

CHAPTER V

CONTEMPT OF COURT AND CONTEMPORARY DEVELOPMENTS

**‘There is no greater crime than contempt of Court and
disobedience’**

The power to punish for Contempt is an inseparable authority of every superior court. Since time immemorial, the superior courts that came to be called as Courts of Record have been exercising this power. For the first time, in India the Act of 1926 vested the contempt jurisdiction in the Courts of Record, for punishing for contempt of itself as well as of subordinate courts. The Contempt of Courts Act, 1971 came to be made to define and limit the power of certain courts in punishing contempt of court and to regulate their procedure in relation thereto for the purposes of securing a feeling of confidence in the people in general and for due and proper administration of justice in the country.

According to Oswald, power of punishment for contempt has been conferred on the courts to keep a blaze of glory around them, to deter people from attempting to render them contemptible in the eyes of the public. These powers are necessary to keep the course of justice free, as it is of great importance to society. The object of punishing for contempt is primarily to protect the public confidence in the system of administration of justice. In *Brahm*

Prakash Sharma,¹ the Supreme Court in 1954, underlined the object and held that the summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of Law as is administered in the courts.

In *Aligarh Municipal board*,² the Supreme Court in 1970, has held that the contempt proceedings against the person who has failed to comply with the courts order serves a dual purpose: (1) Vindication of the public interest by punishment of contemptuous conduct; and (2) Coercion to compel the contemnor to do what the law requires of him.

The object of contempt proceedings is not to afford protection to judges personally from imputations to which they may be exposed as individuals. It is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the sense of confidence which people have in the administration of justice by it is weakened.

Once a Court is made a Court of Record, its power to punish for

¹ AIR 1954 SC 10.

contempt of court is acknowledged. This power has been expressly conferred on the Supreme Court and High courts by our constitution. The power to punish for contempt of court has come up before the Supreme Court on numerous occasions. The public feel the power swings more towards judicial dictatorship. No branch of law has had so much fascination and an equal amount of controversy than the law of contempt. The fundamental public policy of a democratic polity has adopted the power to punish contempt. The common law had adequately articulated it. The constitutional law accorded recognition to such power in the Courts of Record. The Contempt of Courts Act, 1971 is only to supplement and not to circumvent the constitutional power. The Act of 1971 provides definition, procedure, quantum of punishment, etc, to regulate the exercise of this power.

Broadly, the statute has classified contempt as civil and criminal. Still there has been a definite distinction, between contempt and disobedience, Contempt and offences under penal code, scandalizing, defamation, and insult. Sometimes the distinction is very thin. And one gets a semblance of the other. That invites serious debate. The statutes as well as judicial verdicts have delineated numerous restrictions on the exercise of power. Caution

² AIR 1970 SC 1767.

and circumspection in exercise of the power are being continuously administered by way of lessons to judges. Power to punish for contempt is one of the devices to vitalize and further the rule of law as well as due process of law. Time and again it has been made clear that the exercise of power is not to shield the erring judges or their objectionable conduct, but is designed to save the institution for dispensation of justice from motivated and scurrilous attack. 'Justice' has not been viewed as 'cloistered virtue'. It is therefore expected to suffer criticism, which is the public way.

Against the backdrop of the democratic right of freedom of expression, the power to punish for contempt is sensed as an antithesis. All Courts are either of record or not of record. Article 129 of the Constitution provides that the Supreme Court shall be a Court of Record and shall have the powers of such a Court including the power to punish for contempt of itself. According to Blackstone a Court where the acts and proceeding are enrolled in parchment for a perpetual memorial, and testimony is a Court of Record. In other words a Court of Record is a court whose records are admitted to be of evidentiary value and they are not to be questioned when they are produced before the court.

The function of the prosecutor and adjudicator is in one authority.

Articles 129 and 215 of the Constitution of India provide that the Supreme Court and the High Courts shall be Courts of Record and shall have all the powers of such a court including the power to punish for contempt of itself as well as of its subordinate courts. The expression 'including' appearing in Articles 129 and 215 of the constitution of India extends and widens the scope of the power. This extended power is necessary to safeguard and protect the subordinate judiciary, which is the very backbone of administration of justice.

