
(2009) 04 AHC CK 0625
In the Allahabad High Court
Case No : Criminal Contempt No.21 of 2007

Sadhna Upadhyaya, Advocate

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 10, 14, 19
Penal Code, 1860 (IPC) — Section 452

Citation : (2009) 04 AHC CK 0625

Hon'ble Judges : S.K.Jain, J;Janardan Sahai, J;V.K.Shukla, J;A.P.Sahi, J and Vikram Nath, J

Final Decision : Disposed Of

Judgement

S.K. Jain, J.

Long before our Late Prime Minister Pt. Jawahar Lal Nehru had within the portals of the Parliament trumpeted the creation of a free Nation in 1947 proclaiming that India was making her tryst with destiny, the Queen Empress Victoria, through a solemn Royal Charter in the year 1866, laid the surest and firm foundations of this institution representing what every free human being desires, the rule and majesty of law in a civilized Society. This acknowledged the supremacy of law to a great extent even in the British ruled dominions that held sway over almost every part of the Globe. This authenticated document which is still preserved in original and housed in the Museum of our Court, heralded a new era of dispensation of justice with new hopes of preservation of the rule of law. The monarchy came to an end and then dawned a new Republic. With the birth of a new nation, we gave ourselves a New Constitution with a pledge to preserve the rule of Law in a new democracy.

Holding on to the heritage of a Judicial System with its colonial background and imperial authority, but with a new backbone and with visions that stood enshrined and engrafted firmly therein, this "Indian Magna Carta" also contains

Article 215 empowering the Higher Judiciary of the States to punish for contempt. This empowerment is the confidence reposed in this institution by our own people who have given unto themselves the Constitution. Such confidence was thought to be necessarily expressed to aid and support the cherished principle of upholding the Rule of Law and to revere the "sense of justice" that is inherent in every human being. The roots of such pure thoughts travel far beyond our Constitution and the Laws and also the Royal Charter. They are to be found in Manu Smriti and the Srimad Bhagwat Gita, in the Bible and the Quran and even in the documents of Atheists. It has an ethical and philosophical support that has enabled it to survive the test of time.

Armed and supported with such eternally firm principles, we are reminded of the indestructibility of this bastion of democracy in the words of Late Pt. Kanahiya Lal Mishra, while delivering his impromptu speech in the presence of Late Dr. S. Radhakrishnan, the then President of India, on the occasion of the centenary celebrations of this Court in 1966, which is quoted below:

"It is a part of the life of a lawyer to be prepared for surprises; and when I was called upon suddenly a few minutes ago to speak on this occasion, I felt that, because what I have to say will not be any different from what others might say, I should not hesitate.

We are today celebrating the lapse of a hundred years. A period of hundred years in the history of the Universe is a speck of dust in the vast expanse of the sky, but in recorded human history a period of hundred years, particularly the period that has passed between 1866 and 1966, is of considerable importance. This period has seen changes so vast that the institutions of a hundred years ago the institutions that man creates and demolishes have become almost unrecognisable. Monarchies have tumbled. There have been two world wars. In our own country this period of hundred years began almost with the commencement of the rule of British Crown and that rule had disappeared. It is surprising that the fondness with which man creates institutions, the importance that he attaches to them, the permanency that he attributes to them, are all based upon a lack of foresight. This is because institutions grow out of certain ideas which form the bases of these institutions. In the world of Science, the most amazing discoveries, that appear to open out new vistas of knowledge, become after a lapse of time, outdated and are thrown away on the refuse and rubbish bins of time. Institutions come and go and the history of man changes and all that is held near and dear passes away into the void of eternity. When the greatest scientific truths become outdated and worn out, they also pass away into oblivion. But, an institution, like the High Court, retains its place in the life of the nation, without being affected. That is because there are certain things basic and everlasting in man. These are affection and feeling of brotherhood of man for man and above all the sense of justice. And that is why the Temple of Justice is the most permanent of all the temples on earth. That is why we are able to stand today and say that this institution above all other institutions in our

country has successfully buffeted all the vagaries of time....." (Vol.I Pg 65 of Centenary Celebrations Commemoration 1966).

Such aspirations and hopes which have been nurtured throughout should not be allowed to be shattered either by its guardians or its soldiers.

This year saw the Bar Association of our Court celebrating the Golden Jubilee of its registered creation. What would happen if any officer of this Court , as we usually address lawyers, stands up in defiance of preservation of this highly cherished ideal " Sense of Justice " and attempts to send a message that would destroy the faith of the people ? It would be nothing else but destruction of this temple, and chaos, that would lead to something like what has been described by William Shakespeare in one of his classics, Troilus and Cressida (Act I Scene III) where Ulysses depicts what a world would be without law and order :

"Take but degree away, untune that string
And hark, what discord follows; Each thing meets
In mere oppugnancy. The bounded waters
Should lift their bosoms higher than the shores
And make sop of all this solid globe.
Strength should be lord of imbecility,
And the rude son should strike his father dead,
Force should be right" or rather, right and wrong,
between whose endless jar justice resides,
Should lose her names, and so should justice, too.
Then everything includes itself in power,
Power into will, will into appetite,
And appetite, a universal wolf,
So doubly seconded with will and power
Must make perforce a universal prey
And last eat up himself."

It is because of an unfortunate incident that took place on 10th of December, 2007 and events thereafter, that today we are called upon in this Full Bench to lay down the para meters within which the Officers of the Court, namely the Lawyers, have to operate so that, they even, do not transgress the defined limits of law and the minimum of respect that it deserves. With the advent of the Constitution incorporating Article 215 of the Constitution of India, which has its predecessor in the Government of India Act and Laws that were enforced even

prior to that, coupled with the regulations framed under the Contempt of Courts Act 1971 (hereinafter referred as "the 1971 Act"), the power of the Superior Courts to draw contempt in the event of its majesty being violated appears to have been reaffirmed. This matter also brings into focus the powers of the Court to regulate its own functioning in view of the provisions of the Advocates Act 1961 and the rules framed by the Bar Council which provide for taking disciplinary action against an erring Lawyer. Once again the debate has arisen as to whether the Court has the power to debar a Lawyer from practising in Court or not, even though the learned counsel for the contemnor has conceded this position that such a power exists with the High Court which stands recorded in our order dated 3.12.2008.

The contemnor took an offending position before the Court on 10.12.2007 and the learned single Judge before whom the said posture was adopted drew proceedings of contempt as the contemnor firstly stated that she would not allow the Court to function unless the Judge gives the answer to her questions; Secondly that she would stand at the dais (bar podium) and not move out unless she is thrown out of Court by the police and also did not allow other counsels to plead their cases; and Thirdly she accused the Judge of lacking in integrity in open Court in the presence of other Counsels, Clerks, Staff, and Litigants stating that the Judge should paste a list of his favourite counsel on the Notice Board outside the Court. Consequently, the learned single Judge framed the charges which we shall refer to in our judgment hereinafter and directed the matter to be placed before the Division Bench taking cognizance of criminal contempt matters. The contemnor filed an Appeal questioning the said order, being Contempt Appeal No.25 of 2007, which was taken up by the Division Bench on 10.12.2007 itself and orders were passed thereon. The Division Bench, while staying the order of the learned single Judge taking the appellant into custody, simultaneously debarred her from practising in the High Court except in her own case during the pendency of the proceedings. The contemnor filed an application tendering apology which was directed to be placed before the learned single Judge the next day. The learned single Judge sent the matter back on 11.12.2007 to the division Bench noting the ruckus created by the lawyers and the absence of the contemnor, whereupon the Division Bench continued the order of debarment on 11.12.2007 while referring the entire proceedings to be decided by a larger Bench keeping in view the wide ramifications of the incident.

Against the orders dated 10.12.2007 and 11.12.2007 of the learned single Judge and the Division Bench respectively, 4 Special Leave Petitions were preferred by the appellant before the Apex Court and they were disposed of, as the appellant withdrew the Special Leave Petitions. The order of the Apex Court dated 11.2.2008 is quoted below:

"CORAM:

B.N. AGRAWAL

G.S. SINGHVI

For Petitioner (s) Mr. Rakesh Dwivedi, Sr. Adv.

Mr. Abhishek Chudhary , Adv.

For Respondent(s)

UPON hearing counsel the Court made the following ORDER

Taken on Board.

Heard learned counsel for the petitioners.

After some arguments, learned counsel for the petitioner is permitted to withdraw these petitions. The special leave petitions are, accordingly, disposed of."

Thereafter, the contemnor moved an application before the Hon''ble Chief Justice representing her cause and criticizing the Chief Justice for not having constituted a larger Bench where after the Chief Justice passed an order on 2.4.2008 constituting the 5 Judges Full Bench. The appellant states that she was also advised to file a Special Appeal against the order of the learned single Judge being Special Appeal No.309 (Defective) of 2008 on 31.3.2008 under ChapterVIII Rule 5 of High Court Rules, 1952, on the premise that a Contempt Appeal No.25 of 2007 under Section 19 of the 1971 Act, which had been filed earlier, might not be maintainable. The questions raised on the maintainability of the appeals were canvassed at length and the Full Bench vide its judgment dated 22.8.2008 held that a contempt appeal under Section 19 of the 1971 Act would be maintainable and not a Special Appeal keeping in view the nature of the order that had been questioned. Special Appeal No.309 (Defective) of 2008 was accordingly dismissed as not maintainable by a separate order dated 22.9.2008. The contemnor, thereafter, withdrew her Contempt Appeal No.25 of 2007 unconditionally and applied for bail in the Contempt Application No.21 of 2007. While dismissing the appeal, the Court reserved its jurisdiction to decide the larger issues of reference as and when the contempt is heard.

The application was heard and the Bench, while granting bail on 22.9.2008 to the contemnor, continued the order of debarment restraining the applicant from practising that had been earlier passed in the appeal. The appellant had also moved an application for consideration of her apology and for declaring the proceedings of contempt as redundant. Her request was entertained by us and we sent the matter on 13.10.2008 to the learned single Judge for consideration of apology. The learned single Judge, on the question of propriety, sent the matter back to the Full Bench vide order dated 23.10.2008 stating that the apology should also be considered by the Full Bench as the entire matter had been referred by Hon''ble the Chief Justice. The contemnor again did not appear personally before the learned single Judge. Against this order of the learned single Judge dated 23.10.2008, the appellant preferred yet another appeal on

the ground that the learned single Judge ought to have considered the apology as it was a contempt under Section 14 of the 1971 Act. The Division Bench, hearing the Appeal being Appeal No.9 of 2008, was of the opinion that even though the matter was of an exfacie contempt under Section 14 of the 1971 Act, yet propriety demanded that the appeal should also be heard by the Full Bench itself. The contemnor had moved an application for recall of the order of debarment, which was rejected by this Bench on 3.12.2008. The said appeal has been heard by us along with the contempt matter itself and is being disposed of by a separate judgment. Since we had already arrived at the conclusion that the contempt was one under Section 14 of the 1971 Act, we passed a separate order on 22.1.2009 reframing the Section in the charge to Section 14 of the 1971 Act. The arguments concluded on 23.1.2009 where after the judgment was reserved. When the arguments were being concluded, it was pointed out that against the order dated 22.9.2008 debarring the contemnor from practising in Court and rejection of the recall application on 3.12.2008, the contemnor filed a Special Leave petition before the Apex Court and the same has also been dismissed by the following order on 19.1.2009:

"CORAM:

B.N. AGRAWAL

G.S. SINGHVI

Delay condoned.

Having heard learned counsel appearing on behalf of the petitioner at length, we are not inclined to interfere with the impugned orders.

The Special Leave Petitions are, according, dismissed."

The learned A.G.A. Sri Sudhir Mehrotra, thereafter provided us the judgments and written submissions on 13.2.2009 after serving it on the contemnor that had already been iterated at the time of arguments.

BACKGROUND OF THE CASE

The facts, as have come out from the pleadings before the Court, are that the contemnor was engaged for arguing a bail matter in which several accused had been assigned similar roles in a murder case. In the said case, one of the accused was granted bail by Hon"ble Mr. Justice S.S. Kulshreshtha. At the hearing of the bail application of another coaccused, which was argued by the contemnor, it was pointed out that after the commission of offence of murder, the accused had threatened the witnesses regarding which another F.I.R. had been lodged under Section 452 I.P.C. and, therefore, the learned single Judge namely Hon.Mr.Justice Vinod Prasad refused bail to the said coaccused. Certain allegations were made against the learned single Judge of impropriety of having changed the language of the orders passed and deliberately using the word "Shrike" about which the contemnor took objections.

A third coaccused also moved a bail application through the same counsel, which was placed before the same Hon"ble Judge, who was inclined to follow his earlier order as he had already rejected the bail application of the other coaccused. The bail application was insisted upon by the contemnor demanding bail for her client or else the matter be released. The bail application was considered by Hon"ble Mr. Justice Vinod Prasad and it was rejected. This order was passed on the last working day of the week on a Friday i.e. 7.12.2007. On the morning of the following Monday i.e. 10.12.2007, the contemnor stood up in the Court of Justice Vinod Prasad when His Lordship appeared on the dais and questioned His Lordship as to whether the application was released or not where upon she was informed that the application had already been rejected. However, counsel started putting questions to the Court and insisted that she will not allow the Court to function unless the Judge gives her an answer to the questions put by her. Not only this, she accused the Judge of lack of integrity in open Court and levelled other accusations which led to the passing of the following order by the learned single Judge on 10.12.2007:

"I sat in Court at 10.05 A.M. Smt. Sadhana Upadhyay, an Advocate of this Court was sitting. She stood up when her matter was not even called for and she does not have any matter in the fresh cases, which is listed before me. As a matter of normal practice at 10.00 A.M., we take up the fresh matters. Smt. Sadhana Upadhyay asked the Court that she had argued the matter on Friday (7.12.2007), which must have been released. She was informed that the matter has already been decided and the bail has been rejected and order has already been signed and sent on that date. She then contended that unless she gets an answer to her question which had raised on Friday, she will not leave the podium and will not allow the Court to function. She contended that I may take cases but she will not leave the dais. Whenthe Court asked her whether she will allow the Court to function or not, she stated that unless she gets her answer, she will not leave the podium. This act of Smt. Sadhana Upadhyay in my humble opinion amounts jeopardising the proceedings of Court in a public view. On this occasion, I asked the reader to call the Court Officer in my Court, Smt. Sadhana Upadhyay asked the other counsels to go and do their work. On this the other counsels present told her that they have got cases before me as well.

She also stated that, if she will not get answer to her question, she will be taken out of the Court Room only by the police and nobody else. She also stated that there should be a list of counsel pasted who are to appear before this Court. Meanwhile after the above dictation, the Court Officer Sri Farman Raza appeared before me.

From the above narration of fact from 10.07 A.M. till 10.16 A.M. Smt. Sadhana Upadhyay intentionally and deliberately jeopardised the proceedings of the court. Her conduct amounts to a criminal contempt in public view.

Under Section 15 of the Contempt of Courts Act, this Court is entitled to take cognizance of a Criminal Contempt.

I take cognizance of the Criminal Contempt and I directed the Court Officer to arrest Smt. Sadhana Upadhyay forthwith. He is directed to send her to Jail. Smt. Sadhana Upadhyay is charged with the following charges:

That on 10.12.2007 from 10.07 AM till 10.16 AM, she intentionally and deliberately without any reason whatsoever, disturbed the proceedings of my Court No.47 not allowing the Court to function, and kept on standing at dais not allowing the other counsels to appear and plead their cases. This act of Smt. Sadhana Upadhyay amounts to Criminal Contempt under the Contempt of Courts Act and, therefore, why she be not punished for committing Criminal Contempt under The Contempt of Courts Act.

Smt. Sadhana Upadhyay can file a reply to it within a week. This order be sent before the Contempt Bench dealing with a Criminal Contempt today. Court Officer is directed to send Smt. Sadhana Upadhyay to Jail and will produce her as is ordered further by the Contempt Bench dealing with Criminal Contempt matter.

Sd/ Hon. Vinod Prasad, J

Dt. 10.12.2007"

The contemnor filed Contempt Appeal No.25 of 2007 on the same day and since the copy of the order was not available, the following order was passed on 10.12.2007 by the Division Bench:

"Heard Shri Vijai Bahadur Singh, learned Senior Advocate duly assisted by Shri Sant Saran Upadhyay, Ms. Kamla Singh, Shri O.S. Tripathi for the appellant and Shri Ashutosh Tewari appearing for the State.

This appeal has been presented against the order passed today, i.e. 10.12.2007 by the learned Single Judge in exercise of his power under Section 10 of the Contempt of Courts Act, 1971 (hereinafter called the "Act 1971").

The learned A.G.A. appearing for the State has raised a preliminary objection regarding maintainability of this appeal contending that under Section 19 of the Act 1971, an appeal can be maintained by a person after being punished and not at this stage where the charge has been framed. Secondly, as the copy of the impugned order has not been filed along with the appeal, the Appellate Court cannot examine the appeal on merit as it cannot be examined as to on what basis, the learned Single Judge has proceeded with the matter.

Be that as it may, as the learned counsel appearing for the appellant submits that they have applied for the certified copy of the order and as it has not been supplied, they want some breathing period so that they may approach the same Hon"ble Judge for tendering absolute and unconditional apology and for recall of the order. They further submit that they will file such an application by tomorrow, i.e. 11.12.2007 and mention the matter before the Hon"ble Court for being taken up tomorrow itself at 10.00 a.m. It has further been submitted that in case the application is accepted by the learned Single Judge and the order is recalled,

there will be no occasion for this Court to examine the merits of the appeal.

We have no doubt that this Court while hearing the matter has powers to control the functioning of its own Courts and any interference in the freeflow of justice can be administered by this Court. Keeping in view the aforesaid proposition which is reflected in the order of the Hon"ble Supreme Court dated 27.1.2006 passed in Criminal Appeal No.63 of 2006, Mahipal Singh Rana Vs. State of U.P. and others, and considering the report gravity of misconduct, we provide as follows:

"The order taking the appellant into judicial custody and sending her to Jail be kept in abeyance till tomorrow, i.e. 11.12.2007. Further, the appellant is restrained from appearing in the High Court except in the case in which she has been charged for criminal contempt."

List this case on 11.12.2007 in the Court immediately after fresh matters along with the record of the case.

Sd/ Hon. Dr. B.S. Chauhan, J

Sd/ Hon. Arun Tandon, J

Dt. 10.12.2007"

The contemnor had moved an application tendering her apology and paragraph nos. 2 and 3 of the Affidavit in support of such an application dated 11.12.2007 categorically stated that she sincerely regrets for the incidents and expresses her deep concern and tenders her unconditional apology. She further requested that the apology be accepted and the matter be closed. This application was taken up by the learned single Judge on 11.12.2007 despite the contemnor being conspicuously absent in Court, the learned single Judge passed the following order:

"On mention being made by Sri V.B. Singh, learned Senior Counsel, this application has been called by me today and that is how it has been placed before me.

This application, without any prayer has been filed along with an Affidavit of Smt. Sadhana Upadhyay, who is presently not present before me.

This application has been filed in Contempt Matter No.21 of 2007 connected with Contempt Appeal No. /07, Smt. Sadhana Upadhyay Vs. State of U.P. Sri V.B. Singh, learned Senior Counsel submitted that in paragraph 1 and 2 the deponent has shown deep and sincere regret for the incident which had taken place in my Court and express her unconditional apology and vide para 3 it is mentioned that the apology may be accepted or the Hon"ble Court may pass suitable order whatever may deems fit and proper.

