# CRITICAL ANALYSIS OF CONTEMPT LAWS IN INDIA

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## ABSTRACT

The Contempt law in its concept has its genesis since ancient period where the theory that King can do no wrong or King is the Supreme authority and one must respect the king. These types of Concept was revolving and the issue that the theory of contempt was vague is completely disregard with respect to history. When we till deeper into the theory of contempt then we find that this concept was inherent in nature and was a more proficient manner of use. In time travel this contempt is being neglected by the Courts of England a famous instance is there when the three judges picture was being turned upside down and was written some malicious language but the court opined that it is the wisdom and free speech matter of one's own conscious. So from here we can se a continuous tussle between free speech and Contempt is going on for years. It is the free speech thing which has been time and again come into limelight whenever the contempt proceedings are held against media. Free Press is important institution of any democratic country and a democratic country runs effectively when it has free press. Although there has been certain defences has been given to the press persons with regard to there contempt proceedings. It is also important to highlight the role of lawyers, judges in the light of contempt. Advocates are usually considered to be the officers of administration of justice but with the rampages of time and change in the nature of society there are certain etiquettes which had to be developed with regard to the present circumstances and if legal fraternity would not respect the administration of justice then this pious institution will definitely collapse. Now the contempt jurisdiction is very wide from the perspective of Supreme Court and High Court because they have the suo motu powers to initiate the summary procedure against the contemnor and it is this summary procedure which can be used as a weapon to stifle the criticism. Although Judiciary in this regard is being very liberal where official complaint against the judiciary and fair criticism is being kept out of the ambit of contempt. It is the moot point that what amount to fair or what not amount to fair. It is stated as that from time immemorial it is people faith in the judiciary which lets to kept its ideals high so that justice can be served to every sections of society. It is with this mandate judiciary is functioning so if there is any statement or act which lowers the authority or repute of court then that will certainly amount to

punishment. It is this punishment which can create a deterrent effect of judiciary in the minds of people. Creating a image of judiciary to be biased or against the weakest section of society will generally create the rift in the society or we can say an anarchy. A Contempt law is being viewed in India with wider perspective from the point of civil and criminal laws respectively. It is present in the Constitution of India where we can see that contempt powers are being conferred to Supreme Court and high court as being court of record. Court of record does not necessarily means regarding the authority of the court to punish for contempt rather it talks about the authority to punish for contempt as well as the record of each and every judgement. It is the contempt power of Supreme Court to punish for contempt has been given the constitutional power so that this power is to be used with keeping the authority in mind. Actually the intent behind this power was to have the special stature of respect in the eyes of public with regard to this Supreme Court. Although there has been wide power been given but it is necessary too in this changing pattern of society where people easily mistrust the institution working for them. It is also important to highlight the defences that are available to contemnor. It is these defences which are being treated as the safeguard for the contemnor. Essence of the defences is that they must be truth in nature and when committed then that were an innocent mistake. For example when we see the Fair reporting or truth or Bonafide belief of the matter are types of defences available then it is important that what is the intent of legislature behind this giving of defences is that law will not punish if any person speaks of truth or does any mistake innocently so it is important to understand the basic concept and clarity regarding this. With rampages of time there are several new types of contempt that has come in the light among them one is media trial. Media trial is the phenomenon of sensational journalism where the actual reporting of truth is deliberately removed and these media person give there judgement by affecting the public opinion against one party. It is important that court should look more at these instances so that there is no prejudice in the minds of people and judges too because it tends to create a sense of prejudice on these persons as well and when judge wrote its judgement then if it is against public sentiment then it will surely lowers the dignity of court in the minds of ordinary citizen and that constitute the essential ingredient of contempt. It becomes also important to discuss the status of Judges with regard to contempt when we see that Justice Karnan does not follow the orders of superior court and does the thing he wishes to then that becomes problematic and Justice Karnan had to face the consequences as it is the necessary punishment which conveys that judge is not above the court. It is important to highlight the judges are there on the particular post and it is not the respect of man in its individual capacity but it is the post/ office that they hold plays the important aspect. It is always the office for which judge works is important not the person in individual capacity and it was the case in the In re Prashant Bhushancase where it has

been stated that foremost responsibility of upholding the majesty of office of CJI belongs to honourable member of Bar so it becomes important not to have the malignant response from the advocates. It is the essence of contempt law to have its respect and repute in the eyes of citizen so that each and everyone has the confidence in the independence judiciary.

## RESEARCH OBJECTIVES

1. To identify what amounts to contempt
2. To examine the basis and extent of Contempt Jurisdiction
3. To compare the contempt law of India and United Kingdom

## HYPOTHESIS

Contempt law is having wide scope and it covers from Contempt of Court Act 1970 to Constitution. Contempt law is being treated as ambiguous when the matter comes before the Court of Record but court of record are also being binded by certain principles of natural justice and there decision must be within the spirit of justice, equity and good conscience.

## RESEARCH QUESTION

1. What are the contempt jurisdiction in India and ambiguities vis a vis jurisdiction in Court of Record?
2. What is the constitutional validity of the Contempt of Court Act vis a vis freedom of speech?
3. What is the relevance of apology in Contempt law of India?

## RESEARCH METHODOLOGY

The research will be done by doctrinal method. For obtaining the above stated objectives I will go through the secondary data. Past research will also be considered as required. A critical analyses of case laws and instances will be done.

## CHAPTERISATION OF THE RESEARCH

The dissertation discusses about the jurisdiction of contempt proceedings and ambiguities associated with the contempt law of India. It also focuses on the conflict of interest in criminal contempt with regard to the free speech. Moreover this also tries to put emphasis on the jurisprudential nature of the contempt law in India.

The first chapter which is **CONTEMPT AND COURT OF RECORD** this chapter will be dealing with the constitutional power of court and contempt laws. It also focuses on the extent of jurisdiction of Court of Record whether constitutional power of the court can be curtailed or taken away by any legislation such as Contempt of Court Act 1971. Power of Court of Record

which is apex court in respect to contempt proceeding against advocate. This chapter tests this aspect also where officers of the court are itself guilty of contempt of court.

The second chapter will be dealing with **ORIGIN , DEVELOPMENT, OBJECT AND CONSTITUTIONAL VALIDITY OF CONTEMPT JURISDICTION** in this chapter there will be focus on the origin of contempt law and influence of English law on contempt in Indian contempt law. This chapter also tests whether on the constitutional parameters the contempt of court act, 1970 is standing or not.

The third chapter will be dealing with the **BASIS AND EXTENT OF CONTEMPT JURISDICTION.** Here in this chapter I will be dealing with the contempt jurisdiction of high court and supreme court. Whether the high court and supreme court powers on contempt has any limitation or not will be tested on this aspect. Moreover detailed analysis of contempt jurisdiction of subordinate court will also be there.

