IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2020

IN THE MATTER OF:

PRASHANT BHUSHAN

...PETITIONER

VERSUS

1. **UNION OF INDIA**
THROUGH ITS SECRETARY,
MINISTRY OF LAW AND JUSTICE
4TH FLOOR, A-WING, SHASTRI BHAWAN,
NEW DELHI – 110001 ... RESPONDENT NO. 1

2. **REGISTRAR**
THROUGH ITS SECRETARY GENERAL,
SUPREME COURT OF INDIA
NEW DELHI - 110001 ... RESPONDENT NO. 2

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR THE ENFORCEMENT OF RIGHTS GUARANTEED UNDER ARTICLES 14, 19 AND 21 OF THE CONSTITUTION, SEEKING INTRA-COURT APPEAL AND FOR FRAMING OF RULES AND GUIDELINES FOR THE SAME AGAINST CONVICTION IN ORIGINAL CRIMINAL CONTEMPT CASES IN SUPREME COURT

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF
THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. That the instant writ petition has been filed under Article 32 of the Constitution of India for the enforcement of fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution of India seeking issuance of an appropriate writ, order or direction declaring that a person convicted in an original criminal contempt case by this Hon'ble Court would have a right to an intra-court appeal to be heard by a larger and different bench and for laying down rules and guidelines for the same OR in the alternative, an appropriate writ, order, or direction declaring that review petitions filed against orders of conviction by Supreme Court in original criminal contempt cases would be heard in open court by a different bench. That the existing Act and Rules, do not bar or prohibit the prayers as sought by the Petitioner. In fact, it is in the spirit of the Contempt of Courts Act, 1971 to lay down such a procedure. This Hon'ble Court has in the past framed special rules to deal with cases concerning death penalty and has also devised special remedy in the nature of 'Curative Petition' against a final judgment of the Supreme Court on certain limited grounds.

1A. **The Petitioner**: The petitioner is an advocate practicing before this Hon'ble Court for more than 35 years. He is also a social activist involved in public interest work. As a lawyer, he has filed several PILs before this Hon'ble Court and various High Courts and argued them *pro bono*. Many of these cases have resulted in landmark judgments.

Petitioner has also been involved in work of judicial accountability and is a founding member of Committee on Judicial

Accountability (CoJA) and Campaign for Judicial Accountability and Reforms (CJAR).

Because of the Petitioner's involvement in public interest work and work related to judicial accountability, and the need for building public opinion on certain issues, the Petitioner has faced criminal contempt cases, which have been taken up by this Hon'ble Court in original proceedings.

CONTEMPT CASES AGAINST THE PETITIONER

2. That in the year 2009, a contempt case [*C.P. (Crl.) No. 10 of 2009*] was initiated against the Petitioner herein on account of his interview to the *Tehelka* magazine in which the Petitioner had make certain *bona fide* remarks regarding corruption prevalent in the Judiciary. The said contempt case is pending adjudication before this Hon'ble Court. This Hon'ble Court *vide* order dated 10.09.2020 passed an order requesting Ld. Attorney General to act as amicus curiae in the matter. A copy of the order dated 10.09.2020 passed by this Hon'ble Court in C.P. (Crl.) No. 10 of 2009 is annexed herewith and marked as **ANNEXURE P-1 (Pages Nos. 63 to 64).**

3. That in the year 2019, another contempt case was filed in this court by the Attorney General against the petitioner. The matter is pending though in view of an explanation offered by Mr. Bhushan the Ld. Attorney expressed that he does not want Mr. Bhushan to be punished. A copy of order dated 07.03.2019 passed by this Hon'ble Court in C.P (Crl.) No. 1/2019 in W.P.(C) No. 54/2019 is annexed and marked as **ANNEXURE P-2 (Pages Nos. 65 to 67).**

4. That the Petitioner was found guilty and convicted in *SCM (Crl.) No. 1 of 2020,* titled **In Re Prashant Bhushan & Anr** *vide* judgment dated 14.08.2020. The subject matter of the said contempt case was two tweets made by the petitioner on 27.06.2020 and 29.06.2020 on his twitter account. A copy of the judgment dated 14.08.2020 passed by this Hon'ble Court in Suo Motu Contempt Petition (Crl.) No. 1 of 2020 convicting the Petitioner is annexed herewith and marked as **ANNEXURE P-3 (Pages Nos. 68 to 101).** That the petitioner was thereafter sentenced *vide* judgement dated 31.08.2020. A copy of the judgment dated 31.08.2020 passed by this Hon'ble Court in Suo Motu Contempt Petition (Crl.) No. 1 of 2020 sentencing the Petitioner is annexed herewith and marked as **ANNEXURE P-4 (Pages Nos. 102 to 136).**

5. That the Petitioner is also filing a review petition seeking review of judgments dated 14.08.2020 and 31.08.2020 in the aforementioned case Suo Moto Contempt Petition (Crl) No. 1/2020.

NEED FOR PROCEDURAL SAFEGUARDS

6. The Petitioner is filing this writ petition in order to bring important procedural safeguards when this Hon'ble Court considers cases of criminal contempt in original proceedings, i.e. those proceedings where this Hon'ble Court does not act as an appellate Court.

7. In such cases, considering the fact that there is inherent unavoidable conflict of interest involved, and the fact that liberty of the alleged contemnor is at stake, it is of utmost importance that certain basic safeguards are designed which would reduce (though not obviate) chances of arbitrary, vengeful and high handed decisions. It is extremely important to minimise such decisions

since they not only cause great injustice to the alleged contemnor, but also bring disrepute to the Court itself and are likely to be harshly judged by legal historians.

8. Furthermore, in his statement dated 19.08.2020 Justice Kurian Joseph (former Justice of this Hon'ble Court) issued a statement with regard to the two contempt cases against the petitioner, stating that there needs to be a safeguard in the form of an intra-court appeal where there is a conviction in a criminal contempt case. The statement reads as follows:

> *"A three Judge bench of the Supreme Court of India has decided to hear a few serious questions on the scope and extent of contempt of Court. Certainly, there are more graver issues, involving substantial questions of law as to the interpretation of the Constitution of India. For example, whether a person convicted by the Supreme Court of India in a suo-motu case should get an opportunity for an intra-court appeal since in all other situations of conviction in criminal matters, the convicted person is entitled to have a second opportunity by way of an appeal. Under Section 19 of the Contempt of Courts Act, 1971, an intra-court appeal is provided where the order is passed by the single Judge of the High Court and in case it is by the Division Bench, appeal lies to the Supreme Court of India. This safeguard is provided probably to avoid even the remotest possibility of miscarriage of justice. Should there not be such a safeguard in the other Constitutional Court, the Supreme Court of India also, when there is a conviction in a suo-motu criminal contempt case? "Fīatjūstitiaruatcælum" (let justice be done though the heavens fall) is the fundamental*

basis of administration of justice by Courts. But, if justice is not done or if there is miscarriage of justice, heavens will certainly fall. The Supreme Court of India should not let it happen.

Under Article 145 (3) of the Constitution of India, there shall be a quorum of minimum five Judges for deciding any case involving substantial questions of law as to the interpretation of the Constitution. In both the suo-motu contempt cases, in view of the substantial questions of law on the interpretation of the Constitution of India and having serious repercussions on the fundamental rights, the matters require to be heard by a Constitution Bench. In the case of suo-motu contempt against Justice C. S. Karnan, it was the collective wisdom of the full court of the Supreme Court that the matter should be heard at least by a bench consisting of the seven senior-most Judges. The present contempt cases are not cases involving just one or two individuals; but larger issues pertaining to the concept and jurisprudence of the Country regarding justice itself. Important cases like these need to be heard elaborately in a physical hearing where only there is scope for a broader discussion and wider participation. Men may come and men may go, but the Supreme Court of India should remain forever as the court of supreme justice.