Courts of justice are held to be 'temples of Goddess'. 'Temple' denotes sanctity, purity and solemnity. So in the court, these three things are adhered to while administering justice. The temple is a sacred place, so is the court, where justice is administered impartially. Aggrieved parties are redressed with dignity and a solemnity. Judges are the guardians of law and justice. Judges conduct should be above reproach. He should be punctual, courteous, patient, impartial, fearing of public clamor, regardless of public responses and indifferent to private, political or partisan influences. A judge is obliged to administer justice according to the settled norms and to maintain public trust; judge is not to allow other affairs to interfere with the prompt and proper judicial performances. The judiciary, as an institution, depends on

perennial public confidence that judiciary is an institution of integrity and dignity. Any derogatory remarks are bound to diminish dignity and public confidence in the judiciary. It is well settled that the law of contempt is based on sound public policy necessitating the punishing of conduct, which shakes the public confidence in the administration of justice.

The essence of the law of contempt is that all persons at all times observe and display complete respect for the justice dispensation machinery which prominently includes the judges who are invested with the duty of carrying out that task, and who shall be treated with the dignity and the respect which they are entitled to. It is a fundamental duty of the democratic polity to protect the system of justicing from being victimized from the grumblings of litigant public. And it is obligatory to maintain the system of justice unsullied for the public in general. The institution of Courts of Justice is always hallowed with sanctity and reverence. It is not a business counter where one makes a deal. It is the Hall of Justice where the supplicants go in search of truth and fair-play. The occupation of the seat is therefore not a mere authority invested with power, but the dispenser of unalloyed justice not necessarily because he has the power to do so but because he has to answer the higher call of his judicial duties, namely to give a fair hearing

and to the best of his abilities to give a solemn and true decision based on established principles of Law and Justice. To put it bluntly both the Judge and the Lawyer have no rights in the sense of any prerogatives. They have only duties, the duty to help in the administration of Justice, a duty enjoined on them by virtue of the positions of trust in which they have been placed by society and the law.

A libel upon a court is a reflection upon the sovereign people themselves. The contemnor conveys to the people that the administration of justice is gullible. The foundation of justice is tainted. The punishment inflicted is not for the purpose of protecting either the court as whole or the individual judges of the court from repetition of the attack, but for protecting the public.

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. In *Barada Kanta Mishra v. Registrar of Orissa High Court*,³ the Supreme Court held that where the court rejects a motion or a reference and declines to initiate a proceeding for contempt, it also refuses to assume or exercise the jurisdiction to punish and such a decision cannot be regarded as a decision in

³ AIR 1974 SC 2255.

the exercise of its jurisdiction to punish for contempt. Such a decision would not, therefore, fall within the opening words of section 19 (1) and no appeal would lie against it as of right under that provision.

The Supreme Court, being the apex court of the country, has not only the right to protect itself from being scandalized or degraded but is also has the right jurisdiction and the obligation to protect the High Courts and the subordinate courts in the country from being insulted, abused or in any other way denigrated. Any action which has the tendency to interfere with or obstruct the due course of justice has to be dealt with sternly and firmly to uphold the majesty of the law. No one can be permitted to intimidate or terrorize Judges by making scandalous, unwarranted and baseless imputations against them in the discharge of their judicial functions so as to secure orders which the litigant 'wants'. The subordinate judiciary forms the very backbone of administration of justice. The Supreme Court would come down with a heavy hand for preventing the judges of the subordinate judiciary or the High Courts from being subjected to scurrilous and indecent attacks, which scandalize or have the tendency to scandalize, or lower or have the tendency to lower the authority of any Court as also such action which interfere or tend to interfere with the due course of

any judicial proceedings or tend to obstruct the administration of justice in any manner. The foundation of justice cannot be allowed to be polluted by disgruntled litigants. The protection is necessary for the Courts to enable them to discharge their judicial functions without fear.⁴

It is well settled that the power under Art. 215 of the Constitution of India cannot be exercised by the learned Single judge of the High Court without being conferred upon such authority or jurisdiction by the Chief Justice.⁵ It was observed that the administrative control of the High Court vests in Chief Justice alone and it is his prerogative to distribute business of the High Court both judicial and administrative. The Puisne Judges can only do that work which is allotted to them by the Chief Justice or under his directions. No judge or a bench of judges can assume jurisdiction in a case pending in the High Court unless the case is allotted to him or them, as the case may be, by the Chief Justice. The Calcutta High Court was of the view that the power of the High Court under Art. 215 of the Constitution of India has to be read consistently with the Contempt Rules framed by the High Court. The Supreme Court also is of the same view.⁶

⁴ *In re Ajay Kumar Pandey*, AIR 1998 SC 3299.