In this matter on 10.12.2007, I had drawn a criminal contempt proceeding against the applicant deponent Smt. Sadhana Upadhyay and had sent the matter

before the Bench dealing with criminal contempt. After the order was passed there was a total rukus and the window pains and glasses and the doors of many Courts were even got broken with shouting of filthy slogans. In the Court of some of the Hon"ble Judges even books were hurled and there was shouting of slogans and vituperation. Yesterdays, incident has taken the demensions where it is to be decided that whether the Court can function in an atmosphere of terror, vituperation or scandalization or not and whether the Courts can uphold the dignity and majesty of law and of the Court in such an atmosphere?

In my humble view, this aspect of the matter can be better adjudicated by a Division Bench, who is now seized of the matter, as I have been informed that a Division Bench has been constituted by Hon"ble the Chief Justice to look into the matter of criminal contempt and I have been also informed that an appeal against my order dated 10.12.2007 has also been filed before a Division Bench. Under the High Court Rules a criminal contempt and appeal against an order passed by a single Judge is cognizable by a Division Bench, which is seized of the matter and has taken cognizance. Sitting singly, I cannot have a jurisdiction to entertain the alleged qualified apology, which has to be pleaded before the appropriate Division Bench.

I think the applicant should approach the Division Bench concerned for redressal of her grievance.

This application is disposed off with the aforesaid observation.

Sd/ Hon. Vinod Prasad, J

Dt. 11.12.2007"

While recording this order, the learned single Judge further indicated that after the order drawing contempt had been passed, there was a total ruckus in the courts leading to destruction of court property and shouting of slogans and throwing of books and, therefore, the learned single Judge indicated that the incident had acquired dimensions where it had to be decided that whether the Court should function in such an atmosphere or not ? The application for apology was also not considered and it was directed to be placed before the Division Bench. The Division Bench, thereafter, took up the matter on 11.12.2007 itself and taking note of the seriousness of the matter, referred the matter to Hon"ble the Chief Justice for constituting a larger Bench. The order passed by the Division Bench on 11.12.2007 is quoted below:

"This contempt appeal was taken up yesterday, i.e. 10.12.2007 as the matter has been nominated by Hon"ble the Chief Justice to the Bench presided over by one of us (namely Dr. B.S. Chauhan, J). The appeal as filed was not proper as it was not accompanied with the certified copy of the order impugned reason being that the order dated 10.12.2007 passed by the learned Single Judge had not been made available to the appellant. Even otherwise, the learned A.G.A. appearing for the State had raised a preliminary objection regarding the

maintainability of the present appeal under Section 19 of the Contempt of Courts Act, 1971 (hereinafter called the "Act 1971"). In such a factsituation, Shri Vijai Bahadur Singh, learned Senior Advocate duly assisted by Sri Sant Saran Upadhyay, Ms. Kamla Singh, Shri O.S. Tripathi appearing for the appellant prayed for time to prepare the case on the issue of maintainability of the appeal. They also expressed a desire to appear before the learned Single Judge for tendering absolute and unconditional apology and for recall of the order. In such a situation, the Court directed the matter to be taken up today keeping the arrest of the appellant in abeyance till today, i.e. 11.12.2007. The appellant was further restrained from appearing in the High Court except in the case in which she had been charged for criminal contempt.

Today, an application for placing the records without any prayer had been filed by the appellant before the same Hon"ble Single Judge accompanied by an Affidavit tendering unconditional apology. The learned Single Judge vide his order passed today, has sent the entire matter to the concerned Bench. The said application and the order passed thereon by the learned Single Judge have been placed before us. The learned Single Judge has taken note of not only the facts what happened yesterday in His Lordship's Court but also recorded the conduct of lawyers in other Courts of shouting slogans, using filthy and unparliamentary language, extensively damaging Court property and disrupting the entire judicial functioning of the High Court.

Shri C.L. Pandey, Senior Advocate on behalf of the appellant seeks further time to prepare the case and prays for extension of the stay order passed by us on 10.12.2007. Accordingly, we feel that it is in the interest of justice that the parties may be given sufficient time to prepare the case because this act of scandalising this Court is not only punishable under the Act 1971 but also under Section 228 of the Indian Penal Code. Looking to the gravity of the situation which brought about a total chaos in the Courts, it might be imperative for this Court to direct an investigation to be carried out to identify those who indulged in this act of vandalism. Serious issues regarding maintainability of this appeal still survive. Not only this, the large scale of unprecedented vandalism, question of propriety and legality, the conduct of lawyers, the security of Courts and the manner in which this Court can control and discipline the functioning of Courts deserve to be seriously attended to on the judicial side.

We are, therefore, of the opinion that this Contempt Appeal and Contempt Petition No.21 of 2007 be heard together by a larger Bench of not less than five Hon"ble Judges. Let the records be laid before the Hon"ble the Chief Justice for appropriate orders.

List before appropriate Bench on 19th December, 2007.

Till 19.12.2007, interim order passed by us yesterday, i.e. 10.12.2007 is extended.

Sd/ Hon.Dr. B.S. Chauhan, J

Sd/ Hon. Arun Tandon, J

Dt. 11.12.2007"

The interim arrangement of restraining the contemnor from practice made by the said order was extended and thereafter the contemnor preferred 4 Special Leave Petitions before the Apex Court which was withdrawn by her and the orders passed thereon dated 11.2.2008 have already been quoted by us at the very outset of the judgment. The appellant, after the withdrawal of her Special Leave Petitions, preferred a representation before the Chief Justice in which she has justified her cause, upon which, the Full Bench was constituted on 2.4.2008 and the matter proceeded. The Full Bench considered the questions of maintainability of the Appeal which was decided on 22.8.2008 holding that a Contempt Appeal would be maintainable. The sequence of events thereafter have been detailed in the preceding pages leading up to the dismissal of the Special leave Petition on 19.1.2009 by the Apex Court and the conclusion of the oral arguments before us on 23.1.2009.

THE GRAVAMEN OF CHARGES

The act of the contemnor as recorded exactly by the learned single Judge in his order dated 10.12.2007 is to the effect that she did not allow the Court to function and blocked its proceedings and for this she made an excuse that she was doing so to get the desired answer from the Judge. She appears to have stood like a Berlin Wall not allowing the Court to function or the other Lawyers to get their cases taken up or to allow them to put their case across and get their cases disposed of. It was virtually holding the Court to ransom. The posture did not, according to the learned single Judge, was for a mere mention and the contemnor further aggravated her act by accusing the Judge of lack of integrity in open Court and in the presence of Lawyers, Officials, Litigants and the rest. The charge, therefore, constituted against the contemnor is that she intentionally forestalled the functioning of a constitutional office and not only attacked the institution but the presiding Judge as well. Whatever was spoken was well within the perception of the Judge and in the direct sight of the Court. It was clearly intended to undermine the authority of the Court and malign its dignity in the Courts view itself. The Judge was personally imputed with motives by calling him to get a notice pasted outside court of his favourite counsel. The Judge, accordingly, noted this offending act which in his opinion was intentional and deliberate and was clearly contemptuous. For such unorderly behaviour, the contemnor deserved to be tried and punished for having done so.

THE DEFENCE

On her defence, the contemnor stated that she does not intend to file any further affidavit or lead any other evidence on the charge imputed.

We may put it on record that the learned single Judge gave a weeks time to the contemnor vide order dated 10.12.2007 to file a reply in defence. The

contemnor, as per the records, did not file any reply in her defence nor did she make any move to lead evidence on her behalf. She preferred a Contempt Appeal No. 25 of 2007 and later filed a Special Appeal No. 309 (Defective) of 2008 which were withdrawn and dismissed. She also preferred SLP's before the Apex Court which were withdrawn by her on 11.2.2008. During this period also no defence either by way of an affidavit or otherwise was filed in this contempt matter.

This application was heard on 22.9.2008 on which date the bail matter was disposed off and again an opportunity was granted to the contemnor to put up her defence if any and to file an affidavit. The contemnor, as per records, again chose not to file any affidavit or her defence. On the other hand she moved an application for withdrawing the order of debarment questioning the discretion of the court to do so on various grounds which was rejected on 3.12.2008. Against both these orders dated 22.9.2008 and 3.12.2008 she preferred SLP Cr.M.P.No.428 of 2008 which was dismissed by the Apex Court on 19.1.2009.

In spite of clear opportunities being afforded as noted above no affidavit or evidence was introduced in this matter. The contemnor in person however on 22.1.2009, before closing her submissions the following day, made her stand clear which stands recorded in our order quoted below:

"After the charge was altered to be one under Section 14 of the 1971 Act in the presence of the contemnor, she was called upon to advance her submissions. The contemnor commenced her arguments detailing the facts that led to the incident and also about her conduct. She laid emphasis on her apology as well and informed the Court about the filing of a Special Leave Petition before the Apex Court against the orders dated 22.9.2008 and 3.12.2008 passed by this Bench.

The learned A.G.A. Sri Sudhir Mehrotra brought to our notice the order dated 19.1.2009 passed in the said Special Leave Petition by the Apex Court dismissing the same after hearing the matter at some length. He also cited certain decisions to buttress his arguments.

The contemnor Smt. Sadhna Upadhyaya, upon a specific question being put by the court, categorically stated that she has already placed her apology on record and the Affidavit to that effect has been filed promptly. She further submitted that so far as her defence is concerned, the facts have already been narrated in the Affidavits and the submissions to that effect had already been advanced on previous occasions which are reiterated. She further submitted that she has to add nothing further nor does she propose to file any further Affidavit in support of her defence. On a submission being raised by the learned A.G.A. to the effect that in the event of an unqualified apology no defence could be pleaded, the contemnor urged that her submissions should not be taken to be a waiver of her defence. She again submitted that her apology be considered and while considering the apology, the entire facts leading to the incident should be taken into account. She further submitted that any conduct subsequent to her being restrained from practising in the Court, cannot be relevant inasmuch as she did

not come to Court thereafter except in her own case and, therefore, the submission of the learned A.G.A. that she had kept on agitating the matter by filing appeals and a Special Leave petition before the Apex Court, cannot be a matter of consideration for the purposes of the apology tendered by her. She contends that the legal proceedings, that were undertaken by her, were on legal advice and it was her right which she exercised bonafidely which in no way dilutes the effect of the apology tendered by her.

Since the matter could not conclude and the learned A.G.A. sought adjournment to cite a few decisions, let the matter be put up tomorrow at 10.00 A.M. for further arguments.

Sd/ Hon. Janardan Sahai, J

Sd/ Hon. V.K. Shukla, J

Sd/ Hon. A.P. Sahi, J

Sd/ Hon. Vikram Nath, J

Sd/ Hon. S.K. Jain, J

Dt. 22.1.2009

The contemnor as noticed above did not exercise any option to file any further affidavits or lead evidence and merely relied on her submissions made on earlier occasions.

Even though, technically the contemnor would be bound by her pleadings and evidence in the present proceedings, yet in view of the powers conferred on this court while dealing with exfacie contempt, a procedure which is fair to the trial can be adopted. This is by now settled as indicated in In Re V.C. Misra 1995 (2) SCC 584. We have therefore, in order to understand the nature of defence as pleaded on previous occasions, perused the records of Contempt Appeal No. 25 /07, Special Appeal No. 309 (Defective) of 2008, Contempt Appeal No. 9 of 2008 and S.L.P. Cr. M.P. No. 428 /08 (copy whereof has been supplied by the contemnor).

The defence taken in Contempt Appeal No. 25/07 appears to be contained in Ground No.4 and 7 which are quoted below:

"(4). Because, the counsel did not intend any disrespect to the Judge, rather she was polite and humble.

(7). Because, the counsel is not guilty of any fault/contempt and the same shall be established if the matter is examined by any court other than that of the Hon"ble Justice Vinod Prasad, J."

Apart from these grounds, there is neither any affidavit or other material in the shape of pleading or evidence to support the alleged grounds of defence.

So far as Special Appeal No.309 (Defective) of 2008 is concerned, the relevant paragraphs of the affidavit in support of the stay application therein are quoted for ready reference:

"(4). That, the present Contempt proceedings initiated against the petitioner arise out of the incident dated 10.12.2007 when the petitioner being an Advocate in the Hon''ble High Court Judicature at Allahabad made a mention of a bail matter before the court of Hon''ble Justice Mr. Vinod Prasad, J, where upon Hon''ble Justice Vinod Prasad passed orders issuing Criminal Contempt notice, against the petitioner. When the court officer Mr. Khan reached court No.47 along with a police officer, the petitioner quietly left the Hon''ble Court and went with him, to his office. While the petitioner was under Court arrest some people acted in an unruly manner outside the Court rooms.

(5). That, it is respectfully submitted that the petitioner has no role whatsoever, in the incidents which followed thereafter nor is she charged with respect to the said incidents. However, so far no action has been taken against any of the persons who indulged in the act of vandalism in the court campus and no contempt notices have been issued against any of them.

(8). That, the petitioner humbly states that her request for release of the matter and submissions made before the Hon''ble Single Judge in that context were not intended to obstruct the flow of administration of justice. The persistence was bona fide out of Zeal to advance the cause of litigant. However, the petitioner expresses deep regrets for the same. The petitioner also reiterates that she has nothing to do with the subsequent happenings in the court, and neither is the applicant charged for any such incident.

(21). That, on Monday 10.12.2007, at 10.00 a.m. the petitioner sought permission and made mention before the Hon''ble Court, where upon Hon''ble Justice Vinod Prasad passed orders issuing Criminal Contempt notice, against the petitioner. That, it is the undisputed fact that the Applicant did not utter a single word in protest and when the Court Officer Mr. Khan reached court No.47 along with a police officer, the petitioner quietly left the Hon''ble Court and went with him, to his office. Spontaneously, hundreds of people started shouting and the chaos started while the petitioner was under court arrest.

(24). That, the observation in the order that "she will not leave the dais" is an error as the petitioner was all the time at the bar podium and never walked up to the dais. At other places the order itself mentions "podium". As far as the observation that she would not leave the courtroom until she gets answer is concerned, there seems to be some misunderstanding. However, she fully realizes that the incident should not have been allowed to happen.

(39). That, the impugned order dated 10.12.2007 passed by Hon''ble Justice Mr. Vinod Prasad, J, is beyond the jurisdiction. It has been held in Parashuram Detaram Shamdasani Vs. R. (1945) AC 264 at 270 (Paragraph Nos. 12 & 13 & 20 of AIR 2004 SC 2227) that, "An advocate is allowed considerable Freedom in

conducting his case. In the interest of the client, he even can cast reflections upon the character, conduct or credit of parties or witnesses with impunity, provided such comments are relevant to the issue before the court and the same is not defamatory in character. So long the conduct of the advocate does not amount to insult to the court, he may not be held up for contempt. Summary power of punishing for contempt is used sparingly and only in serious cases. Such a power which a court must of necessity possess but its usefulness depends upon the wisdom and restraint with which it is exercised. It is not used to suppress methods of advocacy. Our view is only illustrative in nature to show that the courts ordinarily exercise its power of contempt with due care and caution and not mechanically and whimsically. The power of contempt is not exercised only because it is lawful to do so, but when it becomes imperative to uphold the rule of law."

Then come the pleadings contained in Contempt Appeal No. 9 of 2008. The relevant paragraphs of the affidavit in support of the stay application therein are quoted below for ready reference:

"(16). That, on Monday 10.12.2007, at 10.00 a.m. the Appellant reached Court No.47 and as soon as Hon"ble Justice Vinod Prasad took the Hon"ble Chair she humbly sought permission and made mention regarding the request to release of the bail application, upon which learned single Judge informed for the first time that the Appellant that he has rejected the bail application. The Appellant submitted with utmost respect that since the accused persons have already been granted bail under Section 452 IPC, hence there was no impediment for applying the principle of parity and that there is no reason for not applying the same yardstick as was done by another Hon. Judge in the matter of coaccused Ram Kishen in which the Bail was allowed by Hon"ble Justice S.S. Kulshreshtha vide order dated 9.10.2007, and that if there was any other reason the Appellant may be kindly informed of the same upon which the Hon. single Judge told the applicant that he is not sitting here to give reasons for his orders. However, when the applicant made persistent mention and that too, in a highly dignified language, that in the previous bail applications his Lordship had recorded a derogatory remark against the Appellant for no reason, and that now the instant bail application is also being rejected without informing the Appellant about the reason for the same, Hon. Justice Vinod Prasad, J, threatened to call the police and get the applicant arrested and passed orders issuing Criminal Contempt notice directing to send the applicant to Jail, without affording opportunity of hearing, and in gross contravention of Rules 7, 8 & also Rule 11 of Chapter XXXV E of the Allahabad High Court Rules 1952. The order dated 10.12.2007 drawing contempt proceedings against the Appellant was not made available to the Appellant then.

(28). That, it is the undisputed fact that the Applicant did not utter a single word in protest and when the court officer Mr. Khan reached court no.47 along with a police officer, the petitioner quietly left the Hon"ble Court and went with him, to

his office.

(30). That, the observation in the order that "she will not leave the dais" is an error as the petitioner was all the time at the bar podium and never walked up to the dais. At other places the order itself mentions "podium". As far as the observation that she would not leave the courtroom until she gets answer is concerned, there seems to be some misunderstanding as the applicant was only praying for a cogent reason for not giving benefit of the Rule of Parity. However, she fully realizes that the incident should not have been allowed to happen."

The only other material supplied by the contemnor is the uncertified copy of the SLP Cr.M.P. No.428/09 dismissed by the Apex Court on 19.1.2009 wherein the list of dates and events of 10.12.2007 states as follows:

"10.12.2007

That, on Monday 10.12.2007, at 10.00 a.m. the petitioner sought permission and made mention before the Hon"ble Court, where upon Hon"ble Justice Vinod Prasad informed the petitioner for the first time that he has rejected the Bail Application, and within a few minutes the learned single Judge passed orders issuing Criminal Contempt notice, against the petitioner. When the court officer Mr. Khan reached court No.47 along with a police officer, the petitioner quietly left the Hon"ble Court and went with him, to his office.

It is submitted that Hon"ble Justice Mr. Vinod Prasad, J, in his order framing charge has not even recorded the alleged words used by petitioner.

That, the Hon"ble Single Judge has passed an order framing charge and directing that she be sent to jail to be produced as directed by the learned Division Bench hearing Criminal Contempt matters. This order was passed by the learned single Judge without affording any opportunity of hearing, to the petitioner and without following the procedure prescribed under Section 14 of the Contempt of Courts Act, 1971 as also to the provisions contained in Rule 7 and 8 of Chapter XXXVE of the Allahabad High Court Rules, 1952. It is submitted that a seeks time was granted to reply, the petitioner was taken into custody and no opportunity of apology was granted though petitioner made oral apology to the Hon"ble Single Judge."

FINDINGS

The statement of facts narrating the incident and the utterances of the contemnor stand incorporated in the order dated 10.12.2007 which was placed before the division bench and thereafter under the orders of Hon"ble the Chief Justice before the Full Bench. In view of the provisions of sub section (3) of Sec.14 of the 1971 Act, the statement of fact as contained in the order dated 10.12.2007 would be evidence and it was not necessary for the learned single Judge to appear as witness.

The burden, therefore lay on the contemnor to disprove the charge and refute

the statement of facts as recited in the order dated 10.12.2007. The essential burden of either filing an affidavit or leading evidence in this matter has not been discharged according to ordinary procedural norms. However, the submissions have been advanced reiterating the stand taken at different stages of the proceedings as noted above.