Justice (Retd.) Kurian Joseph

A copy of statement dated 19.08.2020 issued by Justice (Retd.) Kurian Joseph is annexed herewith and marked as **ANNEXURE P-5 (Pages No. 137).**

9. The Petitioner is seeking the instant prayers for the following reasons. The same have been elaborated in the 'Grounds' section of the petition.

A. Violation of Article 21: That the right to appeal against conviction in original criminal cases is a substantive right under Article 21 and flows from principles of natural justice. The absence of such a right thus violates Article 21. This has been affirmed in judgments of this Hon'ble Court as well as under international law.

B. Right of Appeal is an absolute right according to Article 14(5) of International Covenant on Civil and Political Rights (ICCPR) which India has ratified and is therefore binding upon the Indian State. Under ICCPR, first appeal is a right even where trial is by the Highest Court and Review is not a substitute for an appeal.

C. Inherent Bias: Contempt proceedings are one in which the injured party (Supreme Court) acts as the prosecutor, the witness and the judge, thereby raising fear of inherent bias. As a judge the power of the Supreme Court to convict and sentence the accused is unlimited and arbitrary. *Nemo potestesse simul actor et judex* i.e. No one can be at once a suitor and a judge. Thus, there is a need for an intra-court appeal.

D. Contempt Proceedings are quasi-criminal in nature, akin to a criminal trial and thus, similar procedural safeguards must apply as in criminal trials.

E. Violation of Article 19(1)(a): The freedom of speech guaranteed under Article 19 can only be restricted/regulated under Article 19(2) by a procedure which is reasonable and stands the test of Articles 14 and 21.

F. Original Criminal Contempt cases are a unique and distinct category of cases. This Hon'ble Court has in the past framed special rules to deal with cases concerning death penalty and has also devised special remedy in the nature of 'Curative Petition' against a final judgment of the Supreme Court on certain limited grounds.

G. Section 13(b) of the Contempt of Courts Act, 1971, provides for truth as a defense. It is possible that a "truth" not accepted by one bench may be accepted by a different or a larger bench or a different court, when the whole matter is re-examined after passage of time. Thus, while the court of first instance may not accept the "truth" as alleged by the accused in a criminal contempt case, it may be accepted as factually correct by a larger or different bench. In a situation where there is no right of appeal, the right of having a fact determined as truth is lost.

H. Violation of Article 14 since it is discriminatory that a person charged with similar criminal contempt of High Court has a right of appeal but a person charged with criminal contempt of Supreme Court has no appeal.

I. That neither the Contempt of Courts Act, 1971 nor the Rules to Regulate the Proceedings for Contempt of the Supreme Court prohibit the prayers as sought by the petitioner. It is in fact, in the spirit of the Act to provide for such a procedure.

10. The Petitioner has not filed any other similar petition before this Hon'ble Court or any High Court or any other court. The Petitioner has no better remedy available.

GROUNDS

A. Right to Appeal is a fundamental right under Article 21

A1. Under Section 19 of the Contempt of Courts Act, an intra-court appeal lies "as of right" against an order of decision of a single Judge to a bench of not less than two judges of the High Court and in case an order or decision is by a Division Bench, an appeal shall lie to this Hon'ble Court. It is submitted that such a safeguard is provided to avoid any possibility of miscarriage of justice or an abuse of the power of contempt. However, in cases where an order or decision convicting an accused is passed by the Supreme Court in its original jurisdiction, the Act does not provide for any forum of appeal. Thus, an accused is left deprived of his right to appeal in such cases.

Section 19 Contempt of Courts Act, 1971

19. Appeals.—
(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt— —(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt—"

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court: Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that—

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed—

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.

A2. This Hon'ble Court in various judgments has clearly held that one right to appeal in a criminal conviction is a substantive right flowing from Article 21 of the Constitution and is a part of natural justice.

In **M.H. Hoskot v. State of Maharashtra (1978) 3 SCC 544,** a three judge bench of this Hon'ble Court, while dealing with a case where an accused was able to file an appeal against the High Court judgment convicting him after four years, held that at least a single right to appeal is integral to fair legal procedure, natural justice and normative universality and manifests itself in Article 21 of the Constitution. It was held thus:

10. Freedom is what freedom does, and here we go straight to Article 21 of the Constitution, where the guarantee of personal liberty is phrased with superb amplitude:

"Article 21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law."
(emphasis added)

"Procedure established by law" are words of deep meaning for all lovers of liberty and judicial sentinels. Amplified, activist fashion "procedure" means "fair and reasonable procedure" which comports with civilised norms like natural justice rooted firm in community consciousness — not primitive processual barbarity nor legislated normative

mockery. In a landmark case, ***Maneka Gandhi*** *[(1978) 1 SCC 248, 277 at 281 and 284] Bhagwati, J. (on this point the court was unanimous) explained: (paras 4, 5, 7 & 8)*

> *"Does Article 21 merely require that there must be some semblance of procedure, howsoever arbitrary or fanciful, prescribed by law before a person can be deprived of his personal liberty or that the procedure must satisfy certain requisites in the sense that it must be fair and reasonable? Article 21 occurs in Part III of the Constitution which confers certain fundamental rights.*
> *Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements? Obviously, the procedure cannot be arbitrary, unfair or unreasonable. This indeed was conceded by the learned Attorney-General who with his usual candour frankly stated that it was not possible for him to contend that any procedure howsoever arbitrary, oppressive or unjust may be prescribed by the law.*
>
> *The principle of reasonableness which legally, as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise it would be no procedure at all and the requirement of Article 21 would not be satisfied.*
>
> *Any procedure which permits impairment of the constitutional right to go abroad without giving*

reasonable opportunity to show-cause cannot but be condemned as unfair and unjust and hence, there is in the present case clear infringement of the requirement of Article 21."

One of us this separate opinion there observed [Krishna Iyer, J., 337, 338] :(Paras 81, 82, 84 and 85)

" 'Procedure established by law', with its lethal potentiality, will reduce life and liberty to a precarious plaything if we do not ex necessitate import into those weighty words an adjectival rule of law, civilised in its soul, fair in its heart and fixing those imperatives of procedural protection absent which the processual tail will wag the substantive head. Can the sacred essence of the human right to secure which the struggle for liberation, with 'do or die' patriotism, was launched be sapped by formalistic and pharisaic prescriptions, regardless of essential standards? An enacted apparition is a constitutional illusion. Processual justice is writ patently on Article 21.

Procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself. Thus understood, 'procedure' must rule out anything arbitrary, freakish or bizarre. A valuable constitutional right can be canalised only by civilised processes.... What is fundamental is life and liberty. What is procedural is the manner of its exercise. This quality of fairness in the process is emphasised by the

strong word 'established' which means 'settled firmly' not wantonly or whimsically. If it is rooted in the legal consciousness of the community it becomes 'established' procedure. And 'law' leaves little doubt that it is normae regarded as just since law is the means and justice is the end.

Procedural safeguards are the indispensable essence of liberty. In fact, the history of personal liberty is largely the history of procedural safeguards and right to a hearing has a human-right ring. In India, because of poverty and illiteracy, the people are unable to protect and defend their rights; observance of fundamental rights is not regarded as good politics and their transgression as bad politics.

To sum up, 'procedure' in Article 21 means fair, not formal procedure. 'Law' is reasonable law, not any enacted piece."

11. One component of fair procedure is natural justice. ***Generally speaking and subject to just exceptions, at least a single right of appeal on facts, where criminal conviction is fraught with long loss of liberty, is basic to civilized jurisprudence. It is integral to fair procedure, natural justice and normative universality save in special cases like the original tribunal being a high bench sitting on a collegiate basis. In short, a first appeal from the Sessions Court to the High Court, as provided in the Criminal***

Procedure Code, manifests this value upheld in Article 21.

