PROFESSIONAL NEGLIGENCE IN LEGAL PROFESSION AND CONTEMPT LAWS

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ABSTRACT

Contempt of court as termed by the Supreme Court is disobedience to the court, by acting in opposition to the authority, justice and dignity thereof. It signifies a wilful disregard or disobedience of the Court's order; it also signifies such conduct as tends to bring the authority of the court and the administration of law into disrepute. Contempt therefore, is an act done wilfully to disobey any order or undertaking given to a court or an attempt to scandalize or interfere in its proceedings.

The major objective of conferring power to impose punishment for contempt of courts under the Contempt of Courts Act, 1971 is to ensure that justice has been rendered in the proper manner. Along with, to make sure that the machinery of administration of justice functions without getting influenced by any of the biased forces operating outside the system. When stated otherwise, imposing punishment for contempt will certainly enable the judiciary to function efficiently without getting interfered by others in matters connected with the administration of justice. Further, such an act would help to uphold the values of the legal profession and the dignity of law and administration of justice. Gaining the trust and confidence of the people that the legal profession and the judiciary as a whole is having the ability to provide fair, impartial and reasonable justice is greatly important.

The advocates and lawyers are entrusted with certain important duties while they are appearing before the courts in their professional role. Owing to the nature of the obligations, sometimes it can be found that the advocates and the Judge may enter into intense and blazing conversations, which in result would end up as a matter to be considered under the ambit of contempt of court. Contempt of court by advocates is one of the important and most crucial problem faced by the scenario of the judicial system in India. When analysed it has been found that there are numerous instances of professional misconduct done by advocates that has been considered under the purview of contempt of court.

Through contempt proceedings, the judiciary performs its function of proper administration of justice and safeguards the rule of law. But the contempt jurisdiction which is extraordinary in its character, should not be used for the personal protection of judges. This jurisdiction is applied against any authority or person whenever there is any kind of interference in the administration of justice. Further, to maintain an effective system of rule of law, it is highly essential to have respect for the legal system and the judiciary. On the other hand, it is a fact that respect is not something that can be enforced, but it is a quality that can only be earned. This article analyses about the action for contempt as a weapon of the court to impose restrictions on misconduct of advocates.

Keywords: *Advocates, Contempt, Civil Contempt, Criminal Contempt, Professional Misconduct.*

INTRODUCTION

The concept known as contempt of court is a time-old one. Joseph Moskovitz in his notable and oft-quoted article in the Columbia Law Review once described contempt of court as 'the proteus of the legal world, assuming an almost infinite diversity of forms'[1]. It is of ancient origin yet of fundamental contemporary importance[2]. Even in ancient times the courts commanded very high respect and their decisions were acted upon with utmost respect and promptitude.The Black's Law Dictionary[3] defines 'Contempt' as, "A wilful disregard or disobedience of a public authority " and contempt of court as, "Any act which is calculated to embarrass, hinder, or obstruct court in administration of justice, or which is calculated to lessen its authority or its dignity". It also adds that "committed by a person who does any act in wilful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice, or by one who, being under the court's authority as a party to a proceeding therein wilfully disobeys its lawful orders or fails to comply with an undertaking which he has given."In Wharton's Law Lexicon[4], contempt of court is defined as, "A disobedience to or disregard of the rules, orders, process, or dignity of a court, which has power to punish for such offence by committal. Contempts are either direct, which only insult or resist the powers of the Court, or the persons of the judge who preside there; or consequential, which, without such gross insolence or direct opposition, plainly tend to create a universal disregard of their authority." Contempt of court as termed by the Supreme Court is disobedience to the court, by acting in opposition to the authority, justice and dignity thereof. It signifies a wilful disregard or disobedience of the Court's order; it also signifies such conduct as tends to bring the authority of the court and the administration of law into disrepute.[5]Contempt therefore, is an act done wilfully to disobey any order or undertaking given to a court or an attempt to scandalize or interfere in itsproceedings. However, in short, it may be defined as an act or omission which interferes or tends to interfere in the administration of justice.[6]

The historical aspect of Contempt in India has been dealt in by the Sanyal Committee Report[7,] and it states "that the existing law relating to contempt of courts is essentially of English origin. The indigenous legal systems of India, based as they were on the concept of a law above the sovereign and his courts, and functioning as they did, in times when means of communication were slow and publication on anything but a small scale well-nigh impossible, neither possessed nor needed anything like the elaborate system of contempt law such as we have now. Doubtless, courts or assemblies (sabhas) were protected from being scandalised. Kautilya lays down thus:"Defamation of one's own nation or village shall be punished with the first amercement; that of one's own caste or assembly with the middle-most; and that of Gods or temples with the highest amercement."

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[1]Moskovtz 'Contempt of Injunctions, Civil and Criminal' 1943 43 Col. L.R. 780

[2]C.J. Miller, Contempt of Court (1976) p.1.

[3]4th edn. West Publishing Co.1968.p.390

[4] 14th edn., Universal book Traders 1994.p.244

[5]Shri Baradakanta Mishra, Ex-Commissioner of Endowmnets v. Shri Bhimsen Dixit, A.I.R. (1972) S.C .2466.

[6]Kailash Rai, Legal Ethics Accountability for Lawyers and Bench-Bar Relations, 161 (2015).

[7] With the purpose of consolidating and amending the law relating to contempt of court, the Ministry of Law had set up a Committee in July, 1961 under the chairmanship of Shri H.N. Sanyal, the then Additional Solicitor General of India. This committee submitted its report on February 28, 1963.

The King and the King's council stood on a higher footing than the caste, village or assembly. Thus, “any person who insults the King, betrays the King's council, makes evil attempts against the King……. shall have his tongue cut off."

While it was an offence to scandalise or defame the King or the King's council or the other courts or assemblies, there does not appear to have been in vogue any special procedure for the trial of these offences. Not only that, the law seems to have insisted upon the judges also maintaining decorum and adherence to the code of judicial conduct requisite for keeping administration of justice unsullied. If the judge misbehaved or offended against the dignity of the law, he was as much liable to punishment, nay,liable to, a higher degree of punishment than the ordinary individual defaming the judge or the assembly or the court. Citing Kautilya again;-

"When a judge threatens, browbeats, sends out or unjustly silences anyone of the disputants in his court; he shall first of all be punished with the first amercement. If he defames or abuses any of them, punishment shall be double”.

In short, the scheme envisaged must have been one in which any violation of the sanctity of the administration of justice, either by those who administer it or by those for whose benefit it is administered, was vested with a penalty, the penalty being the highest where the offence is by those who administer the law.”[8]It is evident that in India, the law of contempt has its ancient origin which had transformed to its present phase.

