-officio Member



[Dr. G. Narayana Raju]
Ex-officio Member

Annexure - I

**Statement showing Contempt Cases (Civil & Criminal) in
High Courts
from 1.07.2016 to 30.06.2017⁸⁴**

Name of High Court/ Bench	Category of Contempt	Pendency as on 1.7.2016	Institution	Disposal	Pendency as on 30.6.2017
Allahabad	Civil	29992	8329	12951	25370
	Criminal	93	34	34	93
Bombay	Civil	5025	1744	1788	4981
	Criminal	58	22	16	64
Calcutta	Civil	5422	343	318	5447
	Criminal	82	12	08	86
Chhattisgarh	Civil	341	681	731	291
	Criminal	04	02	0	06
Delhi	Civil	1679	1125	1619	1185
	Criminal	20	06	08	18
Guahati	Civil	1069	629	876	822
	Criminal	-	-	-	-
Kohima Bench	Civil	25	14	25	14
	Criminal	02	-	-	02
Aizawl Bench	Civil	24	22	34	12
	Criminal	-	-	-	-
Itanagar Bench	Civil	40	38	30	48
	Criminal	-	-	-	-
Gujarat	Civil	142	242	240	144
	Criminal	0	0	0	0
Himachal Pradesh	Civil	226	384	436	174
	Criminal	01	01	02	0
Hyderabad	Civil	6036	3257	1391	7902
	Criminal	0	-	-	-
Jammu & Kashmir	Civil	6355	1431	914	6872
	Criminal	17	03	04	16
Jharkhand	Civil	1287	1030	1173	1144
	Criminal	22	05	02	25
Karnataka	Civil	774	2457	1994	1237
	Criminal	44	15	15	44
Kerala	Civil	2091	2333	1696	2728
	Criminal	02	06	01	07
Madhya Pradesh	Civil	8087	4844	4674	8257
	Criminal	31	12	18	25
Madras	Civil	6293	4479	3989	6783

⁸⁴ *Indian Judiciary*, Annual Report 2016-17 published by the Supreme Court of India

	JJCriminal	0	0	0	0
Manipur	Civil	520	237	169	588
	Criminal	04	01	0	05
Meghalaya	Civil	18	26	26	18
	Criminal	01	0	0	01
Orissa	Civil	10189	1823	4039	7973
	Criminal	131	04	31	104
Patna	Civil	6341	1344	2969	4716
	Criminal	0	0	0	0
Punjab & Haryana	Civil	4273	3513	3455	4331
	Criminal	44	15	11	48
Rajasthan	Civil	3741	3508	2679	4570
	Criminal	26	04	07	23
Sikkim	Civil	0	01	0	01
	Criminal	0	0	0	0
Tripura	Civil	12	67	46	33
	Criminal	03	01	03	01
Uttrakhand	Civil	491	361	183	669
	Criminal	0	-	-	0

Annexure - II

SUPREME COURT OF INDIA**Statement showing Institution, Disposal and Pendency of the Cases
relating to Civil & Criminal Contempt of Court cases as on 10.04.2018**

S.No	Duration	Casetype	Civil		Pendency as on 10.04.2018	Criminal		Pendency as on 10.04.2018
			Instituted	Disposal		Instituted	Disposal	
1	From 01.01.2017 to 31.12.2017	CONTEMPT PETITION	535	606	680	4	5	13
2		SUO MOTO CONTEMPT PETITION	7	4	3	5	5	2
Total			542	610	683	9	10	15
					683			15
Total (Pendency as on 10.04.2018)								698

Ld. Registrar (C)
11.4.18

Aem:
10.04.2018

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- Arun Kumar Yadav v. State of Uttar Pradesh Thru Distt. Judge*, (2013) 14 SCC 127
- Arun Paswan, S.I. v. State of Bihar & Ors.*, AIR 2004 SC 721
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