

# Contempt of court :jurisdictions India, Sri Lanka, UK



C.J. Miller, Contempt of Court, 3<sup>rd</sup>  
Edition (2000, Oxford University Press)

*Contempt of court, termed as a legal thumbscrew, is so manifold and so amorphous that it is difficult to lay down any precise definition of the offence.*

# In Facie / Ex Facie

"Traditionally, contempt are classified as either in the face of the court (*in facie curiae*) or not in the face of the court (*ex facie curiae*)."

contempt in the face of the court (in facie)

contempt committed outside the court (ex facie)

A contempt in the face of the court may be broadly described as any word spoken or act done in, or in the precincts of, the court which obstructs or interferes with the due administration of justice or is calculated to do so. Examples: assaults committed in court; insults to the court; interruption of court proceedings; refusal to be sworn or, having been sworn, refusal to answer.

Conduct outside the court may be described as words spoken or otherwise published, or acts done, outside court which are intended or likely to interfere with or obstruct the fair administration of justice. Examples are: publications intended or likely to prejudice the fair trial of criminal or civil proceedings; publications that scandalize or lower the authority of the court; acts which interfere with or obstruct persons having duties to discharge in a court of justice.



Contempt on the  
face of court

## **Ram Niranjana Roy Vs. State of Bihar and Ors., JT2014(4)SC477**

Police officer claiming fighting for the cause of all police officers in the state of Bihar wanted to be joined in the proceedings issued by the high court regarding matters of transfer of police officers. However the high court asked him to take permission of the DGP. Thereupon he started shouting at the judges and created scenes in the court. The High Court sent him to jail as punishment for a day i.e. for twenty four hours. Aggrieved by this order he approached the Supreme Court. The Supreme Court held that when a contempt is committed in the face of the High Court or the Supreme Court to scandalise or humiliate the Judge, instant action is necessary. Supreme Court directed him to deposit a fine of Rs. 25,000/- with the Supreme Court Legal Services Committee within 4 weeks time, failing which he shall suffer simple imprisonment for 7 days.

## **A.M.E. Fernando Vs. The Attorney General, LEX/SLSC/0032/2003**

Petitioner suffered injuries in his employee of the Y.M.C.A.. He filed an application to the Deputy Commissioner, Workmen's Compensation Act for redress in respect of the injuries suffered by him. Not satisfied with compensation awarded, he made a complaint to the Human Rights Commission of Sri Lanka, in respect of the proceedings before the Deputy Commissioner. HRC informed its inability to proceed with the complaint in terms of the powers vested in it. He thereafter complained to the Ombudsman seeking public apology from the Deputy Commissioner of WCA and the HRC of Sri Lanka. The Ombudsman on advice of the Judicial Service Commission informed him that such relief can only be obtained in appeal to the SC. Petitioner thereupon approached the SC. The Court did not find material to substantiate submissions made by the petitioner. Petitioner thereupon filed an application naming the Attorney-General, Secretary JSC, Chairman JSC, the Registrar of SC, the Chief Justice and the other two Judges as respondents. He was informed by the Bench that he cannot persist in filing applications of this nature without any basis and abusing the process of this Court. On this he raised his voice and insisted on his right to pursue the application. He was then warned but in spite of the warning, he persisted in disturbing the proceedings of the Court from the bar table of the Court. At this stage he was sentenced to 1 year RI for the offence of committing contempt of Court. The Court held the conduct of the Petitioner constituted Contempt for which he was liable to be summarily judged and punished without even a formal charge.



Sentencing for  
Contempt : UK,  
India, Sri Lanka



# B (ALGERIA) v. Secretary Of State For Home Dept UKSC ON 30/1/2013

B (Algerian national) was sentenced to 4 months imprisonment by the SIAC (Special Immigration Appeals Commission) as he refused to obey earlier order made to disclose his true identity. B appealed against SIAC's order committing him for contempt. Both the Court of Appeal and the SC dismissed appeal against 4 months committal order observing that the loss of residual liberty is unlikely to weigh against order of punishing the contemnor.