In a democratic society, the three organs of the government namely the executive, the legislature and the judiciary are expected to perform their functions within their limitations for the benefit of the public. No one organ is expected to interfere with the functioning of the other. The judicial members are under an obligation to uphold the honour and dignity of the judiciary by showing exemplary behaviour and good conduct[9]. Though judiciary is entrusted with the function of administration of justice, it cannot claim superiority over other two organs and hence it has to be given all the requirements needed for upholding the majesty of law, particularly when it has neither the power of purse nor the power of the police. So, through contempt proceedings, the judiciary performs its function of proper administration of justice and safeguards the rule of law. But the contempt jurisdiction which is extraordinary in its character, should not be used for the personal protection of judges. This jurisdiction is applied against any authority or person whenever there is any kind of interference in the administration of justice. The judiciary uses the weapon of contempt jurisdiction to maintain the supremacy of law when interference is caused by the executive or the individual or the press.[10]

Action for contempt of court is initiated by the court with twin objects namely one to enforce its decisions and two to ensure that its prestige and respect for the court are not slighted by litigants, advocates and the public. Action for contempt is a powerful weapon in the hands of the court to ensure that its decisions are promptly acted upon by the parties as well as the State and no disrespect is shown to the court by the litigants, the advocates representing the parties and the general public. If such a power is not vested with the court, the risk involved is that the litigants may scorn the decisions of the court. At the same time the occasion for the courts to invoke the power arisesonly very

[8]Report of the Sanyal Committee on Contempt of Courts, 3-4 (1963).
[9]Yashomati Ghosh, Legal Ethics and the Profession of Law, 189 (2014).
[10]K. Balasankaran Nair, Law of Contempt Of Court in India, 8-9 (2004).

sparingly. Eminent judges like Lord Denning had unambiguously stated that contempt jurisdiction should not be resorted at the slightest provocation[11].

Justice Gajendragadkar, C. J. in Special Reference No. 1 of 1964[12] proceeded to state the key to the jurisdiction power to contempt, large as it is, must always be exercised cautiously, wisely, and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct. If judges decay the contempt power will not save them and so the other side of the coin is that Judges, like Caesar's wife, must be above suspicion. The key word is "justice", not "judge"; the key not thought is unobstructed public justice not the self defence of a judge; the cornerstone 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 trivial reflections on the judicial process and personnel".Here, Justice Shri Krishna Iyer highlighted that judges like Caesar's wife should be above suspicion of misconduct. The court is the guardian angel of the litigants for safeguarding, protecting and promoting their rights. Whenever a person whose rights are infringed approaches the court, it is dutybound to safeguard, promote and strengthen his rights.

In Re, Arundhati Roy[13]case the Supreme Court has underscored the meaning of 'Rule of Law' and its relevance in Indian Context the court observed thus: "'Rule of Law' is the basic rule of governance of any civilised democratic polity. 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 unquestionably 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 the rule of law, the Constitution has assigned the special task to the judiciary in the country. It is only through the courts that the rule of law unfolds its contents and establishes its concept. For the judiciary to perform its duties and functions effectively and true to the spirit with which it is sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs. After more than half a century of independence, the judiciary in the country is under a constant threat and being endangered from within and without. The need of the time is of restoring confidence amongst the people for the independence of judiciary. Its impartiality and the glory of law has to be maintained, protected and strengthened. The confidence in the courts of justice, which the people possess, cannot, in any way, be allowed to be tarnished, diminished or wiped out by contumacious behaviour of any person. The only weapon of protecting itself from the onslaught to the institution is the long hand of contempt of court left in the armoury of judicial repository which, when needed, can reach any neck howsoever high or far away it may be."

The court will employ all thearms at its disposal to ensure that justice is delivered to the aggrieved promptly and in so doing the State is bound to render all possible aid to the court.At the same time if anyone causes impediment to

[11]Infra n. 26
[12]A.I.R. (1965) S.C .745.
[13]A.I.R. (2002) S.C. 1375.

the delivery of justice, the court is armed with ample powers to uphold its majesty and to ensure that its decisions are implemented with utmost expedition. But there is a risk thatsome persons may cause impediments in the prompt delivery of justice. If the court is not empowered to handle such situations,justice may be derailed or thwarted in such a way that the aggrieved may not get justice. The mechanism employed by the court in this regard is to take action for contempt against the persons hampering the delivery of justice. The Parliament has enacted'The Contempt of Courts Act 1971'[14] to punish persons committing contempt of Court and to regulate theprocedure therefor.The Act has been introduced in the statute book for the purpose of securing a feeling of confidence among the people in general and for due and proper administration of justice in the country, undoubtedly a powerful weapon in the hands of the law courts but that by itself operates as a string of caution and unless thus otherwise satisfied beyond doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the statute[15].

The aim of contempt proceedings is to deter and punish persons committing indignities to a court. Unless the court is vested with such a power, there is a danger that some persons may disregard its verdict and pooh-pooh its observations.Contempt may be committed in a variety of ways.The main types of contempt are the following:

a. Insult to judges,
b. Attack on them,
c. Comment on pending proceedings with a view to prejudicingfair trial,
d. Causing obstructionto the officers of the court, witnessesand the parties,
e. Abusing the process of the court,
f. Causing obstruction to officers of the court to perform their duties and functions and
g. Scandalizing the judges of the court. If any one or more of these actions are resorted to, it will certainly amount to causing contempt of court.

The object of contempt jurisdiction vested in the courts is to uphold the majesty, dignity and grandeur of the court. Thespirit with which action against contempt is taken has been laid down by Supreme Court in*Brahama Prakash Sharma v. state of Uttar Pradesh*[16] . In that case the court observed that the publication of a disparaging statement will cause injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the Court's administration of justice or is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial functions. The court is righty empowered to punish persons committing contempt of court[17]. The Parliament has enacted the Contempt of Court Act 1971 with this object.

TYPES OF CONTEMPT

Contempt of Court has been classified into two categories – civil contempt and criminal contempt.

[14]In India the first statue for contempt of court is Contempt of Courts Act, 1926. Which was repealed by the Contempt of Courts Act, 1952.Based on the recommendations of a committee under the chairmanship of Shri.H.N.Sanyal the Contempt of Courts Act, 1971 was passed.
[15]Chhotu Ram v. Urvashi Gulati A.I.R.(2001) S.C. 3468
[16] A.I.R. (1964) S.C.10
[17] Section 12 (1) of the Contempt of Courts Act 1971 reads thus: "Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a termwhich may extend to six months, or with fine which may extend to two thousand rupees, or with both: Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.".

"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;"[18]

Criminal contempt [19] "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-

a. Scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court[20]; or
b. Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding[21]; or
c. Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner[22].

The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake in effective and orderly administration of justice. The court has the duty of protecting public interest in due administration of justice and so it is entrusted with power to commit for contempt of court not to protect its dignity against insult or injury but to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with.[23]

For initiating action for civil contempt,there should be disobedience to the order, decree etc. of the court or breach of undertaking given to the court. In order to institute action the breach must be wilful.The purpose of proceedings for civil contempt is twofold;

a. To punish the contemnor
b. To enforce obedience of the order of the court.

Civil contempt serves twin purposes. The first is vindication of public interest by punishment of the person committing the contemptuous conduct and the second is coercion to compel the contemnor to do what the court expects of him. In other words to constitute civil contempt the following two elements have necessarily to be proved:

a. There is patent disobedience of any order decreeetc. of the court or breach of any undertaking given to the court,
b. The disobedience or breach must be wilful.

In other words action for contempt is initiated with a view to ensuring obedience of the order, decreeetc. of the court. To institute action for contempt it is necessary to prove that the disobedience of the order or decree of the court is wilful. The disobedience of orders of the court, in order to amount to civil contempt must be wilful and proof of mere disobedience is not sufficient[24.] Where there is no deliberate flouting of the orders of the court but a mere misinterpretation of the executive instructions, it would not be a case of civil contempt[25].