The fourth chapter will be dealing with **CONTEMPT BY LAWYERS, JUDGES , STATE AND CORPORATE BODIES** in this chapter there shall be special emphasis on the subject of contempt by lawyers, judges , state and corporate bodies. It shall be a test of defences open to the aforementioned authorities in this contempt cases against them.

The fifth chapter **DEFENCES OPEN TO CRIMINAL CONTEMNER** which state about the defences which are available in the criminal contempt and civil contempt where it is discussed about various defence available in cases of contempt. It also stresses the important facet of reasonable interpretation which is available.
The sixth chapter **CONCLUSION** where it is discussed nature of punishment, contempt proceedings and its various aspect which affect our judicial system.

**REVIEW OF LITERATURE**

A study of relevant literature is an essential step to know what has been said and done in our own's country and abroad with regard to the problem. It actually provides the background for the study. I have gone through the following literature in the conduct of this research.

1. Legal Ethics Accountability of Lawyers and Bench- Bar relations by Dr Kailash Rai this book focuses on the different aspect of contempt laws in India where the different aspect of contempt law has been focused and dealt with comprehensive manner. It is in

this book which analyses the case laws separately related to Indian judiciary. Moreover nature of contempt proceedings with respect to subordinate courts has been dealt with effectively.

2. Constitution of India by V.N. Shukla this book focuses on the constitutional aspect of contempt law of India and also tries to emphasize on the contempt law with respect to court of record . It tries to stress the constituent assembly intent on the contempt law and freedom of speech.

Law of Contempt of Court and Legislature by Justice Tek Chand and H L Sarin is one the of foremost work on the subject of law of contempt of court in India. It focuses on the view point of various high courts and supreme courts judgment on contempt law.

## CHAPTER 1 : CONTEMPT AND COURT OF RECORD

The Contempt of Court is a matter concerning the fair administration of Justice, and aims to punish any act hurting the dignity and authority of judicial tribunals. Although it is difficult to accurately assess the origins of contempt law, there is little doubt that it stems from the common law ideal of supremacy and independence of the Judiciary.' The law of contempt has gradually changed over the years. The Judges have use and transformed the contempt jurisdiction to deal with the problem that they have faced. Most studies of the law of contempt work on the assumption that we must take the contempt jurisdiction as we find it and that a historical analysis of how the contempt jurisdiction was evolved is unnecessary Even so, there is a lot to learn from the historical development of the law of contempt. In ancient times, the ruler or the King of any state used to dispense justice himself sitting in court. With the rule of law in the form or the other coming in for governance of a state. King delegated his power of disposing justice to different organs of his Government. They acted in the name of King and it was then called the 'King's' justice. Therefore, such court demanded respect and obedience, and any disrespect to the seat of justice was treated and taken as an affront to the dignity and authority of the King. This broad concept of what is known as 'contempt of court' has persisted since ages in almost every country in the world and it has continued even in the present day of democracy.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 as per Article 129 of the Constitution of India 1950. In Wharton Law Lexicon[1] the following definition has been given where their acts and judicial proceedings are enrolled for a perpetual memorial and testimony and they have power to fine and imprison or not of records of court being inferior dignity and in a less proper sense the King’s Court and these are not entrusted with law with any power to fine or imprison the subject of the realm unless by the express provision of some Act of Parliament . These proceedings are not enrolled or recorded. In the draft constitution there was no article defining the supreme court. Article 129 was added to the Draft constitution at the instance of Dr Ambedkar. He said: the new article 108(129) is necessary because we have not made any provision in the Draft constitution to define the status of the Supreme Court. If the house will turn to Article 192(215) they will find exactly a similar article with regard to the high courts in India. It seems therefore necessary that the similarprovision should be made in the constitution to define the position of the Supreme Court. A court of record is the court the

[1] Wharton Law Lexicon (14edn)275

records of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any court. That is the meaning of the words 'court of record'. Then, the second part of Article 108(129)says that the court shall have the power to punish for contempt of itself. As a matter of fact once you make a court a court of record by statue the power to punish for contempt necessarily follows from that position. But it was felt that in view of the fact that in England this power is largely derived from common law and as we have no such thing as common law in this country, we felt it better to state the whole position in the statue itself. That is why Article 108(129) has been introduced[2]. The summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the purpose of interference with the course of justice and to ensure the rule of law [3] . This jurisdiction will not be ordinarily be exercised unless there is less prejudice which can be regarded as the substantial interference with due course of justice as distinguished from a mere question of propriety[4]. This is certainly an extraordinary power which must be sparingly exercised but where the public interest demands it the court will not shrink from exercising it and imposing punishment even by way of imprisonment in cases where a fine may not be adequate[5]. The procedure for the exercise of this jurisdiction will be subject to the provisions of Contempt of Court Act 1971. But the Act cannot curtail the substantive power of the court given in this article[6]. In C.K dapthary vs O.P. Gupta[7] the respondent published and circulated a booklet in public purporting to ascribe bias and dishonesty to Shah J while acting in his judicial capacity. Mr C.K. Daphthary along with others filed a petition alleging that the booklet had scandalized he judges who participated in the decision and brought into contempt into the authority of the highest court of the land and thus weakened the confidence of the people in it. The Supreme Court, in examining the scope of the contempt of court, laid down that the test in each case is whether the impunged publication is mere defamatory attack on the judge, or whether it will interfere with the due course of justice or the proper administration of law by the court. A distinction should be made between defamatory attacks on a judge and the contempt of court. Applying this test, the court found that the booklet contained scurrilous remarks about two judges of the Supreme Court which amounted to gross contempt of the judges and the court

[2] Constituent Assembly Debates Vol VII, 382
[3] State of Karnatka vs T.R. Dhananjaya,(1995)6 SCC 254
[4] Rizwan Ul Hasan vs State of UP AIR 1953 SC185
[5] Hira Lal Dixit vs State of U.P AIR 1954 SC743
[6] Delhi Judicial Service Association vs State of Gujrat (1991) 4 SCC 406
[7] (1971) SCC 626

itself. In examining the scope of the contempt of court some broad generalization were laid down:

1. There is no excuse whatsoever for imputing dishonesty in judge even if it is assumed that there were numerous errors in the judgement.
2. No evidence is allowed to justify allegation amounting into contempt.
3. In the matter of contempt triable by court, the court can deal with the matter summarily and adopt its own procedure. All that is necessary is that the procedure should be fair.
4. In the case of clear and simple charge against the contemnor, there is no need to draw a formal charge by the petitioner or by the court.
5. The President of the Supreme Court Bar Association can intitate contempt of court proceedings as the Bar is vitally concerned in the maintenance of the dignity of courts and proper administration of justice.