⁵ *Raj Kishore Yadav v. Principal, Kendriya Vidyalaya*, AIR 1977 SC 1186.

⁶ *Dr.L.P.Mishra v. State of U.P.* (1998) 7 SCC 379.

Every criticism is not Contempt. One of the tests to ascertain whether the criticism is calculated to interfere with the due course of justice or proper administration of law is whether it trends to create distrust in the popular mind and impair confidence of the people in the Court of law. These tests have been the part of the meaning of the expression contempt of court from before the Constitution and are still a part of its meaning – a meaning that the framer of the Constitution must have known when they used the expression.⁷

Criticisms about the judicial system or judges should be welcomed, so long as such criticisms do not impair or hamper the administration of justice. Any criticism about the judicial system or the judges, which hampers the administration of justice or erodes the faith in the objective approach of judges and brings administration justice into ridicule, must be prevented. Faith in the administration of justice is one of the pillars through which democratic institution functions and sustains. This is how courts should approach the powers vested in them as judge to punish a person for an alleged contempt, be it by taking notice of the matter *suo motu* or at the behest of the litigant or a lawyer. The foundation of the judiciary is the trust and the confidence of the

⁷ *Brahma Prakash Sharma and others v. State of U.P.*, AIR 1954 SC 10.

people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.

Rule of law is the basic rule of governance of any civilized democratic policy. Our constitutional scheme is based upon the concept of rule of law, which we have adopted and given to ourselves. Everyone, whether individually or collectively is under the supremacy of law. Whoever the person may be, however high he or she is, no one is above the law notwithstanding how powerful and how rich he or she may be. For achieving the establishment of rule of law, the constitution has assigned the special task to the judiciary in the country. It is only through the courts that the role of law unfolds its contents and establishes its concept. No person can flout the mandate of law of respecting the courts.

There is no provision in the Contempt of Courts Act, 1971 curtailing the Supreme Court's/High court's power with regard to the contempt of the Subordinate Courts. On the other hand, section 15 of the Contempt of Courts Act expressly refers to the Supreme Court's power of taking action for the contempt of the

subordinate court. Under section 19 of the above said Act, the Supreme Court has the appellate jurisdiction, but that does not divest it of its power under Article 129 of the Constitution. The conferment of appellate power on the Supreme Court by a statute does not and cannot affect the width and amplitude of powers of the Supreme Court under Article 129 of the Constitution. The argument that the Supreme Court has no supervisory jurisdiction over the High Court or other subordinate courts, and therefore, it does not possess powers which the High Courts have under Article 215 is misconceived. Since the Supreme Court has the power of judicial superintendence and control over all the Courts and Tribunals functioning in the entire territory of the country, it has a corresponding duty to protect and safeguard the interest of the inferior Courts to ensure the flow of stream of justice in the Courts without any interference from and quarter.

Contempt of court includes both 'civil' and 'criminal' contempt. 'Civil contempt' means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court. 'Criminal contempt' means the publication, whether by words spoken or written by signs or by visible representation or otherwise, of any matter or doing of any act whatsoever which – (I) scandalizes or tends to

scandalize, 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.

A judge or magistrate or other person acting judicially shall be liable for contempt of his own court or of any other court in the same manner as any other individual is liable. However, any observations or remarks made by the higher court regarding a subordinate court in an appeal or revision pending before the court does not constitute contempt. The following acts or publications will not amount to contempt:

- (a) Innocent publications and its distribution;
- (b) Fair and accurate report of judicial proceedings;
- (c) Fair criticism of judicial act;
- (d) Contempt made in good faith against presiding officers of subordinate courts i.e. below High court.
- (e) Publication of fair and accurate reports of a judicial proceeding before a court sitting in camera.

The rule of law is the foundation of the democratic society. The judiciary is the guardian of the rule of law. Hence, the judiciary is

not only the third pillar, but also the central pillar of the democratic system. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail.