[18] Sec 2(b) ibid
[19]Sec 2(c) ibid.
[20]E. M. Sankaran Namboodiripad v.T. Narayanan Nambiar (1970) A.I.R.2015[1],
[21]State of Maharashtra v. Rajendra J. Gandhi [(1997) 8 S.C.C. 386
[22]SambuNathJha v. Kedar Prasad Sinha [(1992) 1 S.C.C .573
[23]Delhi Judicial Service Association, Tis Hazari Court v. State of Gujarat (1991) SCR (3) 936
[24]S.S.Roy v. State of Orissa A.I.R. (1992) S.C. 407
[25] Bihar State Govt.Sec.Scl.Teachers ssn. V.. Ashok Kumar Sinha A.I.R. (2014) S.C. 2833

In *Dulal Chandra Bhar And Ors. v. Sukumar Banerjee And Ors*[26]it was held that the line between civil and criminal contempt can be broad as well as thin. Where the contempt consists in mere failure to comply with or carry out an order of a Court made for the benefit of a private party, it is plainly civil contempt and it has been said that when the party, in whose interest the order was made, moves the Court for action to be taken in contempt against the contemnor with a view to an enforcement of his right, the proceeding is only a form of execution. In such a case, there is no criminality in the disobedience and the contempt, such as it is, is not criminal. If, however, the contemnor adds defiance of the Court to disobedience of the order and conducts himself in a manner which amounts to obstruction to or interference with the course of justice, the contempt committed by him is of a mixed character, partaking as between him and his opponent of the nature of a civil contempt and as between him and the Court or the State, of the nature of a criminal contempt. In cases of this type, no clear distinction between civil and criminal contempt can be drawn and the contempt committed cannot be broadly classed as either civil or criminal contempt. There is, however, a third form of contempt which is purely criminal and which consists in conduct tending to bring the administration of justice to scorn and to interfere with the course of justice as administered by the Courts. Contempt of this class is purely criminal, because it results in an offence or a public wrong, whereas contempt consisting in disobedience of an order made for the benefit of a private individual results only in a private injury. To put the matter in other words, a contempt is merely a civil wrong where there has been disobedience of an order made for the benefit of a particular party, but where it has consisted in setting the authority of the Courts at naught and has had a tendency to invade the efficacy of the machinery maintained by the State for the administration of justice, it is a public wrong and consequently criminal in nature. In this decision the court demarcates the distinction between civil and criminal contempt. Further, cites the instances in which a combination of both is evident.

It is incumbent on the parties to abide by the rules of the court and to maintain its majesty and dignity. If anybody does anything to tarnish the reputation of the court, the court can initiate action to punish the culprit and to uphold the stature of justice. If anybody tries to cast aspersions on the judiciary as a system in general and a judge in particular, the court can take action to punish the offender. It is not done in the spirit of self- glorification but as a measure to vindicate its sublime status before the public. In an action for contempt of court, the complainant, the prosecution and the judge happen to be one and the same namely the judiciary. This places a heavy responsibility on the judges to be even- handed so that justice is not throttled.

BURDEN OF PROOF IN CONTEMPT CASES

The burden and standard of proof in contempt proceeding being quasi-criminal in nature, is the standard of proof required in criminal proceedings, for the reason that contempt proceedings are quasi criminal in nature[27]. Lord Denning in *Bramblevale Ltd., Re*[28] in regard to the evidence required for the punishment of contempt had commented as follows: “A contempt of court is an offence of a criminal character. A man may be sent to prison for

[26] A.I.R. (1958) Cal 474

[27]Abdul Karim v. M.K.Prakash, A.I.R. (1976) S.C .859, Chhotu Ram v. Urvashi Gulati, A.I.R. (2001) S.C. 3468, Anil Ratan Sarkar v. Hirak Ghosh, A.I.R.(2002) S.C. 1405, Daroga Singh v. B.K.Pandey, A.I.R. (2004) S.C. 2579 and All India Dravida Munnetra Kazhagam v. L.K.Tripathi, A.I.R. (2009) S.C. 1314.

[28] All ER pp.1063H-1064 C

it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond all reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence.... Where there are two equally consistent possibilities open to the Court, it is not right to hold that the offence is proved beyond reasonable doubt." It is pertinent that a charge of contempt cannot be established on preponderance of circumstances[29].Regarding the burden and standard of proof is concerned, the common legal phraseology 'he who asserts must prove' has its due application in the matter of proof of the allegations said to be constituting the act of contempt. The standard of proofto be noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt.

SUO MOTO POWERS OF COURT TO INITIATE CONTEMPT PROCEEDINGS

If it appears to the Supreme Court or the High Court upon its own view that aperson has been guilty of contempt in its presence the court may detain such person in custody, serve him notice of charge, afford him an opportunity to make his defence to the charge and after taking such evidence the court may punish or discharge of such person[30]. In*Leila David v. State of Maharashtra*[31], on reference, a three-Judge Bench of the Hon'ble Supreme Court has resolved the precedential tangle by observing that Section 14 of the Contempt of Courts Act no doubt contemplates issuance of notice and an opportunity to the contemnors to answer the charges in the notice to satisfy the principles of natural justice. However, where an incident of the instant nature takes place within the presence and sight of the learned Judges, the same amounts to contempt in the face of the court and is required to be dealt with at the time of the incident itself. This is necessary for the dignity and majesty of the courts to be maintained. The Bombay High Court on *its own Motion v. N.B. Deshmuk*h[32], a contempt case was registered suo-motu against an Advocate. The contemnor raised a contention that he shall appear in person in the robes of an Advocate. The contemnor was informed that since he was appearing pursuant to a show-cause notice issued to him for having committed criminal contempt, he may appear as an ordinary litigant and not in robes. However, he declined to abide by the suggestions of the Division Bench and contended that he was a practising Advocate of the court and he was well within his rights to appear in robes and if he failed to appear in robes, he may face disciplinary proceedings for having failed to abide by the dress code prescribed by the Bar Council. The contemnor therein contended that if he failed to appear

[29] National fertilizers Ltd v. TuncayAlankus A.I.R. (2013) 5 1306

[30] Section 14(1) of the Contempt of Courts Act 1971 reads thus: When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the court may cause such person to be detained in custody, and, at any time before the rising of the court, on the same day, or as early as possible thereafter, shall-
(a) cause him to be informed in writing of the contempt with which he is charged;
(b) afford him an opportunity to make his defence to the charge;
(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment; to determine the matter of the charge; and
(d) make such order for the punishment or discharge of such person as may be just

[31] (2009) 10 S.C.C .337

[32](2011) 2 Mh.L.J., 273

in his robes, he would be violating the Dress Code Regulation. Then, the Division Bench pointed outthatthe Dress Code isforthe persons who have been granted "Sanad" to practice as an Advocate appearing for the litigant and when the Advocate himself is either espousing his own cause in the proceedings before the court or facing contempt action, as per the long standing convention; which has taken the colour of rule of law, he cannot appear as an Advocate before the court, but may appear as an ordinary litigant in person. Such person cannot claim any privileges available to Advocates appearing for the litigants before the court and cannot be permitted to appear in robes before the court.