The Fundamental right to speech and expression under Article 19(1) (a) may sometimes be raised as as defence against contempt of court. But apart from the fact that every speech is not protected by Article 19(1) a and fair and objective criticism of courts does not amount to contempt of court. Article 19(2) makes an exception in favor of contempt of court. After examining several earlier cases relating to fair criticism and scandalizing the court or judiciary[8] the court in Arundhati Roy re[9] held that expression such as court displays disturbing willingness to issue notice on an absurd, despicable, entirely unsubstantiated petition or the court notice was intended to silence criticism and muzzle dissent did not fall into the category of fair criticism. The court also emphasized that a criticism by a law person has greater chance of falling within the category of fair criticism than the one by the journalist or writer like Arundhati Roy. The Indian Constitution though has not recognized this right specifically under any of the freedoms speech and expression under Article 19(1) (a) of the constitution. In Maneka Gandhi v. Union of India, Supreme Court observed that "to be a fundamental Right it is not necessary that a right must be specifically mentioned in a particular article specifically, it may be fundamental right if it is an integral part of a named fundamental Rights or parties of the same basic nature and character as that fundamental right. Every activity, which facilitates the exercise of the named fundamental right, may be considered internal part of that right and hence be a fundamental right-freedom of press in Article 19." But the freedom of press impliedly provided under Article 19(1) (a) is not absolute. It is liable to reasonable restriction

[8] Sankaran Namboodaripad vs T. Narayan Nambiar (1970) 2 SCC 325
[9] (2002) SCC 343

as imposed by an existing law or a law to be made by a state on various grounds like (a) sovereignty and integrity of India (b) the security of the state (c) friendly relation with foreign states (d) public order (e) decency or morality (f) or in relation with contempt of court and (g) defamation or incitement to an offence. The law of contempt is an exception to the fundamental right of free speech and expression guaranteed under Article 19(1) (a) of the constitution, the law must then be justified on the ground that it is a "reasonable restriction" under Article 19(2). Otherwise it would be unconstitutional. There can be no doubt that the purpose of contempt jurisdiction is to uphold the majesty and dignity of law courts and then image in the minds of the public and that this is in no way whittled down. If by contumacious words or writings the common man is led to lose his respect for the judge acting in the discharge of his judicial duties, then the confidence reposed in courts if justice is rudely shaken and the offender need be punished. In essence the law of contempt is the protector of the seat of justice more than the person of the judge sitting in that seat. The law of contempt has been enacted to secure public respect and confidence into judicial process. If such confidence is shaken or broken, the confidence of the common man in the institution of judiciary and democratic set-up is likely to be eroded which, if not checked, is sure to be disastrous for the society itself. But the law of contempt that part of which is so carefully described as "scandalizing the court" is intended as a wall of projection against the vicissitudes of judging. The power of the Supreme Court of India in dealing with the day-to-day affairs of the citizens has increased many a fold during the past few decades. Looking at the pages of law reports prior to lifting of emergency will reveal the irrelevance of the courts to a large part of the Indian population. It is after the lifting of emergency from the 1980's that the Supreme Court fully realized its potential. The failure of the legislature and the Bureaucracy to live up to the expectations in the eyes of the people put the judiciary in a higher pedestal. It was seen as the last resort for justice to the citizens of India. But it was precisely this magnimous view taken by the Supreme Court to look into almost all the aspects of the other two wings that gave rise to criticisms. The criticisms were from the public, from the press and media. The views of the Supreme Court towards these criticisms were not always static. It kept on changing from the stating that the judiciary's shoulders are broad and going to the other extreme by punishing an individual who had made a contempt of court. It is precisely that exercise of contempt powers of the Supreme Court and the Indian judiciary in general over the past few decades that will be discussed in the proceeding chapters. There is no better way to look at these exercise of power but to examine the judgment passed by the Supreme Court and the High Court's regarding this matter, In light of these powers and principles laid down under our constitution, an attempt has been to analyze the law on

Contempt of Court in India. The position of this principle seems to be arbitrary as far as the recent debates in media portrayed it to be. This is an important tool in the hands of the court and sometimes they need to be used as a sword and sometimes as a shield to protect itself.

## CHAPTER 2: ORIGIN, DEVELOPMENT,OBJECT AND CONSTITUTIONAL VALIDITY OF CONTEMPT LAW

The existing law of contempt is related to the contempt of court is essentially of English origin. In England it has been the view that the courts of record has the power to punish for the contempt of itself and also the courts subordinate to it. The superior court being court of record has inherent power to punish contempt of itself and of courts subordinate to it. Thus the contempt power of the superior court does not base on any statuory enactment but on common principle that the contempt power is inherent in every court of record This power of court is considered anecessary attribute of a superior court of record. The English contempt law was introduced in the British India by setting up court of record. In 1687 a Charter known as Charter of 1687 was issued by the East India Company for the establishment Mayor's court at Madras. In 1688 a corporation and Mayor's Court were established at Madras under the charter of 1687. The Mayor's court consisted of the Mayor and 12 alderman. It was a court of record The civil cases where the value of the cases was more than three pagodas and the criminal cases where the offender was sentenced to loose life or limb the appeals from the Mayor court lay to the court of Admiralty established under the British's crown charter of 1683. When after 1704 the court of admiralty ceased to sit regularly appeal's from the Mayor's court to lay to the governor and Council. The Admiralty court and the governor in council may also be taken as court of record as they heard appeals from the Mayor's court, a court of record. Before 11726 there was uniform judicial system in all the three Pendency towns. By this charter a Mayor's court was established in each presidency town. The Mayor and Alderman of the corporation of the Presidency town to constitute the Mayor's court established at that town. This court was the court of Record and as incidental to that status processed the power to punish for contempt. The Mayor's court was reconstituted under the charter of 1753 and even it was court of record having the power to punish for contempt. In 1774 Calcutta Mayor's court was replaced by the Supreme court established under the charter granted in 1774 in pursuance of the regulating act 1773 and in Madras and Bombay the Mayor's court continued till 1797 when they were superseded by the Recorder's court. The recorder's court was court of record and consequently it had power to punish for contempt . In 1880 British Parliament passed an act empowering the British to establish a Supreme Court at Madras in the place of Recorder's court Consequently,