In **Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd., (2007) 6 SCC 528 this Hon'ble Court** again held that right to appeal against a judgment of conviction affecting the liberty of a person is a fundamental right as under:

> **"***12. An appeal is indisputably a statutory right and an offender who has been convicted is entitled to avail the right of appeal which is provided for under Section 374 of the Code. Right of appeal from a judgment of conviction affecting the liberty of a person keeping in view the expansive definition of Article 21 is also a fundamental right. Right of appeal, thus, can neither be interfered with or impaired, nor can it be subjected to any condition.*

In **GarikapatiVeeraya v. N. Subbiah Choudhry** [AIR 1957 SC 540] this Hon'ble Court opined that:

> *"23. (i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.*
>
> *(ii) The right of appeal is not a mere matter of procedure but is a substantive right.*
>
> *(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are*

preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

55. Unfortunately, the legislature has not made any express provision in this behalf. In absence of any express provision, the question must be considered having regard to the overall object of a statute. ***We have noticed hereinbefore that Article 21 of the Constitution of India read with Section 374 CrPC confers a right of appeal. Such a right is an absolute one.***

…

A3. As per **Maneka Gandhi**, "*any procedure prescribed by law*" depriving an individual of their life or personal liberty has to satisfy the touchstone of Article 14 and 19 i.e. such a procedure must be just, fair, non-arbitrary and reasonable. An accused, convicted and

sentenced for criminal contempt by Supreme Court in its original jurisdiction, is not given any avenue for appeal and in the absence of a right to appeal his/her right guaranteed under Article 21 is violated.

B. Right of Appeal against conviction is an absolute right under International Law which is binding on India

B1. In 1976 India ratified the International Covenant on Civil and Political Rights (ICCPR). Article 14(5) thereof, states, "*Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*"

The United Nations Human Rights Committee interpreted Article 14(5) of ICCPR in ***Terron v. Spain, Comm. 1073/2002, U.N. Doc. A/60/40, Vol. II, at 111 (HRC 2004)*** and held that the right to appeal against a criminal conviction is absolute – even if the verdict was initially determined in the highest national court.

In ***Hens Serena and Corujo Rodriguez v. Spain, Comm. 1351-1352/2005, U.N. Doc. A/63/40, Vol. II, at 93 (HRC 2008),*** the United Nations Human Rights Committee further held that even if the verdict had to be initially determined in the highest national court owing to national law specifically requiring to be so, and even if the aggrieved persons availed the right of a constitutional review, still Article 14(5) of ICCPR would be violated if there is no 'appeal'. i.e. a constitutional

review does not obviate the right to an 'appeal' under Article 14(5).

General Comment No. 32, Article 14, Right to Equality before Courts and Tribunals and to Fair Trial by UN Human Rights Committee (HRC) dated 23 August 2007, states:

> *"47.... Where the highest court of a country acts as first and only instance, the absence of any right to review by a higher tribunal is not offset by the fact of being tried by the supreme tribunal of the State party concerned; rather, such a system is incompatible with the Covenant, unless the State party concerned has made a reservation to this effect."* Significantly, India has not made such a reservation while ratifying ICCPR.

Given that India has ratified ICCPR subsequent to enactment of Contempt of Courts Act, 1971, and subsequent to enactment of Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, by virtue of Article 253 of Constitution of India and in line with the judgments of this Hon'ble Court**,** it is submitted that an appeal from a judgment of this court in an original criminal contempt case is a right.

B2. This Hon'ble Court, has held in several judgments including **Gramophone Company of India** and **Vishaka**that international conventions ratified by India would be read as part of domestic law if there is no domestic law which is in conflict with such

international law. Therefore, the right to appeal against an original conviction by the Supreme Court must be read into law in India and the Supreme Courts Rules in this regard must be brought in line with that. The same is legally binding.

In **Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey**, (1984) 2 SCC 534, a three judge bench of this Hon'ble Court held:

> ***5.*** *There can be no question that nations must march with the international community and the municipal law must respect rules of international law even as nations respect international opinion. The comity of nations requires that rules of international law may be accommodated in the municipal law even without express legislative sanction provided they do not run into conflict with Acts of Parliament. But when they do run into such conflict, the sovereignty and the integrity of the Republic and the supremacy of the constituted legislatures in making the laws may not be subjected to external rules except to the extent legitimately accepted by the constituted legislatures themselves. The doctrine of incorporation also recognises the position that the rules of international law are incorporated into national law and considered to be part of the national law, unless they are in conflict with an Act of Parliament. Comity of nations or no, municipal law must prevail in case of conflict. National courts*

cannot say yes if Parliament has said no to a principle of international law. National courts will endorse international law but not if it conflicts with national law. National courts being organs of the national State and not organs of international law must perforce apply national law if international law conflicts with it. But the courts are under an obligation within legitimate limits, to so interpret the municipal statute as to avoid confrontation with the comity of nations or the well established principles of international law. But if conflict is inevitable, the latter must yield.

6. *The proposition has been well stated by Latham, C.J., in Politics v. Commonwealth [70 Comm LR 60]:*

> *"Every statute is to be interpreted and applied, as far as its language admits, as not to be inconsistent with the comity of nations or with the established rules of international law.... It must be held that legislation otherwise within the power of the Commonwealth Parliament does not become invalid because it conflicts with a rule of international law, though every effort should be made to construe Commonwealth statutes so as to avoid breaches of international law and of international comity. The question, therefore, is not a question of the power of the Commonwealth Parliament to legislate in breach of international law, but is a question whether in fact it has done so."*

C. Inherent Bias in Criminal Contempt proceedings

C1. Contempt proceedings are one in which the injured party (Supreme Court) acts as the complainant, the prosecutor, the witness and the judge, thereby raising the fear of inherent bias. The accused is left at the mercy of a particular bench, without any recourse of an appeal so that a different set of judicial minds may apply their minds in a cool and dispassionate manner. This has indeed happened in the *suo motu* contempt proceedings in the petitioner's case. That though the doctrine of necessity is an exception to the rule against bias, the same has to be exercised in a manner that is fair, reasonable and just.

C2. The power of the Supreme Court bench dealing with a contempt case to convict and sentence an accused is claimed to be unlimited and unregulated, especially when Article 129 is invoked. In the petitioner's sentencing judgment dated 31.08.2020 in Suo Motu Contempt Case (Criminal) No. 1 of 2020, the alternative sentence on refusal to pay the fine is debarment from practice before this court for 3 years and imprisonment for 3 months, which is very harsh and completely beyond the maximum sentence which can be imposed under the Contempt of Courts Act, 1971. In fact, this power is so dangerous that it can be invoked to sentence a person for life imprisonment. Such a power, especially when it is used by judges in their own cause, is exceedingly dangerous to be vested in any court without even providing for an appeal.

C3. In contempt jurisdiction, judgments over the years have shown that there can be serious inconsistencies in what has been held to be contempt and what has been held not to be contempt in the eyes of the court. A part of it is owing to the vagueness embedded in the definition of Criminal Contempt under the Contempt of Courts Act, 1971, more specifically Section 2(c)(i) of the Act that defines criminal contempt as:

> ***2. Definitions***. — *In this Act, unless the context otherwise requires,—*
>
> ...
>
> *(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—*
>
> *(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or*
>
> ...

C4. In ***Supreme Court Bar Assn. v. Union of India***, (1998) 4 SCC 409, a fresh set of judicial minds came to a different conclusion with regard to the issue of suspension of license to practice or debarment of advocate in contempt cases. In **Vinay Chandra Mishra**, (1995) 2 SCC 584 this Hon'ble Court had found the advocate concerned guilty of criminal contempt and along with simple imprisonment directed that he "shall stand suspended from practising as an advocate for a

period of three years". SCBA filed a Writ Petition under Article 32 praying for a declaration that, "Disciplinary Committees of the Bar Councils set up under the Advocates Act, 1961, alone have exclusive jurisdiction to inquire into and suspend or debar an advocate from practising law for professional or other misconduct, arising out of punishment imposed for contempt of court or otherwise". In SCBA, this Hon'ble Court observed, *"In V.C. Mishra case [(1995) 2 SCC 584] the Bench relied upon its inherent powers under Article 142 to punish him by suspending his licence, without the Bar Council having been given any opportunity to deal with his case under the Act. We cannot persuade ourselves to agree with that approach. .....To the extent this Court makes the statutory authorities and other organs of the State perform their duties in accordance with law, its role is unexceptionable but it is not permissible for the Court to "take over" the role of the statutory bodies or other organs of the State and "perform" their functions"* (Para 82). Thus, this Hon'ble Court modified it's own stand in an application under Article 32.