In a democratic society, freedom of speech and expression is a prized privilege and a salutary right of the people. But, at the same time, no less important is the maintenance of independence and integrity of the judiciary and public confidence in the administration of justice. It thus becomes necessary to draw a balance between the two values. The freedom of speech and expression guaranteed by Article 19 (1) (a) is subject to Articles 19(2), 129 and 215.

A newspaper published a news item that two sons of a judge of Supreme Court had been allotted petrol pumps by the Minister out his discretionary quota. However, on verification the news was found to be incorrect. The court held the printer, publisher, editor and the reporter guilty of contempt of the court. None of them took

the necessary care to verify the correctness and credibility of the information published by them as news item in their newspaper of the allegation of a very serious nature causing embarrassment to the court.⁸

While freedom of the press follows the guarantee of freedom of speech in Article 19(1)(a), yet there are limits to this freedom. Article 19(2) of the Constitution makes this freedom subject to the existing law relating to libel, slander, defamation and contempt of court. Medium of the Press is the sine qua non of a vibrant democratic society. For this it is essential that the press do enjoy full freedom in a democratic country. But while fair comment in the press is desirable and is privileged there is no privilege to allege as facts that which is not true. That will be libellous. Very often the press clash with the Government authority when there is undue criticism against Government policy and action. According to Lord Denning the Law of contempt of court as applied to the press, was said to be a necessity. He observed that

‘the press plays a vital part in the administration of justice. It is the watchdog to see that every trial is conducted fairly, openly and above board. Any misconduct in a trial is sure to receive notice in the press and subsequent condemnation by the public opinion. The Press is itself liable to make mistakes. The watchdog may sometimes break loose and have to be punished for misbehavior’.

⁸ *In re Harijai Singh and another and In re Vijaykumar*, (1996) 6 SCC 466.

If newspapers publish scandalous news of men and matters society would become corrupt and morbid and get subjected to 'coloured glasses' tormented by what is termed 'the yellow' or the 'gutter press'. When this 'gutter press' extends its activities towards court matters, and depicts court trials and purveys court news in most objectionable way so to infuse a spirit of dislike for courts in the general public, goading the latter to be disrespectful to courts, and to shake public confidence in courts of justice, then it is surely proper for the erring newspaperman to be hauled up to answer a charge of gross contempt of court. Instead of being the messenger of progress and civilization, the press may as well become a tool in the hands of the unscrupulous. The Government of India Press Laws Enquiry Committee of 1948 in its report⁹ stated as under:

'they can debase and vulgarise mankind. They can endanger the peace of the world. They can play the news up and down and change and blind spots misuse great words and uphold empty slogans'.

In the sphere of court news they can descend to an attack on judges, impute dishonesty, bribery, favoritism and partisanship to them in the discharge of their duties, question their competence, indulge in siding with one of the parties to the cause, deride one party, witness, or counsel, misrepresent court proceedings by screaming headlines with a view to prejudicing the court and the

⁹ Laws Enquiry Committee, 1948, Government of India Press, New Delhi, 1948, at 22.

public, publish only one side of the case to the detriment of the opposite party, publish pleadings before the cause is begun and without the court's permission, bring out articles on a matter pending in court and in diverse ways carry on what has been so aptly called a 'trial by news papers'. If such things are allowed to pollute the air of society, the dignity and prestige of courts could stand in great jeopardy.

To eradicate these evils the 1948 Report suggested that the press must have its own 'super body' to control its working and set the standards for its benefit. A five-fold objective was suggested:-

1. The press must first give a truthful, comprehensive and intelligent account of the day's events in a context which gives them meaning.
2. It must provide a forum for the exchange of comment and criticism.
3. It must be a means of projecting the opinions and attitudes of the groups in society to one another.
4. It must have a method of presenting and clarifying the goal and values of society.
5. It should have a way of reaching every member of society by the currents of information, thought and feeling which the press supplies.

The above are general standards for the effective functioning of the press.

The 1954 Report of the Press Commission of India has made certain recommendations for the proper working of the press under the existing law. If the press follows the recommendations in practice, there can be hardly any conflict between the press and courts of justice. The press to be a true servant of democracy should avoid tendencies like sensationalism, misleading headlines, prejudicial advertisements, facts broadcast too early without verification, twisting of facts, vilification of an individual, an institution, a court of law, a caste, a community or Government, interfering or tending to interfere with the course of justice.