In the case of criminal contempt, other than a contempt referred in Section 14 of the Contempt of Court Act 1971 the Supreme Court or the High Court may take action on its own motion or on a motion made by the Advocate-General or any other person[33]. In S.K.Sarkar, *Member, Board of Revenue, U.P.v.Vinay Chandra Misra*[34], the Supreme Court observed about suo motu powers of court to take contempt proceedings.If the high court acts on information derived from its own sources, such as from a perusal of the records of a subordinate court or on reading a report in newspaper or hearing a public speech, without there being any reference from the subordinate court or the Advocate-General, it can be said to have taken cognizance on its own motion. But if the High court is directly moved by a petition by a private person feeling aggrieved not being the Advocate-General, the High Court, has, in such asituation, a discretion to refuse to entertain the petition, or to take cognizance on its own motion on the basis of the information supplied to it in that petition. If the petitioner is a responsible member of the legal profession, it may act suo motu, more so, if the petitioner-advocate, prays that the court should act suo motu.

The whole object of prescribing these procedural modes of taking cognizance in section 15 of the Contempt of Courts Act, 1971 is to save the valuable time of the High Court or the Supreme Court from being wasted by frivolous complaints of contempt of court. If the High Court is prima facie satisfied that the information received by it regarding the commission of contempt of a subordinate court is not frivolous, and the contempt alleged is not merely technical or trivial, it may, in its discretion, act suo motu and commence the proceedings against the contemnor. However, this mode of taking suo motu cognizance of contempt of a subordinate court, should be resorted sparingly where the contempt concerned is of grave and serious nature. Frequent use of this suo motu power on the information furnished by an incompetent petition, may render these procedural safeguards provided in sub-section (2) otiose. In such cases, the high court may be well advised to avail of the advice and assistance of the advocate-General before initiating proceedings.

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[33]Section 15 ibid reads thus:1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by:-
(a) the Advocate-General, or
(b) any other person, with the consent in writing of the Advocate-General, [2][or]
[2][(c)in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.]
(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.
(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

[34] (1981) S.C.C.(1) 438

In what manner the suo motu power may be exercised in appropriated caseswas enunciated in by Supreme Court in *J.R.Parasharv.Prasant Bhushan*[35]. In that case it was observed that in any event the power to act suo motu in matters which otherwise require the Attorney-General to initiate proceedings or at least give his consent must be exercised rarely. Courts normally reserve this exercise to cases where it either derives information from its own sources, such as from a perusal of the records, or on reading a report in a newspaper or hearing a public speech or a document which would speak for itself. Otherwise section 15(1) of the Contempt of Courts Act, 1971 might be rendered otiose.

PARTIES IN CONTEMPT PROCEEDINGS

The contempt is a matter between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he may still assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely the court and the contemnor[36]. Thus the person bringing the facts constituting contempt to the notice of the court can never be party to the lis nor can join the proceedings as a petitioner[37].

TRUTH AS DEFENCE IN CONTEMPT PROCEEDINGS

Section 13[38]of the Contempt of Courts Act, 1971 deals with instances of defence available in contempt proceedings. Clause (b) was inserted by 2006 amendment[39]to allow the court to permit justification by truth as a valid defence if it is in public interest and is bona fide. Before this amendment the only defence available was Clause (a) wherein the act does not amount to contempt unless it substantially interferes, or tends substantially to interfere with the due course of justice. Including truth as a defence in the Contempt of Courts Act 1971 is in the right direction but the government should make amendment in Indian Constitution because the power of the Supreme Court and the High

[35]A.I.R.(2001) S.C. 3395
[36]D.N.Tanejav.BhjanLal (1988) 3 S.C.C. 26
[37] State of Maharashtra v. Mahboob S. Allibhoy&Anr A.I.R.(1996) S.C. 2131 , BimanBasu v. KallolGuhaThakurta A.I.R.(2010)S.C 3328
[38]Contempts not punishable in certain cases.—Notwithstanding anything contained in any law for the time being in force,—
(a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;
(b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide.]

[39]The Statement of Objects and Reasons for the amendment of Section 13 by Act 6 of 2006 read as follows:
1. "The existing provisions of the Contempt of Courts Act, 1971 have been interpreted in various judicial decisions to the effect that truth cannot be pleaded as a defence to a charge of contempt of court.
2. The National Commission to Review the Working of the Constitution (NCRWC) has also in its report, inter alia, recommended that in matters of contempt, it shall be open to the Court to permit a defence of justification by truth.
3. The Government has been advised that the amendments to the Contempt of Courts Act, 1971 to provide for the above provision would introduce fairness in procedure and meet the requirements of Article 21 of the Constitution.
4. Section 13 of the Contempt of Courts Act, 1971 provides certain circumstances under which contempt is not punishable. It is, therefore, proposed to substitute the said section, by an amendment.

Courts to punish for contempt is recognized in the Constitution[40] itself. The Court may now permit truth as defence if two things are satisfied, viz., (i) it is in public interest (ii) the request for invoking said defence is bonafide[41].

Whether criticism of a judicial body amount to contempt, fair criticism of the system of administration of justice or functioning of institutions or authorities entrusted with the task of deciding rights of the parties gives an opportunity to the operators of the institution to remedy the wrong and also bring about improvements. Such criticism cannot be castigated as an attempt to scandalize or lower the authority of the Court or other judicial institutions or as an attempt to interfere with the administration of justice except when such criticism is ill motivated or is construed as a deliberate attempt to run down the institution or an individual Judge is targeted for extraneous reasons. Ordinarily, the Court would not use the power to punish for contempt for curbing the right of freedom of speech and expression, which is guaranteed under Article 19(1) (a) of the Constitution. Only when the criticism of judicial institutions transgresses all limits of decency and fairness or there is total lack of objectivity or there is deliberate attempt to denigrate the institution then the Court would use this power.[42]

FREEDOM OF EXPRESSION AND CONTEMPT

The Article 19(1) (a) of the Constitution empowers 'all citizens shall have the right to freedom of speech and expression'. In *Vincent Panikulangara v. V.R.Krishna Iyer*[43] the Kerala High Court negated the contempt petition and observed "By pointing out the weak spots in the judicial system and alerting the people to the need for a change lest the people as a whole reject the system, Justice Iyer was alerting his audience to bestow serious attention to the problem. The comments made by him are not of a person who is vituperative or who wants to bring into disrepute the judicial system of this country, but of one who was exhorting the people for revolutionary change in the outlook concerning problems of the judiciary. Judged in the perspective of what we have explained earlier we see no reason to consider his criticism, coming as it does from a person, whose bona fides in the cause of judiciary is not open to doubt, as mala fide or dishonest." In *Hari Singh Nagru v. Kapil Sibal*[44]the court reiterated it by expressing "that a fair and reasonable criticism of a judgement which is a public document or which is a public act of a judge concerned with administration of justice would not constitute contempt. In fact, such fair and reasonable criticism must be encouraged because after all no one, much less judges, can claim infallibility". In *R v. Commissioner of police of the Metropolis*[45] case Lord Denning had enunciated the position thus "Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we

[40] The national commission to Review the working of constitution (NCRWC) recommended: "A mere legislation by the Parliament amending the Contempt of Courts Act, 1971 alone may not suffice because the power of the Supreme Court and the High Courts to punish for contempt is recognized in the Constitution. Therefore, an appropriate amendment by way of addition of a proviso to article 19(2) of the Constitution to the effect that, 'in matters of contempt, it shall be open to the Court on satisfaction of the bona fides of the plea and of the requirements of public interest to permit a defence of justification by truth.'"

[41] Dr. Subramanian Swamy v. Arun Shourie (2014) 3 KLJ 655

[42]Indirect Tax practitioners' Association v. R.K. Jain; [(2010) 8 S.C.C. 281]

[43] (1983) K.L.T. 829.

[44] (2011) Cri LJ .102.