C5. That there have been occasions in the past wherein while the High Court found the contemnor guilty of contempt, this Hon'ble Court took a much lenient view and held the act not to be contemptuous. It is also a possibility that another bench in appeal may either decide to drop the contempt case altogether or drastically reduce sentence. Thus, it is in the interest of complete justice that a contemnor is accorded one right

of appeal, in consonance with the spirit of Section 19 of the Contempt of Courts Act, 1971.

C6. That the **Report of the Committee on Contempt of Courts by the Sanyal Committee** dated February 1963 noted the importance of appeal in cases of contempt. The recommendations given by the Sanyal Committee were generally accepted and Contempt of Court Act, 1971 came to be enacted. Sanyal Committee recommended for a right of appeal and the same was incorporated in Section 19 of the Act. However, unfortunately, no right of appeal was provided in the Act against original criminal contempt conviction by the Supreme Court. The relevant part of the Sanyal Committee Report on Contempt of Courts under the chapter titled "Right of Appeal" is reproduced below:

> ***Introduction***.— *The feature of the law of contempt which has given rise to considerable criticism relates to the non-appealability as of right of a sentence passed for criminal contempt. It is urged that much of the criticism against the large powers of the court to punish contemnors will disappear if a right of appeal is provided. In an earlier Chapter, we have pointed out how Judges, like other human beings, are not infallible and inasmuch as any sentence of imprisonment for contempt involves a fundamental question of personal liberty, it is only proper that there should be provision for appeal as a matter of course. As the Shawcross Committee observed: "…in every system of law of any civilised*

State, there is always a right of appeal against any sentence of imprisonment".98 There is no justification whatsoever for making any exception to this universally recognised principle in the case of sentences for contempt.

2.2. *The discretionary right of appeal in contempt cases, so far as it goes, has served a very useful purpose, both in the direction of setting aside erroneous decisions as also in the direction of bringing about some degree of uniformity and certainty in regard to the principles of law relating to contempt. The Shawcross Committee has referred to eight reported cases in which convictions for criminal contempt were considered by the Judicial Committee of the Privy Council on merits, those being the only cases of the type which they could discover. They have pointed out that it is noteworthy that in every case except one (in which the fine was reduced), the appeal was allowed and the conviction quashed. The story of the cases which have come up on appeal before our Supreme Court is not very much different. In a considerable majority of the cases, the Supreme Court has found it necessary either to modify or reverse the decision of the High Court. Mention may be made in this connection of the following;—*

(1) Rizwan-ul-Hasan v. State of U.P
(Judgment of High Court set aside).
(2) Brahma Prakash Sharma v. State of U.P

(Judgment of High Court set aside)

(3) M.Y. Shareef v. Judges of the High Court of Nagpur

(Opportunity given to the High Court to accept the apology by contemners and on failure by the High Court, sentence of fine passed by the High Court set aside).

(4) State of M.P. v. Revashankar

(High Court's interpretation of S. 3(2) of the Contempt of Courts Act, 1952, held erroneous).

(5) S.S. Roy v. State of Orissa

(Judgment of High Court set aside).

(6) B.K. Kar v. Chief Justice and Justices of Orissa High Court

(Judgment of High Court set aside).

A copy of the relevant chapter of the Report on Contempt of Court by Sanyal Committee dated February, 1963 is annexed herewith and marked as **ANNEXURE P-6 (Pages Nos. 138 to 143).**

C7. In the case of the petitioner i.e the Suo Motu Contempt Case (Criminal) No. 1 of 2020, the entire contempt proceedings, from the issuance of notice for contempt to the hearings and passing of judgment, was concluded by a bench of this Hon'ble Court in less than a month, without even considering the defense of the petitioner. There is a possibility that if the petitioner is accorded one right to appeal, (in his case an intra-court appeal by a different bench) this Hon'ble Court might come to a different conclusion.

D. Original Proceedings under Contempt Jurisdiction are in the form of a Quasi-Criminal Trial and therefore same standards must apply

D1. This Hon'ble Court in a catena of judgments has held that contempt jurisdiction is of a quasi-criminal nature and requires the same procedure and standard of proof to be followed as in criminal trials. In criminal trial appeal is a matter of right. However, in original criminal contempt cases before the Supreme Court, an accused, once convicted and sentenced, is accorded no forum for appeal, as is otherwise available to a convict in a regular criminal case, thereby violating his right under Article 14. In such a situation, the Supreme Court becomes the first and the last adjudicating authority deciding the fate of the accused.

This Hon'ble Court in **Sahdeo v. State of U.P** (2010) 3 SCC has held that contempt proceedings are quasi-criminal in nature:

> *"27. In view of the above, the law can be summarised that the High Court has a power to initiate the contempt proceedings suo motu for ensuring the compliance with the orders passed by the Court. However, contempt proceedings being quasi-criminal in nature, the same standard of proof is required in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided*

in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The alleged contemnor is to be informed as to what is the charge, he has to meet. Thus, specific charge has to be framed in precision. The alleged contemnor may ask the Court to permit him to cross-examine the witnesses i.e. the deponents of affidavits, who have deposed against him. In spite of the fact that contempt proceedings are quasi-criminal in nature, provisions of the Code of Criminal Procedure, 1973 (hereinafter called "CrPC") and the Evidence Act are not attracted for the reason that proceedings have to be concluded expeditiously. Thus, the trial has to be concluded as early as possible. The case should not rest only on surmises and conjectures. There must be clear and reliable evidence to substantiate the allegations against the alleged contemnor. The proceedings must be concluded giving strict adherence to the statutory rules framed for the purpose."

In **Muthu Karuppan v. ParithiIlamvazhuthi** (2011) 5 SCC 496 this Hon'ble Court held thus:

"15. Giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of "deliberate falsehood" on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge.

***

17. The contempt proceedings being quasi-criminal in nature, burden and standard of proof is the same as required in criminal cases. The charges have to be framed as per the statutory rules framed for the purpose and proved beyond reasonable doubt keeping in mind that the alleged contemnor is entitled to the benefit of doubt. Law does not permit imposing any punishment in contempt proceedings on mere probabilities, equally, the court cannot punish the alleged contemnor without any foundation merely on conjectures and surmises. As observed above, the contempt proceedings being quasi-criminal in nature require strict adherence to the procedure prescribed under the rules applicable in such proceedings."

In **Mrityunjoy Das v. Sayed Hasibur Rahaman** (2001) 3 SCC 739 it was held thus:

"14. The other aspect of the matter ought also to be noticed at this juncture viz. the burden of standard of proof. The common English phrase "he

who asserts must prove" has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the "standard of proof", be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt."

E. Power of the Supreme Court to convict and sentence without providing for a right of appeal for contempt is not a reasonable restriction of the freedom of speech and expression under Article 19(1)(a)

E1. Because freedom of speech and expression is a guaranteed right under Article 19(1) (a) of the Constitution and only reasonable restrictions (which withstand the test of Constitutionality) can be imposed on that right on the ground of contempt of court as per Article 19(2). To confer an unlimited and original power on the Supreme Court to convict and sentence a person for contempt by way of speech (where judges can sit in their own case) without recourse to an appeal would be an unreasonable restriction on freedom of speech and expression.