The pleadings of the contemnor, which are strictly not in these proceedings, but in the appeals filed by the contemnor subsequently that were already disposed of, as extracted above, in our considered opinion, do not successfully deny the statements uttered by her before the learned single Judge. The contemnor has not filed any Affidavit before this Court specifically denying the statement as recorded by the learned Single Judge. The only recital is contained in the SLP filed by her before the Supreme Court dismissed on 19.1.2009. The same according to us is not admissible here as it has not been pleaded through any Affidavit nor any evidence led before this Court to the contrary. The said recital, therefore, cannot be treated as denial of the utterances by the contemnor before the learned single Judge. A bald assertion assuming that nothing offending was stated by her is no denial in the eyes of law, as against the statement recorded by the learned Judge himself. The probative value of the evidence recorded by the Judge could be dislodged only if evidence to the contrary was affirmatively pleaded and proved. The contemnor did not choose to lead any evidence either in the shape of statement of lawyers who were present in court at the time of the incident or of the court staff or any other person willing to support her cause. There is total absence of any effort to adduce any such evidence to prove the contrary. In such a situation there is no material on record on the basis whereof the evidence recorded by the learned Judge could be discarded. The court is, therefore, fully justified in law to accept the version as contained in the order dated 10.12.2007 to be correct. We accordingly, find the defence set up by the contemnor to be too weak to be accepted.

It would be worthwhile to specify the nature of the submissions as contained in the pleadings of the connected litigations. In Contempt Appeal No.25 of 2007, there is a bald denial pleading not guilty. It would be relevant to point out here that initially the contemnor had even questioned the judicial conduct of the learned single Judge as ground No.8 in the said appeal but the same was later on deleted by the contemnor. The question that she is not guilty no longer survives in view of our findings recorded hereinabove and hereinafter.

The averments contained in Special Appeal No.319 (Defective) of 2008, which have been extracted above, indicates an admission on the part of the contemnor that she had requested for release of the case and that her persistence to do so was a bona fide zeal to advance the cause of the client. Paragraph no.8 of the pleadings, as extracted above, also recites that realizing the extent to which she went, the contemnor expressed her deep regrets for the same. Not only this in para 24 of the said pleadings, the contemnor states that she remained at the podium of the Lawyers and that her assertion that she would not leave the Court

room unless she gets an answer, appears to be some misunderstanding. What was that misunderstanding has neither been explained nor attempted to be explained by the contemnor in the present contempt proceedings. At the same time, in the same paragraph, the contemnor has admitted that she fully realizes that the incident should not have been allowed to happen. The aforesaid pleadings, therefore, also leave no room for doubt that the contemnor herself did not have the courage to specifically deny the utterances made by her before the learned single Judge. Her assertion on the strength of certain decisions that the same did not amount to an insult to the Court or the Judge, cannot be countenanced for which enough reasons are available in our findings in this judgment.

Then come the pleadings contained in Contempt Appeal No.9 of 2008 which appeal was filed very recently and is being disposed of by us simultaneously along with this matter. The contemnor has not specified as to what specific language, which she calls to be a dignified language, was used by her. She has again not categorically denied in the said Appeal the statement of fact as recorded by the learned single Judge. Her contention that she did not utter a single word in protest is something which might have followed after the arrival of the court officials. This, in no way, denies the utterances made by her prior to that. In paragraph no.30 of the said Appeal, she has reiterated that there was some misunderstanding about her insistence and persistence and she again asserts that she fully realizes that the incident should not have been allowed to happen. The aforesaid pleadings once again reaffirm the fact that the contemnor had uttered something which she chooses to describe as misunderstanding and that she fully realized the consequences which led her to believe that it should not have had happened. Such pleadings also do not provide any plausible defence as against the charge imputed. On the other hand, it establishes the happening of the incident.

Last but not the least are the averments that were allegedly made by the contemnor in her Special Leave Petition before the Supreme Court about which we have already indicated hereinabove.

The contemnor even though has not raised any specific pleas about her defence, yet her submission was that she has already stated the entire incident on previous occasions and, therefore, she was reiterating her submissions in that regard. Even though, the said statement is vague enough but to satisfy the tests of law, that justice should not only be done but it should be seem to have been done, we may recall the submissions that were made by the contemnor and have been recorded during the hearing of Contempt Appeal No.25 of 2007 in which the Full Bench had delivered its opinion with regard to the maintainability of the Appeal vide order dated 22.8.2008 reported in 2008 (7) ADJ 336, Sadhna Upadhaya Vs. State of U.P. Apart from the issue of making a mention in accordance with traditions, the questions raised by the contemnor were of want of jurisdiction before the learned single Judge, violation of mandatory procedure

by the learned single Judge in drawing the proceedings and violation of principles of natural justice. To our mind, all these 3 questions had been specifically raised by the contemnor in that appeal which she has consciously and voluntarily got dismissed as withdrawn. Even then, it would be necessary to state, that in spite of the fact that the contemnor has abandoned her pleas, yet we may record that in a matter of exfacie contempt of the nature presently involved, the learned single Judge had full jurisdiction to take cognizance and frame charges against the contemnor under Section 14 of the Contempt of Courts Act, 1971. It is for this reason that we reframed the charges in the present contempt proceedings through our order dated 22.1.2009. We have stated this specifically and have held that there was no want of jurisdiction on the part of the learned single Judge to deal with the matter. We have, however, considered the peculiar fact of this case where under the orders of Hon'ble the Chief Justice dated 2.4.2008, the entire proceedings have been referred to this Full Bench and, as such, the question of jurisdiction as raised stands answered and needs no further deliberation.

The question that the procedure adopted by the learned single Judge was in violation of the provisions of the Contempt of Courts Act, 1971 also does not arise in view of the fact that the entire matter has been referred to the larger Bench and the contemnor had the full opportunity at every stage to either defend herself or apologize. Apart from this, as already indicated above, the Court in the matter of exfacie contempt, can adopt its own summary procedure to ensure a fair trial as held in V.C. Mishra's case, reported in (1995) 2 SCC 584.

So far as the question of natural justice is concerned, we have recorded in detail the opportunity given to the contemnor at every stage of the proceedings and which has been availed by her. We may, however, reiterate that in spite of all what had happened, the contemnor did not make herself available in person physically before the learned single Judge on the dates that were fixed before him for tendering of apology. We may point out that in matters of exfacie contempt, the contemnor unless exempted from appearance has to attend the Court unless and until there is a specific reason for the absence.

Before we embark upon the delicate aspects, we will have to trace the origin of those dreadful thoughts that might have driven the contemnor to expose an indecent behaviour in Court. The contemnor in her own way has tried to justify her act, as if it was to preserve the essential idea of seeking justice but has merely sought it wrongly. According to her, there is no element of contempt but it was a zealous attempt to secure justice for her client on her part, the manner whereof might be regrettable. For this, she emphasizes that given the first opportunity, she has apologized. The contemnor pleads as if it was a sin of passion, not a mistake of principles or even on purpose.

The genesis, which can be located to the origin of the intent of the contemnor to rebuke the Judge, is to be clearly found in her assertions which we are quoting from paragraph nos. 12, 13 and 14 of the order of the Full Bench reported in

2008 (7) ADJ 336 (supra):

"(12).The contemner gave her own explanation about the incident and urged that the learned Judge had passed an altogether different order in Court and for this, she states that even though the order was passed on 1.11.2007 the certified copy of the same was delivered to her only on 13.11.2007. In para 8 of her representation dated 2.3.2008, the contemner has quoted the alleged order which according to her was passed on 1.11.2007 in open Court. The same is quoted below:

"Smt. Sadhna Upadhyaya has submitted on behalf of the Applicant that one of the coaccused has already been granted Bail therefore the Applicant whose role is similar and identical be given parity and released on Bail.

Mr. J.S. Audichya and Mr. P. Verma, counsel for the complainant, have contended that the Applicants are also charged under Section 452 IPC for which another F.I.R. has been registered upon being asked about this F.I.R. Mrs. Upadhyaya said that she has no knowledge about this second F.I.R.

The complainant counsel may file counteraffidavit within a month bringing this F.I.R. on record. Rejoinderaffidavit may be filed within 3 weeks thereafter.

After the order for counteraffidavit and rejoinderaffidavit was passed Mrs. Upadhyaya has made a request that these Bail Applications be kindly dismissed at this stage. Accordingly, these two Bail Applications are being decided on merits the accused Applicants have tried to tamper with the evidence for which an F.I.R. under Section 452 IPC has been lodged. I am, therefore, not inclined to grant bail on parity and accordingly the bail application is rejected at this stage."

(13). She alleges that the said order was substituted and changed by the learned single Judge which she was surprised to find when the certified copy of the same order was delivered to her and which according to her contained derogatory remarks including the word "Shrike". This bail order dated 1.11.2007 in Bail Application No.24380 of 2007 moved on behalf of the accused Arvind and Ajay has been brought on record as Annexures4 and 5 to the SupplementaryAffidavit dated 16.4.2008 filed in defective Special Appeal No. 309 of 2008.

(14). The contemner, thereafter, laid stress that the word "Shrike" used by the learned single Judge was objectionable as the word Shrike connotes a Brazilian butcher bird with a sharp and shrill voice. She contends that the bail application had already been rejected on merits in open Court in the order, which she claims as quoted herein above to have been passed in open court and, therefore, there was every reason for her to get concerned about the aforesaid remarks."

Things had not gone too far as we assess till that stage. The twist and turns dawned immediately thereafter when the contemnor appears to have become desperate and exhibited her obstinacy in open Court. She appears to be engulfed in a rebellious mood and consequently entered the court room on the fateful day with a predetermined mind. Her attitude was not one of respect but sick in form

when she uttered what stands recorded and what forms the factual basis of the charge. We may repeat that the recorded version has not been successfully challenged as not having been uttered or that it has been wrongly recorded. There is no apt challenge to the exactness of the grammatical contents of the same. She opened a barrage of venom in the name of a mention and stood firm till the law attendants took her into custody. She poured out herself with wild accusations that were intended to breach the parameters of apology in contempt. Her disrespectful posture continued for several minutes in succession and uninterrupted by any form of decency. Unpleasant words totally undigestive in content seem to have been the order of the day. It appears that the contemnor had taken it for granted that solemn traditions and conventions stood abolished or have long been put to disuse. She meant what she said and which had an element of sincerity in it. If we go by the standards of perception and average assessment, she appears to have said less than what she actually meant. The consequences of her vocal deliverance not only insulted the Judge, his office and the court, but also the entire edifice of what we boast of as the impregnable fortress of life and liberty .

By her conduct the contemnor has acquiesced to her own selfish end for some short term gain rather than have led the bar to achieve some ideal. The contemnor accused the Judge passionately and violently with exaggeration. The Judge with respectability, drew charges, left with no other option. If we look below the surface of things, then the discovery is of abundant proof of the intent of the contemnor.

The tenor of the accusations might be consolatory to the contemnor or to her client or even to those who sympathize with her, but it is definitely dishonourable to the institution. The accusations in seriatum made by the contemnor make up the misdemeanours which are sought to be justified as the principles for securing justice which appear to have been invented and described as the zeal of a lawyer. The words were of the most unkindest cut, with a world of bitterness involved. They were singularly pungent and inappropriate.

The conduct of the contemnor and her defence, if viewed from the point of view of justification, would be supported only by a classic satire of George Bernard Shaw narrated in "The Sunday Express, 13 May 1928" entitled "On The Entirely Reasonable Murder of a Police Constable" (Extracted at Page 509 of The World of Law Edited by Ephraim London "The Law as Literature, Published by Simon and Schuster: New York). It can be said that the contemnor "shot the law."

The said facts demonstrate that what had actually agonized the contemnor was the previous attitude of the Judge and which constituted the intent to put the Court and the Judge to disrepute. The assertion of legal rights was converted into a merciless insistence for procuring justice.

Such reflexes do occur mostly in immature minds where one gets perturbed by the "alleged" aberration in a Judge. It can be a case of wrong judgment either

way, but can any form of such expression as made by the contemnor in the present case, be a justification for seeking justice. Can a lawyer be expected, much less permitted, to forestall and block the proceedings of a Court by sheer physical presence where mental abilities are the only route available within the precincts of law. Persuasiveness cannot, in our opinion, be substituted by a pitched battle of words by accusing the Judge of alleged partial behaviour, more so when no such material was brought forth to even remotely establish that any particular lawyers had been favoured by the Judge in the case which was being pleaded by the Contemnor including that of the other coaccused, that too even on a day when the case was not on board. The excuse of mention was nothing else but a method to throw a splash of accusations when there was no occasion to do so. It was more like a "Dharna" in a court and an attempt to convert the atmosphere into that of a street demonstration. Her manners and speech appear to be incurably tragic. The contemnor was attempting a reform which was entirely unsuited and unnecessary, that too even through an unjust crusade on the strength of repulsive ideas and untactful behaviour. A request was being sounded more like a wacry. It was challenge to authority founded on malicious allegations.

One cannot justify in doing an illegal act by its having been done by another; nor can it be justified as a precedent on the basis of some past act done by someone else because the other persons act might have been his bad example.

There is yet another aspect which deserves to be noticed and which has been made the basis of the defence namely that the contemnor was in a traditional way making a mention before a Court to know the reasons as to why the case had not been released. We may at the very out set categorically specify that no such variety of mention is either traditionally known to this Court or is even presumably permitted under the High Court Rules. No such liberty is given to a lawyer to raise such questions once the matter has been disposed of. What a tradition means has already been set out by the Full Bench in the order dated 22.8.2008 and to specify the same, we may point out that it stands recorded in paragraph no.44 of the said order reported in 2008 (7) ADJ 336. We may, however, hasten to add that this sort of tradition was sought to be justified by none else than Sri V.C. Mishra which stands recorded in para 27 of the said order quoted below:

"(27). Sri V.C. Misra, Senior Advocate, has contended before us that the contemner has not committed any contempt, and that she was merely making a mention before Hon"ble Mr. Justice Vinod Prasad. He also suggested that if the Hon"ble Judge was faced with the situation where a member of the Bar was insisting upon not allowing the Court to function, the Hon"ble Judge should have left the Court and returned after some time to continue with the judicial work."

One should not readily corrupt one's thought in a careless hurry to meet the demands of the public. The situation does not call for any political rhetorics. The suggestion appears to be as if one is standing at the extreme end of some wild

road of reasoning. The argument has been made too easily, and casually, but it has a very terrible purport.

We are not only dismayed but we are shocked at such a suggestion being made by the President of the Bar Association, who had himself faced contempt proceedings and is heading the celebrations of Golden Jubilee of the Bar Association this year. To ask a constitutional functionary to abandon his office when such a mention is insisted upon is to incite anarchy. Nothing could be more detestable and nothing could be more damaging for the institution which has been set up to secure the "sense of justice" and which is essential for a democracy. If this be the connotation of an alleged tradition, then it would be difficult to imagine the functioning of any democratic institution. We are surprised at indiscipline being made the foundation of a tradition. If that be so, then sooner such a tradition is forgotten, it would be better. By propagating such a tradition, the leaders of the Bar are firmly laying the foundation of a permanent demolition of the institution. To ask a Judge to rise from Court is to compel him to abdicate his constitutional function and above all to deny justice to a litigant. Departure from traditions should not end up in either amusement or distress. It should provide a new avenue and a stride ahead, for the better preservation of the institution. A change is welcome only if it sub serves the noble purpose for which it is brought about. Any special diversion should not be aimed to reduce the height which the institution has already attained.

The aforesaid attitude appears to emanate from the imagination as if Article 215 either never existed or has already been abolished. We may recall that Mr. Mishra had made a clarion call for abolishing such powers to the Court which in his opinion were subjected to misuse. To ask for abolition of contempt proceedings is nothing else than an indication of a group silently or vocally bound in a crusade against the institution. We are aghast at such suggestions and the only hope that we can express is that the Lawyers at large should not allow themselves to be exploited by such announcements as this might lead to anarchy which in turn may allow the institution to perish. We have made these observations even though the contemnor has not specifically raised it at the time of closing her submissions, but because of the fact that she has reiterated time and again that the submissions made earlier should be taken into account.

Another explanation given by the contemnor is that she is not at all concerned about what happened in courts after she was taken into custody. The contemnor's act brought about a situation which compels one to think how small a flame can set fire to a huge forest. What the contemnor did, resulted in provoking and inciting passions of her colleagues after she was taken into custody. It appears as if the scene created inflamed their passions to levels of frenzy. Those Lawyers cannot be aliens, rather they appear to be those who have a similar bent of mind nor can their acts be segregated or divorced altogether. However, since this was not a specific charge framed, we have mentioned this, as the fact of disruption of courts by unruly elements is clearly recited in the order

of the learned single Judge dated 11.12.2007. The contemnor appears to be right when she asserts that no action was taken against those who indulged into unruly attacks destroying court property. To that we had called for a report from the officials and which has been submitted on the administrative side which is as follows:

"Registrar General,

Your goodself may kindly refer to the direction given by Hon"ble the Full Bench on 23.1.2009 while hearing the matter of Cr. Contempt Appeal No.25 of 2007.

The Hon"ble Court has desired to be aware of the facts and status relating to the compliance of Court's order dated 11.12.2007 passed by the Division Bench in the aforesaid criminal contempt Appeal.

It is most humbly submitted that the aforesaid Court's order was not formally communicated to the offence of the Registrar General till date. The photocopy of the above order is provided on 23.1.2009 by the Contempt Appeal Section in compliance of above directions, which is placed below (Flagged "X"). The relevant portion of the order is as follows:

".....Looking to the gravity of the situation which brought about a total chaos in the courts, it might be imperative for this Court to direct an investigation to be carried out to identify those who indulged in this act of vandalism....."

The explanation given by the Section, submitted by the concerned officer, is placed below (flaggedY) for kind perusal. This explanation discloses that there are no clear directions for placing the copy of the order before the Registrar General and that is why the aforesaid file was placed by the office only for the nomination of the Bench. Beside it, the office has tendered unconditional apology for the latches, if any.

Since the above order was not placed before the Registry, therefore, no F.I.R. or complaint was lodged nor any investigation was formally conducted in this matter.

The report, if approved by the Registrar General, be placed for kind perusal and orders.

Sd/ Pratibha Khanna

Registrar (B)

27.1.2009

Hon"ble the Court

Submitted.

Sd/ R.G.

27.1.2009

To our mind the High Court administration could have taken appropriate measures by seeking proper instructions as we find that Hon''ble the Chief Justice had occasion to peruse the orders of the learned single Judge at the time of nomination of the matter while referring it to a Full Bench.

The demeanour was that, which would admit to an exact calculation, intended to intimidate the Court. The contemnor may have a feeling of having led a triumphant protest but it appears to have been motivated by malice. Her premeditated action of making a mention with a deliberate mood to undermine the proceedings of a court leave no room for doubt about her intent. The attitude a reflex of overbearing energy and an unendurable posture. A gesture that is more like a slap than a handshake. It was not a secret or undisguised interference with the functioning of the Court. It was bare and naked defiance of authority that is supposed to be seated quietly and dispense justice in the gravest of cases in solitude and serenity. The contemnor has profaned the temple of justice and has outraged the decencies to be preserved in Courts. The act is definitely unprincipled and unscrupulous and the attempted defence appears to be mendacious.

There are instances of normal and excusable, though excessive, outbreaks of acrimonious expressions by lawyers. They are condonable and pardonable as they do not exceed limits of vulgar indecency. But where a calculative approach with the intent of bringing about disrepute to the Court for no valid cause is discernible, then it is nothing else but contemptuous if not something more. The utterances give a feeling of burning sense of impropriety. We cannot comprehend of any feeble conception of our concern about the same. What other construction could be put for such words leaves us bewildered. An out burst of the kind presently in question suggests that our belief in the institution is slandered and its image disfigured. The words spoken were unattractive, extravagant and ferociously contemptuous. What is unbounded is unpleasant and does not register itself. It is unreceptive and unrecognisable. We do not decry the art of persuasive speech.