**M.V. Jayarajan vs. High Court of Kerala and Ors.**  
(2015)4SCC81

DB of the Kerala HC banned the holding of meetings on public roads to ensure accident-free and uninterrupted traffic. Thereafter Appellant delivered a speech in a public meeting condemning the decision of the court by using expressions like "if those judges have any self-respect, they should resign and quit their offices". Different media houses reported and published it. He was held guilty of contempt of court by the HC. In appeal to the SC, court agreed that appellant intended to lower the dignity of the court and hence confirmed the order of the HC in holding him guilty of contempt of court but reduced his sentence awarded of 6 months imprisonment to that of SI for 4 weeks.

## **Heathcliffe Properties Ltd v Dodhia** Chancery Division, 20 October 2016 [2016] EWHC 2628

Dissolution of a partnership between the parties led to claims settled at mediation. It was agreed upon to sell various partnership properties in accordance with a settlement agreement. However defendants refused to co-operate with the court appointed master conducting the sale proceedings. They had stopped attending court when they were no longer legally represented. An order was made requiring them to attend a hearing to provide the court with the assistance required for the sales to proceed. They did not attend. The court was called upon to determine the appropriate sentence to be imposed on the defendants, found to be in **contempt of court** for failing to attend a hearing in accordance with a court order. The court held that the combination of circumstances like defendant admitting their breach, them being first-time offenders, their promise to comply with future orders did not justify an immediate custodial sentence. Each defendant was fined £25,000 (paras 30-31).



Whether not  
obeying interim  
orders Contempt  
of court : UK, India,  
Sri Lanka

# **Upali Dharmasiri Welaratne Vs. Wesley Jayaraj Moses,** **LEX/SLSC/0018/2009**

The matter came before the SC due to an undertaking given by U in the Court of Appeal. He undertook before the Court of Appeal not to effect further constructions and to maintain the status quo. The interim injunction was to restrain U from continuing construction. It is the violation of this undertaking in interim-injunction that was raised before the SC. The SC held that once a party has given an undertaking, it cannot raise plea that an interim-injunction was issued without due hearing as the very purpose of undertaking is to save for the court as well as to the parties, valuable time that would otherwise be spent on the inquiry into the grant of interim relief. Nor is it open to such a party to later challenge the jurisdiction of the court if it had voluntarily submitted itself to the jurisdiction of court by the very act of giving the undertaking.

## **Regent International Hotels Ltd Vs. Cyril Gardiner And Others LEX/SLSC/0006/1980**

Regent International Hotels Ltd.(R), instituted an action for the specific performance of an agreement between itself and the (G) Galle Face Hotel Company Ltd., restraining G from violating any of the rights of R under the said agreement. The District Judge entered an interlocutory order and an enjoining order restraining the G from committing any of the acts violating R's right under the said agreement. The order was served on G but G disobeyed the said order on a number of occasions when the R attempted to enforce the provisions of the said order. Thereafter R instituted proceedings before the Court of Appeal for contempt of Court which dismissed the application. The issue before the SC was whether the breach of an enjoining order amounts to contempt of court. The SC held that an enjoining order has all the force of an interim injunction and disobedience of an enjoining order constitutes an offence of contempt of court.



Relevancy of  
Intention in  
deciding  
Contempt : UK,  
India, Sri Lanka

- **National Federation of The Blind Vs. Sanjay Kothari 2015**  
(9) SCALE 611

A contempt petition was filed by federation alleging willful disobedience of the judgment of the SC wherein the government was directed to compute the number of vacancies available in all the establishments and identify the posts for disabled persons within a period of 3 months. It was alleged that the government has committed contempt of Court's order by not making provision for reservation in promotion and also by not identifying the posts for persons with disabilities. The government in its defence on affidavit stated that steps are taken to fill up 15000 identified vacancies which also included 5629 posts earmarked for persons with disabilities. The court thereupon held that there is no willful disobedience of the order of the court. It was observed that filling up of 15000 vacancies is a matter of considerable magnitude and that they are convinced that the government is seriously committed towards induction of persons with disabilities in large numbers.