Lord Denning in ***Regina v. Commissioner of Police of the Metropolis, ex parte Blackburn*** *[1968] 1 All ER 76 observed as follows:*

"Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.

It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.

Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent

to the matter in hand. Silence is not an option when things are ill done."

E2. That a restriction under Article 19(2) can only be said to be "reasonable" if it satisfies the test of constitutionality vis-à-vis other Fundamental Rights guaranteed under Articles 14 and 21. This Hon'ble Court in ***Maneka Gandhi vs. Union of India*** (1978) 1 SCC 248 held that fundamental rights are all interlinked and State action must satisfy and safeguard all fundamental rights. A procedure which is not just and reasonable would violate Articles 14 and 19 would not be a procedure established by law. This Court held:

> ***6.*** *We may at this stage consider the inter-relation between Article 21 on the one hand and Articles 14 and 19 on the other. We have already pointed out that the view taken by the majority in A.K. Gopalan case [AIR 1950 SC 27 : 1950 SCR 88: 51 Cri LJ 1383] was that so long as a law of preventive detention satisfies the requirements of Article 22, it would be within the terms of Article 21 and it would not be required to meet the challenge of Article 19. This view proceeded on the assumption that "certain articles in the Constitution exclusively deal with specific matters" and where the requirements of an article dealing with the particular matter in question are satisfied and there is no infringement of the fundamental right guaranteed by that article, no recourse can be had to a fundamental right conferred by another article.*

This doctrine of exclusivity was seriously questioned in R.C. Cooper case [(1970) 2 SCC 298 : (1971) 1 SCR 512] and it was over-ruled by a majority of the full Court, only Ray, J., as he then was, dissenting. The majority Judges held that though a law of preventive detention may pass the test of Article 22, it has yet to satisfy the requirements of other fundamental rights such as Article 19. The ratio of the majority judgment in R.C. Cooper case [(1970) 2 SCC 298 : (1971) 1 SCR 512] was explained in clear and categorical terms by Shelat, J., speaking on behalf of seven Judges of this Court in Shambhu Nath Sarkar v. State of West Bengal [(1973) 1 SCC 856 : 1973 SCC (Cri) 618 : AIR 1973 SC 1425] . The learned Judge there said (SCC p. 879):

> *"In Gopalan case [(1973) 1 SCC 856 : 1973 SCC (Cri) 618 : AIR 1973 SC 1425] the majority court had held that Article 22 was a self-contained code and therefore a law of preventive detention did not have to satisfy the requirements of Articles 19, 14 and 21. The view of Fazl Ali, J., on the other hand, was that preventive detention was a direct breach of the right under Article 19(1)(d) and that a law providing for preventive detention had to be subject to such judicial review as is obtained under clause (5) of that article. In R.C. Cooper v. Union of India [(1970) 2 SCC 298 : (1971) 1 SCR 512] the aforesaid*

premise of the majority in Gopalan case [AIR 1950 SC 27 : 1950 SCR 88 : 51 Cri LJ 1383] was disapproved and therefore it no longer holds the field. Though Cooper case [(1970) 2 SCC 298 : (1971) 1 SCR 512] dealt with the inter-relationship of Article 19 and Article 31, the basic approach to construing the fundamental rights guaranteed in the different provisions of the Constitution adopted in this case held the major premise of the majority in Gopalan case [AIR 1950 SC 27 : 1950 SCR 88 : 51 Cri LJ 1383] to be incorrect."

Subsequently, in Haradhan Saha v. State of West Bengal [(1975) 3 SCC 198 : 1974 SCC (Cri) 816 : (1975) 1 SCR 778] also, a Bench of five Judges of this Court, after referring to the decisions in A.K. Gopalan case [AIR 1950 SC 27 : 1950 SCR 88 : 51 Cri LJ 1383] and R.C. Cooper case [(1970) 2 SCC 298 : (1971) 1 SCR 512] agreed that the Maintenance of Internal Security Act, 1971, which is a law of preventive detention, has to be tested in regard to its reasonableness with reference to Article 19. That decision accepted and applied the ratio in R.C. Cooper case [(1970) 2 SCC 298 : (1971) 1 SCR 512] and Shambhu Nath Sarkar case [(1973) 1 SCC 856 : 1973 SCC (Cri) 618 : AIR 1973 SC 1425] and proceeded to consider the challenge of Article 19, to the constitutional validity of the Maintenance of Internal Security Act, 1971 and

held that the Act did not violate any of the constitutional guarantees enshrined in Article 19. The same view was affirmed once again by a Bench of four Judges of this Court in Khudiram Das v. State of West Bengal [(1975) 2 SCC 81 : 1975 SCC (Cri) 435 : (1975) 2 SCR 832] . Interestingly, even prior to these decisions, as pointed out by Dr Rajeev Dhavan, in his book, The Supreme Court of India at p. 235, reference was made by this Court in Mohd. Sabir v. State of Jammu and Kashmir [(1972) 4 SCC 558 : 1971 Cri LJ 1271] to Article 19(2) to justify preventive detention. The law, must, therefore, now be taken to be well settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of "personal liberty" and there is consequently no infringement of the fundamental right conferred by Article 21, such law, insofar as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that article. This proposition can no longer be disputed after the decisions in R.C. Cooper case [(1970) 2 SCC 298 : (1971) 1 SCR 512] , Shambhu Nath Sarkar case [(1973) 1 SCC 856 : 1973 SCC (Cri) 618 : AIR 1973 SC 1425] and HaradhanSaha case [(1975) 3 SCC 198 : 1974 SCC (Cri) 816 : (1975) 1 SCR 778] Now, if a law depriving a person of "personal liberty" and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be

applicable in a given situation, ex-hypothesi it must also be liable to be tested with reference to Article 14. This was in fact not disputed by the learned Attorney-General and indeed he could not do so in view of the clear and categorical statement made by Mukherjea, J., in A.K. Gopalan case [AIR 1950 SC 27 : 1950 SCR 88 : 51 Cri LJ 1383] that Article 21 "presupposes that the law is a valid and binding law under the provisions of the Constitution having regard to the competence of the legislature and the subject it relates to and does not infringe any of the fundamental rights which the Constitution provides for", including Article 14. This Court also applied Article 14 in two of its earlier decisions, namely, State of West Bengal v. Anwar Ali Sarkar [AIR 1952 SC 75 : 1952 SCR 284 : 1952 Cri LJ 510] and Kathi Raning Rawat v. State of Saurashtra [AIR 1952 SC 123 : 1952 SCR 435 : 1952 Cri LJ 805] where there was a special law providing for trial of certain offences by a speedier process which took away some of the safeguards available to an accused under the ordinary procedure in the Criminal Procedure Code. The special law in each of these two cases undoubtedly prescribed a procedure for trial of the specified offences and this procedure could not be condemned as inherently unfair or unjust and there was thus compliance with the requirement of Article 21, but even so, the validity of the special law was tested before the Supreme Court on the touchstone of Article 14 and in one case, namely, Kathi Raning Rawat case [AIR 1952

SC 123 : 1952 SCR 435 : 1952 Cri LJ 805] he validity was upheld and in the other, namely, Anwar Ali Sarkar case [AIR 1952 SC 75 : 1952 SCR 284 : 1952 Cri LJ 510] it was struck down. It was held in both these cases that the procedure established by the special law must not be violative of the equality clause. That procedure must answer the requirement of Article 14."

E3. It is clear from the law emerging from ***Maneka Gandhi*** that although as per Article 19(2), the State can make any law imposing "*reasonable restrictions*" on the exercise of the right conferred by Article 19(1)(a), *inter alia,* in relation to contempt of court, but any such restriction imposed should be reasonable and should not violate the expansive mandate of Articles 14 and 21. The procedure by way of which a person is charged, convicted and sentenced, and his right to appeal is regulated for criminal contempt should not in any way infringe upon constitutional guarantees of Articles 14 and 21, otherwise it would ipso fact violate Article 19(1)(a) of the Constitution of India as well, in so far as freedom of speech of that person is abridged.