The oral transmission by the contemnor appears to be almost onesided. She appears to have conquered her fears. When one becomes furious, the grammar of language becomes erratic. It was not a tone of exasperation but one of defiance. The expression was a pointed ridicule, full of insult and a determined effort to put the judge in disrepute. The Judge was taken by surprise in an atmosphere to which any Judge would be reluctant to have witnesses. The outbursts of the lady were such that would make an ordinary man petrified with horror and disgust. Her appearance like a thunderbolt announcing her bold intentions not to leave the dais/ podium till she gets an answer from the Judge and then in the worst form of insult accusing the Judge to name his favourite counsels by putting a notice outside Court reflects total defiance to authority, designed to undermine the authority of the Court and to put it to disrepute. Putting such questions reflects rude curiosity. Admiration of such a zeal might

well be illadvised as it seeks to procure justice by unjust means. This would be glorifying an inglorious tale. For the contemnor it might be an act of courageous contempt for some short term gain or to enlist the Judges fault. At times one has to pretend ignorance but this incident could not be overlooked as a sheer pretence as it was a conscious act by the contemnor. The guilt beneath whatever mark of defence it might be concealed, is enough to prove the contempt.

Throughout her submissions the contemnor projected her firm and zealous attachment to the principles which she stated to be necessary to secure justice for her client and supported it in a steady and manful tone.

The contemnor appears to have proceeded to set up her defence in a way so as to reflect a devoted cause little realising the shortcomings and divisions in the manner she staged herself before the learned single judge, that virtually turned out to be contemptuous, with total apathy shown to the discipline that was required of her in this noble profession. The conduct is nothing else but unparalleled effrontery.

Mr. S.S. Rathore, Advocate assisted us and urged that the Court does not merely require the physical installation of video cameras and closecircuit television. It requires vigilant seniors who are the only guides and it is their vigilant eyes that have to come to the aid of courts to secure what has been lost. There has been overdoing by the contemnor, but under the impression that probably such an attempt would not lead to any coercive action against her. This was under a bona fide faith reposed by lawyers in their Judges that a zealous effort by a lawyer to secure justice for a client would not end up in the punishment of the lawyer herself. The contemnor is a woman, who unlike them might have become hysterical, but with no mens rea so as to commit contempt.

We, in principle agree with what Sri Rathore suggests but we are unable to subscribe to the view that the act of the contemnor was a mere overdoing under some notion of bonafide faith. No doubt such a faith has always existed and it has been cherished by this institution, but certainly not in this case where the contemnor has designedly done something about which we have already expressed our opinion as being nothing short of contempt, the reasons whereof are not far to see and which need not be repeated as enough has been said by us.

In the absence of any valid defence, the facts leading to the charge stand established and the charge stands proved to the hilt. The scene created by the contemnor taken in its entirety takes within its fold all the characteristics of an exfacie criminal Contempt as defined in Section 2 (c),(i),(ii) and (iii) read with Section 14 of the 1971 Act.

APOLOGY

The contemnor has stressed before us her apology which she describes as unconditional and contends that her apology is sincere , prompt and is

remorseful to the extent it should be. The application expressing her regrets and apology was moved on 11th Dec., 2007 before the learned Single Judge and it also stands recorded in the order of the learned Single Judge of the same date. The second opportunity availed by the applicant was when the applicant again went before the learned Single Judge and moved an application for apology which was returned back to the Full Bench by the learned Single Judge vide order dated 23.10.2008. The contemnor contends that she had voluntarily tendered this apology but the learned Single Judge instead of entertaining it, passed orders to be sent back before this Court and therefore, this Court should have no hesitation in accepting the same. She emphasised that the apology was unconditional and, therefore, in view of the law laid down by the Apex Court in the following three cases, the same deserves to be accepted. The judgments relied on, are ;

1.Mulkh Raj Vs. State of Punjab ,1972 (3) SCC 839

2.Capt.Virendra Kumar Vs. Union of India, 1993 Suppl.(4) SCC 24

3.In Re: Bal Thackeray Editor Samna, 1998(8) SCC 660.

We have perused the said affidavits of apology but we also find from the orders passed by the learned Single Judge that while moving the said applications, the contemnor was not physically and personally present before the learned Single Judge when the said applications were heard and orders were passed. It is also on record that the contemnor has very seriously agitated her cause right up to the Apex Court justifying her stand and her mention of apology even on the previous occasions always rhymed with her defence. Such instances where, there is some doubt or suspicion about apology, can be described with the aid of a one line description given by the famous humorist P.G. Wodehouse in his work "The Man Upstairs (1914) in the following manner;

"The right sort of people do not want apologies, and the wrong sort take a mean advantage of them"

A Tanzanian Proverb goes on to say

"With the mouth one offends

With the mouth one apologizes"

(Words on Words by David and Hilary Crystal

Penguin Publications)

The former reflects disrespect, and the latter acknowledges it with humility underlined by remorse and repentance.

The ordinary dictionary meaning of apology is a speech in defence; a regretful acknowledge or excuse for failure. An explanation offered to a person affected by one's action that no offence was intended, coupled with the expression of regret for any that may have been given; or a frank acknowledgement of the offence

with expression of regret for it, by way of reparation. (Refer to Murray's Dictionary). In short an apology is something written or said in defence of what appears to other people to be wrong and is an expression of regret.

To apologize, is to speak in justification, explanation or palliation of a fault. It is to serve as a satisfaction for any failure that may have caused dissatisfaction. It carves out an excuse or defensive argument acknowledging and expressing regrets for a fault without setting up any defence. The fault committed, cannot be reversed but it can be repented for. An apology is a substitute which is peculiar in nature and such character is very subtly reflected in the speech of Benjamin Disraeli the former British Prime Minister who said it in the following words in his speech in the House of Commons on 28.7.1871:

"Apologies only account for the evil which they cannot alter."

In the instant case we have to examine the nature of the apology which has been tendered by the Contemnor, before delving into what the Contemnor intends. We may make it clear that the plea for apology should be unquestionable in sincerity. It should be honest and transparent. Lack of sincerity and a calculated motive destroy the very intent and purpose of a true apology. Rugged honesty of purpose and unbending ethical rectitude has to be shown or else the effect gets diluted.

To our mind if an unconditional apology is tendered, then it should be tempered with a sense of genuine remorse and unflinching repentance. No justifications for the cause are to be pleaded and insisted inasmuch as, once such an apology is tendered, then in that event the guilt is almost unhesitatingly admitted and an expression of contrition exhibiting a real mood not to commit any such mistake in future is indicated. It is in such circumstances that the court starts contemplating as to whether the trust that the court desires and legitimately expects can be reposed or not.

An honest unconditional apology is normally received by the court with implicit faith. The faith is diminished if it is tainted with consequences. However, unconditional apology, even if tendered voluntarily and not strategically to avoid punishment, is no absolute assurance of discharge. The court has to weigh the circumstances keeping in view the object for which such powers are preserved especially in superior courts.

A real apology should not be blind, but it should be uncompromising in its remorse, it should not be tainted with or underlined by a hidden, cold and calculative measure so as to manifest deceit. It has to be plainly submissive exhibiting repentance. An apology of the present variety hedged with a full scale defence, cannot be unconditional. We are aware that Section 12 of the 1971 Act makes room for acceptance of an apology, and should not be rejected if it is conditional, provided it is bonafide.

The contemnor by her conduct has established that she contested the matter

tooth and nail up to the Apex Court twice in her attempt to justify her cause. This is evident from the pleadings before the Apex Court in the Special Leave Petitions filed by her and copies whereof have been supplied to us. There also she has strategically proceeded to defend herself at all levels and during the course of arguments has repeatedly stated that whatever she did was a "zealous attempt" to secure justice for her client. We should not be however, taken to believe that we find her to be determined to take revenge for her boldness before the Court nor should we be misunderstood that she had no right to appeal before this Court or before the Apex Court. The rights preserved under the Statute have been acknowledged by us in the order dated 22.8.2008, but at the same time we cannot loose sight of the fact that the contemnor gave an impression that her apology was in the alternative and not a complete surrender before the law. These factors, in our opinion, do not make out a case for unconditional apology as the contemnor while closing her arguments made it absolutely clear that she was not at all waiving her right of defence. Her attempt no where reflects a bonafide approach given the background of the contest put forth by her and the manner of submissions by her personally as well as by her counsel Sri V.C.Misra.

Instead of yielding to the court honestly and unconditionally, a well guarded defence has been advanced by referring to all the facts that led to the incident and of keeping a distance from what followed thereafter. An apology is not a palliative medicine to mesmerise a court for sometime. It has to generate a sort of a permanent belief that the tender of apology is genuine and is likely to have a baneful effect. Not a casual or formal passing of affairs to avoid punishment. Such an apology with defence raises a presumption of predominant whim of contradictions and lacks in sincerity.

A suspicious and defensive approach by the contemnor herself cannot invoke sympathies or any other equitable considerations. There appears to be a barrier of confusion in her about her own fate which might have impelled her not to give up her defence. There is no open commitment to an unqualified apology and is hedged by desperate attempts to justify her stand. In spite of the long opportunity available to the contemnor we are surprised at her stolidity for a remorseful apology. The apology is superficial and is only an upholstery with no sense of depth in it.

A humble person talks politely and frankly whereas a proud man watches himself too closely. A humble person has no reservations whereas an egoist has all the armour of defence concealed stylishly. This we find true of the contemnor to a great extent. She has been maintaining the twin strategy of filing a formal apology and simultaneously pleading defence throughout her contest during the intermediate proceedings up to the apex court where her allegations continue to justify the contemptuous act as if it was the learned Single Judge who was the villain. It is a mixture that attempts to justify the coexistence of valid defence and a formal apology founded on the premise that the act was not contemptuous.

The elements of remorse, repentance and contrition are what can be described

as the life and blood of a bonafide expression of apology. To detest the existence of such virtues for judging an act of contempt, is to deprive the law of its morality which it deserves and which is also necessary to preserve the same. It is like asking to live comfortably in a room with all its air having been pumped out.

In our assessment there is an absence of remorse, repentance and contrition on the part of the contemnor in the manner in which she has staged her formal apology.

Remorse is deep regret experiencing the pain of a guilty conscience. It is selfcondemnation. Once the guilt is realised, then the natural feelings of humanity that assert themselves, is known as remorse. Shakespeare with his undoubted mastery of thought and language has depicted this at several places in the character of Macbeth and lady Macbeth, when they talk of the merciless killings of innocent persons at the behest of Macbeth. To quote one such line:

"I am afraid to think what I have done;

look on it again I dare not."

The affidavit of the contemnor and her submissions as well as her pleadings as relied on, do not anywhere remotely touch the feeling of remorse or is otherwise indicative of contrition. Her regret is empty of remorse. Such feelings have to express repentance. It should manifest itself with a desire to amend oneself. The purpose is to do better in future. We may quote Thornton who on genuine repentance said "True repentance consists in the heart being broken for sin and, broken from sin. Some often repent, yet never reform; they resemble a man travelling in a dangerous path, who frequently starts and stops, but never turns back" (Page 544 of the "New Dictionary of Thoughts" Compiled by Tryon Edwards, Classic Publishing Co., London, New York.)

Luther may also be quoted who says,

"To do so no more

is the truest repentance."

Bishop Horne expresses the same thought in the following words:

"Sorrow for having done amiss is fruitless

if it issue not in doing so no more."

Repentance, without amendment, is like continually pumping without mending the leak Dilwyn.

In the context of the present contemnor, W.M. Taylor's advice can be said to be heeded most,

"True repentance hates the sin,

and not merely the penalty."

A true repentance can be expressed in a way as noted by Tryon Edwards who says,

"Right actions for the future are the best apologies for wrong ones in the past the best evidence of regret for them that we can offer, or the world receive."

Such repentance can only be visible when there is a bonafide realisation of one's mistake. One can go back in history to remember Epictetus, the Great Greek philosopher (born A.D. 60) who opined:

"If you would be good,
first believe you are bad."

A bonafide repent, is necessary to establish its genuineness, in order to bring about the desired result of a true apology which can clearly be read in the famous lines of Robert South (1634-1716), an English divine and preacher of the Church who says:

"True repentance has a double aspect, it looks upon things past with a weeping eye, and upon the future with a watchful eye."

It is only then can it be said that a reform is visible. The desired effect would then be achieved as Shakespeare has said:

"A true repentance shuns the Evil itself, more than the external suffering or the shame."

This desire or feeling of repentance has been expressed again in the words of Shakespeare.

"Repentance is the heart's sorrow,
and a clear life ensuing."

If a person expresses such repentance honestly, then one is said to be in a state of contrition. It is a state of repentance and remorse. The contemnor, in our opinion has not expressed any such concern which may reflect contrition. On the contrary she has hastily put in her formal apology and then contested her full defence. She has been throughout pleading justification with a searching eye to get rid of the charge of contempt. This attitude of the contemnor brings her within the category of the state of attrition where one feels sorry only on account of the punishment due for a wrong act. To save herself from penalty appears to be the object of apology which in no way is showing a bonafide penitence and is a mere device to avoid consequences. The entire edifice of defence and apology of the contemnor had something veiled behind, like a camouflage, that does not inspire confidence. She, therefore, cannot claim the pardon of the Court as contemplated under section 12 of the 1971 Act in the absence of bonafides.

Something more that was witnessed by us during the recent visit of Hon^{ble} the Chief Justice of India also deserves mention. The President of the Bar Association publicly raised an issue about a lady advocate and circulated the same during his speech on 28th Feb., 2009 during the visit of the Hon^{ble} C.J.I. to attend the Golden Jubilee Celebration of the Bar Association of our Court, even though the matter was subjudice. This was also preceded by a prelude through a letter circulated by the contemnor herself calling upon the Court to fulfil a promise allegedly given for an early judgment. All this was done presumably to embarrass the Court and is also a contravention of Rule 3 of Rules for Standards of Professional Conduct and Etiquette framed under Section 49 (1) (c) of the Bar Council Act. The contemnor and her counsel may remind themselves of the law laid down by the Supreme Court in paragraph nos. 10 and 45 of the case reported in (2001) 7 SCC 318, Anil Kumar Rai Vs. State.

It is in the aforesaid background that we have also examined the judgements relied upon by the contemnor. We must confess that none of the circumstances as exist in the present case, can be said to be even remotely near to the facts of the cases that have been relied upon by the contemnor.

On the other hand, the Apex Court has laid down that a mere apology tendered is not to be accepted as a matter of course and the Court is not bound to accept an apology. Reference may be made to 1995 (3) SCC 619 In Re. Sanjiv Datta Pr 9 and 10. It has been further said by the Apex Court in 1976 (2) SCC 291 The Bar Council of Maharashtra Vs. M.V. Dabhokar that an apology does not take away the power of the court to punish. It has been laid down by the Apex Court in 1974 (1) SCC 374 Sri Baradakanta Misra Vs. Registrar, High Court that if the words are calculated and clearly intended to cause any insult, an apology if tendered, does not deserve to be accepted. In 1992 Supple. (2) SCC 72 Mohd. Zahir Khan Vs. Vijai Singh the Apex Court said that the use of insulting language does not absolve the contemnor on any count. However, the best authority on the subject which cannot be lost sight of is the case reported in 1984 (3) SCC 405 L.D. Jaikwal Vs. State of U.P. where the Apex Court has clearly indicated that an apology to avoid punishment is nothing else but an example of slap, say sorry and forget. If the said judgments are clearly scrutinized, then in the back ground of the present case, would establish that the clear intention of the contemnor was to justify her cause at every stage. This leaves no room for doubt that the contemnor has tendered her apology to save herself from the ignominy of punishment. We cannot spell out any remorse or repentance in either her affidavits or the submissions which we have noted herein above. We, therefore, do not doubt the apology to be worth any acceptance and the same is accordingly rejected.

PUNISHMENT

Having examined the nature of the charges and recorded our findings on the contemptuous behaviour of the contemnor, we have expressed ourselves clearly reciting all the reasons for not accepting the apology of the contemnor. We have

described the incident as it was, not one which imagination could have helped in painting it. The arguments were stretched from stem to stern and we are of the opinion that the Court cannot endure such an attitude of thunder with submissive solemnity. To stage a detest in a hostile form by blocking the proceedings of the Court and accusing the Judge personally, it was a sure object of the contemnor to undermine the authority of the court which appears to emanate out of a predetermined mood. It was a way to register her so called protest to secure justice. In our opinion, it was an intended endeavour to stifle the courts functioning and to obstruct and impede the justice delivery system. This in our opinion was not only against professional ethics but it was also a fanatical stand. This incident is a contempt not by an individual, but by a lawyer who claims a descent and was also an office bearer of the Bar Association.

The width of the impact of such an incident has caused a severe damage to the institution. The insult and injury inflicted by the contemnor is too severe to be wiped out even with an apology. It cannot be erased and deserves to be punished. The contemnor has rightly disclosed her hereditary interest in the profession which we do not wish to extinguish, but which to an extent stands contradicted by her contemptuous conduct, and is sought to be windowdressed by her pantomime apology. It is for this reason that the punishment which is being awarded to the contemnor cannot be said to be an unreasonable compensation for the damage done to the institution.

For the Court, granting pardon is no art of legal liberality. This is no time for showing ceremonial politeness, neither it is a time for ceremonial modesty. We do not propose to impose a sentence of unceremonious ejection of the contemnor from the profession inspite of her conduct. At times the misery caused directly or indirectly by legal punishment out weighs any conceivable harm. However, this is no school punishment that it should be conspicuous by its absence. The contemnor has been deservingly kept out of practice for fairly some time since the order dated 11.12.2007 till today. If the contemnor has any sense of remorse, she would realize that her creative period still lies ahead. We have assessed the extent of wrong and weighed the circumstances for calculating the proportionality of the penalty to be imposed. Having done so we find that not only the interest of justice but also the gravity of the contempt committed, demands the severity of awarding a sentence of imprisonment. We accordingly, holding the contemnor to be guilty of the charges of contempt, award the sentence of punishing her to undergo a simple imprisonment of one month.

We however, find it necessary and appropriate, in view of the fact that the contemnor is a lady, and has not been convicted earlier of any such offence, to keep the sentence awarded under animated suspension subject to the contemnor remaining under constant surveillance of the court for a period of three years which shall continue till this order is modified either by this court or by a higher court. We may observe that we are suspending the sentence under the inherent powers reposed in the High Court in Article 215 of the Constitution of India read

with Section 12 of the Contempt of Courts Act 1971 and the Rules framed thereunder, and further that even otherwise we do not find any bar operating or prohibition existing so as to minimise the jurisdiction of this Court to do so. Such powers can be exercised in appropriate cases where the need arises, like the present one, in order to preserve the continuing authority of the Court without pain of violation to any of the aforesaid provisions. In the event of any such act being repeated by the contemnor, the aforesaid direction suspending the sentence awarded shall stand vacated and the contemnor shall be taken into custody to serve out the sentence. The bail bonds stand discharged. The contemnor is permitted to resume her practice subject to the aforesaid conditions.

THE POWER OF THE COURT TO DEBAR OR RESTRAIN A LAWYER FROM PRACTICE

This issue relating to the power of the Supreme Court and the High Court to restrain a Lawyer from regular practice was subject matter of decision in the case of Supreme Court Bar Association (1998) 4 SCC 409, which had reversed the view taken earlier in V.C. Mishra's case. However, while concluding the Supreme Court observed in paragraph no.80 as follows:

" (80).In a given case it may be possible, for this Court or the High Court, to prevent the contemner Advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an Advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate on Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practice as an Advocate on Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practice as an Advocate in other Courts or tribunals."