# Gyani Chand v. State of AP 2016 (9) SCALE 45

GC gave undertaking in the civil suit before the civil court that he would produce the documents to the court whenever directed and that he is collecting them for their rightful owner – his mother who required these documents. Later on mother died and GC lost the documents to cyclone in 1999 that destroyed his whole house. When the trial court asked him to produce the documents, he told that it was impossible for him to return the documents as the same were handed over by him to the rightful owner – his mother who died and moreover the common house was destroyed in cyclone thus destroying all property including the document in that house. The trial court referred the case to the HC for initiating contempt proceedings. The HC held GC guilty and punished him. In appeal, the SC held that there was no intention on the part of GC to willfully disobey order of the court and therefore no contempt case was made out. The judgment of the HC was set aside.

**Bhushna Power and Steel Ltd (BPSL) vs. Rajesh Verma and Ors. (2014)5SCC551** - BPSL proposed to set up of plant in some identified villages of Orissa and applied to the state for grant of lease of mining of iron ore in the proposed plant. The State Govt gave commitment to BPSL that its proposal would be recommended to the Central Govt for grant of iron ore mines in the proposed plant. As granting of mining lease of iron ore reserves in the aforesaid area fell into rough weather, it led to the decision that mining lease over the area could not be allowed on various grounds and the application made by BPSL was premature. Thereafter, state Govt made a recommendation to the Central Government to grant mining lease in favour of some other company. This was challenged by BPSL in the writ petition in the HC. As HC dismissed the claim, BPSL approached the SC. As the SC was informed that the area has large reserves of iron ore, in which the BPSL can also be accommodated, SC directed the State to recommend the case of the BPSL also to the Central Govt. On failure to recommend BPSL to the Central Government, the contempt petition for not abiding with directions of the SC was filed. In response, the State pleaded helplessness by narrating some circumstances. The Q-whether such a plea can be raised to avoid implementation of the directions contained in the judgment? The Court held that the state Govt instead of implementing the order was trying to circumvent the same and deny the benefits to the Petitioner. It was held liable for contempt.



Forum for filing  
Contempt : UK,  
India, Sri Lanka

# **Dilrukshi Dias Wickramasinghe Vs. Lakshman Namal Rajapaksha, LEX/SLSC/0104/2016**

Director General of the Commission filed the case before the SC when D disregarded summons issued by it which ordered him to appear before the commission over a case. D contended that as per Section 20(3) (c) of Commission to Investigate Allegations of Bribery or Corruption Act 1994 “showing disrespect to the authority of the Commission is contempt against the Commission” and hence the opinion on contempt has to be formed by the Commission and not by the Court. SC held that contempt against the "Commission" can be punished by the SC as though it was committed against the SC under Article 105(3) of the Constitution.

## **Dineshan K.K. Vs. R.K. Singh and Anr. (2015) 2 SCC 496**

The High Court in the writ petition directed UOI and its officer to re-designate the Petitioner from the rank of Hawaldar (Radio Mechanic) to Warrant Officer as recommended by the Ministry of Home affairs and also to extend the pay-scales as given to the rank counterparts in the CRPF and BSF. Appeal against this HC order in the SC was dismissed with costs. Later on, SC was requested to initiate contempt proceedings against UOI for disobeying the order passed by the HC and confirmed by the SC in spite of lapse of considerable period of time. The SC directed to file contempt petition before the HC as the original judgment and order emanated from the HC and also with a view to lessen the burden on the SC.



Contempt for  
restraining future  
actions

# ANUJ JOSHI & ORS. v. CHIEF CONSERVATOR OF FORESTS & ORS 2016 (1) SCALE 325

The SC in judgment dated 13/8/2013 passed several directions and one of them was to the MoEF and the State of Uttarakhand to not grant any further environmental clearances to any hydroelectric power project in view of tragedy in the state. Appellant brought action against respondent saying they have violated this judgment by transferring forest land for hydroelectric power project. The court after going through papers found that approval for the same project was given much before the judgment on 28/5/2013. later correspondence in pursuant to this approval cannot be contempt of judgment.