in 1801 the Recorder's court was abolished and in its place were transferred to the supreme court. The power of supreme court at Calcutta has the same power at Madras. Consequently they have the power to punish for the contempt. In 1823 the British Parliament passed a n act empowering the British Crown to abolish the Recorder's Court in its place to establish a Supreme Court at Bombay. In1823 the British Crown issued a charter for establishing a supreme court at Bombay and in 1824 Supreme Court was formally inaugurated. The Supreme Court was declared to be court of record. It functioned up to 1862 when the High Court of judicature was established at Bombay under the Indian High Court Act 1861. The Indian High Court Act 1861 was passed by the British Parliament with the object to abolish the Supreme Court and Sadder Adulate and to establish the High Court in their place. The Act empowered the British Crown to establish one high court in each presidency town . In May 1862 a charter was issued by the British crown to establish a High Court at Calcutta. In June 1862 the crown issued the Charters for the establishment of the High court at Bombay and Madras. Thereafter in the exercise of the power under the Indian High Court 1861 a High Court was establish at Agra and in 1875 it was shifted to Allahabad. In Oudh Judicial Commissioner was established in 1865 and it was declared to be the highest court of Appeal for Oudh. Later on the judicial commissioner court was raised to the status of the Chief Court by the Oudh Court Act 1925. In 1926 the first contempt of court act was enacted. It was repealed and replaced by the Contempt of Court Act 1952. The Act of 1952 largely enacted the provisions contained in the earlier contempt of court 1926. However made by the changes in 1952are notable. The expression High Court was included in the Act.. However the Contempt of Court Act 1952 was not satisfactory There was no mention of the defences available to the contemnor in the contempt proceeding. Beside the act do not contain the provision as to contempt liability of the judges and other person acting judicially contempt proceeding and as to appeal in contempt cases from the High Court to the Supreme Court. There was no definition of then contempt in this act. All these requires the necessary examination of the then existing law to remove the confusion prevailing therein. On April 1 1960 Sri Bibhuti Bhushan Das introduced the bill to amend the law relating to the contempt of court . After considering the Bill the Government realized that the law relating to contempt of court needed reforms and thorough consideration. For this purpose the committee was set up under the chairmanship of Shri H.N Sanyal Additional Solicitor General of India by Ministry of Law. The entire law of contempt was scrutinized by the committee. The committee submitted the report in 1963 . The bill was referred to the joint committee . The bill was substantially altered in the light of the report and the Bill was finally introduced in the Rajya Sabha on 19 February 1968 and the contempt of courts Act, 1952 was

replaced by the contempt of courts Act, 1971. Several jurists and judges have defined contempt of court but there is no one single standard definition of the phrase contempt of court. Prior to the contempt of courts Act, 1971, there was no statutory definition of the concept contempt of court. Even the definition of contempt of court given in the contempt of courts Act, 1971, is not a definition in the real sense, but only the classification of contempt of courts. Contempt of Court Act 1971 is not an exhaustive code Section 22 of the Act provides that the provisions of this act shall be in addition to and not in derogation of the provision of any other law relating to contempt of court. An attempt has been made to define the concept of contempt of court . The important defences have been made in the act and all other defences have been co existing. The Act makes the provision in respect the liability of the provisions of the act . The act makes the provisions of the respect of liability of the judges, magistrate and other persons acting . It makes elaborate provisions in respect of the procedure to be observed in the contempt proceedings and also in respect of the appeals from the decision of the High Court and Judicial commissioner The Act tries to remove out the uncertainty as to the quantum of punishment as contempt however the uncertainty still exists. In a case the court has held that the contempt jurisdiction intends to uphold the majesty and dignity of court and not to protect the judicial offers for criticism. However the court has made it clear that the growing tendency of the maligning reputation of the judicial officers has to be curbed with heavy hand.

## CHAPTER 3: BASIS AND EXTENT OF CONTEMPT JURISDICTION CONTEMPT JURISDICTION OF HIGH COURT AND SUPREME COURT

An issue is as to whether The Contempt jurisdiction is based on some stated provision or it is inherent jurisdiction will able to them on account of being the court of Record The Contempt law in India has been developed mainly on the basis of English law and in England Superior Court of Record has been exercising in the power to indicate a person for its contempt in a summary manner this power is taken as a necessary attribute of Superior Court record in India also this practice has been followed it is now in the supreme court that the Superior Court that is superior Supreme Court and high court got being court of record have inherent power to punish The Contempt of court even in America Court of Record has inherent power to punish for The Contempt of court in this power has been given by the constitution and therefore it cannot be materially interfere it or taken away by the law made by the legislature in India the constitution declares the supreme court and high court as the court of Record article 129 of the

constitution provides that 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 article 215 of the constitution provides that every high court shall be a court of record and shall have all power of such a court including the power to punish for contempt of itself does the supreme court by reason of article 129 and the high court by reason of article 215 have the power to punish for contempt of itself.

[10]The Contempt of Courts Act is the final word in the matter and if the procedure prescribed under the Contempt of Courts Act has not been followed then the proceedings have to be dropped the Supreme Court being a Court of Record is not bound by the provisions of the Contempt of Courts Act. The only requirement is that the procedure followed is just and fair and in accordance with the principles of natural justice Article 129 of the Constitution of India reads as follows: "129. 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." A bare reading of Article 129 clearly shows that this Court being a Court of Record shall have all the powers of such a Court of Record including the power to punish for contempt of itself. This is a constitutional power which cannot be taken away or in any manner abridged by statute Article 142 of the Constitution of India reads as follows: "142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.- (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe. (2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself." Article 142 also provides that this Court can punish any person for contempt of itself but this power is subject to the provisions of any law made by parliament. A comparison of the provisions of Article 129 and clause (2) of Article 142 clearly shows that whereas the founding fathers felt that the powers under clause (2) of Article 142 could be subject to any law made by parliament, there is no such restriction as far

[10] In Re Prashant Bhushan vs Court (2020) SC 16

as Article 129 is concerned. The power under clause (2) of Article 142 is not the primary source of power of Court of Record which is Article 129 and there is no such restriction in Article 129. [11]Samaraditya Pal in the Law of Contempt has very succinctly stated the legal position as follows: "Although the law of contempt is largely governed by the 1971 Act, it is now settled law in India that the High Courts and the Supreme Court derive their jurisdiction and power from Articles 215 and 129 of the Constitution. This situation results in giving scope for "judicial self-dealing". The High Courts also enjoy similar powers like the Supreme Court under Article 215 of the Constitution. The main argument of the alleged contemnors is that notice should have been issued in terms of the provisions of the Contempt of Courts Act and any violation of the Contempt of Courts Act would vitiate the entire proceedings. We do not accept this argument. In view of the fact that the power to punish for contempt of itself is a constitutional power vested in this Court, such power cannot be abridged or taken away even by legislative enactment.The first judgment on the point is [12]Sukhdev Singh Sodhi v. The Chief Justice and Judges of the Pepsu High Court. It would be pertinent to mention that the said judgment was given in the context of the Contempt of Courts Act, 1952. The issue before this Court in the said case was whether contempt proceedings could said to be the proceedings under the Criminal Procedure Code, 1973 (Cr.PC) and the Supreme Court had the power to transfer the proceedings from one court to another under the Cr.PC. Rejecting the prayer for transfer, this Court held as follows: We hold therefore that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. This rule was laid down by the Privy Council in In re Pollard [13] and was followed in India and in Burma in In re Vallabhdas and Ebrahim Mamoojee Parekh v. King Emperor. In our view that is still the law . A Constitution Bench of this Court in [14]Shri C. K. Daphtary v. Shri O.P. Gupta was dealing with a case where the contemnor had published a pamphlet casting scurrilous aspersions on 2 Judges of this Court. During the course of argument, the contemnor raised a plea that all the evidence has not been furnished to him and made a request that the petitioner be asked to furnish the "pamphlet" or "book" annexed to the petition. The Court rejected this argument holding that the booklet/pamphlet had been annexed