Some judges, being over-conscious of their position and dignity, are tempted to assert them by instituting proceedings for contempt of court whenever they feel hurt by any adverse criticism. It must be borne in mind in this connection, that in such proceedings, the judge, being usually both the prosecutor and the judge, his position is delicate and care should be taken to see that it does not give rise to an inference that he abused or misused his powers.

Although it is the duty of a judge to maintain and uphold the dignity of the court, as also to punish those who interfere with the course of justice, he should act objectively in the matter and institute proceedings for contempt only when he considers it absolutely necessary to do so in the larger interests of the administration Justice. Some judges while reversing the judgment of the subordinate court readily assume that the judge acted under improper motives and pass stricture on him. This is not fair. In cases where evidence is evenly balanced, different judges may be inclined to come to different conclusions on appreciation of evidence. But merely because the finding of a subordinate court does not appear to be correct to a superior court or its approach appears to be erroneous, it would not be proper to impute improper motives to the judge of the subordinate court while reversing his decision. A judge does not mind that it is not in the interests of administration justice because it is likely to shake the confidence of the litigant public in the impartiality of the judge. In this connection it would be appropriate to refer to decision of the Supreme Court in *Ishwari Prasad Misra v. Mohammad Isa*,¹⁰ it was held that an extravagant language should be avoided while criticizing the trial court as such language and imputations of corrupt motives should not be made light heartedly because the

¹⁰ AIR 1963 SC 1728.

judge against whom such imputation were made had no remedy in law to absolve his position. It was further ruled that such language should also not be used while criticizing the witnesses of the case in order to show regard to every witness whose evidence could not be accepted by the that court.

A contempt of court may be punished with simple imprisonment for a term, which may extend to six months or with fine, which may extend to rupees 2000 or with both. Administration of justice and judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their conscience and oath of office must judge their accountability, that is, to defend and uphold the Constitution and the laws without fear or favour, affection or ill will. The famous speech of Abraham Lincoln in 1865 may be cited here which says that 'with malice towards none, with charity for all, we must strive to do the right, in the light given to us to determine the right'.

When a judge is pronouncing judgment, for a man to jump up, wave his hand and shout an exclamation of approval is contempt. Applauding in open court is contempt. An accused calling a judge prejudiced in his face and refusing to withdraw is guilty of contempt. Slander of judges and imputing bias is contempt. To

accuse a judge of corruption is indeed gross contempt. But general criticism of a judge which is not calculated to or does not obstruct or interfere with the course of justice or due administration of the law even if libelous does not constitute contempt of court. Outrages on the court, throwing missiles, a stone, at a judge, disturbances and interruption in court while in sitting, defiance and insult to a judge such as by an advocate snatching a court document, burning a court document, making unfair and insulting remarks at the Judge, private communication to judges, interference with Judges by politicians and members of Legislative Assemblies by direct approach or through letters concerning pending cases, are all various acts of contempt which invite punishment.

In *Delhi judicial Service Association v. State of Gujarat*,¹¹ the Court for the first time sent five police officers including Indian Police Service officer to jail as they were found guilty for committing criminal contempt of Judicial Magistrate Court for harassing and hand-cuffing the Chief Judicial Magistrate of Nadiad, District Hheda, in the State of Gujarat. In the above said case the Police Inspector of Nadiad arrested, assaulted and handcuffed the Chief Judicial Magistrate and tied him with thick rope like an animal

¹¹ (1991) 4 SCC 406.

and took him openly to the hospital for medical examination on the alleged charge of having consumed liquor in breach of the state Prohibition Law. The incident undermined the dignity of courts in the country. A member of Bar Association and the Indian Judges Associations approached the Supreme Court by petitions under Art. 32 for saving the dignity and honour of the Judiciary. The Court issued notices for contempt to seven police officers. Since there was dispute between the parties with regard to the entire incident the court appointed Justice R. M. Sahai of the Allahabad High Court to inquire into the incident and submit report to the court. On the basis of this report the seven police officers were found guilty of committing criminal contempt and sent to jails. It was held that under Article 129 the Supreme Court has power to punish a person for the contempt of itself as well as of its subordinate courts.