Contempt for false  
Evidence : UK,  
India, Sri Lanka



Solicitor General v Dodd, Queen's Bench Division, 31 January 2014, [2014] EWHC 240 (QB);

A CEO and a sales director of a company were sentenced to six and two months' imprisonment respectively for contempt of court in relation to false statements they had put before the court to support a passing off claim. The contempt had arisen from admitted false statements in a claim for passing off. D's conduct was more to blame; he was the chief instigator and a sentence of six months' imprisonment was appropriate. C had only one false affidavit but was a party to the concoction of emails and he was sentenced to two months' imprisonment.

# International Sports Tours Ltd (t/a Inspire Sports) v Shorey

Queen's Bench Division, 17 July 2015 [2015] EWHC 2040

S had admitted knowingly given false evidence in an affidavit to subvert the due administration of justice with the specific intent of undermining judicial proceedings. S was not given custodial sentence but asked to pay a fine of £1,000 on account of: (i) S admitted the contempt and took steps to purge the contempt and prevent harm. (ii) S was of previous good character; he had also been subject to personal pressures at home and at work. (iii) purposes of punishment to secure future compliance did not apply in this case. (iv) no evidence to suggest that prejudice would be caused to the opposite party.

# **Dhiren Dave, Company Secretary vs Surat Dyes And 3 Ors. 2016(6) SCC 253**

Order of the Company Judge directing winding up of the Company was challenged by filing the review. While rejecting the Review Petition, Company Judge observed that the applicant tried to build a case on the basis of non-existent document with the help of Dhiren Dave, Company Secretary, and both of them made factual averments on affidavit, which were prima facie untrue. After recording these findings, Company Judge directed that the applicant (Shailendra Agrawal) and Dave be prosecuted for committing an offence relating to submission of the false documents and also for initiation of contempt proceedings against both of them. An appeal before the DB of Guj HC was rejected and thereupon appeal was filed in the SC. The SC accepted regrets and unconditional apology and dropped all actions against appellant.



Closure of  
Contempt for lapse  
of time

Rajeev Dhawan Vs. Gulshan Kumar Mahajan, JT2014(8)SC530

Post BabriMasjid demolition, the President, under Article 143 of the Constitution, referred the Acquisition of Certain Area at Ayodhya Act, 1993 to the Constitution Bench for its opinion on the validity of the Act. On this reference, V.H. Dalmia and Giriraj Kishore, questioned the authority of courts in a press conference which was reported by the press. The petitioner advocate brought a contempt petition against the authors of these statements and the publishers and reporters. The Constitution Bench in year 2014 observed that as the matter remained dormant for years and authors are not physically fit to respond to the charges owing to old age and bad health and also because contemners tendered unconditional apologies, treated the contempt petition as a fit for closure.



Procedure to be  
followed in issuing  
Contempt

## **Tillekeratne Vs. Officer-in-Charge, Pugoda Police Station, LEX/SLSC/0060/1994**

The petitioner filed an appeal in the SC against the judgement of the HC dismissing his appeal against his conviction and sentence by the Magistrate for certain offences on two counts, Firstly, giving false evidence in Primary Court and secondly, intentionally insulting the Magistrate in the course of the same proceedings. The SC held that neither the reports to Court nor the charge sheet gives any particulars of the acts said to have constituted the contempt. It was also submitted that the proceedings which culminated in the conviction are unlawful in that the appellant was not given a fair opportunity to meet the allegations against him. The Supreme Court held that as the charge sheet did not contain particulars of the alleged offence and the record does not show that the appellant was given any further information or an opportunity of defending himself, he being deprived of a fair trial, contempt proceedings are invalid due to the non observance of principles of natural justice.