[45](1968) 2 QB 150.p.154.

use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself".

No person can flout the mandate of law of respecting the courts for establishment of rule of law under the cloak of freedoms of speech and expression guaranteed by the Constitution. Such a freedom is subject to reasonable restrictions imposed by any law. Where a provision, in the law, relating to contempt imposes reasonable restrictions, no citizen can take the liberty of scandalising the authority of the institution of judiciary. Freedom of speech and expression, so far as they do not contravene the statutory limits as contained in the Contempt of Courts Act, are to prevail without any hindrance. However, it must be remembered that the maintenance of dignity of courts is one of the cardinal principles of rule of law in a democratic set up and any criticism of the judicial institution couched in language that apparently appears to be mere criticism but ultimately results in undermining the dignity of the courts cannot be permitted when found having crossed the limits and has to be punished[46].The right to freedom of expression is not an absolute right,the provisions of the Contempt of Courts Act is in compliance with the reasonable restrictions in Article 19(2) of theIndian Constitution[47].Article 19(2) permits reasonable restrictions to be imposed by statute for the purposes of various matters including 'Contempt of Court'. Art. 19(2) does not refer to 'administration of justice' but interference of the administration of justice is clearly referred to in the definition of 'criminal contempt' in section 2 of the Contempt of Courts Act, 1971 and in section 3[48] thereof as amounting to contempt. Therefore, publications which interfere or tend to interfere with the administration of justice amount to criminal contempt under that Act and if in order to preclude such interference, the provisions of that Act impose reasonable restrictions on freedom of speech, such restrictions would be valid.[49]

Justice Shri Hidaytullah, in *R.C. Cooper v. Union of India*[50], observed:"There is no doubt that the Court like any other institution does not enjoy immunity from fair criticism. This Court does not claim to be always right although it does not spare any effort to be right according to the best of the ability, knowledge and judgment of the judges.

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[46]Supra n. 11.

[47]Article 19 (2) reads thus: Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

[48] Section 3 of the Contempt of Courts Act, 1971 reads thus: " (1) A person shall not be guilty of contempt of court on the ground that he has published (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at that time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

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

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

[49]Law Commission Of India: 200 th Report On Trial By Media Free Speech And Fair Trial under Criminal Procedure Code, 2006.P.2

[50] (1970)2 S.C.C .298

They do not think themselves in possession of all truth or hold that wherever others differ from them, it is so far error. No one is more conscious of his limitations and fallibility than a judge but because of his training and the assistance he gets from learned counsel he is apt to avoid mistakes more than others. We are constrained to say also that while fair and temperate criticism of this Court or any other Court even if strong, may not 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. We think this will be enough caution to persons embarking on the path of criticism." In this decision it is rightly pointed out that under the freedom of expression the institution of court can be criticised in a fair and temperate manner.

In *Re: S. Mulgaokar*[51], when the case was taken up in the Court, contempt proceedings were dropped without calling upon the counsel appearing for the respondent in response to the notice. The action had been initiated in some news items published in the Indian Express which was termed to be milder publication. Krishna Iyer J while concurring observed:"The contempt power, though jurisdictionally large, discretionary in its unsheathed exercise. Every commission of contempt need not erupt in indignant committal or demand punishment, because judges are judicious, their valour non-violent and their wisdom goes into action when played upon by a volley of values, the least of which is personal protection for a wide discretion, range of circumspection and rainbow of public considerations benignantly guide that power. Justice is not hubris; power is not petulance and prudence is not pusillanimity, especially when judges are themselves prosecutors and mercy is a mark of strength, not whimper of weakness. Christ and Gandhi shall not be lost on the judges at a critical time when courts are on trial and the people ("We, the People of India") pronounce the final verdict on all national institutions. Such was the sublime perspective, not plural little factors, that prompted me to nip in the bud the proceeding started for serving a larger cause of public justice than punitive action against a publisher, even assuming (without admitting) he was guilty. The preliminary proceeding has been buried publicly; let it lie in peace. Many values like free press, fair trial, judicial fearlessness and community confidence must generously enter the verdict, the benefit of doubt, without absolutist insistence, being extended to the defendant. Such are the dynamics of power in this special jurisdiction. These diverse indicators, carefully considered, have persuaded me to go no further, by a unilateral decision of the bench. This closure has two consequences. It puts the lid on the proceedings without pronouncing on the guilt or otherwise of the opposite parties. In a quasi-criminal action, a presumption of innocence operates. Secondly, whatever belated reasons we may give for our action, we must not proceed to substantiate the accusation, if any."

[51]A.I.R. (1978) S.C. 727.

CONTEMPT WITH REFERENCE TO ADVOCATES

The fundamental duty of an advocate is to assist the court in the administrations of justice. In *Radha Mohan Lal v. Rajasthan High Court*[52] the court emphasized that an advocate is not merely an agent or servant of his client, that he is an officer of the court and that he owes a duty towards the court. It automatically follows that an advocate should not do anything to impede or obstruct the course of justice.The legal profession is one of the pillars on which the edifice of the legal system rests. The three limbs of the legal system are the legislature which makes the law, the advocate who presents the case before the court and the judge who decides the case to deliver justice to the aggrieved. The judge makes no distinction between the saint and the sinner if both of them come before the court as litigants. Similarly if a rich person and a poor man come before the court seeking justice, the court shows no partiality to any of them and decides the case objectively and without any prejudice to any of them. The goddess of justice holds the balance evenly in such a way that it is not tilted by partiality to any side. The balance will swing to the just side thereby enabling the aggrieved party to get justice. Members of the legal profession are under no duty to their clients to make grave and scandalous charges either against judges or the opposite parties on the mere wish of their clients. [53]

An advocate is bound to present before the court the full facts of the case and the law without any overstatement or suppression, distortion or embellishment. Above all it is the duty of the lawyer to uphold the dignity and the decorum of the court and to refrain from doing anything which may bring the court to disrepute. He is enjoined to present the grim facts of the case without any addition, modification or suppression. If he indulges in any of these,he will be doing a disservice to the court, and thereby to his own client. If he breaks this salutary principle he stands the risk of throwing to the winds the indefeasible elements of his client's case. He is also vulnerable to action under the contempt of the Court Act 1971. In *R.K. Anand v. Delhi High Court*[54], the Hon'ble Supreme Court has, with considerable pain, expressed its concern at the falling professional norms among the lawyers. The court has strongly felt that unless the trend is immediately arrested and reversed, it will have very deleterious consequences for the administration of justice in the country. No judicial system in a democratic society can work satisfactorily unless it is supported by a Barthat enjoysthe unqualified trust and confidence of the people, that shares the aspirations, hopes and the ideals of the people and whose members are monetarily accessible and affordable to the people.

In *Harsh Uppal v. Union Of India & Anr*[55]it was observed that the right to practice as an advocate, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right to appear and plead and conduct cases in courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings. On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of law are

[52] (2003) A.I.R. S.C. 1467.
[53]Sanjiva Row's, The advocates Act, 1961, 228(2012).
[54]Infra. n.66.
[55] A.I.R.(2013) S.C. 739

structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts.