In re Wallace, a Barrister who happened to be a party in a suit wrote a letter to the Chief Justice casting reflection on the administration of justice in the court. This was clear contempt and the Barrister was suspended from practice. The Privy Council, however, opined that the punishment could only be fine, as the Barrister acted as a party and not as a lawyer when he committed the contempt. But in an Indian case, *In re Tulsidoss Amanamal*

Karani,¹² where counsel under cover of giving notice under section 80, Civil Procedure Code, to the Judge made scandalous allegations attributing prejudice, bias, malice and dishonesty to the judge, their Lordships held they had both the power to fine and also to suspend the contemnor from practice as he had exceeded his privilege as counsel. An attack in open court of a witness in abusive language is as much offending the dignity of the court and will be contempt.

Withholding petitions addressed to High Court by detenues or prisoners would render the concerned officer liable for contempt.¹³ So also arresting of counsel when he is proceeding to court for a case by a police officer with the intention of interfering with the due course of justice. Removing counsel's brief with a view to make improper use of it is contempt. Scandalizing and attacking judges by indecent publications, editorials, or articles is gross contempt. But a just and fair criticism of judgments is permissible in the interest of public good.

Writing to judges after the case is over cannot be contempt unless charges of injustice are leveled against the judge. Thus a defeated litigant who had been warned by the judge not to behave like a

¹² AIR 1941 Bom.228.

monkey' in the witness box revenged himself by telegraphing to the judge every morning for some time after trial 'Why did you call me a monkey? Reply paid'. It was held not to be contempt but to be merely an ingenious and expensive satisfaction indulged in by the party.

An article attacking the integrity of a judicial officer based on hearsay and without any attempt to verify the information amounts to contempt. Such contempt of a subordinate court which is defamatory may lie open to an action under section 499 Cr.P.C by the aggrieved judge. The High Court also can take action under the Contempt of Courts Act. The High Court's jurisdiction is ousted only when the contempt is punishable as contempt under the penal code e.g. section 228, Indian Penal Code, in which event the offended court would itself deal with the matter.

In re Arundhati Roy,¹⁴ the respondent who is a writer of repute, associated with a movement concerned about the adverse environmental impact of the construction of Sardar Sarovar dam, had in a reply filed to a notice for contempt made disparaging remarks against the Supreme Court, accusing the court for harassing and had drawn uniform comparisons to make

¹³ *Homi Rustomji Pardwala v. S. I. Baily*, AIR 1944 Lah 196.

statements about the court. She has not claimed to possess any special knowledge of law and the working of the institution of judiciary. She has only claimed to be a writer of repute. She has submitted that “as an ordinary citizen I cannot and could not have expected to make a distinction between the Registry and the Court”. It was also not denied that the respondent was directly or indirectly associated with the Narmada Bachao Andolan. Therefore, it was held she was interested in the result of the litigation. She has claimed to have made the offending imputations in her proclaimed right of freedom of speech and expression as a writer. The benefit of fair comment made in good faith and in public interest is, therefore, not available to the respondent in the proceedings. She has not shown any repentance or regret or remorse. However, showing the magnanimity and keeping in mind that the respondent is the woman, and hoping that better sense and wisdom shall dawn upon the respondent in the future to some of the cause of art and literature by a creative skill and imagination, the court only imposed sentence of symbolic imprisonment, and fine of rupees 2000.

In Manipur assembly Speaker *Borobabu*'s case, the Supreme Court had directed the union government to produce before the court

¹⁴ AIR 2002 SC 1375.

Manipur speaker Borobabu, had committed contempt by violating the order of the court. While passing the order, Constitution bench of the court observed that it is unfortunate that this action has to be taken against a person who happened to be speaker of a legislative assembly, but that does not permit us to apply law differently to him when he has willfully driven the court to this course. Chief Justice L. M. Sharma delivering the judgment said that 'it is our constitutional duty which required us to make this order, to uphold the majesty of law and to justify the confidence of the people, that no one in this country is above the law, and governance is not of men but the rule of law'. In this case the speaker had disqualified some of the MLAs under the anti-defection law. The court had quashed the order of the speaker and had directed him to pay salary of a former legislative secretary who had been terminated for acting in support of the courts order in implementing the anti-defection law judgment. The court made it clear that that *Dr Boro Babu Singh* had been asked to appear in the court not as a speaker of the assembly but as Chief of the assembly secretariat and as a statutory authority under the anti-defection law. The contempt proceedings were dropped against him when he appeared before the court and tendered an unconditional apology.