## **Govindarajah Vs. Attorney-General LEX/SLSC/0064/1994**

G a witness at a criminal trial, immediately after he gave evidence, was held guilty for giving false evidence and of contempt. The Magistrate dealt sentenced G to 3 months' RI. On appeal, the HC upheld the Magistrate's order, but reduced the sentence. On appeal, the SC held that the Magistrate neither communicated the essence of the accusation to G nor gave him an opportunity to furnish an explanation; instead, proceeded to convict and sentence him. SC held this is a clear breach of the principles of natural justice and set aside the orders of the HC and the Magistrate's Court.



## **Rajeshwar Singh Vs. Subrata Roy Sahara and Ors., 2014(1)SCALE401**

R, Assistant Director of ED and investigating officer of the 2G scam case monitored by the SC, when sent summons to Roy under Prevention of Money Laundering Act (2002) was in turn sent questionnaire by the reporter of news channel owned by Roy asking him about his assets and his previous cases in which he was already exonerated. SC restrained Sahara from airing any program based on the questionnaire. SC issued a show cause notice to Roy for his channel airing the TV programme. Roy questioned the maintainability of the petition on the grounds that the permission of the AG was not obtained, nature of content whether civil or criminal not specified and lastly he was not made aware of the restraint order issued by the court against the TV program. SC held that the petition is perfectly maintainable as the court has constitutional obligation to examine whether Roy is attempting to derail the investigation which is being monitored by the court.



Contempt of  
Commission  
whether contempt  
of court

## Subramanian Swamy Vs. Arun Shourie, AIR2014SC3020

The Contempt Petition arose from the editorial published in Indian Express (respondent) by the name "If shame had survived". A Supreme Court Judge (Kuldip Singh) was appointed as Chairman of Enquiry Commission. Some scandalous remarks were published in newspaper against the Commission. The Issue before the Supreme Court is, when a sitting Supreme Court Judge is appointed as a Commissioner by the Central Government does he carry with him all the powers and jurisdiction of the Supreme Court. It was held that Commission is not a Court for the purpose of Contempt of Courts Act even though it is headed by a sitting Supreme Court Judge. It 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. Meaning of word "Court" suggests that the Court is an institution which has power to regulate legal rights by the delivery of definite judgments, and to enforce its orders by legal sanctions and if its procedure is judicial in character in such matters as the taking of evidence and the administration of oath, then it is a court. So, the Contempt Petition was dismissed.



Contempt to  
remedy corporate  
wrongs

**Securities and Exchange Board of India (SEBI) and Ors. Vs. Sahara India Real Estate Corpn. Ltd. and Ors. 2015 (7) SCALE 173**

Sahara India Real Estate Corporation Limited and Sahara Housing Investment Corporation Limited invited and claimed to have collected deposits from general public in the form of 'Optional Fully Convertible Debentures' (OFCD). SEBI directed Saharas not to offer OFCDs or invite subscription in any manner it was not legally permissible. The Bombay High Court dismissed the petition of Sahara and directed the company and its directors to jointly and severally refund the amount collected by them along with interest @ 15% per annum. Aggrieved by these orders, Saharas approached SAT which declined to interfere and directed Saharas to refund the amount within 6 weeks. Against the order of SAT, an appeal was preferred by Saharas in the SC. The SC maintained the orders of SEBI and SAT with a direction to deposit the amount with SEBI within 3 months. The Saharas produced demand drafts of 5120 crores and were further directed to deposit the balance of 17,400 crores with SEBI in two installments. However, as the balance amount was not deposited, it resulted in filing of the contempt petitions. The SC issued non-bailable warrants Mr. Subrata Roy for his production and directing personal presence of the other three Directors in the Court. The Court committed three out of four contemnors to judicial custody. The Court passed order of bail on the condition that the contemnors deposit 10,000 crores i.e. 5000 crores in cash and balance of 5000 crores in the form of bank guarantee of a nationalized bank. In pursuance to this the applicants submitted a format of guarantee which was accepted by the Supreme Court and the applicants were granted time to deposit the balance amount.