The power to frame such rules should not be confused with the right to practice law. While the Bar Council can exercise control over the latter, the courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar council to frame rules laying down conditions subject to which an advocate shall have a right to practice i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this court, Similarly Section 34 of the Advocates Act empowers High Courts to frame rules, inter alia to lay down conditions on which an advocate shall be permitted to practice in courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an advocate to appear in a court. It must be remembered that Section 30 has not been brought into force and this also shows that there is no absolute right to appear in a court. Even if Section 30 were to be brought into force control of proceedings in court will always remain with the court. Thus even then the right to appear in court will be subject to complying with conditions laid down by courts just as practice outside courts would be subject to conditions laid down by the Bar Council of India. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and section 34 or Article 145 of the Constitution of India on the other.

The Constitution itself vests in Supreme Court the power to take action for Contempt of Court. According to Article 129[56], the Supreme Court shall be a court of Record and shall have all powers of such a court including the power to punish for contempt of itself. This Article 129 clothes Supreme Court with full powers for punishing a condemner for the contempt of court[57]. Similarly Article 142(2)[58]provides that the supreme Court shall have all and every power to make any order for the purpose of receiving the attendance of any person the discovery or production of any documents, or the investigation orpunishment of any contempt of itself. This makes the Supreme Court an omnipotent body to deal with any action which may be attributed as amounting to contempt of court[59]. According to

[56]Article 129of The Constitution of Indiareads thus: Supreme Court to be a court of record 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.

[57]Delhi Judicial Service v. State Of Gujarat And Ors. (1991) S.C.C. 4 406;Ratnamasari v. Akilandammal And Ors. (1903) 13 MLJ 27;R.M.M.S.T. Somasundaram v. VaithilingaMudaliar And Ors. (1917) ILR 40 Mad 846.

[58]Article 142**(2)** of The Constitution Of India reads thus: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.

[59]The Tata Iron And Steel Company v. Ramniwas Poddar And Ors. A.I.R. (1989) Cal 375; C. K. Daphtary&Ors v. O. P. Gupta & Ors (1971) S.C.C. 1 626

Article 215[60]every High Court shall bea court of record and shall have all the powers of such a court including the power to punish for contempt of itself[61]. Thereare a number of landmark cases where the power of the Court in this regard has been amply demonstrated. The most important case in this genre is: In *Re, VinayChandra Mishra*[62]case where the contemnor was sentenced to undergo simple imprisonment for a period of six months andwas alsosuspended from practicing as an advocate for a period of three years. However the punishment of imprisonment was suspended for a period of four years and was to be activated in case of his conviction for any other offence of contempt of court in the said period. The court also held that the licence of an advocate to practice legal profession can be suspended or cancelled by Supreme Courtor HighCourt in exercise of its contempt jurisdiction. *Vinay Chandra*[63]case was overruled by Supreme Court in *Supreme Court BarAssociation v Union of India*[64]. In this case the Supreme court Bar association filed a petition under Article 32[65]of the Constitution of India seeking relief by way of issuing an appropriate writ, directive or declaration to the effect that the disciplinary committee of the Bar Council set up under the Advocates Act 1961 alone have exclusive jurisdiction to enquire into and suspend and debar an advocate from practicing law for professional or other misconduct and that the Supreme Court of India or any other High Court in exercise of its inherent jurisdiction has no such original jurisdiction, power or authority in that regard notwithstanding the contrary view taken by the honourableCourt in V*inayChandra Mishra*case.The petition was placed before a Constitutional Bench for passingan appropriate direction or declaration. The petitioner asserted the decision in V*inay Chandra Mishra* caseand submitted that the issue of professional misconduct was not the subject matter of any case pending before the court and hence the court could not make any order under Article 142 or Art 129 of the Constitution to suspend the licence of advocate contemnor, for which other statutory provisions existed. It was contended that the Supreme Court can neither create a jurisdiction,nor prescribe a punishment. The courtoverruled V*inay Chandra Mishra* case[66] and opined that the power to punish for contempt of court, though quite wide is still very limited and cannot be expanded to include the power to determine whether an

[60]Article 215 in The Constitution Of India reads thus:
High Courts to be courts of record. Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.
[61]Kanaka Raj Mehta v. K.V. Shivakumar: ILR (1990)KAR 42;The Tata Iron And Steel Company v. RamniwasPoddar And Ors. A.I.R. (1989) Cal 375;
Ram RakhChacha v.Mohd. Yusuf 1997 (2) WLC 516;
Shyamal Krishna Chakraborty v. Sukumar Das And Ors. (2002) CriLJ 60
[62] A.I.R. (1995) S.C .2348.
[63]Ibid.
[64]A.I.R. (1998) S.C .1895.
[65] Article 32 reads thus:
Remedies for enforcement of rights conferred by this Part.- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution
[66]Supra n.32.

advocate is guilty of professional misconduct in a summary fashion jettisoning the procedure prescribed under the Advocates Act 1961[67]. In this case the honourable Supreme Court had made some valuable observations such as:

An advocate who is found guilty of contempt of court may also as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor General informed to the court that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for " professional misconduct", on the basis of his having been found guilty of committing contempt of court. The court went on stating that it has no doubt that the Bar Council of the State or Bar Council of India, as the case may be, when appraised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion, and take appropriate action against such an advocate. Under Article 144 of the Constitution "all authorities, civil and judicial, in the territory of India, shall act in aid of the Supreme Court". The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act "in aid of the Supreme Court". It must, whenever facts warrant, rise to the occasion and discharge its duties uninfluenced by the position of the contemnor advocate. It must act in accordance with the prescribed procedure, whenever its attention is drawn by this Court to the contumacious and unbecoming conduct of an advocate which has the tendency to interfere with due administration of justice. It is possible for the High Courts also to draw the attention of the Bar Council of the Stateto a case of professional misconduct of a contemnor advocate to enable the State Bar Council to proceed the manner prescribed by the act and the rules framed thereunder.

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[67]Section 35 in The Advocates Act, 1961 reads thus:

(1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

[(1A) The State Bar Council may, both of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.]

(2) The disciplinary committee of a State Bar Council shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.

(3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:—

(a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;

(b) reprimand the advocate;

(c) suspend the advocate from practice for such period as it may deem fit;

(d) remove the name of the advocate from the State roll of advocates.

(4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.

(5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf. Explanation- In this section, [section 37 and section 38], the expressions "Advocate-General" and Advocate-General of the State" shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India.

The court also stated that there is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. Further, whenever a court of record, records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the court or disregard by the court of the privileges of the Bar. In case the Bar Council, even after receiving "reference" from the court, fails to take action against the advocates concerned the court might consider invoking its power under section 38[68]of The Advocates Act 1961by sending for the record of the proceedings from the Bar Council and passing appropriate orders.