In *Mohd Aslam v. Union of India*,¹⁵ the Supreme Court held that the Chief Minister of Uttar Pradesh, Kalyan Singh, was guilty of contempt of court for violating the order of the court 'not to allow any permanent structure on the disputed land'. The Chief Minister's defense was that the congregation of sadhus did the construction and any attempt to prevent the work would have created a violent situation endangering the structure itself. The court however took the view that the assurances and undertaking given by the Chief Minister to the Supreme Court was violated, and he did not prevent the construction work by Sadhus. The court said that although the state of U.P. was guilty of contempt, but a minister or officer of government is in his official capacity or if there is personal element contributing to contempt, in his personal capacity is liable to contempt. The court awarded a token sentence of one-day and a fine of rupees 2,000 to be paid within two months. The verdict establishes the principle of the rule of law that no authority is above the law.

*In re Vinay Chandra Mishra*¹⁶ the Supreme Court has held that under articles 129, 215 and 142 of the Constitution the Courts have power to take *suo motu* cognizance of contempt proceedings against the contemner. Article 129 vests in the Supreme Court not

¹⁵ (1994) 6 SCC 442.

only with the power to punish for contempt of itself but also of lower courts and tribunals as the highest court of record. It was also held that the power of the court under articles 129 and 142 cannot be curtailed by statute namely the Contempt of Courts Act, 1971. The jurisdiction of the Supreme Court/High Court under article 129/215 is independent of the statutory law. Neither the Contempt of Courts Act, 1971 nor the Advocates Act, 1961, can restrict the said jurisdiction. The court has power under article 129 and 142 to cancel or suspend the license of an advocate committing criminal contempt of the court. The power cannot be restricted on the ground of article 19 (1) (a). The freedom of speech and expression cannot be used for committing contempt of court. This right is subject to the law of contempt as well as provisions of the Constitution. *In re Vinay Chandra Mishra*,¹⁷ a senior advocate and president of the Bar Council of India was found guilty of contempt of court for misbehaving with justice Kishore of Allahabad High Court and he was sentenced to six months simple imprisonment and his licence for practicing as an advocate was suspended for a period of three years, but the court, suspended the sentence of imprisonment for a period of four years and said that if he were found guilty of further contempt during this period the sentence would be revived.

¹⁶ (1995) 2 SCC 584.

But in *Supreme Court Bar Association v. Union of India*,¹⁸ a five-judge-bench of the Supreme Court has overruled its three-judge-bench judgment in *Vinay Chandra Mishra*¹⁹ and held that the power of the Supreme Court under article 129 to punish for contempt is though quite wide yet limited and cannot extend to include the power to determine whether an advocate is also guilty of 'professional misconduct' in a summary manner by passing the procedure prescribed under the advocates Act. The power to do complete justice under article 142 is the corrective power which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act, by suspending his licence to practice in a summary manner while dealing with the case of contempt of court.

The apology to be available to the contemnor must be sincere and unconditional. It must be definite and must be made early enough in the proceedings to merit full consideration. To say 'I am extremely sorry' is a mere expression of regret and is not an apology as contemplated in the Act. A belated apology loses its value. The court has power to reject an apology when it is not

¹⁷ *ibid.*,

¹⁸ AIR 1998 SC 1895.

¹⁹ *Ibid.*,

satisfactory. In the 1971 Act, Explanation to section 12 states that 'an apology shall not be rejected merely on the ground that is qualified or conditional if the accused makes it bona fide'.

The Supreme Court and the High Courts are the courts of Record. The constitution has conferred powers on them to punish for contempt. This power cannot be abrogated or stultified by providing a period of limitation for initiating the proceedings for contempt. Section 20 of the Contempt of Courts Act, 1971 cannot restrict the power of the Supreme Court and the High Courts to punish for contempt as provided under Art.129 and 215 of the Constitution.²⁰

It is submitted that the ruling of the Supreme Court in *Supreme Court Bar Association case*,²¹ supra, is not correct. It is submitted that the decision rendered in *Vinay Chandra Mishra* ²² and the ruling of the court that under Article 142 the court has power to summarily punish an advocate by suspending his licence according to the object and spirit underlying the constitutional provisions contained in Articles 129 and 142 of the Constitution is correct. It is the feeling of the public that the Bar Councils who are

²⁰ *Pallaow Sheth v. Custodian*, AIR 2001 SC 2763.