[11] Samaraditya Pal Law of Contempt of court, 17, 5 ed, 2019
[12]1954 AIR 186
[13] (L.R. 2 P.C. 106 at 120)
[14]1971 AIR 1132

to the petition in original and the Court had directed that the matter be decided on affidavits. In respect of the absence of a specific charge being framed, the Court held that a specific charge was not required to be framed and the only requirement was that a fair procedure should be followed. Dealing with the Contempt of Courts Act, 1952 this Court held as follows:— We are here also not concerned with any law made by Parliament. Article 129 shows that the Supreme Court has all the powers of a Court of Record, including the power to punish for contempt of itself; and Article 142(2) goes further and enables us to investigate any contempt of this Court

Thereafter, this Court approved the observations in Sukhdev Singh Sodhi's case[15] and held as follows In our view that is still the law. It is in accordance with the practice of this Court that a notice was issued to the respondents and opportunity given to them to file affidavits stating facts and their contentions. At one stage, after arguments had begun Respondent No. 1 asked for postponement of the case to engage some lawyers who were engaged in fighting elections. We refused adjournment because we were of the view that the request was not reasonable and was made with a view to delay matters. We may mention that the first respondent fully argued his case for a number of days. The procedure adopted by us is the usual procedure followed in all cases. According to the alleged contemnors, both the aforesaid judgments are per incuriam after coming into force of the Contempt of Courts Act, 1971. They are definitely not per incuriam because they have been decided on the basis of the law which admittedly existed, but for the purposes of this case, we shall treat the argument of the alleged contemnors to be that the judgments are no longer good law and do not bind this Court. It has been contended by the alleged contemnors that both the aforesaid cases are overruled by later judgments. We shall now refer to some of the decisions cited by the parties. In [16]P.N. Duda v. P. Shiv Shanker the respondent, Shri P. Shiv Shiv Shanker, who was a former judge of the High Court and was the Minister for Law, Justice and Company Affairs delivered a speech which was said to be contemptuous. A petition was filed by the petitioner P. N. Duda who was an advocate of this Court but this Court declined to initiate contempt proceedings. At the outset, we may note that while giving the reasons for not initiating contempt, though this Court held that the contempt petition was not maintainable, it went into the merits of the speech delivered by Shri P. Shiv Shanker and held that there was no imminent danger of interference with the administration of the justice and bringing administration into disrepute. It was held that Shri P. Shiv Shanker was not guilty of contempt of this Court. Having held so, the Court went on to decide whether the

[15] Supra Note 45
[16] 1988 AIR 1208

petition could have been entertained on behalf of Shri Duda. In the said petition, Shri Duda had written a letter to the Attorney General seeking consent for initiating contempt proceedings against Shri P. Shiv Shanker. A copy of the said letter was also sent to the Solicitor General of India. While seeking consent, the petitioner had also stated that the Attorney General may be embarrassed to give consent for prosecution of the Law Minister and in view of the said allegations, the Attorney General felt that the credibility and authority of the office of the Attorney General was undermined and therefore did not deny or grant sanction for prosecution. The Court held that the petitioner could not move the Court for initiating contempt proceedings against the respondent without consent of the Attorney General and the Solicitor General. The relevant portion of the judgment reads as follows: The question of contempt of court came up for consideration in the case of C.K. Daphtary v. O.P. Gupta. In that case a petition under Article 129 of the Constitution was filed by Shri C.K. Daphtary and three other advocates bringing to the notice of this Court alleged contempt committed by the respondents. There this court held that under Article 129 of the Constitution this Court had the power to punish for contempt of itself and under Article 143(2) it could investigate any such contempt. This Court reiterated that the Constitution made this Court the guardian of fundamental rights. This Court further held that under the existing law of contempt of court any publication which was calculated to interfere with the due course of justice or proper administration of law would amount to contempt of court. A scurrilous attack on a Judge, in respect of a judgment or past conduct has in our country the inevitable effect of undermining the confidence of the public in the Judiciary ; and if confidence in Judiciary goes administration of justice definitely suffers. In that case a pamphlet was alleged to have contained statements amounting to contempt of the court. As the Attorney General did not move in the matter, the President of the Supreme Court bar and the other petitioners chose to bring the matter to the notice of the court. It was alleged that the said President and the other members of the bar have no locus standi. This Court held that the court could issue a notice suo motu. The President of the Supreme Court bar and other petitioners were perfectly entitled to bring to the notice of the court any contempt of the court. The first respondent referred to Lord Shawcross Committee's recommendation in U.K. that “proceedings should be instituted only if the Attorney General in his discretion considers them necessary”. This was only a recommendation made in the light of circumstances prevailing in England. But that is not the law in India, this Court reiterated. It has to be borne that decision was rendered on March 19, 1971 and the present Act in India was passed on December 24, 1971. Therefore that decision cannot be of any assistance. We have noticed Sanyal Committee's recommendations in India as to why the Attorney General should be associated with it, and

thereafter in U.K. there was report of Phillimore Committee in 1974. In India the reason for having the consent of the Attorney General was examined and explained by Sanyal Committee Report as noticed before The alleged contemnors contended that the last portion of the aforesaid paragraph shows that the judgment in C.K. Daphtary's case (supra) having been delivered prior to the enactment of Contempt of Courts Act, 1971 is no longer applicable. We may however point out that in the very next paragraph in the same judgment, it was held as follows:— Our attention was drawn by Shri Ganguly to a decision of the Allahabad High Court in G.N. Verma v. Hargovind Dayal[17] where the Division Bench reiterated that Rules which provide for the manner in which proceedings for contempt of court should be taken continue to apply even after the enactment of the Contempt of Courts Act, 1971. Therefore cognizance could be taken suo motu and information contained in the application by a private individual could be utilised. As we have mentioned hereinbefore indubitably cognizance could be taken suo motu by the court but members of the public have also the right to move the court. That right of bringing to the notice of the court is dependent upon consent being given either by the Attorney General or the Solicitor General and if that consent is withheld without reasons or without consideration of that right granted to any other person under Section 15 of the Act that could be investigated in an application made to the court The alleged contemnors rely on certain observations in the concurring judgment of Justice Ranganathan in the same judgment wherein he has approved the following passage from a judgment of the Delhi High Court in Anil Kumar Gupta v. K. Subba Rao.:— "The office is to take note that in future if any information is lodged even in the form of a petition inviting this Court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in Section 15 of the said Act, it should not be styled as a petition and should not be placed for admission on the judicial side. Such a petition should be placed before the Chief Justice for orders in Chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the Court whether to take any cognizance of the information. The office is directed to strike off the information as "Criminal Original No. 51 of 1973" and to file it." Thereafter Justice Ranganathan made the following observation:— I think that the direction given by the Delhi High Court sets out the proper procedure in such cases and may be adopted, at least in future, as a practice direction or as a rule, by this Court and other High Courts.