The Court further went on to record in paragraph no.81 as follows:

" (81). We are conscious of the fact that the conduct of the contemner in V.C. Mishra case was highly contumacious and even atrocious. It was unpardonable. The contemner therein had abused his professional privileges while practising as an Advocate. He was holding a very senior position in the Bar Council of India and was expected to act in a more reasonable way. He did not. These factors appear to have influenced the Bench in that case to itself punish him by suspending his licence to practice also while imposing a suspended sentence of imprisonment for committing contempt of Court but while doing so this Court vested itself with a jurisdiction where none exists."

This debate was carried further and the Supreme Court in the Case of ExCapt. Harish Uppal Vs. Union of India, (2003) 2 SCC 45, explained it clearly in paragraph no.34 as follows:

" (34). One last thing which must be mentioned is that the right of appearance in courts is still within the control and jurisdiction of courts. Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in court can only be within the domain of courts. Thus Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding condition on which a person (including an advocate) can practise in the Supreme Court and/or in the High Court and courts subordinate thereto. Many courts have framed rules in this behalf. Such a rule would be valid and binding on all. Let the Bar take note that unless selfrestraint is exercised, courts may now have to consider framing specific rules debarring advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. Such a rule if framed would not have anything to do with the disciplinary jurisdiction of the Bar Councils. It would be concerning the dignity and orderly functioning of the courts. The right of the advocate to practise envelopes 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, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file vakalat on behalf of a client even though his appearance inside the court is not permitted. 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 them in exercise of their disciplinary powers. The right to practise, 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 continue 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 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 practise 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 practise 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 practise 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. An advocate appears in a court subject to such conditions as are laid down by the court. It must be remembered that Section 30 has not been brought into force and this also show 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."

There have been concerns expressed by responsible members of the fraternity on the powers of courts to exercise control over the practise of law. One such Article is worth noting by Mr. V.A. Bobde, a Senior Advocate of the Supreme Court, published in (2003) 8 SCC (Journal) Page 32. This concern has been engaging the research of academies abroad where democracy and the faith in judiciary has survived for centuries. We may refer to an illustrative article by Thomas A Alpert published in Buffalow Law Review Vol. 32 Page 525. The justification for judicial control, as lawyers are "Officers of the Court", has been discussed together with the suggestion of legislative control. In our laws, we have a striking balance of both these aspects and the parameters have been interpreted, as defined in our Laws, by our Courts from time to time.

The power of the Court to draw contempt has been criticised at times severely. This criticism stems either from the historical background indicating retention of a colonial code or from the international trends extending the right of freedom of speech. In an article published in the People's Union of Civil Liberties Bulletin, April 2001, the writer K.G. Kannabiran has gone to the extent of saying:

"The courts structured as they are provide the pomp and the contempt jurisdiction, a facet of the divine right theory of the Stuart Monarch, in its unadulterated arbitrariness continued in its pristine state to regulate the matters governing the institution."

This extreme criticism, however, does not reflect on situations like the one

presently involved which is in a way peculiar in context of the category of criminal contempt.

Every civilised society fosters the free development of conviction which is the basic requirement for open thoughts and which aids the achievement of truth the right path. Free thinking and freedom of expression should not, however, lead us to anarchy. There has to be a distinction between a disciplined debate and irresponsible unrestrained scandalous talk. To force oneself upon physically in Court and to compel a Judge through personal embarrassment is to suppress the free flow of justice. This obstruction and interference with justice is no freedom guaranteed under the Constitution.

We have consulted some authorities on this branch of Law including Halsbury's Laws of England, The Corpus Juris Secundum, Oswald on Contempt, Borrie and Lowe on the Law of Contempt as well as a couple of Indian Commentaries including "The Law of Contempt" by Samar Ditya Pal, and have been able to lay our hands on some decisions which precisely deal with the genesis of the subject matter of concern.

During the British Rule, when this power of contempt was presumed as inherent without any codification, particularly in the higher judiciary, we have an illustrative judgment of a Special Bench of five Judges of the Calcutta High Court, reported in AIR 1918 Calcutta 988, In Re: Tarit Kanti. There also it was clearly held that this jurisdiction is not for the vindication of any personal interest of Judges but the general administration of justice. A care has to be taken to exercise such powers especially when the proceedings are at the instance of the Court. The nature of the power has been stated thus at page 1017:

"The power to punish for contempt is inherent in the very nature and purpose of Courts of Justice. It subserves at once a double purpose namely, as an aid to protect the dignity and authority of the tribunal and also as an aid in the enforcement of civil remedies. The power may consequently be exercised in civil or criminal cases or independently of both and either solely for the preservation of the authority of the Court or in aid of the rights of the litigant or for both these purposes combined. By reason of this twofold attribute, proceedings in contempt may be regarded as anomalous in their nature possessed of characteristics which render them more or less difficult of ready or definite classification in the realm of judicial power. Hence, such proceedings have sometimes been styled *sui generis*."

If we carefully scrutinize Article 215 as it stands by itself, it depicts the engrafting of this power which was described by the Calcutta High Court as *Sui Generis*. However, with the interpretation of the courts on the right to freedom of speech and human rights approach, this debate led to the formalisation of such powers in the shape of the Contempt of Courts Act, 1952 to regulate it. The criticism of unbridled powers being exercised at times to suppress the freedoms guaranteed under the Constitution led to the Sanyal Committee report submitted

to reform the law which in turn saw the present form of regulations in the shape of 1971 Act. The latest amendment also brings in the element of truth being pleaded as a defence. Even though a little bit away from the exact problem, we are tempted to recommend the reading of an article on this particular aspect, of truth as a defence, written by Ankit Nigam and Charuhas Dharmadhikari, two students of Law from ILS Law College, published in March 2008, the Edict where the entire background of the law of contempt, both historical and evolutionary, has been brushed with a brilliance that matches a judgment of a seasoned legal professional. Similarly a couple of more articles namely Truth as a Defence by V. Venkatesan Deputy Editor, Frontline Magazine and Law of Contempt Reasonability and Truth as valid defence by Amrita Khemka 4th year student of NALSAR University of Law, Hyderabad, are worth reading as they excel in intense preparation.

A survey of all this indicates that genetically the power has been inherited, preserved and ultimately moulded by regulating it through necessary amendments. However, the Parliament in its wisdom has retained the power in its vigour in Courts for the proper administration of justice in the interest of public at large. The purpose of the power, therefore, remains the same.

It is for this reason that our court in the case of State Vs. M.P. Rana, reported in (2006) 1 UPLBEC 465, has acknowledged the existence of such powers with the Court. Chapter 35E of the Allahabad High Court Rules, 1952 lay down the procedure to be followed in matters of contempt. These rules are framed in exercise of the power conferred on the High Court under Article 225 of the Constitution of India read with Section 23 of the Contempt of Courts Act, 1971. These rules, however, do require some amendments keeping in view Section 34 of the Advocates Act for an appropriate formalisation of such procedure to be followed in acknowledgment of the powers to be exercised under Article 215 of the Constitution of India. Realising the need in such situations, the Full Bench of the Jharkhand High Court went on to impose the condition of permanently debarring an Advocate from practising in the State in the case of K.K. Jha Kamal and another Vs. Pankaj Kumar, reported in AIR 2007 Jharkhand 67 (F.B.).

However, both these decisions are subject matter of consideration before the Apex Court in Criminal Appeal No.63 of 2006 and Criminal Appeal No.1673 of 2007 respectively.

We need not delve into this any further as we also endorse the view of retention of such powers in the High Court particularly in situations of the present category. However, in the instant case, the contemnor has already conceded to this position as stands recorded in our order dated 3.12.2008 and, therefore, any pronouncement would be superfluous. We only wish to clarify that this concession must not be construed as a charity in Law, rather it is an acknowledgment of the existence of such a power inherent in courts.

A recent report reflecting some popular public opinion also deserves to be noted

in this context as the argument proceeds on contradictions reflected within the system itself. The paradox, as projected, might wake enlightened men of this profession to a neglected truth. The said report, published in the "Indian Express" dated 9th of March, 2009 titled "Laws for Lawyers" is quoted below:

"In few other countries in the world do lawyers have it so good. While some complain that archaic Indian norms prevent lawyers from advertising, it's a small price to pay for a world of luxuries protection from being sued in consumer courts, little court oversight, and a regulatory structure that rarely takes action against illbehaved Advocates. And in any case, the price is paid by others: poor litigants inconvenienced by strikes, clients who cannot sue for malpractice and the general public alarmed at a justice system that does not deliver.

The Srikrishna Commission's interim report on the violence in the Madras High Court strongly criticised lawyers and recommended reforms in lawyer regulation. At the heart of the problem: the Bar Council of India, tasked with punishing errant advocates, has turned into a lawyer's lobby instead. This regulatory paradox has plagued other countries too. After decades of putting up with a Lawyer's Society in charge of both regulating and protecting solicitors, the UK passed the Legal Services Act, 2007; its express purpose was to set up an independent board to examine allegations of lawyer misconduct. The US has a slightly different system. State Supreme Courts can hear allegations against lawyers and take suitable action, in addition to the state bar. And unlike in India, lawyers can be and are sued in court for faulty services. These steps ensure that lawyers are not the only ones keeping an eye on their own; that task is shared by the courts or by an independent authority.

Perhaps the time has come to reform the Bar Council in India. One way would be to give courts more power and involve the judiciary in keeping tabs on the men in black. Another would be to appoint nonlawyers to the Bar Council, or completely outsource the job of punishing lawyers.

Professional guilds such as the Bar Council and the Medical Council of India cannot protect as well as punish. A whiff of outside air is surely welcome."

FOR THE BENCH

Whenever such situations arise, there is generated a murmuring about Judges as well. Generally, courts are neither unreasonable nor are Judges oversensitive, when confronted with situations like the present one. They are more concerned with the larger interest of the institution. Not only this, the Bench and the Bar being complimentary to each other, the Judges encourage dialogue with an open mind that sows the seeds of confidence and the interdependence develops an everlasting faith between the two. They do not stand with swords drawn into battle like rivals or arch enemies. There is an alienation of trust and confidence when accusations and counter allegations are made.

The trend of thought has gone a change. Fingers are being raised most of the

time for no reason and on mere speculation. There are many reasons, some of which are germane to the issue, have been discussed by us while dealing with the role of Advocates, but before suspecting Judges let the suspicion be transferred on Lawyers themselves. Let them introspect as to what was the necessity of the contemnor to insist for a bail, persist in the practice of "Relief or release" and then throttle the functioning of the Court. We may refer to psychologists who say that a person who is too suspicious of others, bears within himself, the germs of that very thing, which he is so ready to impute to others.

Nonetheless, men feel and know that there is a justice higher than the justice of the law, even the most just law. It is this sense of justice that we have referred to earlier. There are imperfections, and the infallibility of Judges is not accepted. Shakespeare with his exceptional clear sightedness foresaw this doubt and wrote:

"Look with thine ears, see how yond justice rails upon yond. Simple thief. Hark, in thine ear; change places; and, handy dandy, which is the justice, which is the thief" ?

But, imperfect as men's justice is, it still as against his other earthly and divine achievements, stands as one of the very noblest achievements of human history. We, as Judges know this, as well as our imperfections, and it would not be wrong on our part to remind ourselves that Justice should not only be done, but it should also seem to have been done. For this, we are tempted to again quote Shakespeare on the Scales of Justice:

"Were he my brother

Nay my kingdom's heir,

Such neighbour nearness to our

Sacred blood should nothing privilege him,

Nor partialize the unstooping

firmness of my upright soul."

Judicial restraint, a fair trial free from prejudices are what were indicated in the case of Mangilal & others Vs. State of M.P., reported in (1994) 4 SCC 564 (paras 5, 6 & 7), which is quoted below:

"(5). We are afraid that the High Court has shown a lack of judicial restraint and decreed in advertent to and influenced by matters which were extraneous. The judicial proceedings in this Court relating to the administering the High Court during that period would indicate that this went severely wrong in the High Court's administration in certain matters. The fact is that the advocates were on strike justifiably or otherwise. Why should the Court embark on the reason for the strike which was not the issue before it? Therefore, all the observations which we have quoted above were totally unwarranted. A judge must be of sterner stuff. His mental equipoise must always remain firm and undeflected. It

is essential that a judge should not allow his personal prejudice to go into the decisionmaking as was remarked by Scrutton, L.J. in R v. Bath Compensation Authority:

"The object . . . is not merely that the scales be held even; it is also that they may not appear to be inclined."

(6). A closed mind is antithetical to fair hearing. Prejudice tends to corrupt the ability to exercise independent judgment. It has a tendency to intrude upon a free mind and may influence the outcome. At this stage, it is worthwhile to recall the words of Mr. Justice Frankfurter in Public Utilities Commission of the District of Columbia v. Franklin S. Pollak:

"The judicial process demands that a judge move within the framework of relevant legal rules and the covenanted modes of thought for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that on the whole judges do lay aside private views in discharging their judicial functions. This is achieved through training, professional habits, selfdiscipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted." (emphasis supplied)

7. Should the Judge take cognizance of the newspaper report and the reasons which prompted the advocates to seek transfer of the then Chief Justice? The learned Judge should not have let out his bile against the advocates who are free to hold any opinion as to the lapses committed by the then Chief Justice. Holding of such opinions can hardly be characterised as an unruly attitude on the part of the advocates. Such holding of opinions, nor again, would either obstruct or disturb the judiciary. If the learned Judge had the slightest compunction he should have rescued himself. "

We are aware that Judges have to be careful and sanguine about their roles.

"Justice is not represented by the splendid figure of the Judge. The Judge in his robes, scarlet and ermine, represents the Majesty of the law. He is there to see that the cunning of contending Advocates does not mislead the minds of the jury, and to see that the prisoner, guilty or not guilty, is given a fair trial according to law."(The Book of Knowledge Edited by Arthur Mee Vol.I, Page 44)

This debate on judges and their status has been since long related to the divine rights reposed in monarchs. However, our civilization and the Western World both have subjected all authorities to the rule of law and subordinate to "Justice". This can be seen right from the recitals contained in the Manu Smriti, Chanakya Niti Darpan and the Sutras of Sages Panini and Patanjali. Instead of referring to other details, we would be partially content by quoting the following lines from Appendix I titled "The Judge" in "Professional Conduct and Advocacy" by K.V. Krishnaswami Aiyar at Pages 197 and 198 to the following effect:

"I have referred to the primary duty of counsel not to be uncivil, rule or disrespectful in any form or manner towards the Judge. It is not too much to say that this duty of counsel calls for a reciprocal duty on the part of the court not to disregard the privileges of the Bar. While Judges ought to be insistent upon the dignity of their office and upon a deferential courtesy in speech and manner, and should properly enforce it, they should not expect from the Bar conduct tantamount to servility; neither should they themselves be haughty and overbearing in manner, nor impatient and inconsiderate in their conduct, nor rude and unapproachable in their relations with the Bar.

As Justice Mc Cardie said, it is the sense of independence of the Bar that deepens and confirms the instinct for fearless decision in the Judge. So, even where a practitioner's conduct calls for chastisement from the court, it is consistent with its own dignity to make the admonition in a dignified manner. Lord Bacon has said: "There is due to the public a civil reprehension of advocate where there appeareth cunning counsel, slight information, indiscreet pressing, or an overbold offence." Thus, duty to the Bar, duty to himself and duty to the public, all alike demand civil conduct on the part of the presiding Judge."

However, our views would not be complete unless we quote Sir Francis Bacon from his Essay "On Judicature". This essay which was written centuries ago, enters into the basic values that deserve to be possessed of Judges. We would neither like to interpret it as we wish the readers to form their own opinion about what has been said there, nor would we like to edit it as it would be doing injustice to the author. The same has been extracted from Law, A Treasury of Art and Literature by Sarah Robbins (Beaux Arts Editions) Pages 105 to 107:

"Judges ought to remember that their office is *jus dicere*, and not *jus dare*; to interpret law, and not to make law, or give law. Else will it be like the authority claimed by the church of Rome, which under pretext of exposition of Scripture doth not stick to add and alter; and to pronounce that which they do not find; and by shew of antiquity to introduce novelty. Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident. Above all things, integrity is their portion and proper virtue. Cursed (saith the law) is he that removeth the landmark. The mislayer of a merestone is to blame. But it is the unjust judge that is the capital remover of landmarks, when he defineth amiss of lands and property. One foul sentence doth more hurt than many foul examples. For these do but corrupt the stream, the other corrupteth the fountain. So saith Solomon, *Fons turbatus, et vena corrupta, est justus candens in causa sua coram adversaria* [A righteous man falling down before the wicked is as a troubled fountain or a corrupt spring]. The office of judges may have reference unto the parties that sue, unto the advocates that plead, unto the clerks and ministers of justice underneath them, and to the sovereign or state above them.

First, for the causes or parties that sue. There be (saith the Scripture) that turn judgment into wormwood; and surely there be also that turn it into vinegar; for

injustice maketh it bitter, and delays make it sour. The principal duty of a judge is to suppress force and fraud; whereof force is the more pernicious when it is open, and fraud when it is close and disguised. Add thereto contentious suits, which ought to be spewed out, and the surfeit of courts. A judge ought to prepare his way to a just sentence, as God useth to prepare his way, by raising valleys and taking down hills: so when there appeareth on either side an high hand, violent prosecution, cunning advantages taken, combination, power, great counsel, then is the virtue of a judge seen, to make inequality equal; that he may plant his judgment as upon an even ground. Qui fortiter emungit, elicit sanguinem [Violent blowing makes the nose bleed]; and where the winepress is hard wrought, it yield a harsh wine, that tastes of the grapestone. Judges must beware of hard constructions and strained inferences; for there is no worse torture than the torture of laws. Specially in case of laws penal, they ought to have care that that which was meant for terror be not turned into rigour; and that they bring not upon the people that shower whereof the Scripture speaketh, Pluet super eos laqueos [He shall rain snares upon them]; for penal laws pressed are a shower of snares upon the people. Therefore let penal laws, if they have been sleepers of long, or if they be grown unfit for the present time, be by wise judges confined in the execution: *Judicis officium est, ut res, ita tempora rerum*, etc. [A judge must have regard to the time as well as to the matter]. In causes of life and death, judges ought (as far as the law permitteth) in justice to remember mercy; and to cast a severe eye upon the example, but a merciful eye upon the person.

Secondly, for the advocates and counsel that plead. Patience and gravity of hearing is an essential part of justice; and an over speaking judge is no welltuned cymbal. It is no grace to a judge first to find that which he might have heard in due time from the bar; or to show quickness of conceit in cutting off evidence or counsel too short; or to prevent information by questions, though pertinent. The parts of a judge in hearing are four: to direct the evidence; to moderate length, repetition, or impertinency of speech; to recapitulate, select, and collate the material points of that which hath been said; and to give the rule or sentence. Whatsoever is above these is too much; and proceedeth either of glory and willingness to speak, or of impatience to hear, or of shortness of memory, or of want of a staid and equal attention. It is a strange thing to see that the boldness of advocates should prevail with judges; whereas they should imitate God, in whose seat they sit; who represseth the presumptuous, and giveth grace to the modest. But it is more strange, that judges should have noted favorites; which cannot but cause multiplication of fees, and suspicion of byeways. There is due from the judge to the advocate some commendation and gracing, where causes are well handled and fair pleaded; especially towards the side which obtaineth not; for that upholds in the client the reputation of his counsel, and beats down in him the conceit of his cause. There is likewise due to the public a civil reprehension of advocates, where there appeareth cunning counsel, gross neglect, slight information, indiscreet pressing, or an overbold

defense. And let not the counsel at the bar chop with the judge, nor wind himself into the handling of the cause a new after the judge hath declared his sentence; but on the other side, let not the judge meet the cause half way, nor give occasion for the party to say his counsel or proofs were not heard.