### **E. Bapanaiah vs. K.S. Raju (2015)1SCC451**

The Respondent, K.S. Raju was Promoter Director of M/s. Nagarjuna Finance Limited, Hyderabad which issued advertisement inviting deposits promising good returns and collected huge sum from the public. The present Appellant deposited 40,00,000/- hoping that it would double within 45 months as projected in the advertisement. The amount was due for repayment on maturity on 28.4.2001. However, NFL failed to re-pay the sum to the depositors and an application was filed before the CLB for repayment in instalments within 48 months. The CLB allowed time to NFL on request of its directors. During pendency of the application the Directors, including K.S. Raju, gave undertaking to the CLB that they would abide by the scheme and pay off the amount due to depositors. But the Promoter Director and its group companies filed appeal against the order of CLB. In appeals, the Company gave an undertaking to pay half of first year's entitlement of the present Appellant by 20.4.2002. However, no amount was paid. Therefore, contempt petition was filed by the present Appellant before the High Court for violation of the orders of the CLB. A counter affidavit was filed by K.S. Raju before the High Court stating that he had left NFL long back and therefore he is not responsible to make repayment of the deposits made to NFL. Single Judge held that NFL and its Promoter Director, K.S. Raju, are guilty of contempt of court. Then, K.S. Raju filed appeal before the Division Bench where the appeals of the Directors were allowed. An appeal was therefore filed by E. Bapanaiah before the Supreme Court against the judgment of the division bench. The court observed that after giving undertaking before CLB, K.S. Raju submitted his resignation in September, 2000, which clearly reflects that it was done to save himself and his company from making the repayment to E. Bapanaiah. The Supreme Court held K.S. Raju guilty of Contempt of Court and the order passed by the Single Judge to the extent of conviction and sentence against K.S. Raju was restored. However sixty days was allowed to K.S. Raju to repay the entire amount to the Appellant as directed by CLB.



Contempt for  
compliance with  
labour laws

## **Gauri Shankar Pd. Rai vs. Sajal Chakroborty and Ors. (2015)8SCC163**

The Respondent-employees were appointed in the year 1981 to the posts of Junior Engineers in the Rural Development Department in the state of Bihar. Subsequently, they were appointed in 1987 on ad-hoc temporary basis as Assistant Engineers. They have been working in the said posts for more than 29 years from the date of first appointment as Junior Engineers. The employees were issued show cause notices as to why their services should not be terminated on the ground of their appointment to the posts being illegal/invalid. Against this, the employees approached the High Court. The regularization of service of the employees was ordered by the single judge which was later confirmed by the division bench of the High Court. In appeal to the Supreme Court the appellants were directed to implement the orders of the Division Bench and to continue the Respondents in their services and extend all benefits as have been granted by it in that judgment. But, the appellants by a notification regularized the services of the employees from 1987 and not from 1981. The Supreme Court did not held the respondents guilty of willful disobedience as they have partially fulfilled the direction given by this Court as well as the High Court. The court gave another opportunity to the respondents to comply with the direction of the court in toto.



## **Kamil Hassan Vs. Fairline Garments (International) Ltd. and Two Others, LEX/SLSC/0013/1990**

K complained to the Commissioner of Labour about termination of his employment as a Purchasing Officer by F in contravention of the Termination of Employment of Workmen (Special Provisions) Act, 1971. Commissioner after inquiry, directed F to reinstate K in his employment as Purchasing Officer, without a break in service, and to pay him back wages. F applied to the Court of Appeal for Certiorari to quash the order and the order was quashed. The Supreme Court restored the order of the Labour Commissioner and directed F to reinstate K in the post as its Purchasing Officer with all back wages from the date of his non-employment to the date of his reinstatement. Thereafter, K addressed several letters to F claiming back wages and F through letter expressed inability to pay the total sum immediately due to serious liquidity problem. The SC finding no material or document to suggest that F had the capacity to pay or that there was willful non-compliance or defiance on the part of F, held F cannot be held guilty for contempt of Court.