In *R.K. Anand v.Registrar of Delhi High Court*[69]known as BMW hit and run case two senior advocates were found guilty of criminal contempt. A unique feature of the case is that the contempt proceeding was initiated suo motu by the Delhi High Court on the basis of a sting operation conducted by a news channel NDTV. The case was an adjunct of a criminal trial involving the prosecution of an influential person who was being tried on the charge of causing the death of six persons on account of rash and negligent driving in an intoxicated state. One of the prosecution witnesses in the criminal trial was considered to be a valuable witness. Curiously he was dropped from the list of witnesses by the prosecution without adequate justification. Eight years thereafter the trial court summoned him to appear as a court witness. Sometime later, the above mentioned sting operation was conducted. That operation was conducted with a concealed camera and recorder. The video so taken was telecast by the news channel. In that programme the Special public prosecutor and the senior defencecounsel were shown as negotiating a foul deal with the witness to tender evidencein favour of the defence for an exorbitant price .Taking suo motu cognition of this invidious incident, the Delhi High Court issued show cause notices to the advocates requiring them to explain why contempt proceedings should not be instituted against them. After hearing the parties the High Court held the special public prosecutor and the senior defence counsel guilty of gross criminal contempt under the Contempt of Court Act 1971. Ultimately the court punished them by prohibiting them from appearing in the Delhi High Courtand subordinate courts under it for a period of four months. The court further held that the advocates concerned had forfeited the right to be designated as senior advocate and recommended to the concerned court to divest them of the honour. Moreover a fine of Rs.2000/- eachwas also imposed. Separate appeals were filed by the advocates challenging their conviction and punishment. The appeal preferred by the Special public prosecutor was allowed by

[68]Section 38 of The Advocates Act 1961 reads thus: Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under section 36 or section 37 1[or the Attorney-General of India or the Advocate-General of the State concerned, as the case may be,] may within sixty days of the date on which the order is communicated to him, prefer an appeal to the Supreme Court and the Supreme Court may pass such order 1[(including an order varying the punishment awarded by the disciplinary committee of the Bar Council of India)] thereon as it deems fit:

[Provided that no order of the disciplinary committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard.].

[69]2009(8) S.C.C. 106

the court to the extent of setting aside the conviction of criminal contempt and imposition of fine. Appeal filed by the senior defencecounsel was dismissed.

In a Suo Motu notice of contempt proceedings the court on its *Own motion v. Kanwaljit S. Sareen*[70]it was held:

When it come to the role of advocates and counsel vis-a-vis the Courts and administration of justice, it may be observed that the Judge and counsel are the two wheels of the chariot of justice. While the direction of the movement is controlled by the Judge holding the reins, the movement itself is facilitated by the counsel and litigants, without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between the Bench and the Bar smoothen the movement of the chariot. As responsible officers of the Court,the counsel have an overall obligation of assisting the Courts in a just and proper manner, in the just and proper administration of justice.

There are a catena of cases that deals with contempt of court by advocates. Some of them are briefly outlined below:-

In the case of *Pravin C. Shah*[71] , it was held by the court that an advocate found guilty of contempt cannot be allowed to act or plead in any court till he purges himself of contempt. The court issued this direction having regard to Rule 11 [72]of the Rules framed by the High Court of Kerala under section 34(1)[73] of the Advocates Act 1961.In this decision the court made remarkable observations of its powers to take action against an errand lawyer with that of the powers of the Bar Council. In this regard the court observed that Rule 11 of the Rules is not a provision intended for the Disciplinary Committee of the Bar Council of the State or the Bar Council of India. It is a matter entirely concerning the dignity and the orderly functioning of the courts. The right of the advocate to practise envelops a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits, or any other documents, he can participate in any conference involving legal discussions etc.

Rule 11 has nothing to do with all the acts done by an advocate during his practice except his performance inside the court. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by the Bar Council in exercise of its disciplinary powers. The right to practise, no doubt is the genus of which the right to appear and conduct cases in the court is a matter on which the

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[70] (2007) Cr LJ 2339.

[71]Pravin .C. Shah A.I.R. (2001) S.C. 3041

[72] Rule 11 of the Rules framed by the High Court of Kerala reads that

"No advocate who has been found guilty of contempt of court shall be permitted to appear, act or plead in any court unless he has purged himself of the contempt."

[73] Section 34(1) reads thus:

(1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto.

(1A) The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any Court subordinate thereto.]

[(2) Without prejudice to the provisions contained in sub-section (1), the High Court at Calcutta may make rules providing for the holding of the Intermediate and the Final examinations for articled clerks to be passed by the persons referred to in section 58AG for the purpose of being admitted as advocates on the State roll and any other matter connected therewith.]

court must have the major supervisory power. Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate.

When the Rules stipulate that a person who committed contempt of court cannot have the unreserved right to continue to appear and plead and conduct cases in the courts without any qualm or remorse, the Bar Council cannot overrule such a regulation concerning the orderly conduct of court proceedings. Courts of law are structured in such a design as to evoke respect and reverence for the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who was found guilty of contempt of court on the previous hour, standing in the court and arguing a case or cross-examininga witness on the same day unaffected by the contemptuous behavior he hurled at the court, would erode the dignity of the court and even corrode the majesty of it besides impairing the confidence of the public in the efficacy of the institution of the courts. This necessitates vesting of power with the High Court to formulate rules for regulating the proceedings inside the court including the conduct of advocates during such proceedings. The power should not be confused with the right to practise law.The court made the position further clear that the Bar Council can exercise control over the right to practise law, the High Court should be in control of the proceedings inside the court.

In the *Municipal Corporation of Greater Bombay v. Smt. Annattee Remond Uttanwala*[74]the respondent's advocate had been engaged by his client in an earlier litigation involving a property. The advocate suppressed the facts in the pleading relating to the subsequent proceeding instituted by the client's wife in respect of the same property. The Bombay High Court held the advocate guilty of Contempt of Court. In *Narain Das v. Government of Madhya Pradesh*[75] the Supreme Court held that if a misleading statement is deliberately and wilfully made by a party to a litigation inorder to obtain a favourable verdict it would amount to prejudicing or interfering with the course of judicial proceedings and would amount to contempt. In *Re Ajai Kumar Pandey, Advocate,*[76]the Supreme Court held that using intemperate language and casting aspersions on judicial officers by the advocate would amount to contempt of court. In *Shamsher Singh Bedi v.High Court of Punjab and Haryana*[77],the advocate sent a notice to Judicial Sub-Divisional Magistrate alleging that by the action in denying bail to his client the judge had tried to help the local police in their nefarious activities to keep his client in custody with a view to humiliating him and the court held that it amounted to contempt. In *Re Nandlal Balwani*[78], the advocate shouted slogans inside the court and hurled shoe at the judge thereby interrupting the court proceedings. His action both by words and deeds was taken as gross criminal contempt of the court. He was punished by the court rejecting his apology which was not accepted as genuine and bonafide. In *Shri.C.N.Presannean v. K.A.Mohammed Ali*[79], an advocate staged a demonstration before the residence of the Chief Justice of High Court against judicial acts ofa Magistrate. He had also published near the court premises posters containing contemptuous remarks against the judiciary. The Division Bench of Kerala High

[74] (1987) Cr LJ 1038.
[75]A.I.R. (1974) S.C. 1252.
[76]A.I.R. (1998) S.C. 3299.
[77]A.I.R. (1995) S.C .1974.
[78]A.I.R. (1999) S.C. 1300.
[79] (1991) Cr Lj. 2194.

Court found him guilty of Contempt. In *Smt. Harbans Kaur v. P.C.Chaturvedi*[80], the Supreme Court held that contempt proceedings cannot be initiated against an advocate for making comments in the open court regarding the moral character of the lady complainant. The court observed that the party can have recourse to appropriate proceedings under the Indian Penal code.