Thirdly, for that that concerns clerks and ministers. The place of justice is an hallowed place; and therefore not only the bench, but the footpace and precincts and purprise thereof, ought to be preserved without scandal and corruption. For certainly Grapes (as the Scripture saith) will not be gathered of thorns or thistles; neither can justice yield her fruit with sweetness amongst the briars and brambles of catching and polling clerks and ministers. The attendance of courts is subject to four bad instruments. First, certain persons that are sowers of suits; which make the court swell, and the country pine. The second sort is of those that engage courts in quarrels of jurisdiction, and are not truly amici curiae [friends of the court], but parasiti curiae [parasites of the court] in putting a court up beyond her bounds, for their own scraps and advantage. The third sort is of those that may be accounted the left hands of courts; persons that are full of nimble and sinister tricks and shifts, whereby they pervert the plain and direct course of courts, and bring justice into oblique lines and labyrinths. And the fourth is the poller and exacter of fees; which justifies the common resemblance of the courts of justice to the bush whereunto while the sheep flies for defence in weather, he is sure to lose part of his fleece. On the other side, an ancient clerk, skilful in precedents, wary in proceeding, and understanding in the business of the court, is an excellent finger of a court; and doth many times point the way to the judge himself.

Fourthly, for that which may concern the sovereign and estate. Judges ought above all to remember the conclusion of the Roman Twelve Tables; *Salus populi suprema lex* [The supreme Law of all is the weal of the people]; and to know that laws, except they be in order to that end, are but things captious, and oracles not well inspired. Therefore it is an happy thing in a state when kings and states do often consult with judges; and again when judges do often consult with the king and state: the one, when there is matter of law intervenient in business of state; the other, when there is some consideration of state intervenient in matter of law Let judges also remember, that Solomon's throne was supported by lions on both sides: let them be lions, but yet lions under the throne; being circumspect that they do not check or oppose any points of sovereignty. Let not judges also be so ignorant of their own right, as to think there is not left to them, as a principal part of their office, a wise use and application of laws. For they may remember what the apostle saith of a greater law than theirs; *Nos scimus quia lex bona est, modo quis ea utatur legitime* [We know that the law is good, if a man use it lawfully]."

Judges are at times misunderstood in spite of their dignified and respectable bearing in Court. They keep grim and remain solemn but a lack of response is not always a sign of general assent. They should not be taken to be mere chair

warmers. Their chair is static even though the woolsack keeps on being changed. But their jobs are like "Casuists" of Law. This job is full of responsibility and, therefore, there is hardly any scope for doubts or compromises with regard to the onerous duties of a Judge. The reason is if the trumpets give an uncertain voice, how shall one decide the fate of a battle? This state of indecision or casual doubts and dissent amongst Judges would not be in the interest of the institution. Such a situation would be well comprehended if one remembers the following lines from Alexander Pope's Moral Essays (iii) :

"Who shall decide, when Doctors disagree And soundest casuists doubt, like you and me ?

Like Doctors thus, when much dispute has past, we find our tenets just the same as last."

The authority, which goes with the chair of a Judge is a right to enforce the command of Law the will of the people. But his duty is to temper it with justice about which, we have indicated above. It is that which compels reverence and exacts obedience. This is how a Judge gets respect.

This administration of justice is protected through the Law of Contempt which is neither threat or tyranny. It is the real symbol of a final umpire whose duty is to see that Law is kept and justice done. To command this respect, one has to sacrifice and observe worldly affairs for which our courts are in no dearth of examples. We have set great traditions and standards of integrity and one glorious illustration would be adept on this occasion.

Sir Gurudas Bannerji, who donned the office of a Judge at the Calcutta High Court in the early part of the 20th Century was paid a tribute in a write up published in 1944 in a local magazine, "The Modern Review". The tribute was paid on his 100th Birth Anniversary and which contains the following extract that illustrates the purpose:

"He had a son a doctor of law, he had a soninlaw (later a distinguished follower of his footsteps in many spheres) the late Sir Manmatha Nath Mukherji, as lawyers. Neither the one nor the other could accept a brief in any case before him a standard unfortunately forsaken by many and others yielding to scandals in many ways.

Sir Manmatha personally told me an amusing story. He was then briefless. He found that a brief had come wellmarked with handsome fees from a solicitor's firm he was unacquainted with. He received it with great joy as first briefs must always inspire. In Court the next day he was asked by Dr. Rashbehari Goosh if he had received a brief which he learnt his opponent had managed to give him on the wellknown assumption that Sir Gurudas would never take up a case in which a relative of his appeared as a lawyer. The shrewd solicitor wanted to get an adjournment which he badly needed but was refused. As the case came up Sir Gurudas who was very particular in these matters looked up the Vakalatnama,

and addressing Sir Manmatha asked him to withdraw from the case. Though both Dr. Ghosh and the European brother judge protested Sir Gurudas was unyielding. Sir Manmatha had to withdraw. In the evening Sir Manmatha somewhat crestfallen by the misadventure was at his residence when he found the loving father-in-law walk in. He humorously asked him what loss Sir Gurudas had put him to by the return of the fee and when told the amount Sir Gurudas paid him out of his own pocket and said that he would not rob him of the good luck, of the fees for the first brief. Such was Sir Gurudas, the man of principle, and Sir Gurudas, the ever affectionate relative"

The aforesaid standards of ethics if practised would enable us to preserve that sense of justice which was spoken of by the great American statesman and lawyer of the 19th Century, Daniel Webster in the following words:

"Justice is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the improvement and progress of our race. And whoever labors on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself, in name, and fame, and character, with that which is and must be as durable as the frame of human society."

We may add that Judges work under great constraints. They are to deal with a very heavy docket everyday. Concentration of work and the sense of duty keep them engaged and involved. They do not hold brief for anybody. They judge cases and not counsels. It is the litigants interest which is watched. The litigants interest has to be judged by delving into the claim of both sides and not the one who can afford a loudspeaking counsel. To err is human and a Judge is no exception. But can that be a cause for insolent behaviour by the Bar. Criticism, therefore, most of the time is illfounded, misdirected and at times motivated. The question is how should Judges respond to such turbulence. Should Judges be frightened out of their wits or should they behave like traditional boys passing the graveyard at night whistling to keep up their courage? They have taken oath to do justice without fear or favour. To stop the present state of unabated discipline and to restore the Lost Glory of tradition, Judges have to perform. They do not deserve to live in fear of their being obstructed in the discharge of their duties.

The Supreme Court has, while noticing the desired qualities of a Judge, quoted the extent of the responsibilities of a Judge in *Brij Mohan Lal Vs. Union of India*, (2002) 5 SCC 1, para 7 as follows:

"(7). The qualities desired of a judge can be simply stated: "that if he be a good one and that he be thought to be so". Such credentials are not easily acquired. The judge needs to have "the strength to put an end to injustice" and "the

faculties that are demanded of the historian and the philosopher and the prophet". A few paragraphs from the book Judges by David Pannick which are often quoted need to be set out here:

"The Judge has burdensome responsibilities to discharge. He has power over the lives and livelihood of all those litigants who enter his court His decisions may well affect the interests of individuals and groups who are not present or represented in court. If he is not careful, the judge may precipitate a civil war or he may accelerate a revolution He may accidentally cause a peaceful but fundamental change in the political complexion of the country.

* * *

Judges today face tribulations, as well as trials, not contemplated by their predecessors..... Parliament has recognized the pressures of the job by providing that before the Lord Chancellor recommends anyone to the Queen for appointment to the Circuit Bench, the Lord Chancellor "shall take steps to satisfy himself that the person's health is satisfactory" This seems essential in the light of the reminiscences of Lord Roskill as to the mental strain which the job can impose.... Lord Roskill added that, in his experience, " the workload is intolerable: seven days a week, 14 hours a day"

He [judge] is a symbol of that strange mixture of reality and illusion, democracy and privilege, humbug and decency, the subtle network of compromises, by which the nation keeps itself in its familiar shape."

But above all Judges are expected to reflect attributes that befit their exalted status in general perception. We would remind ourselves of what was said by Joseph Addison, the celebrated English laureate:

"To be perfectly just is an attribute of the divine nature; to be so to the utmost of our abilities, is the glory of man. Justice discards party, friendship, and kindred, and is therefore represented as blind."

The manner in which a Judge should conduct himself has been very succinctly stated by (Henry) Brockholst Livingston, an associate Justice of the United States Supreme Court (1807-1823) as follows:

"If judges would make their decisions just, they should behold neither plaintiff, defendant, nor pleader, but only the cause itself."

SENIOR ADVOCATES

Senior Advocates, designated or otherwise are our real torchbearers on whose shoulders rests the task of giving a direction to their future generation. Their duty is of absolute parental care by setting up an example themselves. "In fact, it is no more than the duty of him, who achieves greatness to leave behind him, in his ascent, such landmarks as may guide others to be great, and to give a detail of those important, yet feeble and tottering, first steps, by which at length, he attained the high road to the pinnacle of human renown Nathaniel Hawthorne

in *The Scarlet*". We realise that they are torn between their legitimate aspirations and the obstinacy of the system but their love for liberty and justice must exclude the passive violence of refusing to reform a situation which is contrary to the professed ideals.

The history of our Bar is replete with statutes of those whose portraits adorn the Bar Library Hall and their fame stands recorded in the shape of their erudite arguments and exemplary professional conduct even when they had a difference of opinion with the bench. We need not reproduce all here but we may record that all such instances are readily available in the 1966 Centenary Commemoration Volumes and the postcentenary 1991 Commemoration Volumes preserved in the Bar Library as well as the Judges Library. There is yet another precious collection of such material in the Allahabad High Court Bar Association Centenary Commemoration Volume (1973). One instance is worth quoting which was contributed in the said volume by Mr. R.K. Dave, Advocate, in the Article titled "Meet our Babuji Rt. Hon"ble Dr. Sir Tej Bahadur Sapru" at Page 107. For the benefit of those who would understand the stature of Sir Tej and the reflections of the respect he commanded, the following lines are extracted here under:

"When Justice Walsh was the Acting Chief Justice in 1927, for certain reasons the Advocates' Association under the Presidentship of Sri Tej passed a resolution in proper and polite language drawing the attention of acting Chief Justice regarding the haste shown in admitting or rejecting cases by Justice Dalal and Justice Pullan. The resolution of the Association was communicated by Shri S.K. Dar later Justice Dar, under his signature as secretary. The Acting Chief Justice on receipt of the letter, issued notice to Shri S.K. Dar to show cause why he should not be charged with contempt of the court. Sir Tej called another meeting and repeated similar resolution. When the case was listed for hearing, all lawyers who were members of the Advocates' Association and were present at the meeting, appeared as accused persons without gown and bands, Sir Tej giving the lead. Two Barristers were engaged to defend the lawyers concerned.

Justice Suleman and Justice Lindsay, who formed the bench to hear this case, refused to come up to court room to hear such a case. Other judges were requested but none agreed to hear this matter. This case remained pending for long as none of the judges was willing to take it up. As usual, the judges came up and the work started as per cause list but did not touch this case. There was correspondence and some people intervened without any result.

Later, in Sept. 1928, when Sir Grimwood Mears, the then Chief Justice returned from leave, the Registrar in his administrative capacity put up the papers of this case for constitution a fresh bench. Sir Grimwood declined to do so and the case was consigned to the office records. "

Such respect was commanded by a person who had refused Judgeship thrice during the British period and such was the response of Judges who represented

the might of a monarchy. To say the least, one has to emulate Sir Tej's character when expecting such a response from the Bench. We have quoted this example as it arose out of a contempt drawn on a criticism of a sitting Judge. Not only this, it is worth noting that Mr. S.K. Dar, the then Secretary of Advocates Association against whom the contempt had been drawn was found fit to be elevated as a Judge of this Court. It is the righteousness of a cause taken up by persons maintaining highest standards of professional ethics that such examples are worth quoting. This freedom to speak for a right cause is not difficult to locate in seasoned Senior Lawyers. The triumphs in their lives fail to destroy the humility in them. They have earned this freedom of speech through a sacrifice which is like living unconfined in a world without owning a blade of grass in it. They can be measured by their physical appearance of grey hair, bathed with professional experience, with wrinkles that spread like rays of wisdom and the trouble of an age retina but behind watchful glasses. Their courtesy, good nature and good temper are reflected everywhere. There are many such reflections for which one may usefully read the great poet "Akbar Allahabadi" and if one can lay hands on "Insaf Sangrah" by Munshi Devi Prasad, Munsif Jodhpur published by Indian Press, Prayag (Allahabad). We all are aware of the great Lord Denning, Judge Benjamin Cardozo and a host of others, who are to be found quoted oft and on in a large number of publications.

The circumstances as on today are a little pathetic. Seniors appear to be suppressing their real opinions, as if they are in a helpless situation, and allowing things they dislike to continue by a mere passive acceptance of them. But the Bench cannot shirk from its responsibility of clearly expressing its deep concern about this situation. This deepseated wrong will perpetuate if those who are true to their profession do not come forward to free the fraternity from this self imposed bondage. One would not like to suffer the least from the infirmity of fame. From the point of view of both, the seniors and the juniors, the situation that emerges is that the dominant group has the fear of dispossession and the oppressed stores up just resentment.

The responsibility also lies on our senior lawyers to exhibit exemplary professional behaviour which in no way would reflect any compromises so as to indicate any diminishing standards of professional ethics. They should be harsh in their approach, soft from within so that the new entrant does not lose interest and firm from outside so that the discipline of law remains intact. Seniors have lost the will or the wish to lift themselves out of the situation which has been brought about by the indisciplined lot. We have to give them a new self confidence and responsibility to unite in our resolve to attain the goal set before us. Seniors it appears are losing their willingness to preserve on account of their being unheard. Our heritage in this profession can help to support the cause of our new entrants. They can still persuade their junior colleagues to return the primitive purity to the profession.

The significance of silence is often underestimated. Silence does not necessarily

mean ignorance or even concurrence. It could well mean a desire to distance oneself from the situation in order to get a clearer view of the larger picture sitting on the fence to save one's grace and much esteemed acquired reputation. A fear of losing the same looms large over one's head. They seem to have a desire to live in isolation, not the safety of a crowd. The fear of indisciplined conduct by younger colleagues, that manifests itself in not even observing normal courtesies, what to say of giving respect, is observed even in matters of ordinary reflexes like the offering of a chair to a senior standing nearby. With a large number of lawyers practising, one can make a lame excuse of not knowing or recognising a senior in the profession, but it is difficult to comprehend that one who has put in sufficient number of years has also started ignoring courtesies. Such degradation and depreciation of normal courtesies not only pain us but makes us realise that seniors are not to blame altogether. They might have developed a sense of apathy and indifference but this appears to be more out of compulsion than mere desire. The decline in standards is like a natural failure of life energy as if the ageold traditions have been allowed to decay and almost lost in practice. There appears to be no attempt to stem the decline and no one available to shoulder the responsibility. The ship of destiny of the profession and its future is rudderless almost heading for and on the brink of a catastrophic capsizing. Silence is a sin where speech is the solemn occasion.

The predicament with which the senior lawyers and saner elements are faced is not want of courage but want of will. The urge in them is unable to muster the required strength on account of a complex existence of their lot as a minority view. They are in doubt about their views being respected since they are branded by the majority as those sitting in ivory towers and fond of theoretical sermons, instead of helping juniors. To remove such doubts, it is apt to remember that whosoever saves his life, shall lose it. If we refuse to do so, and insist on saving our lives instead of spending them, we negate our true nature.

Juniors on their part, instead of making efforts to associate themselves in order to learn the secret of the gradual success of such seniors, try to achieve their material goals in their pursuit to earn a fast buck. A little victory in a few cases makes them believe that their path is a surer way to the top little realising that such methods are nothing more than quick sand and such ideas have their glamour fade away like a house of cards. Yet we from our experience and observations in court, find a sizeable number still trying to clear their doubts while making genuine and sincere efforts to learn the law and discipline themselves in the profession. This dilemma has been expressed in a wiser tone by none other than the great Bertrand Russell "The problem with the world is that fools are always so certain of themselves, but wiser people so full of doubts."

A concerted effort to reform the basic attributes is wanted from the leaders of the Bar. A timely tap on the shoulder of one's future will avoid any mishap in the future. For that a debate has to emanate with the hope that an unorganised effort brings about confusion, a disorganised effort brings about complete

disorder, but an organised approach evolves definite results.

Seniors have to display their leadership with a hope to the juniors, who also expect what was expressed by a former Prime Minister of the United Kingdom while debating in Parliament:

"Applaud us when we run.

Console us when we fall.

Cheer us when we recover.

Pray let us pass on for God's sake

Let us pass on." Herbert Asquith.

CONDUCT OF LAWYERS

The High Court as an institution, should flourish as a fine flower of learned advocacy and erudite judgements. This fragrance, if maintained, would strengthen the roots of democracy that would in turn fulfil the ambitions of our founding fathers and ultimately preserve the confidence of the public at large for whose benefit and service this institution was created under the Constitution. It goes without saying, that this Court in its almost one and a half century of its existence has had a brilliant past with towering lawyers and great judges. The honour of a liberal profession has indeed been vindicated by ancient and modern Advocates who have filled the most important stations with pure integrity and consummate wisdom. The stream of names is up to the brim and they have come in endless succession. Their contributions are revered countrywide right from the Mofussils up to the highest courts within and beyond the nation. This court has always represented the quaint continuation of the old and the new spirit and is a living example of a repository steeped in tradition. The institution has faced intense moments, even after independence, right from the unseating of a former prime minister (Raj Narain Vs. Indira Nehru Gandhi) up to the propriety of communicating language between the secretariat of His Excellency the Governor and Hon'ble the Chief Justice of this province (In re. Secretary Bar Association Vs. Secretary to the Governor, 2006 (3) ESC 2153) apart from the daily routine matters of capital punishment, malafides against politicians and submissive bureaucratic over doings. The court has saved the common man from the wrath of State excessiveness and has insulated citizens from draconian laws.

The unruly behaviour of some erring lawyers have invaded our lives in our daily routine and we have ample news reflected everyday through the media that indicates that it has attained a truly terrifying degree. The incidents noted in the order of the learned Single Judge in his order dated 11.12.2007 are no less. The atmosphere created is one of a world of wild doubt and despair. It is a revolt against sanity. Misbehaviour is being witnessed as a fashion of contemporary style. The incident has taken a wrong twist as if the Lawyers vision is dimmed and way lost.

The lawyers stood up violent and unaccountable as if all the ends of indiscipline were closing in fast on this benign structure. The princes of anarchy this is what the lawyers appear to have become destroyed court property and disrupted proceedings. Such incidents bring about a third kind of fear to our minds which is more piercing, full of constant apprehensions relating to the practical problems being faced by courts today and greater in intensity than mere moral revulsions and its social dimensions.

The litigant who steps into the portals of this structure depicting man's imperishable "Sense of Justice" would be dismayed if he witnesses such unruly scenes. It would be like stepping into an atmosphere of a written tragedy where one comes with a hope of receiving his due under the law. He is lost and bewildered in this combination of ignorance and intellectualism.

Lawyers form the battalion of priests of this temple of justice enjoined with the duty of constantly guarding the ivory gates of truth and wisdom. They possess the key to the gates of this institution and show the way to the portals of this temple where the common man seeks justice. Lawyers chivalrous devotion to a cause binds him indissolubly to the cause of truth One has to rise above attachment and repulsion to be free from passion in thought, word and deed away from fear and vanity.