F. Original Criminal Contempt convictions by the Supreme Court are a unique and distinct category of cases for which special rules need to framed

F1. This Hon'ble Court has in the past has devised special procedure to deal with special category of cases such as death penalty cases and has also devised special

remedy in the nature of 'Curative Petition' against a final judgment of this Court on certain limited grounds.

F2. A Constitution Bench of this Hon'ble Court in **Mohd. Arif v. Registrar, Supreme Court of India, (2014) 9 SCC 737** held that death penalty cases were a uniquely distinct category of cases where life under Article 21 was itself at stake. It was further held that for such a category of cases, the necessity of oral hearing in such review petitions becomes an integral part of "reasonable procedure", as envisaged under Article 21.

> ***29.*** *We agree with Shri K.K. Venugopal that death sentence cases are a distinct category of cases altogether. Quite apart from Article 134 of the Constitution granting an automatic right of appeal to the Supreme Court in all death sentence cases, and apart from death sentence being granted only in the rarest of rare cases, two factors have impressed us. The first is the irreversibility of a death penalty. And the second is the fact that different judicially trained minds can arrive at conclusions which, on the same facts, can be diametrically opposed to each other. Adverting first to the second factor mentioned above, it is well known that the basic principle behind returning the verdict of death sentence is that it has to be awarded in the rarest of rare cases. There may be aggravating as well as mitigating circumstances which are to be examined by the Court. At the same time, it is not possible to lay down the*

principles to determine as to which case would fall in the category of rarest of rare cases, justifying the death sentence. It is not even easy to mention precisely the parameters or aggravating/mitigating circumstances which should be kept in mind while arriving at such a question. Though attempts are made by Judges in various cases to state such circumstances, they remain illustrative only.

30. *Deflecting a little from the death penalty cases, we deem it necessary to make certain general comments on sentencing, as they are relevant to the context. Crime and punishment are two sides of the same coin. Punishment must fit the crime. The notion of 'just deserts' or a sentence proportionate to the offender's culpability was the principle which, by passage of time, became applicable to criminal jurisprudence. It is not out of place to mention that in all of recorded history, there has never been a time when crime and punishment have not been the subject of debate and difference of opinion. There are no statutory guidelines to regulate punishment. Therefore, in practice, there is much variance in the matter of sentencing. In many countries, there are laws prescribing sentencing guidelines, but there is no statutory sentencing policy in India. The IPC, prescribes only the maximum punishments for offences and in some cases minimum punishment is also prescribed. The Judges exercise wide discretion within the statutory limits and the scope for deciding the*

amount of punishment is left to the judiciary to reach decision after hearing the parties. However, what factors which should be considered while sentencing is not specified under law in any great detail. Immanuel Kant, the German philosopher, sounds pessimistic when he says "judicial punishment can never serve merely as a means to further another good, whether for the offender himself or for the society, but must always be inflicted on him for the sole reason that he has committed a crime". A sentence is a compound of many factors, including the nature of the offence as well as the circumstances extenuating or aggravating the offence. A large number of aggravating circumstances and mitigating circumstances have been pointed out in Bachan Singh v. State of Punjab [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] , SCC at pp. 749-50, paras 202 & 206, that a Judge should take into account when awarding the death sentence. Again, as pointed out above, apart from the fact that these lists are only illustrative, as clarified in Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] itself, different judicially trained minds can apply different aggravating and mitigating circumstances to ultimately arrive at a conclusion, on considering all relevant factors that the death penalty may or may not be awarded in any given case. Experience based on judicial decisions touching upon this aspect amply demonstrate such a divergent

approach being taken. Though, it is not necessary to dwell upon this aspect elaborately, at the same time, it needs to be emphasised that when on the same set of facts, one judicial mind can come to the conclusion that the circumstances do not warrant the death penalty, whereas another may feel it to be a fit case fully justifying the death penalty, we feel that when a convict who has suffered the sentence of death and files a review petition, the necessity of oral hearing in such a review petition becomes an integral part of "reasonable procedure".

31. *We are of the opinion that "reasonable procedure" would encompass oral hearing of review petitions arising out of death penalties. The statement of Justice Holmes, that the life of law is not logic; it is experience, aptly applies here.*

36. *If a pyramidical structure is to be imagined, with life on top, personal liberty (and all the rights it encompasses under the new doctrine) immediately below it and other fundamental rights below personal liberty it is obvious that this judgment will apply only to death sentence cases. In most other cases, the factors mentioned by Krishna Iyer, J. in particular the Supreme Court's overcrowded docket, and the fact that a full oral hearing has preceded judgment of a criminal appeal on merits, may tilt the balance the other way.*

F3. In **Rupa Ashok Hurra v Ashok Hurra** (2002) 4 SCC 388, the question arising out of a reference made to the Constitution Bench of this Hon'ble Court in the present case was: whether an aggrieved person is entitled to any relief against a final judgment or order of the Supreme Court, after dismissal of review petition, either under Article 32 or otherwise. This Hon'ble Court held that duty to do justice prevails even over the policy of certainty of judgments. The judgment in **Rupa Ashok Hurra** thus devised the recourse to "Curative" Petition after the dismissal of Review Petition in cases of gross miscarriage of justice or bias. It was held thus:

> ***42.*** *The concern of this Court for rendering justice in a cause is not less important than the principle of finality of its judgment. We are faced with competing principles — ensuring certainty and finality of a judgment of the Court of last resort and dispensing justice on reconsideration of a judgment on the ground that it is vitiated being in violation of the principles of natural justice or giving scope for apprehension of bias due to a Judge who participated in the decision-making process not disclosing his links with a party to the case, or on account of abuse of the process of the court. Such a judgment, far from ensuring finality, will always remain under the cloud of uncertainty. Almighty alone is the dispenser of absolute justice — a concept which is not disputed but by a few. We are of the view that though Judges of the highest court*

do their best, subject of course to the limitation of human fallibility, yet situations may arise, in the rarest of the rare cases, which would require reconsideration of a final judgment to set right miscarriage of justice complained of. In such case it would not only be proper but also obligatory both legally and morally to rectify the error. After giving our anxious consideration to the question, we are persuaded to hold that the duty to do justice in these rarest of rare cases shall have to prevail over the policy of certainty of judgment as though it is essentially in the public interest that a final judgment of the final court in the country should not be open to challenge, yet there may be circumstances, as mentioned above, wherein declining to reconsider the judgment would be oppressive to judicial conscience and would cause perpetuation of irremediable injustice.

46. *In Supreme Court Bar Assn. case [(1998) 4 SCC 409] on an application filed under Article 32 of the Constitution of India, the petitioner sought declaration that the Disciplinary Committees of the Bar Councils set up under the Advocates Act, 1961, alone had exclusive jurisdiction to inquire into and suspend or debar an advocate from practising law for professional or other misconduct and that the Supreme Court of India or any High Court in exercise of its inherent jurisdiction had no such jurisdiction, power or authority in that regard. A Constitution Bench of this Court considered the*

correctness of the judgment of this Court in Vinay Chandra Mishra, Re [(1995) 2 SCC 584] . The question which fell for consideration of this Court was: whether the punishment of debarring an advocate from practice and suspending his licence for a specified period could be passed in exercise of power of this Court under Article 129 read with Article 142 of the Constitution of India. There an errant advocate was found guilty of criminal contempt and was awarded the punishment of simple imprisonment for a period of six weeks and was also suspended from practice as an advocate for a period of three years from the date of the judgment of this Court for contempt of the High Court of Allahabad. As a result of that punishment all elective and nominated offices/posts then held by him in his capacity as an advocate had to be vacated by him. Elucidating the scope of the curative nature of power conferred on the Supreme Court under Article 142, it was observed: (SCC p. 431, para 47)

"The plenary powers of the Supreme Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature

of supplementary powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which the Supreme Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. It is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Supreme Court to prevent 'clogging or obstruction of the stream of justice' ".