[17] AIR 1975 ALL 52

## CHAPTER 4: CONTEMPT BY LAWYERS, JUDGES , STATE AND CORPORATE BODIES

The contempt jurisdiction is very wide The court has power to punish every person body or authority found guilty of the contempt of Court. However the liability of the lawyers,judges, state and corporate bodies is of the special importance and therefore there liability has been discussed under separate headings.

**CONTEMPT BY LAWYERS-** The lawyer has to discharge certain duties towards the Court. But sometimes because of the nature of duties, the lawyers and judges may get into heated dialogue which may result in contempt of court. Contempt by lawyers is the most pertinent problem before the Courts these days. There are several instances of misconduct, which have been taken as contempt of Court.There are several instances of the misconduct which have been taken as contempt of Court, e.g., using insulting language against a Judge,(1) making scandalous allegations against a Judge,(2) suppressing the facts to obtain favourable order hurling shoe at the Judge,(3) imputation 0f partiality (4) and unfairness against the Judge,(5) etc. A counsel who advises his client to disobey the order of the Court is also held liable for contempt of Court. Attacking the Judiciary in a Bar Council Election Manifests is taken as contempt of Court. If a counsel refuses to answer the questions of the court is also liable for contempt of Courts. For example, using insulting language against the judge, making scandalous allegations against a judge, suppressing the facts to obtain favorable order, allegation of partiality and unfairness against the judge, etc. An advocate who advises his clients to disobey the Court is. Also held liable for contempt Courts. In Bar Council election attacking judiciary is also taken, at contempt of court if a council, advocate refuses to answer the question of the Court, is also liable for the contempt of court. In Re Ajay Kumar Pandey[18] the Supreme Court has held that an advocate using intemperate language and casting unwarranted aspersion (false report) on various judicial officers is equality of gross contempt of court for not getting expected results. Court awarded punishment of sentence to 4 months simple imprisonment and fine Rs.1000. Supreme Court in this case warned that only because a lawyers appear as a party in Person, he does not get a license to submit content of court , by intimidating the judges or scandalizing the Court. An Advocate can use language either in pleading or during argument which is either intemperate or unparliamentarily and which has tendency to interfere in the administration of justice and undermine the dignity of the Court. In

[18] AIR 1998 SC 3299

Re Vinay Chandra Mishra Supreme Court held that to resent (to show anger) the question asked by the judge to be disrespectful to him, to question is authority, to ask question, to shout at him, to threaten him with transfer and impeachment, to use insulting language, to abuse him to dictate order, such acts of advocate tends to prevent court from performing its Duty to administer the justice and hence, are instances of contempt of court.[19]It has been held that if a wrong or misleading statement is deliberately and willfully made by the party to a litigation with a view to obtain a favourable order, it would prejudice or interfere with the due course of the judicial proceedings and thus amount to contempt. An advocate was Personally engaged in earlier litigation involving a particular property and which has resulted in an eviction order against the client of the Advocate, who suppressed these fact in the pleading in subsequent proceeding brought by the wife of his client in respect of the same property and obtained an interim injunction restraining the Municipal Corporation from interfering with the possession of the wife. Bombay High Court held the Advocate guilty of contempt . Justice Sawant of the Bombay High Court delivering the judgement observed that, "the contemner by suppressing the facts, had fraudulently obtained from the Courts favorable Orders and had thus prejudiced and interfered with the due course of the judicial proceeding and had also obstructed the administration of justice. That a false statement made to the court with a view to obtain a favorable order amounts to contempt of the Court[20].

**CONTEMPT BY PERSONS ACTING JUDICIALY, JUDGES AND MAGISTRATE-** Section 16 of the contempt of court Act 1971 makes judges, magistrate and other persons liable for the contempt of court. It provides that subject to the provisions of any law for the time being in force a judge, Magistrate or other persons acting judicially shall also be liable for contempt of its own jurisdiction or any other court for the same manner as any other individual is liable and the provision of this act shall be applied so far as may be apply accordingly. However it also makes it clear that nothing in this section shall apply to any observations or remarks made by a judge, Magistrate or other persons acting judicially regarding a subordinate court in appeal. The aforesaid question squarely arose only two times in our country. For the first time this issue arose before a Full Bench of Five Judges of the Patna High Court in Shri.Harish Chandra· Mishra and others Vs The Hon'ble Mr.Justice S.Aii Ahmed . The same issue arose before a Full Bench of three Judges of the Madras High Court in M.Ranka Vs Hon'ble Mr.Justice P.S.Mishra Court. In both the cases, it was held that a Judge of a High Court cannot

[19] Narain Ds vs Government of Madhya Pradesh AIR 1974 SC 1252
[20]Bombay vs Shrimati Annattee Remond Uttanwala (1987) Cr LJ 1038.

be punished under the contempt of Courts Act, 1971. But the question whether a Judge of a High Court can be punished for committing contempt of the Supreme Court was answered in the affirmative by the Supreme Court in [21]Spencer & Company Ltd., Vs Vishwadarshan Distributors (Pvt.) Ltd. In Harish Chandra Mishra & Ors Vs The Hon'ble Mr.Justice S.Aii Ahmed , a Full Bench of five Judges of the Patna High Court examined the questions that 1. Whether a contempt petition against a sitting High Court Judge is maintainable without the consent in writing of the Advocate-General And Can a Judge of High Court be tried under the Contempt of Courts Act, 1971 Both the questions were answered in the negative by the majority. N.P.Singh, J who delivered the leading majority judgment held that the contempt application filed by the petitioners without the consent in writing of the AdvocateGeneral is not maintainable. It was held that Sec.16 of the Contempt of Courts Act, 1971 has no application to Judges of High Courts and Supreme Court. In this connection, N.P.Singh J observed including even the Judges of the Courts of Record. In my opinion, it only gives statutory recognition in respect of Contempt of Court committed by Judges and Magistrates presiding over subordinate courts". S.K.Choudhuri and Uday Sinha, JJ agreed with the judgment of N.P.Singh, J. But, Birendra Prasad Sinha, J., though dismissed the application on a different ground, dissented with the majority on both the questions of law.