The disciplined lot however has almost diminished and a majority of the new generation which has taken over can be seen slithering away down the slopes of the convictions and ideals of this great institution. The impact of such self proclaimed newdynamic powerful forces has hit the institution, making it vulnerable from within. One has to have a clear grasp of these sweeping changes. Those of the minority, who form the decent lot, have to step out for an essential exercise with their entire reserve of character and determination as nothing leads to deadlier disaster than cabinroom idealism which ignores the engineroom problem. The recent events have to be visualised as a whole and not as an isolated incident involving an individual. If this task is not undertaken through the efforts of both the Bar and the Bench, then this splendid legacy of which we rightly feel proud and boast of will dwindle in no time. We are a nation in the making and are to be acknowledged as world leaders. This is a formative period and therefore the sirens of caution have to be sounded to make everyone who is concerned alert. A slightest vibrancy on the footsteps of this building, rocks the entire nation.

A lawyer comes to this Court full of excitement and awe coupled with youthful Idealism. With the passage of time he acquires sensibilities that form the traits of a trained and experienced lawyer. In short, he gets steadily disciplined. With every new opportunity he adds something new to his pursuit. Good lawyers in their initial stages might be poor in every thing except spirit and intellectual activity.

But those who go astray indulge in indiscipline and profess to preach vices to

enhance their own breed. They do not rely on genuine talent, rather find it convenient to have the short cut through the ladder of a risky adventurer or tread the lawless path. This breed adopts the method of shouts and threats bereft of wisdom to extract submission from the sober. They create an atmosphere of helplessness and browbeat the logical and the reasonable. They call it agitation and glorify it in the name of revolution. Their motto is to get at something, by disrespect and creating chaos. Many young lawyers today are wandering without rule or guidance in a wilderness as vast and intricate as the untamed forest. The training of a newcomer to the profession is too casual and too scanty.

A successful lawyer has always been held in high esteem not because he has succeeded in accumulating unlimited earnings but because of his knowledge, wisdom and court craft. His keen mind, brilliant intellect, indomitable labour and prophetic vision aid him to acquire a personality which inspires the new entrant and fosters respect amongst colleagues.

There is a sense of detachment in some young lawyers from the major activity of learning with which they are supposed to be preoccupied during their initial years of training. Instead the mood is of earning a fast buck. Lawyers at times accept briefs not because they believe in the cause of their client but for the more urgent purpose of recruiting finances. The experience of all without exception, howsoever big or small in the profession has been, that earnings in the early years are meagre and uncertain. Every one who joins the stream of regular practice in courts has a sense of confidence coupled with a feeling of insecurity. But does that mean that one has to stoop low against all ethical norms to achieve results which might not be forthcoming out right. The obvious answer is in the negative to save those virtues which immediately require reaffirmation both by the Bar and the Bench. The profession has definitely slipped from its proud position even if some of them are successful in amassing wealth. Competition is very much there to stay but that does not justify achievements, where morality is defeated, through unhealthy and unethical practices. Having a large practice without any element of professional ethics is like those hermits who make long pilgrimages by measuring their length along the ground without any real achievement. Unwanted earning is Wealth that becomes irresistible and oppressive. Lawyers should not be mere hunters for fees, clients and full employment, not just legal technicians but should be whole men (Francis Cowper).

Indisciplined and uncontrolled utterances to demean the authority of the court and passing personal comments cannot be the suggested modus operandi for lawyers to get orders from courts. The language of courtesy can not be permitted to be violated in the name of overzealousness to secure justice. At times, even if the court's observations generate some uncomfortable and inconvenient situation resulting in a rising degree of impatience outlined by anger, a lawyer has to train himself to learn the secret of formulating smoothflowing sentences,

discovering how to weave harsh words into soft tapestries. Oratory is a great art. It can affect the mind and the soul like poetry and music. It is the message of Personality. For this one has to be trained in Philosophy and Ethics, so that it is not used for selfish ends. If oration is not guided by ethics it is a curse. It has to be coupled with a tone calculated not to give offence.

The art of sophisticated advocacy will not only sooth an adverse Judge but will also heavily aid the lawyer in proceeding with the case to the best advantage of the litigant whose interest is supreme. This supremacy of the object should however not overcome the mental faculties of a lawyer so as to malign the freeflow of justice. It also does not enhance the limits of the license given to a lawyer so as to destroy his own privileges which he enjoys by virtue of being an officer of the Court. It is only when a lawyer transgresses such limits that the court on such rare occasions has to rise to preserve the faith and confidence of the public at large while ensuring the rule of law and dispensation of justice. Public interest or litigants interest cannot be served by resorting to whole scale violence of public faith reposed in the judiciary. Lawyers do not enter into contracts with clients to give guaranteed results. They are only obliged to defend a cause which they think to be right in the eyes of law. But that should not in over zeal prompt one to wilfully misrepresent oneself more so where the cause is to secure justice.

They are the instruments who are supposed to assist the court in finding out the truth. They are engines of interpretive ideas to infuse life into the dead letter of laws. They enliven hope of justice like an oasis in the desert. The courts through their devoted labour deliver justice. Judges who have taken oath discharge their onerous duties through these ministers of justice.

A lawyers pursuit should be what was professed by the great 19th Century American Statesman, William Lloyd Garrison, who while launching his new number "The Liberator" said,

"I will be as harsh as truth and as uncompromising as Justice. I am in earnest I will not equivocate I will not excuse I will not retreat a single inch and I will be heard"

The wisdom of the courts are both sharpened and chiselled by the forensic arguments, representing deeper thoughts well dressed with logic, advanced by the lawyers. For students it is said that if they do not study well, they will miss school instead of vacations. If lawyers do not receive proper training, they will miss cases and clients. Improper behaviour and absence of courtesy might end up in what Lawyers detest most loss of a Judge. A lawyer should be adept at expedients for avoiding any unpleasant predicament. He has to by dint of his profession, maintain a dignified and respectable bearing in the court. A lawyers conduct should reflect respectful obedience. Courtesy, consideration towards others and unselfishness are the sources of true politeness from which etiquette springs.

A person who chooses this vocation is not one who has been tossed into this world to be a sport of fortune; one is supposed to train oneself, as the profession obliges service to the institution and service to the litigant whose interest is supreme to receive justice through the rule of law. The attire in roles of a lawyer is a respectable disguise. To hold on to such a respect would also require a disciplined character. The moment such a character is shed or given up, not only the attire but the person donning it loses respect. A lawyer should put all his genius into being heard by the court, not for inviting hatred and contempt. The eloquence and speech of a lawyer should be direct and brilliant, but eminently self controlled and circumscribed by law. The logic and language should not be allowed to go tangent and should be rarely at fault, if not perfect. Speaking in a tongue which one does not altogether understand, should be avoided. It is not necessary to stoop to verbal vulgarity to receive attention. A corrupt reasoning of the mind becomes an instrument of dispute.

The measure between what one can say and what one does not have the courage to say; what one does and what one had half a mind to do; what is necessary and what is unnecessary are known as doubts. This regular practice of measuring one's mind grounded with intense logic helps one to attain that discipline of the brain which is one of the facets of wisdom. If this practice is either not exercised or abandoned, that one tends to be unbounded in mind. Therefore, training in a chamber, where such a discipline of mind is inculcated is absolutely necessary apart from academic excellence. From our experience, we can say it with a certain amount of responsibility, that the practical knowledge of courtroom work is absolutely essential without which even the most meticulous mastery of legal theory is mere bookworm stuff.

Jestering, ridicule and light talk have been a pastime amongst lawyers in corridors but not with maligned moods or belligerent attitudes inside courts. The personality of Judges are subjected to appreciation and criticism alike but with a sense of responsibility and with logic; not as a saga of loose characters. We are however concerned with those habits that have been cultivated to give shape to a situation that we are now faced with. The intellectual wit and the common jest is being replaced by unmeasured big talk and crude remarks. Neat compliments are a luxury. This poverty in character reflects lack of good company which appears to be a direct result of lack of training traditional and conventional from chambers of repute. What is worse that violence has come to be respected, on compulsion by even those who do not wish it. It is like students on a rampage on a University Campus as if such activities have shifted automatically from educational institutions physically along with their executors. This sort of behaviour has to be abandoned or else it may ruin and desecrate this temple of justice. The result would be that the legal profession would be depleted of its genuine cadres.

We say all this for the Bench and Bar to come together to do everything within our means to secure the " Sense of Justice" that is required to be preserved for

this institution about which we have said in our opening paragraphs. Behaviour of some lawyers is unfortunately becoming increasingly independent of guidance on account of lack of proper training. They are for the time being incorrigible.

The mind is hungry for knowledge and the zeal is impatient to apply that learning. This poverty in the mind and impatience of implementation, has to be harnessed, and put to the best use by infusing it with virtues like courtesy, preciseness, avoidance of impertinence and impudence, power of oratory and eloquence bereft of shouting and yelling, and above all with wit, humility and honesty. It is such a discipline which has to be observed by anyone who is called to the Bar. This, added with a forensic and analytical bent of mind coupled with the psychological art of best persuasion and exposition of wide learning would further supplement the complete personality of a lawyer. A Lawyer should make his presence felt through his well acquired and suitably groomed professional skills. Insistence, till it is a persuasion and not naked irritation, should not be allowed to exhibit further a strong sense of one's own consequence. The vocal range of lawyers if remain unbounded becomes unpleasant. An unintelligible jargon underlined with conceit compels one to detest such practice.

Robust arguments taking shape of indecorous behaviour if encouraged would allow others to cultivate practise of this benevolence which is definitely detrimental to the cause of justice. If a Judge is browbeaten or otherwise misled to pass an order it may be success for one but definitely a miscarriage of justice for the other who obeys Law and respects the system. This will shake the confidence of the litigant and has to be averted. Such attempts practice to browbeat for getting results are like quicksands on the seashore in which the unwary wayfarers sink and perish.

The attitude of a lawyer in promoting a cause should be tempered with humility and not sheer raw force. We are reminded of a story that we were made to learn as school boys to understand the primeval laws of nature and which in a simple way would convey what we intend to say. The story is of "The Sun and The Wind" contained at Page 12 of Reading and Thinking Edited by Richard Wilson (Published by Thomas Nelson and Sons). The same is reproduced below in the author's own words:

THE SUN AND THE WIND

"Poof," said the Wind to the Sun. " I am stronger than you."

" Are you indeed ?" said the Sun, with a broad and pleasant smile. " I wonder how we could find out?"

For a time they talked about it, the Wind in a temper and the Sun in very good humour. At last the Sun looked out across the broad plain, and said slowly,

"Here comes a traveller who wears a big cloak. Let us each try to take his cloak from him, and he who does so shall call himself the stronger."

"Very well, " said the Wind, in a great hurry as usual. "I will try first."

Then the Wind rushed across the plain to meet the traveller, and blew at him with all his might. The man wrapped his cloak more closely round his legs and body.

The Wind blew harder and harder, so that the man was quite out of breath. But he held his cloak tightly with both hands, and would not let the Wind take it from him.

"Now," said the Sun, with his jolly smile, "it is my turn." Then he made his warm beams fall on the traveller. After a while the man was forced to stop and take a rest.

The Sun shone brighter and brighter, and the traveller grew hotter and hotter. At last he felt so hot that he had to sit down by the side of the road.

The Sun went on shining upon him, until in the end the man threw off his cloak. The simile of the Sun now seemed to be broader than ever, and he said to the fussy, angry Wind

"Learn from this that gentleness and kindness often win where force and anger lose."

We may add as a caution that the said story should not be pressed as an aid by lawyers indulging in endless and tiresome arguments or else the purpose of quoting the story would turn out to be a paradox.

Judges are no aliens that they have to be rebuked and tormented with unsavoury comments in order to remind them of their duties and responsibilities. The talents of a lawyer are not to be wasted for lashing out wild accusations on Judges. Such uncalled for behaviour undermines the confidence of the litigants at large and the public in general. This in turn reduces the authority of the court thereby lowering the esteem and prestige of the entire institution.

The language to be employed by a lawyer should be nothing less than courtesy and the response of a Judge should not be less than sobriety and sombreness. Such limits if digressed, raise passions that often lead to obscenity. This is because of lack of training and patience. A respondents counsel praying for the dismissal of a petition can say that "the Court be pleased to dismiss the petition" and at the same time one can say "Can I be permitted to pray for disapproval by the Court of the contentions raised on behalf of the petitioner", but it will not be proper to say "You will have to dismiss the petition". The reason is, that by adopting the former course one adds to the majesty of law, while showing respect and grace to the chair which in turn infuses confidence in the institution, while the latter withholds all these virtues. Virtue is a mean State between two vices, one in excess the other in defeat.

Courtesy costs nothing. It always pays and one does not loose any thing. Showing respect by using disciplined polite language is not serfdom. It should

not be taken to be a colonial relic. It is a part of civilized culture known across the entire human world. It reflects obedience to the rule of law and is not to be confused with servitude.

A lawyer has to arm himself with those essential equipoises that are required to present a balanced personality. An abdication of disciplined conduct excites serious suspicion of dereliction of principles and confirms belief about eventualities like the present one. Legal training emphasizes respect for past as well as present institutions and that is why Lawyers are amongst the most conservative elements in the community. They are not expected to move in any unorderly manner.

A lawyer should envelope himself with such virtues that might help him to create an impression that he is in the possession of some faculty that can be described as "ethical magnetism". The attraction should be such that it creates not a mere interest but rivets the mind of the listener. The lawyer is not a person expected to exhibit coarse and brutal instincts. "Litigants interest is Supreme" is not to be read in isolation so as to mean that a lawyer can go to any extent to obtain orders for clients. A lawyer cannot force a court of law to undergo an experience so as to transgress the scope of generally received laws in the name of zeal to secure justice. The role of a lawyer is not a passport for outpouring irrelevance it is a cloister embalmed with virtues to respect, serve and revere the institution. A person who professes the Law should not seek any dealings with it.

The over indulgence of courts to the junior members of the Bar at times develops in them an apathy to learn thereby reducing their own talents. They start shaping themselves in a routine fashion and with easy money coming in, they forget to invest in knowledge. Books are the greatest casualty and the process of learning has become a wish of the past. We do not wish to overemphasize on books but we wish the process of learning to accelerate with the aid of wisdom. It has been said by a poet "By books, may Learning sometimes be fall; But wisdom never by books at all". That, however should not be taken to the extent of sacrificing books altogether. At times the poverty of books become the wealth of life. The "Emancipator" President of the United States of America, Abraham Lincoln, starved of books in his early childhood and formative years of a Lawyer, made him travel on foot to his colleagues miles away to borrow and read a book that he had not come across, because of his pecuniary disadvantaged position. We are of the opinion that lawyers should not only be trained to talk well, they should also be trained to think well. This is necessary because even wise men try to avoid what is inconvenient to them and independent of their will.

This cannot be cured by a magic wand and has to be gradually inculcated. The defects that are now deep rooted, have come to stay and cannot be just wished away. They have therefore to be contained by taking appropriate reformatory measures, and putting them to actual practice, so that it does not spread any further and make the scenario worse than it is today. The process of eradication would be far more tedious, but people with hope and the desire to reform can

undertake this task to change the lowered bent of mind into a new ray of hope. Coercion and policing do not bring reform in intellectuals who lead their dutiful professional lives and who are otherwise not criminals. At times it aggravates such minds, and that results in a misdirected approach which may have arisen also on a considerable amount of misunderstanding. This misdirected flow may also end up in some sort of violence, which is at times loosely termed as a revolutionary protest.

Intolerance is a species of violence. To believe that your thoughts are superior to others denies the basic virtue of giving equal respect to others one may agree or disagree but the attitude should be of positive appreciation even in a disagreement.

This oldest honourable profession has not been free from criticism even in the past, and history bears testimony through recorded opinions by eminent people. Centuries ago, Edward Gibbon (1737-1794) a British Historian of repute while writing "On lawyers and the Byzantine State" said "The ordinary promotion of Lawyers is pregnant with mischief and disgrace and who with cunning rather than with skill, exercise a sordid pernicious trade". This criticism, though may appear to be an extreme pathetic view and slightly unfair in today's context, but it should be remembered so that History may not repeat itself again in this form. The vagaries of the profession should not be allowed to build a public perception of that sort or else people would lose confidence. The duty is to set up high standards of character and rectitude without which the profession is a meaningless jugglery, a jejune, a lifeless process.

We are concerned with the ethical fall in the profession. This concern is also reflected in the opinion of a litigant. To describe this concern on an optimistic note, it would not be inappropriate to refer to something more practical, like what was expressed by Benjamin Franklin (1706-1790) in his "Poor Richard's Opinion" that recites as follows:

" I know you lawyers can with ease
Twist words and meanings as you please;
That language, by your skill made pliant,
Will bend, to favor every client;
That 'tis the fee limits the sense
To make out either side's pretense,
When you peruse the clearest case,
You see it with a double face,
For skepticism's your profession,
You hold there's doubt in all expression.

Hence is the Bar with fees supplied,
Hence eloquence takes either side;
Your hand would have but paltry gleaning
Could every man express his meaning.
Who dares presume to pen a deed
Unless you previously are feed?
"Tis drawn, and to augment the cost,
In dull prolixity engrossed;
And now we're well secured by law,
Till the next brother find a flaw.

The encroachment of indiscipline has to be arrested. It is better to be frightened now, than to be killed hereafter. Least said soonest mended. If bad men combine, good men associate to procure great public ends. The court has to barricade itself against such onslaughts. You have to have enough rubber in you to remain waterproof. It is better to redress evils before they become intolerable and a folly to wait for the ripeness of calamity. The stream of justice would not be comforted unless the rectification is earnestly carried out. We have to be careful of these setbacks, blind alleys and disasters. If one succumbs to such moments, it would be surrender before an intellectual conspiracy which threatens the very existence of the confidence in this institution. We are reminded of Chief Justice Warren E Burger of the United States Supreme Court who said "My mother taught us that the time to fix the cracks in the plaster is when you first move into a house. Later on, you don't pay attention to them." The new entrants and the recent one's have to be taken care of as soon as possible.

We have to strive with all our might to keep our heads above the waves of misfortune. The rainbow of hope has not to be cut out and snapped merely because an individual act or a group expression is trying to infect the system. It is not only the greatness of danger, but the value of the adventure, which measures the degree of our concern in every undertaking. The need is to lift the lost spirit of Lawyers and to revive faith in the system that is gradually declining. Motives of selfinterest should be shed and replaced by pure patriotism to the system. Withholding the facets of discipline or otherwise not propagating it is a serious shortfall on the path of discipline. It is like keeping it rather dark from those "educated legal professionals" who need it most because of their lack of proper training. To ensure the balance of discipline a note has to be struck between abstinence and latitude. Abstinence from roguish and discourteous behaviour, and latitude in politeness and courtesies.

One of the principles of legal moralism is the enforcement of morality as a proper part of the laws business. Let us pursue, with moral courage and quiet

intellectual pressure, the permanent ideals of the ethics in the profession. Improvement has to be made to give it morality, tone and noble objectives. Our efforts might appear like tiny fingerprints on the wall that speak of little prisoners trying to feel their way to sea and air, but these efforts are strongly anchored on hopes that have firm foundations in our approach full of faith in the system and its legal fraternity. There are many, and feel a vast majority, who share the views of the Bench, that virtues of discipline are here to stay and are not like monstrous quicksand, shifting its particles constantly, with no foundation, its upper granules of today buried tomorrow.

If greed, indiscipline and contempt have made some individuals go astray, we must change them before a disastrous situation in its aggravated form devours the institution. One has to have the courage to put the blame to where it exactly belongs.