In spite of the width of power conferred by Article 142, the Constitution Bench took the view that suspending the advocate from practice and suspending his licence was not within the sweep of the power under the said article and overruled the judgment in Vinay Chandra Mishra case [(1995) 2 SCC 584] .

***48.** In the cases discussed above this Court reconsidered its earlier judgments, inter alia, under Articles 129 and 142 which confer very wide*

powers on this Court to do complete justice between the parties. We have already indicated above the scope of the power of this Court under Article 129 as a court of record and also adverted to the extent of power under Article 142 of the Constitution.

49. *The upshot of the discussion in our view is that this Court, to prevent abuse of its process and to cure a gross miscarriage of justice, may reconsider its judgments in exercise of its inherent power.*

50. *The next step is to specify the requirements to entertain such a curative petition under the inherent power of this Court so that floodgates are not opened for filing a second review petition as a matter of course in the guise of a curative petition under inherent power. It is common ground that except when very strong reasons exist, the Court should not entertain an application seeking reconsideration of an order of this Court which has become final on dismissal of a review petition. It is neither advisable nor possible to enumerate all the grounds on which such a petition may be entertained.*

51. *Nevertheless, we think that a petitioner is entitled to relief ex debito justitiae if he establishes (1) violation of the principles of natural justice in that he was not a party to the lis but the judgment adversely affected his interests or, if he was a party to the lis, he was not served with notice of*

the proceedings and the matter proceeded as if he had notice, and (2) where in the proceedings a learned Judge failed to disclose his connection with the subject-matter or the parties giving scope for an apprehension of bias and the judgment adversely affects the petitioner.

52. *The petitioner, in the curative petition, shall aver specifically that the grounds mentioned therein had been taken in the review petition and that it was dismissed by circulation. The curative petition shall contain a certification by a Senior Advocate with regard to the fulfilment of the above requirements.*

53. *We are of the view that since the matter relates to re-examination of a final judgment of this Court, though on limited ground, the curative petition has to be first circulated to a Bench of the three seniormost Judges and the Judges who passed the judgment complained of, if available. It is only when a majority of the learned Judges on this Bench conclude that the matter needs hearing that it should be listed before the same Bench (as far as possible) which may pass appropriate orders. It shall be open to the Bench at any stage of consideration of the curative petition to ask a Senior Counsel to assist it as amicus curiae. In the event of the Bench holding at any stage that the petition is without any merit and vexatious, it may impose exemplary costs on the petitioner.*

The Court in this case created the curative jurisdiction exercising the Court's inherent power under Article 129 and 142 of the Constitution. The same power can easily be exercised to create an intra-court appeal against an original conviction in criminal contempt case especially when it is required under Article 21 and International Covenant on Civil and Political Rights (ICCPR).

F4. On the issue of evolving procedure and adapting the law, a constitution bench of this court in **Union of India vs Raghubir Singh (1989) 2 SCC 754** observed that:

> ***10.*** *But like all principles evolved by man for the regulation of the social order, the doctrine of binding precedent is circumscribed in its governance by perceptible limitations, limitations arising by reference to the need for readjustment in a changing society, a readjustment of legal norms demanded by a changed social context. This need for adapting the law to new urges in society brings home the truth of the Holmesian aphorism that "the life of the law has not been logic it has been experience" [Oliver Wendell Holmes : The Common Law, p. 5] , and again when he declared in another study [Oliver Wendell Holmes : Common Carriers and the Common Law, (1943) 9 Curr LT 387, 388] that "the law is forever adopting new principles from life at one end", and "sloughing off" old ones at the other. Explaining the conceptual import of what Holmes had said, Julius Stone elaborated*

that it is by the introduction of new extra-legal propositions emerging from experience to serve as premises, or by experience-guided choice between competing legal propositions, rather than by the operation of logic upon existing legal propositions, that the growth of law tends to be determined [Julius Stone : Legal Systems & Lawyers Reasoning, pp. 58-59] .

11. *Legal compulsions cannot be limited by existing legal propositions, because there will always be, beyond the frontiers of the existing law, new areas inviting judicial scrutiny and judicial choice-making which could well affect the validity of existing legal dogma. The search for solutions responsive to a changed social era involves a search not only among competing propositions of law, or competing versions of a legal proposition, or the modalities of an indeterminacy such as "fairness" or "reasonableness", but also among propositions from outside the ruling law, corresponding to the empirical knowledge or accepted values of present time and place, relevant to the dispensing of justice within the new parameters.*

14. *The profound responsibility which is borne by this Court in its choice between earlier established standards and the formulation of a new code of norms is all the more sensitive and significant because the response lies in relation to a rapidly*

changing social and economic society. In a developing society such as India the law does not assume its true function when it follows a groove chased amidst a context which has long since crumbled. There will be found among some of the areas of the law norms selected by a judicial choice educated in the experience and values of a world which passed away 40 years ago. The social forces which demand attention in the cauldron of change from which a new society is emerging appear to call for new perceptions and new perspectives. The recognition that the times are changing and that there is occasion for a new jurisprudence to take birth is evidenced by what this Court in Bengal Immunity Co. Ltd. v. State of Bihar [AIR 1955 SC 661 : (1955) 2 SCR 603 : (1955) 6 STC 446] , when it observed that it was not bound by its earlier judgments and possessed the freedom to overrule its judgments when it thought fit to do so to keep pace with the needs of changing times. The acceptance of this principle ensured the preservation and legitimation provided to the doctrine of binding precedent, and therefore, certainty and finality in the law, while permitting necessary scope for judicial creativity and adaptability of the law to the changing demands of society.[emphasis supplied]

F5. This Hon'ble Court in **Vishaka v. State of Rajasthan, (1997) 6 SCC 241** has held that in absence of enacted

law for the enforcement of fundamental right, the Supreme Court under Article 32 read with Article 141 of the Constitution of India has the necessary power and jurisdiction to lay down guidelines to fill the said lacuna till the time a proper legislation is duly enacted by the legislature in this regard in following terms:

> *16. In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces, we lay down the guidelines and norms specified hereinafter for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.*
>
> *18. Accordingly, we direct that the above guidelines and norms would be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These writ petitions are disposed of, accordingly."*

G. Absence of a right to appeal restricts the right for determination of a fact as truth

G1. The legislature made a very important amendment to Section 13 of the Act in the year 2006 by adding 'truth' as defence which could be raised in any proceeding for contempt of court. This amendment has been recognized and accepted by this Hon'ble Court in several judgments. This amendment has a very significant bearing on the issue raised in this writ petition.

Section 13(b) of the Contempt of Courts Act, 1971, provides for truth as a defense. It is possible that a "truth" not accepted by one bench may be accepted by a different or a larger bench or a different court, when the whole matter is re-examined after passage of time. Thus, while the court of first instance may not accept the "truth" as alleged by the accused in a criminal contempt case, it may be accepted as factually correct by a larger or different bench. In a situation where there is no right of appeal, the right of having a fact determined as true is lost.

G2. Moreover, for a court sitting in original jurisdiction in a criminal contempt case, to accept the "truth" as a defense is akin to accepting its own folly in issuing contempt notice (especially in suo motu criminal contempt cases), which is highly unlikely and the court may find such an outcome as undesirable, even though it would be in the interest of justice. It may be noted that when a court/bench sits in appeal generally, it has

to point out the shortcomings of a lower court/authority, which it often does. However, when it hears a case of contempt and especially a suo motu contempt, it would have to point out its own error in issuing notice to the accused for contempt.

This Hon'ble Court in various judgments has not only upheld the validity of truth as a defense but has also dropped contempt charges where contempt is alleged of a body like CESTAT or a Commission of Enquiry and has even imposed fines for frivolous contempt petitions.