The Supreme Court in *Pritam Pal v. High Court of Madhya Pradesh*[81]observed the procedure for initiating contempt proceedings against an advocate as follows "To punish an advocate for contempt of court, no doubt, must be regarded as an extreme measure, but to preserve the proceedings of the courts from being deflected or interfered with, and to keep the streams of justice pure, serene and undefiled, it becomes the duty of the court though painful, to punish the contemnor in order to preserve its dignity". In a recent case namely Mahipal Singh Rana, Advocate v. State of Uttar Pradesh[82]The Supreme Court held that refusal of an advocate-contemnor to tender apology shows that he has no remorse and that as he has justified his action in a loud and thundering voice which the court observed as criminal contempt. The court held that the conviction of the appellant was justified and held that the enrolment of the advocate would stand suspended for two years and that the license of the appellant would remain suspended for further five years. The Supreme Court ruled that the disqualification of advocates in Sec 24A [83]of the Advocates Act 1961 is not only applicable at the time of enrolment but also after enrolment. In another recent case namely *Yatin Narendra Oza v. Khemchand Rajaram Koshti and Ors*[84]the Supreme Court accepted the unconditional apology tendered by advocate-contemnor and obtained an undertaking that he should neither speak nor give any kind of interview to either electronic or print media.

In a recent judgment the honourable High court of Keralain S*uo Motu v. C.K. Mohanan*[85]expressed that the Kerala High Court Bar is excellent and exemplary—both erudite and polite—almost to a point of perfection. Yet one lawyer has tried to hold the whole system to ransom. The efforts to make the erring counsel see reason having failed, the court undertook the unpleasant task of holding the member of the Bar guilty of contempt. The court was animated by only a single objective: The canker of contemptuous conduct should not eat into the vitals of this august institution. And, in that process, the Bar's blemishless image should not be sullied.

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[80](1969) 3 S.C.C. 712.

[81]A.I.R. (1992) S.C. 904.

[82]A.I.R. 2016(8) S.C. 3301.

[83]Section 24A reads thus:

(1) No person shall be admitted as an advocate on a State roll—

(a) if he is convicted of an offence involving moral turpitude;

(b) if he is convicted of an offence under the provisions of the Untouchability (Offences) Act, 1955 (22 of 1955);

[(c) if he is dismissed or removed from employment or office under the State on any charge involving moral turpitude.

Explanation- In this clause, the expression "State" shall have the meaning assigned to it under Article 12 of the Constitution:]

Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a period of two years has elapsed since his 3[release or dismissal or, as the case may be, removal].

(2) Nothing contained in sub-section (1) shall apply to a person who having been found guilty is dealt with under the provisions of the Probation of Offenders Act, 1958 (20 of 1958).

[84]A.I.R. (2016) 10 S.C. 4099. .

[85] 2016 (4) KLT 731

A highly deplorable incident took place at the Patiala High court on February 15, 2016 when Kanhaiyakumar a JNU students who was arrested on sedition charges was brought before the Court. Violence was unleashed barely moments before the hearing of the case. Further he was bashed up enroute to the Court hearing by men dressed in the black robes of lawyers. He was hurled the choicest abuse, gravel and a jagged end of a flowerpot piece[86].A six member team of senior advocates including Mr. KapilSibal, handpicked by the Supreme Court was appointed to verify and report back on the ground situation in the court complex. Violence was committed even within the sacred court hall of Supreme Court when a petition filed by a JNU aluminus seeking free and fair access to justice to Kanhaiya Kumar was being heard. The Supreme Court in very strong terms deprecated the unruly behaviour of lawyers inside the court room and directed the Bar Council of India to take action against errant lawyers. It is indeed a shameful matter that the learned lawyers had no compunction to unleash violence inside the courtroom and its precincts.

Making judicial history, the Supreme Court on 11th November, 2016 served a contempt of court notice on former apex court judge Justice Markandey Katju and accused him of writing blogs not just to criticise the Soumaya rape case judgement but to "assault" judges who delivered the verdict. Utterance of the word 'contempt of court' from justice Gogoi however was akin to a red rag to Justice Katju, who loudly told the court,"This is a free country I wrote what I felt. Judges generally laugh away such criticism. Learn how to be modest. Don't you dare threaten me withcontempt of court Mr. Gogoi." Justice Gogoi was annoyed by the comments but did not slip in addressing the former Supreme Court Judge without prefixing 'Justice'. In contrast, justice Katju repeatedly addressed the lead judge of the bench as Mr.Gogoi. "Mr. Gogoi, don't give me threats. I am not scared. Do what you want, you were my junior in Supreme Court. Don't act funny with me" he said defiantly. Moments after dismissing petitions seeking review of its earlier decision to award life sentence and not death penalty to Govindachamy in the Soumya case after duly recording appreciation for Justice Katju's assistance, a bench headed by justice Gogoi sought attorney general Mukul Rohatgi's view on the former judge's language against the bench. "AG, your role as counsel for Kerala government is over. Now, you assist the court in examining the contents of the two other blogs written by Justice Katju". The bench said. When asked by the court, Justice Katju admitted to writing the two blogs. When Rohatgi said the content and language was "scandalous", the bench issued contempt notice to Justice Katju. Rohatgi attempted to scale down his view and said, "Let me rephrase my view. The language in the blog appears to me as intemperate." But it was too late by then. The bench, also comprising justices P.C.Pant and U.U.Lalit, till that point was conversing normally with justice katju despite the latter raising his voice and daring the court to do what it felt. Once Justice Katju told the court not to dare threaten him, the bench asked, "Is there anyone to escort Justice Katju out?" The court asked him to file an affidavit in six weeks and explain why contempt of court proceedings be not initiated against him for the "scandalous" language used by him in two blogs to criticise the judges of the Supreme Court personally. Issuance of contempt notice means Justice Gogoi will from now on be referred to as 'contemnor' in the case records of the apex court and he will have to appear personally every time the case is taken up for hearing. This is the first instance in judicial history when a former judge of the apex court is facing contempt of

[86] "SC to hear JNU student's plea today" The Hindu daily (Thiruvananthapuram) dated 18th day of February 2016. P.1.

court proceedings.[87]. Here the Supreme Court would have initiated contempt proceedings against the former judge as and when the two blogs were published; instead, it took the action when the former judge was invited to express his views in suo motu review petition taken by the court in the Soumya murder case.This was an unprecedented episode in the history of Indian judiciary.

CONCLUSION

The power vested in the High Courts as well as the Supreme Court to punish for contempt is a special and rare power available both under the Constitution as well as under theContempt of Courts Act 1971. It is adrastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty on the courts to exercise the same with greatest care and caution. In order to ensure that the court is not slighted and its decisions are not trampled upon, the court is armed with adequate powers to institute contempt proceedings against the person doing so. This is a measure intended to ensure that the court decisions are implemented with utmost respect. An advocate as an officer of the court is duty-bound to safeguard the honour and dignity of the court. If he blatantly violates or ignores this healthy norm the court is prone to exercise its power to check the aberrations of the advocate and to force him to abide by the rules of the court and behave in a manner befitting the dignity of the court. The judiciary and advocates are the two wheels of the same chariot namely justice delivery system. If any of them malfunctions, that will tell upon the efficiency of the system and the chariot will be tilted.

REFERENCES

1. C.J. Miller, Contempt of Court (Scientific Books, 1976)
2. K. Balasankaran Nair, Law of Contempt Of Court in India (Atlantic Publishers and Distributers, 2004).
3. Sanjiva Row's, The advocates Act, 1961 (Lexis Nexis Butterworths, 2012).
4. Kailash Rai, Legal Ethics Accountability for Lawyers and Bench-Bar Relations (Central Law Publications,2015).
5. Yashomati Ghosh, Legal Ethics and the Profession of Law (Lexis Nexis, 2014).

[87]**"SC** issues **contempt** notice to Katju for 'assault 'on judges" The Times of India daily (Thiruvananthapuram) dated 12th November, 2016.p.1.