It is not a tolerable doom that this court will allow itself to be faced with. We are more concerned in securing a sense of competence and discipline amongst lawyers rather than simply aiming to refashion an individual. We have contemplated upon the current trends of indiscipline with a cool detached scepticism. Lawyers also have been keen but not unfriendly critics of the system. The themes that were brooding deepest in our minds concern the functioning of the entire institution and not a mere singular instance.

We should not be mistaken to have carried out a heresy hunt. We are sincerely trying to mend what has been deliberately torn. The entire exercise is a reluctant necessity. The command of law compels us to do our duty with an unexpressed consent. Our judgment may once again at least arouse the conscience of those who genuinely feel about the preservation of the entire institution and their thoughts do not get marred by mean and short sighted considerations. We have to climb the mountain by different paths but that which we seek is the same. The view from the summit is identical for all.

Being creatures of habit, the Bench and the Bar cling together, sharing each other's misery and wisdom, shortcomings and successes, arguments and judgments, oratory and eloquence, art and humour, faith and respect and above all the desire to continue to preserve the confidence of the people in the rule of Law. This is what binds the system and such habits keep the institution from flying to pieces. Such is the system that all this appears to be akin to the theory of gravitation a moral and authentic force that by itself emanates with an upsurge when one is devotedly engrossed in upholding the majesty of the institution. Any loss of faith to this devotedness either on account of circumstances or because of deliberate motives, brings about the lowering of standards which we would term as the germs of indiscipline. Some lawyers appear to have become lapsed devotees of discipline. They mistakenly think that everything is stacked against them and they appear like tormented souls. The companionship of Bench and Bar is almost experiencing a sense of mutual dread due to occurrences like the present. It is an awestricken crisis inflicting a deep

injury on the institution. There is no need to make an attempt to vindicate by throwing the blame on each other.

There are recorded exertions of active outrageous behaviour and have been very frequent in the recent past. They have seen manifestations of arson when a particular court of this High Court was ransacked in the month of April 2008. The newly acquired dominion of unrest by a mob of lawyers at Madras has been widely reported and therefore we want that lawyers should exercise their freedom the right of everyone to investigate for himself. The assumption of the right to an outrageous protest under the attempted veil of legitimacy, skulking under the disguise of professional necessity, appears to be no courageous act of usurpation. The courts atmosphere is being turned into street ransacking like students on a rampage during agitation or ragging with freshers. The scale of attempted destruction of court property with justice as its casualty calls for a serious deterrent action.

The means to combat this prevailing infected atmosphere requires a substantial doze of remedial measures which may be well directed in its operations to ensure nonrecurrence of such incidents. The situation has to be dealt with promptitude and eagerness. The shattering of window panes and glass doors, the destruction of property, which is undoubtedly revered public property, is a demonstration which is to the total dislike of the public at large and definitely an open defiance of law. Such acts have neither any public or legal sanction and have always faced criticism bringing the noblest of professions to general disrepute.

There is no need to replace the glass doors with iron protection and mere physical replacement by changing the chemistry of doors is no solution. To our mind it has to be checked with an iron determination both by the Bench and by the Bar. Discipline to be defined from above, coupled with self regulation by lawyers, has to be immediately pressed into service before things go too far. We know that strong symptoms of inattention are visible, yet it is our duty to pronounce on the occasion.

There is a general dislike when discipline is sought to be reminded of, just like the irritating signals of a traffic policeman to a rash driver who always wants the shortest cut even if it is a wrong cut, but such signals are necessary to avoid accidents and disasters like the present one. The bar does not flourish in a cloistered calm. In the realm of common law, lawyers are engaged in the bustling business of disputes over broken heads, broken contracts, street accidents, libel and slander and of course crime. They are at times impatient of discipline and restrictions. Their extreme steps may jettison justice and decency for the sake of expediency and quick fix.

The quality of discipline that is required to be observed should, in our opinion be, based on rigorous training. It should be, if possible a hundred percent input with the same output. Such ideas at times emanate from sources that makes us believe that they have percolated even to remote villages where wisdom appears

to be reflected simply, but directly and amazingly with precision. We are supposed to express ourselves in a way that Law is understood in its most simplified form. The same way and with the same level of wisdom a teacher, Shikha Dwivedi, imparting science lessons at Krishi Audyogik Vidyalaya, Aau, Attarra, District Banda, has put in her point of view about discipline amongst students through the following formula:

"DISCIPLINE

Discipline should be made 100 percent. To achieve anything in life we must have 100 percent Discipline and it can be proved mathematically.

We give number to each of all the alphabets of the English language and see what happens.

A B C D E F G H I J K L M

1 2 3 4 5 6 7 8 9 10 11 12 13

N O P Q R S T U V W X Y Z

14 15 16 17 18 19 20 21 22 23 24 25 26

(D=4, I=9, S=19, C=3, I=9, P=16, L=12, I=9, N=14, E=5) = Total 100

So, unless discipline is 100 percent nothing can be achieved in life."

In our opinion, it may appear to be an elementary approach to some, but there is no doubt that it carries the same weight and gravity of wisdom which experts claim to unearth after much research and observation.

A recent reminder on discipline would be worth mentioning that we came across in a newspaper editorial where the tribute paid by a sincere disciple to her music Guru Late Pandit Ram Ashray Jha has been stated. The same was published in a local English Daily Northern India Patrika dated 5.1.2009 where Dr. Smita Agarwal, Professor in English, University of Allahabad, expressed herself as follows:

"Though wise men at their end know dark is right, because their words had forked no lightening they do not go gentle into that good night.

Dylan Thomas"

".....He was ruthless in his selection: he never accepted any financial or material gratification; he did not suffer fools, nor the consideration that you happened to be someone's son or daughter. And so we came from all walks of life and were let into the fold only if we had the voice and the will.....The training was rigorous."

"..... And if you missed he was merciless. Adolescent eyes brimming with tears failed to move him. You had to aim for perfection."

"..... He would transmogrify into a devastating critic if he perceived someone as careless or flippant to its essential structure."

It is by the disciplined and combative nature of one's strong character that the mind can be persuaded to believe what one says is right or wrong. A character that is bathed in a firm belief of healthy traditions and moral uprightness, can turn the entire world in its favour. Disciplined effort and austere living is a way of self imposed suffering which rinses your thoughts and your soul clean. To indisciplin oneself is an awful abnegation of human behaviour. The example of Mahatma Gandhi as a Barrister and the compliment given to him by the Judge who tried and sentenced him in the famous sedition case should be remembered, if we have not forgotten it altogether. This sedition trial was in reality a tribute by a British Judge, Mr. C.N. Broomfield, District and Sessions Judge, Ahmedabad, to Gandhiji who in his reply after conviction surpassed all examples of a lawyers humility (Reference 1970 SCC Vol. I journal Section Page 7, Law A Treasury of Art and Literature by Sarah Rohbins Pages 87 and 88 and "Gandhi A plea for severest penalty by Houston Peterson at page 459 of the Law as Literature, the World of Law by Ephraim London Vol.II). This humility was practised by one who preached that not only injustice but tolerance of injustice is also a sin.

It is an alarming exigency when a constitutional authority is threatened with subversion. It is therefore a painful necessity to disapprove any such reprehensible conduct. Such acts of manifest contempt have to be discouraged and innovations projected to dislodge the judicial functions, avowedly espoused for a determined cause, has to be deprecated. By pronouncing the legitimate limits of law and strengthening its foundation, would in our opinion be an aid to prevent any such drive to create disturbances. It is our duty and there is an urgent need to effectuate measures of salutary reform by launch of prudent entrenchments in law to bring about the necessary deterrent results. This has to be done with a moderation so as to disarm the animosity that has gradually taken the shape of such protests and therefore the High Court Rules would require suitable amendments. The avenues of a sort of reunion with the system and reaffirmation of lost values have to be opened to secure the institution without any further damage to it. The incident marks the institution being endangered with an overwhelming force which nothing else but the resources of law can resist. This requires the united endeavours of the Bench and the Bar to call forth these resources in support of this cause which can be conceived of as unavoidable necessities.

Respect to authority in a democracy is respect to the system of governance which we the people of India have on our own chosen for ourselves. There is no reason, therefore, to defy one's own choice merely because it causes personal inconvenience. To defile the system by sporadic acts of indiscipline is to attempt the detraction of one's own creation. Any such encouragement would be alike to spoiling one's own child leaving old age to lament and repent.

Values have wilted and perished. The court cannot be asked not to perform its

duties. Even Statutory bodies entrusted with the task of disciplining the torch bearers of the profession, have failed to perform their duties and are sluggish in taking any action against the erring lawyers. A peculiar situation totally different in magnitude than V.C. Mishra's case has arisen and the court in such a situation cannot leave the judiciary unprotected. The Lawyers are advancing the course of a new variety of mobocracy comprising of legal intellectuals. This has definitely generated an atmosphere that may virtually paralyse the judicial system. " Counsel in court are robed representatives, within the parameters of adversary system, geared to the higher cause of justice, not amoral attorneys, paid to ventriloquize the case of the principal, (1980) 2 SCC 471 Page 4.

The job to secure justice is the duty of every lawyer and in our opinion, therefore, is ethically and morally required to exercise restraint in his functions to that extent his actions do not accelerate the "mob mentality" with which we are presently dealing with. Values have crumbled. From their debris new ones emerge. We live in an age of angry men and women direction less unemployed frustrated and struggling who challenge the very foundations of true thought. It is perhaps frustrating but a survivable situation. Ethics has not been abandoned altogether. We earnestly hope that there are still many, who would stand by the side of law at least, and also justice.

The institution, harassed by pride and selfdepreciation needs to be rejuvenated. An awakening is required to help this gloomy situation. This institution deserves to be stationed as an inviolate authority or else the very roots of this one of the three great pillars of democracy would be subject to a self destructive irretrievable decay. The institution has inherited an ethicism which cannot be allowed to evaporate.

Lawyers cannot be comprehended to be an association like the "Supreme Anarchist Council " (G.K. Chesterton) a body of men dedicated to the overthrow of the world order. They are there to secure and preserve order in society by serving the best interests of the institution. Can lawyers be said to be queer traders and their profession queerer still? A professional reput of fame gathered through generations and one's own sincere devotedness should not be allowed to be trodden under odd men's feet.

The common man thinks that people have nothing to do with the laws but to obey them. The lawyers have a greater command to obey and a greater obligation to observe professional conduct and etiquette.

The emphasis is on the faith that binds the Bench and the Bar. This necessarily entails a sense of duty and obligation both, on the lawyers, who enjoy the privilege of claiming themselves to be a legitimate part of governance in this great institution of Judiciary. The confidence of the public at large on this wing of democracy, and its consequential ever increasing importance on account of the general public perception that the Legislature and the Executive are possibly losing their credibility, makes it imperative for the lawyers to behave in the real

sense as officers of the court. It is only then it can be said that they have in good faith put in their efforts to secure justice for their clients. In effect that is a solemn duty cast on the lawyer. The discharge of this duty therefore ushers in a debate as to how should lawyers conduct themselves so as to avoid any unsavoury feature which might marr their profession.

It would be apt to quote about some of the eminent contributors of the profession to this field. Their opinions and the present situation compel us to declare our job as Casuists as we find that the work entrusted to us requires a handling with care. To begin with, we may refer to a treasure on this subject, namely Professional Conduct and the Art of Advocacy by KVK Krishna Aiyer (1944) Former President Madras Bar Association. This treatise which fortunately continues to be available in our Judges Library, unfortunately is unknown to those members of the Bar who ought to know about it right at the time of their baptism in the profession. It is a series of lectures delivered by the author, who from his own intense study and lifelong experience at the Bar, has laid threadbare the norms to be religiously adhered to for attaining the position of an indispensable lawyer. It is so comprehensive that quoting one part would amount to showing disrespect to the other. The entire work discloses something new in every page and, therefore, one cannot afford to discriminate between them while reading.

Some more useful material is available at Pages 281 to Page 325 in Sandeep Bhalla's "Advocates Act 1961 and Professional Ethics" Second Edition 2004 published by Nasik Law House, Aurangabad. This in turn narrates in gist another write up by Hon. Mr. Justice Raj Kishore Prasad published in the Journal Section of AIR 1956, (Part of AIR 1956 SC Vol.I), where the learned Judge of Patna High Court has elaborately in his lectures contributed at length towards professional ethics and standards. The same volume treasures some more useful hints in lectures by Hon"ble Judges of the Mysore and Andhra High Courts.

May we take this opportunity to request those who claim themselves to be the leaders of the Bar to at least make it compulsory for all new entrants, apart from those who are already there, but unaware of the said treatises, to have a copy of the same and read it cover to cover, page to page and after understanding it, may implement it during their career. Our expressions, we fear may not remain a monologue which was defined by Ambrose Bierce in The Devil's Dictionary (1911) as an activity of a tongue that has no ears. We know it, but not for certain, that this request may turn on deaf ears, yet we are hopeful that even if a handful of senior lawyers and some of our young entrepreneurs sincerely dwell on our request, the same might commence an era with a mild breeze of fresh thoughts that may bring about a change for the better. Our words are not likely to fall as frozen vain.

Sir Maurice Gwyer, the former Chief Justice of the then Federal Court said that in the last analysis it is character and personality which still counts most in human affairs. This can be achieved through discipline and proper training. To achieve

this we will have to think higher and for that one will have to listen to what our late President Dr. S. Radhakrishnan had to say in his work "Ideal State of Life" (at Page 197) as follows:

"The inward constraint is more important than the law imposed from without. One should crave for inward truthfulness, utter sincerity and not mere conventional propriety."

In spite of this huge problem, we are not to be threatened or influenced by the prophets of gloom. We wish that such instances do not last beyond this case and fate forbid, if it does then this precedent would require better refinement. We do not wish to say that we would fail in our endeavours but there are chances of mistakes being committed. It is then that one has to make haste and be stern enough to meet the cause. We do not wish to circulate any feeling of segregation but we definitely want to ensure the nonrepetition of any such recurrence which may bring about any other unsavoury situation. Our reason is that this is a case in which the situation has been brought about by our own officer of the court a lawyer. The court has been virtually driven to despair to devise its opinion.

Such incidents depict that the profession is getting infected with a thin film of sin laden dust covered with tainted rain which is clearly decipherable as indiscipline, together producing a mud that is soiling our minds. Marks of injury are also visible and therefore a cleaning bath in the pure water of unstinted discipline is needed.

The conduct expected from Lawyers in the interest of the institution are calculated in their practical application. They have to be observed with profound wisdom to their practical object of securing the lost discipline amongst misdirected lawyers. The principles that are warmly cherished have to be firmly embraced by proper understanding. Let the lawyers be able to profit out of this or else they might continue to be misunderstood than what they really are. The need is concerted action coupled with sacrifice and forgiveness. We still have hope as men do change when they cross deep waters.

SECURITY

The question relating to the security of the High Court, its property and Hon^{ble} Judges of this Court has now come to the forefront. The immediate indulgence of lawyers in breaking windows pane, shutting doors and making unruly noise by dragging chairs, throwing furnitures and books are now on the rise. We do not wish to repeat that such instances did happen subsequently as well and the existing security and the system of its operation was found to be inadequate to meet such exigencies. Fortunately, the High Court did rise to the occasion on the administrative side, but partially. The Administrative Committee of the High Court met on several occasions and we are informed that a Committee was also formed to look into these aspects. We are also informed that the matter was taken up with the State Government in order to work out the possible contingencies to meet the exigencies of such situation. However, the said effort

has not yielded any concrete result which may reflect implementation of any decision taken on the administrative side. We would, therefore, be content by humbly requesting Hon''ble the Chief Justice to take up this matter on the administrative side in order to sort matters out, as it is known that intricacies of the problem together with minute details have already been deliberated upon when these matters were taken up in the past. The entire information and the incident that gave rise for such speculations are already on record on the administrative side and, therefore, any opinion does not require any expression on the judicial side at this stage. The magnitude of the problem is such that we would make a further request in this regard that the matter should be taken up at the earliest and the solution found out in order to avoid any future mishap. We are not in doubt that the High Court on the administrative side is fully equipped to deal with the matter and we, therefore, direct the State Government to extend its full cooperation to the High Court in order to make the security arrangements complete in all respects at the earliest. A copy of this order shall also be communicated through the Registrar General and the Legal Remembrancer/ Secretary Law to the State Government for an appropriate action and our judgment shall also be placed before Hon''ble the Chief Justice for perusal and necessary action, if any.

POWERS EXERCISABLE ON ADMINISTRATIVE SIDE

Whenever such destruction of property or arson takes place, apart from the provisions of Contempt of Courts Act, there are certain acts which are also punishable under the Indian Penal Code. The specific provision to that effect is under Section 228 IPC, which is quoted herein below:

"228. Intentional insult or interruption to public servant sitting in judicial proceedings. Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

The High Court on the administrative side is, therefore, empowered to take action by lodging an appropriate First Information Report. Apart from this, the property of the High Court is also public property and, therefore, any destruction of public property is not only punishable under the Indian Penal Code as a criminal trespass but is also mischief and is also a cause of action under the Prevention of Damage to Public Property Act 1984. The Registrar General, therefore, should not hesitate in taking action in such matters where public tranquility is disturbed inasmuch as it is the duty of the Registrar General of the High Court to maintain the law and order situation within the precincts and the premises of the High Court under orders of Hon''ble the Chief Justice.

FRAMING OF RULES

We have already dealt with in detail the powers of this Court to be exercised

while imposing an order to restrain a lawyer from practising in the event the behaviour of such a lawyer is grossly contemptuous. This aspect, therefore, leads us to the question as to whether there is a necessity of framing a rule to that effect and as to whether the High Court Rules do require an amendment on that count. The Allahabad High Court Rules 1952 contain Rules pertaining to the procedure to be adopted by the Courts while proceeding in matters of contempt. So far as Rules framed under Section 34 of the Advocates Act 1961 are concerned, they are contained in Part VI Chapter XXIV where the notification dated 16.2.1990 published in the Gazette on 20.4.1991 has been incorporated. Rule 11 of the said Rules is quoted below:

"11. Appearance of advocate after committing contempt. 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 contempt, either by tendering apology which is accepted or by suffering punishment imposed on him or where, in case of an appeal, a stay order is in operation."

The Bar Council of India has issued notifications and in the Notification dated 18.3.1969, clause 11 has been incorporated as follows:

"11. 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 contempt."

In this context, it would be appropriate to point out that under Section 34 of the Advocates Act 1961, provisions have been made empowering the Court to frame their Rules. These Rules, however, cannot be inconsistent with any other law on the subject but at the same time it can make regulatory provisions in order to enable the Courts to regulate their proceedings. This question has already been dealt with by the Apex Court in the case of ExCapt. Harish Uppal (supra) and the relevant paragraph of the judgment has already been extracted by us herein above. The same has been reiterated in the Full Bench judgment of the Jharkhand High Court in the case of K.K. Jha Kamal (supra). We are, therefore, of the view that a rule to the said effect be incorporated under Chapter XXIV of the Allahabad High Court Rules as indicated herein above in addition to Rule 11 empowering the Court to restrain/debar a lawyer proportionately in accordance with the conduct of such a lawyer. This exercise will have to be carried out on the administrative side of the High Court and we, therefore, direct the Registrar General to bring it to the notice of Hon'ble the Chief Justice requesting His Lordship to pass appropriate orders on the administrative side for the consideration of framing of such a rule in accordance with law. So long as such rules are not framed, the law laid down under this judgment shall continue to bind the proceedings of this Court.

The Contempt proceedings as well as the reference on other issues as per orders of Hon'ble the Chief Justice dated 2.4.2008 stand accordingly answered. All matters stand disposed off.