In **Indirect Tax Practitioners' Assn. v. R.K. Jain**, (2010) 8 SCC 281, this Hon'ble Court accepted the legislative mandate of Section 13(b) and dismissed with costs a contempt petition (which had been filed with the previous approval of the then AG) for the alleged contempt of the members of CESTAT. It was held thus:

> *"39. The matter deserves to be examined from another angle. The substituted Section 13 represents an important legislative recognition of one of the fundamentals of our value system i.e. truth. The amended section enables the court to permit justification by truth as a valid defence in any contempt proceeding if it is satisfied that such defence is in public interest and the request for invoking the defence is bona fide. In our view, if a speech or article, editorial, etc. contains something which appears to be contemptuous and this Court or the High Court is called upon to initiate proceedings under the Act and Articles 129 and*

215 of the Constitution, the truth should ordinarily be allowed as a defence unless the Court finds that it is only a camouflage to escape the consequences of deliberate or malicious attempt to scandalise the court or is an interference with the administration of justice. Since, the petitioner has not even suggested that what has been mentioned in the editorial is incorrect or that the respondent has presented a distorted version of the facts, there is no warrant for discarding the respondent's assertion that whatever he has written is based on true facts and the sole object of writing the editorial was to enable the authorities concerned to take corrective/remedial measures.

…

42. In our view, a person like the respondent can appropriately be described as a whistleblower for the system who has tried to highlight the malfunctioning of an important institution established for dealing with cases involving revenue of the State and there is no reason to silence such a person by invoking Articles 129 or 215 of the Constitution or the provisions of the Act.

43. We agree with the learned counsel for the respondent that this petition lacks bona fides and is an abuse of the process of the court. The petitioner is a body of professionals who represent the cause of their clients before Cestat and may be other tribunals and authorities. They are expected to be vigilant and interested in transparent

functioning of Cestat. However, instead of doing that, they have come forward to denounce the editorial and in the process misled the Attorney General of India in giving consent by suppressing the factum of appointment of the Inquiry Committee by the President, Cestat. We are sorry to observe that a professional body like the petitioner has chosen the wrong side of the law.

44. In the result, the petition is dismissed. For filing a frivolous petition, the petitioner is saddled with costs of Rs. 2,00,000, of which Rs. 1,00,000 shall be deposited with the Supreme Court Legal Services Committee and Rs. 1,00,000 shall be paid to the respondent."

Subramanian Swamy v. Arun Shourie (2014) 12 SCC 344, was a case concerning contempt of a Commission of Enquiry headed by a sitting Supreme Court judge. A contempt petition was filed by Subramaniam Swamy against Arun Shourie, the then editor of The Indian Express for an editorial criticizing a Commission of Enquiry headed by Justice Kuldip Singh, a sitting Supreme Court judge at the time. The constitution bench in this case approved the judgment in Indirect Tax Practitioners' Assn. (supra) and accepted truth as a valid defense in contempt proceedings. It was held that a Commission of Enquiry even if headed by a sitting Supreme Court judge does not become an extended arm of the Supreme Court. It was held:

13. The legal position with regard to truth as a defence in contempt proceedings is now statutorily settled by Section 13 of the 1971 Act (as substituted by Act 6 of 2006).

...

15. A two-Judge Bench of this Court in R.K. Jain [Indirect Tax Practitioners' Assn. v. R.K. Jain, (2010) 8 SCC 281 : (2010) 3 SCC (Civ) 306 : (2010) 3 SCC (Cri) 841 : (2010) 2 SCC (L&S) 613] had an occasion to consider Section 13 of the 1971 Act, as substituted by Act 6 of 2006.

...

Thus, the two-Judge Bench has held that the amended section enables the Court to permit justification by truth as a valid defence in any contempt proceedings if it is satisfied that such defence is in public interest and the request for invoking the defence is bona fide. We approve the view of the two-Judge Bench in R.K. Jain [Indirect Tax Practitioners' Assn. v. R.K. Jain, (2010) 8 SCC 281 : (2010) 3 SCC (Civ) 306 : (2010) 3 SCC (Cri) 841 : (2010) 2 SCC (L&S) 613].

"34. We agree with the view in Baliram Waman Hiray [Baliram Waman Hiray v. B. Lentin, (1988) 4 SCC 419 : 1988 SCC (Cri) 941] and approve the decision of the Nagpur High Court in M.V. Rajwade [M.V. Rajwade v. S.M. Hassan, AIR 1954 Nag 71] . We are also in agreement with the submission of Shri Mohan Parasaran, learned Solicitor General

that a Commission appointed under the 1952 Act is in the nature of a statutory Commission and merely because a Commission of Inquiry is headed by a sitting Judge of the Supreme Court, it does not become an extended arm of this Court. The Commission constituted under the 1952 Act is a fact-finding body to enable the appropriate Government to decide as to the course of action to be followed. Such Commission is not required to adjudicate upon the rights of the parties and has no adjudicatory functions. The Government is not bound to accept its recommendations or act upon its findings. The mere fact that the procedure adopted by the Commission is of a legal character and it has the power to administer oath will not clothe it with the status of court. That being so, in our view, the Commission appointed under the 1952 Act is not a "court" for the purposes of the Contempt of Courts Act even though it is headed by a sitting Supreme Court Judge. Moreover, Section 10-A of the 1952 Act leaves no matter of doubt that the High Court has been conferred with the power to take cognizance of the complaint in respect of the acts calculated to bring the Commission or any member thereof into disrepute. Section 10-A of the 1952 Act provides the power of constructive contempt to the Commission by making a reference to the High Court with a right of appeal to this Court. Our answer to the first question is, therefore, in the negative.

35. In view of the above reasons, the contempt petitions are dismissed and the contempt notices are discharged."

Thus, it is submitted that without a right of appeal, the valuable defense of truth becomes meaningless and cannot be properly effectuated. The recent judgments rendered in the case of the petitioner herein by this Court in holding him guilty of criminal contempt, are a prime example as to how the defense of truth was not accepted by this Court in original criminal contempt proceedings. This Court without coming to any conclusion that this Court has protected democracy and has stood up for the rights of the people, held that petitioner's tweet that the court has played a role in destruction of democracy as false and contemptuous. However, if there is a provision for an appeal, at least there is a chance that an appellate bench would consider the "truth" as pleaded by the petitioner in his case. It is also a possibility that in appeal the appellate bench may not punish the petitioner on the ground that there has been no interference in the administration of justice by his two tweets.

It is submitted that the petitioner's case is not the only case. There are likely to be many such cases in the future, since this court has virtually said that all negative tweets or comments which it thinks would bring down its reputation, need to be dealt with strongly otherwise the central pillar of democracy will shake. Therefore, the fundamental rights of citizens

under Article 14, 19 and 21 are vitally at stake, and provision of an appeal would act as a critical safeguard.

H. Violation of Article 14 since it is discriminatory that a person charged with similar criminal contempt of High Court has a right of appeal but a person charged with criminal contempt of Supreme Court has no appeal.

I. That neither the Contempt of Courts Act, 1971 nor the Rules to Regulate the Proceedings for Contempt of the Supreme Court prohibit the prayers as sought by the petitioner. It is in fact, in the spirit of the Act to provide for such a procedure.

PRAYERS

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

a) Issue an appropriate writ, order or direction declaring that a person convicted for criminal contempt by this Hon'ble Court, including the petitioner herein, would have a right to an intra-court appeal to be heard by a larger and different bench.

b) Issue an appropriate writ, order or direction framing rules and guidelines providing for intra-court appeal against conviction in original criminal contempt cases as referred in prayer (a.) above.

c) Alternatively, issue an appropriate writ, order, or direction declaring that review petitions filed against orders of conviction by Supreme Court in original criminal contempt cases would be heard in open court by a different bench;

d) Pass such other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case

FILED BY;

KAMINI JAISWAL
COUNSEL FOR THE PETITIONER

Dated: 12.09.2020
New Delhi