²¹ Supra, note, 18.

²² *ibid.*,

controlled by Lawyers have never taken action against erring advocates. It is also submitted that the judgment in *Vinay Chandra Mishra*²³ will have a salutary effect on irresponsible lawyers who by their professional misconduct were threatening to damage the dignity of the court and thereby interfere with the free, fair administration of justice by the courts.

In *Delhi Development Authority v. Skipper Construction Company limited*,²⁴ the Supreme Court has rendered a landmark judgment and a builder was sentenced to jail for committing contempt of the court and defrauding others in deliberate disobedience of the Supreme Court's order. The court held that under articles 129 and 142 the court had power to make appropriate orders to do complete justice. The respondent company had purchased a plot of land in auction from DDA as he offered the highest bid in a sum of rupees 9.82 crores. The company did not pay the bid amount as per terms of the bid and obtained extensions a number of times. When DDA started the proceeding to cancel the bid, the company went to the court, which stayed the cancellation of the bid. DDA applied for vacating the stay but nothing happened except repeated adjournments. Even before the permission to re-enter upon the plot and make construction was granted under the revised

²³ *ibid.*,

agreement, the company was selling plots to various persons and receiving monies. In 1990 the High Court passed an order permitting the company to commence construction on the plots subject to deposit of more than rupees eight crores within one month and stop all further construction till the said payment was made and also provided that in case of default in payment the licence shall stand terminated and DDA would be entitled to re-enter the plot. The company failed to deposit the amount and approached the Supreme Court by way of special leave petition.

The Supreme Court granted an interim order subject to the company depositing rupees 2.5 crores within one month, another sum of rupees 2.5 crores before the 8.4.1991 and expressly prohibited the company from inducting any person in the building and creating any right in favour of third parties. In spite of the said prohibitory orders from the court, the company issued advertisement in the leading newspapers of Delhi inviting persons to purchase the space in the proposed building. The SLP was dismissed and therefore, the DDA re-entered the plot and took possession of the property along with building as provided for in the orders of the High Court. It also ordered forfeited the amounts paid till then. But before the said date, the company had collected

²⁴ (1990)24 SCC 622.

about rupees 14 crores from various parties agreeing to sell the space in the proposed building. Thereupon the Supreme Court initiated *suo motu* contempt proceedings against the director of the Company Tejwant Singh and his wife and by invoking power under the Articles 129 and 142 sentenced them to imprisonment and imposed fine on them. The power under Article 142 is meant to supplement the existing legal framework to do complete justice between the parties and not to supplant it.

In a number of cases the Supreme Court has exercised its power of contempt to punish erring bureaucrats who were either found guilty of disobeying certain court orders for enforcing fundamental rights of citizens or were charged with corruption.

In 1995 the Supreme Court held that the summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and to ensure the rule of law. For the first time since independence a senior Indian Administrative Service officer J. Vasudevan²⁵ was convicted for contempt of court and sentenced to imprisonment and sent to jail by the Supreme Court.

²⁵ *J. Vasudevan v. T.R. Dhananjay*, (1995) 6 SCC 254.

The Supreme Court has rightly asserted its power under Article 129 of the Constitution to make public servants aware of their duties and perform it in a responsible manner and also warned them that they would be held accountable for administrative inaction.

As things stand, the radical view that contempt jurisdiction must be scrapped appears unacceptable. Apart from litigants and the press, even well informed lawyers and judges offend the seat of justice. The mind of man is yet to cast off much of the ever gathering dirt before one can think of scrapping any penal law or the law of contempt which is quasi-criminal.

Over dominance and interruption in the discharge of judicial functions needs to be curbed with determination. Any attempt to dilute the power to punish for contempt, conferred on the Higher Courts under the Constitution of India, by way of amendment to Art.19, as suggested in the Report of the National Commission to Review the Working of the Constitution, in the name of freedom of speech and expression by allowing 'truth' to be pleaded as defence, would seem undesirable.

It would be erroneous for politicians or any one to think that the

Courts will abuse their power. The intention to dilute the contempt of court jurisdiction would only serve to demolish the confidence of the public in the courts of justice and once the image of the very institution is sullied, the damage would be irreparable.