## CHAPTER 5: DEFENCES OPEN TO CRIMINAL CONTEMNOR

Section 3 to section 7 of the Contempt of Court Act, 1971 makes provision in respect of the defences available to the contemnor in the criminal proceedings. However section 8 makes it clear that the defences other than those mentioned in Section 3 to 7 of the Act are not affected. The defences may be discussed under the following headings:

**Innocent publication and distribution of matter-** Sub Section 1 of Section 3 of the Contempt of Court Act 1971 provides that a person shall not be guilty of contempt of court on the ground that any matter which was published was truth in nature. Section 3 in the Contempt of Courts Act, 1971 states that, 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

[21]1995 SCC (1) 259

that time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending It further provides that 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 A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned in sub-section (1), if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid: Provided that this sub-section shall not apply in respect of the distribution of— (i) any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in section 3 of the Press and Registration of Books Act, 1867 (25 of 1867); (ii) any publication which is a newspaper published otherwise than in conformity with the rules contained in section 5 of the said Act. The explanation attached to the section provides as under; For the purposes of this section, a judicial proceeding— (a) is said to be pending— 10 Section 3(2), The Contempt of Courts Act, 1971. 191 (A) in the case of a civil proceeding, when it is instituted by the filing of a plaint or otherwise, (B) in the case of a criminal proceeding under the Code of Criminal Procedure, 1898 (5 of 1898),11 or any other law— (i) where it relates to the commission of an offence, when the charge-sheet or challan is filed, or when the court issues summons or warrant, as the case may be, against the accused, and (ii) in any other case, when the court takes cognizance of the matter to which the proceeding relates, and in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired; (b) which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending. Thus, section 3 provides that although there has been publication or distribution of publication which interferes or tends to interfere with, or obstructs the course of justice in connection with any civil or criminal proceeding (whether pending or not at the time of publication), such The Code of Criminal Procedure, 1973 (2 of 1974). Explanation to section 3, The Contempt of Courts Act, 1971. publication or distribution would not constitute contempt of court in the circumstances and subject to the conditions specified in

the section being fulfilled. In State vs. Faquir Chand[22] the Allahabad High Court stated that before a person can be convicted for contempt, the court should be satisfied (a) That something had been published which is either clearly intended or at least is calculated to prejudice a trial which is pending, (b) That the offending matter was published with knowledge of the pending cause or with knowledge that the cause was imminent and, (c) That the matter published tended substantially to interfere with the due course of justice or is calculated substantially to create prejudice in the public mind. Basically, sub-section (1) of section 3 replaces the strict liability rule in the case of publication of any matter which interfere or tend to interfere with or obstructs or tends to obstruct the course of justice in a pending proceeding by enabling the person charged to establish that in the facts and circumstances of the case he had no reason to believe that any proceeding referable to the publication was pending.

**NO REASONABLE GROUND THAT THE PROCEEDINGS ARE PENDING-** The law of contempt does not prevent comment before the litigation is started nor after it has ended. So long as the commentator got their facts right and keep their comments fair, they are without reproach. They do not offend against the law as to contempt of contempt unless there is real and substantial prejudice to pending litigation before the court. Matters of public interest particularly academic questions which have no reference to a pending litigation but are of a general educative character, no person can stop such comment by serving a writ[23] Sub-section (2) of section 3 provides that even though there has been publication of any matter which interferes or tends to interfere with or obstructs or tends to obstruct the course of justice such publication shall not be deemed to constitute contempt of court if the proceeding (whether civil or criminal) in relation to which such publication is made, are not pending. The immunity under this sub-section is absolute The Explanation attached to the section clarifies as to when a judicial proceeding is said to be pending. In In re Subrahmanyan, Editor Tribune, it was held that in case of criminal trial proceedings will be deemed to be pending after the accused is taken into custody and even before he has been committed for trial or produced before a magistrate. Further, the offence of contempt may be committed even if no case is actually pending provided that such a proceeding is imminent and the writer of the offending publication either knew it to be so or should have known that it was imminent. Sub-section (2) is rather involved in its construction and this subsection makes it further clear that, when as matter of fact a proceeding is ―not pending‖ publication of any matter which is otherwise

[22] AIR 1957 All 657.
[23] Attorney General vs. Times Newspaper Ltd., (1973) 2 WLR 452 at P. 460

contemptuous and which has already been described in sub-section (1) of section 3 is still not to be deemed to constitute contempt of court. In broad manner therefore this section lays down that the publication of matter which might otherwise fall within the clutches of the definition of contempt of court is still granted a certain exemption from being so styled if the proceeding was not pending at the time of its publication.

**FAIR AND ACCURATE JUDICIAL PROCEEDINGS-** It has been provided in section 4 of the Act, that subject to the provision contained in section 7, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof. The word ―Judicial Proceeding‖ in section 4 is to be narrowly construed to mean day to day proceedings of the court. In the case of Subhash Chandra vs. S.M. Aggarwalthe court observed: It would be seen that the section gives protection to fair and accurate report of judicial proceedings and says nothings beyond that. In the first place, the word "judicial proceeding" appearing in the section has to be given a restricted meaning. Reading section 4 with the provision of section 7 of the Contempt of Courts Act, 1971, it is clear that what is meant by the word "judicial proceeding" is the day to day proceedings of the court. Assuming though not granting that it is capable of a wider construction, it only permits a publication of "fair and accurate" reports of a „judicial proceeding". In the present case, the media was well within its right to publish fair and accurate report of the judgment delivered by S.M. Aggrawal. But the reporting of subsequent interviews can, by no stretch of imagination, be called a report relating to proceedings in a court.

**FAIR CRTICISM-** Section 5 of the Act, protects a person or a newspaper for his fair criticism on the merits of the case which has been heard and finally decided. It states that a person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided. Fair criticism of judicial acts is necessary in the rule of law. The courts are manned by human beings who suffer from weaknesses of ego, anger and even bias, if not to individuals but to classes of society or to political theories. As custodians of law and order, the courts have to decide the cases according to law of the land. The path is narrow and the judges have to walk on the edge of a sword. If the watchful eye of a critic points out to any departure from the cherished goal of an independent judiciary, then it is not contempt of court provided, of course, the critic does not attack the judge personally nor does he scandalise the court, lower its authorities or ridicule it. The defence of fair criticism is open at any stage of the proceedings After, a case has been decided, if a judgment severely and even

unfairly criticised, and assuming that this has an adverse effect on the administration of the justice, it must be balanced against the harm which would ensure if such criticism is stopped. This sort of attack in a country like ours has the inevitable effect of undermining the confidence of the public in the judiciary. If the confidence in the judiciary goes, the due administration of justice definitely suffers In Brahma Prakash case, Mukherjea J. while endorsing the proposition made by Lord Atkin in Ambard case made it clear that a "Reflection on the conduct or character of a judge in reference to the discharge of his judicial duties would not be contempt if such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice. It is not by stifling criticism that confidence in courts can be created.

**BONAFIDE COMPLAINT-** Section 6 of the Contempt of Courts Act, 1971 states that a person shall not be guilty of contempt of court in respect of any statement made by him in good faith concerning the presiding officer or any subordinate court to (a) any other subordinate court, or (b) the High court to which it is subordinate. The Explanation appended to this section, provides that ―subordinate court‖ means any court subordinate to a High court. The word any statement in the section will include not only statements adverse to the presiding officer of the court but even a statement in praise of a presiding officer can be motivated and may bring the wrath of the High Court by way of punishment for contempt of court. This section assumes that a statement made by a person concerning the presiding officer of any subordinate court, as mentioned in the section itself, would be contempt except where it has been made in good faith. Thus this section allows a person to make bona fide and legitimate complaint concerning a judge of any subordinate court to the High Court or to any other subordinate court to which the former subordinate court is subordinate. Further, explanation makes it clear that a complaint can be filed under this section against Munsif to the District Judge to whom he is subordinate, and similarly a complaint can be made against District Judge to High court under whose jurisdiction he is exercising his power. Section 6 of the Act, does not cover the High Court. It does not talk of any supervisory power of any agency or court over the High Court and for that protection of section 6 cannot be claimed by the contemner for addressing communication to Chief Justice, Judges of the High Court, the Prime Minister and the President in highly libellous language maligning, criticising and scandalizing the Chief Justice and the Judges for their decisions taken judicially and administratively, when court issued notice on its own motion for contempt proceedings.A citizen has always a right; if he has a legitimate grievance, to make a representation to the Government and that if that representation is made in good faith it could

not, when the conduct complained of was that of a court of judge, constitute contempt of court. The only tangible test which can be applied for judging the good faith of a person in doing a certain act is as to whether he acted with due care and attention. It is surely not open to a person to take precipitate action only on vague information received by him from irresponsible sources and without verifying the same diligently[24].

## CONCLUSION AND SUGGESTION

Contempt law is necessary for the sake of administration of justice but its procedure and implementation of its orders have to be sharply done as it walks on the tight rope of sometimes fair criticism , freedom of speech in broader aspect or in accurate reporting of the circumstances. In the wake of social media where free speech exercising option has increased but the same goes with the increasing number of contempt cases. It is indeed truth on the record that country like U.K. have removed the contempt law but when we talk of India here there is huge difference in the society . Here to effectively administer the law and enforce the orders of the court it becomes the weapon for the court to use it whenever necessary. It is the courts and judicial officers dignity are maintained only when there orders are being comply with . It is also the great lacunae while we confer Supreme Court power of contempt of wide amplitude where there is not set procedure to be come within the ambit of the contemptuous notion of Supreme Court so it needs a drastic change and this drastic change can be done only with codifying the Supreme court jurisdiction also. Although in Contempt of Court Rules it has already been stated about the power of Supreme Court with regard to the Court power in Contempt matters but the suo motu cognizance by the Court of Record make the matter under scanner. It is always a tight rope to walk on the contempt proceedings and free speech but the one who walks on it must be careful not to cross the borderline. In this case it is media which can largely be a contemnor from media trial to commenting on the pending investigation cases it is important to media to follow the ethics. It is ethics of each and every profession which is important which keeps circumscribing limit to work upon. Moreover it is media utter responsibility to report with responsibility because they have huge impact and when such matters which are being high profile or sensational and any particular prejudice based reporting can seriously affect the way judgement might come out. The moral rule to not speak in the

[24] State vs. S.N. Dikshit, 1973 Cr.L.J. 1211 (All).

matter which is sub judice is the golden one since media coverage gives prejudice or undue influence in the mind of judges who are going to give the judgement because ordinary citizen do not understand the intricacy of law on which the judgement come out and this judgement is based on law and facts. It is important also to have the good and professional conduct from the bar members i.e. advocate fraternity. It is the contempt law only which enable the judges to punish for the misconduct of advocates. A important note is that advocates can boycott but with certain guidelines which has enunciated in the Common Cause guidelines. Although to give a strike call from advocates is hampering the administration of justice but with the consent of the judges one can have a day of strike for benefit of justice. It is advocates as an fraternity are respectful somewhat because of deterrent effect of this law. Moreover this law also keeps a close check on judges too. The recent example is of Justice Karnan where a judge simply defy the orders of the Superior court and hence has to face the consequences. It is on the judge also not to make certain remarks which scandalizes or tends to lower the dignity of court. Summary powers and procedure are also bone of contention although summary procedure keeps the time fast of case but lack of appreciation of evidence in this creates a riddle to prove the innocence just on the object of law and nothing more or nothing less. Defences open to contemnor it can be said to be innocent privilege or truth or bonafide belief can be taken as the major defences but if the apex court does not agree on the defence then there is no certain and codifies mechanism for appeal and there the chance of justice is minimized and blatant exercise of power comes into picture so it is important to have proper mechanism to hear the appeals and hearing of the case. It can be stated in the gist that contempt law has to be more transparent and have a fair balance between free speech, free press and contempt law.

**SUGGESTION:** Upon the basis of research the following suggestion I shall be making-

(1) To set up a 5 judges retired committee to look upon the contempt matters against sitting high court and supreme court judges where the procedure and manner be fair transparent and procedure shall include the law of evidence.
(2) To codify the law relating to appeal , review and reference in the contempt matters taken by the Supreme Court and it is important to have separate procedure for each so that the contemner can get a fair chance of representation.
(3) There must be curb on suo motu powers related to contempt of supreme court where this power shall be replaced by a well-defined power which can clearly state about the method and type of things which would come within the ambit of contempt.

(4) There must be abolishment of criminal contempt with respect to free speech cases as that invariably results in to silence the free press. In a democratic society free press is the boon of any country and good watch dog is necessary to have over the Executive, legislature and judiciary so to not stifle the free press it is absolutely necessary.

(5) Scandalization of court must be clearly defined so that the power of court to use it as their own free will shall not be there it is important to have quite correct and dynamic in nature the term scandalization of court to be clearly defined.

This was my few suggestion which I think should be incorporated to make our country a respectful place of judiciary, free speech and vibrant democracy.

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