## **Malathi Das (Retd.) Now P.B. Mahishy and Ors Vs. Suresh and Ors., 2014CriLJ753**

About 129 daily wagers and other contractual employees serving in different departments approached HC for their regularization. The court directed for their regularization and pursuant to the same, vide Government Order dated 18.04.2006, 55 out of 129 employees were regularized while the claim of the remaining 74 employees were not responded to. Accordingly, the Contempt Petition was heard on behalf of 74 employees and closed by the HC by granting the state departments 8 weeks' time to pass appropriate on the claim for regularization. As no action was initiated pursuant to the order of the HC, the Contempt Petition was lodged by the 74 Respondents before the SC. During the pendency of the contempt petition, regularization claim of 74 were rejected on the ground that they do not fulfill the conditions for regularization laid down by SC in *Umadevi and Ors.* Judgment. The SC held that even though the stand taken in refusing regularization cannot be admitted, as the said stand stems from their perception and understanding of the decision in *Umadevi*. Hence they cannot be held liable for contempt.



Whether mere  
reporting  
Contempt of  
court?

## **In Re: Garumunige Tilakaratne, LEX/SLSC/0005/1991**

R was correspondent of the Newspaper, but not an employee. R was charged with having unlawfully and improperly caused the publication of a news item in the newspaper, to the effect that a MP had stated, in a speech that the Presidential Election petition had already been proved and that if same did not succeed it would be the end of justice in this country. The Supreme Court held R guilty of contempt on the reasoning that R ought to have had the foresight to see that this report was likely to cause prejudice to the case before the court and to the administration of justice as a continuing process. The court held that these words contained an imputation that the allegations contained in the aforesaid petition have already been proved and that if the petitioner is denied success in that petition, it would amount to a total negation of justice in this country and thereby R committed contempt of the Court. Court further held that to establish a charge of contempt it is not necessary to prove that R intended a particular meaning or effect; intention is not an ingredient, though often an aggravating circumstance, relevant to punishment. The Court further held that an intention to cause disrepute or disrespect to the Supreme Court or any Court is irrelevant because all that is required is the publication.

## **Hewamanne Vs. De Silva and Another, LEX/SLSC/0001/1983**

A Special Presidential Commission comprising of Justice J.G.T.Weeraratne, Justice S. Sharvananda and Justice K.C.E. de Alwis was appointed which recommended the imposition of civic disabilities on Mrs Sirima Bandaranaike, former Prime Minister and at that time member of Parliament and on Felix R. Dias Bandaranaike thereby expelling Mrs Sirima Bandaranaike from the House. Thereafter, Mr. Felix R. Dias Bandaranaike instituted proceedings for the issue of a writ of Quo Warranto against Mr. Justice K.C.E. de Alwis, a member of the Commission, on the ground that he had become disqualified from acting as a member of the Commission by reason of a financial transaction with one A.H.M. Fowzie, a former Mayor of Colombo, whose conduct was a subject of investigation by the Commission. In this matter, writ of Quo Warranto was issued against Justice K.C.E. de Alwis, prohibiting him from functioning any further as a member of the Commission. Subsequently, Justice K.C.E.de Alwis made representations to the President alleging bias against himself and asked for an inquiry. Thereafter, a Cabinet decision that the Minister of Justice would move a Resolution in Parliament for the appointment of a Select Committee of Parliament to investigate and report on the allegations made by Mr K.C.E. de Alwis was made. The proposed motion was included in the Order Paper of Parliament.

The 1<sup>st</sup> respondent, the editor of the newspaper “Daily News” and the 2<sup>nd</sup> respondent, the owner, printer and publisher of the newspaper jointly and severally printed and published a news item carried on the front page under the headings “Select Committee probe of Mr. K.C.E. de Alwis’ representations” and “F.D.B.’s pleadings prepared in Judges’ Chambers”. It was a verbatim reproduction of the motion contained in the order paper of the Parliament. The 1<sup>st</sup> respondent in view of the public interest and concern in the subject matter and the people's right to know that such a Resolution was before Parliament decided to publish this news item.

The court held that the publication of a parliamentary motion impliedly reflecting on the conduct of a Judge would hold the respondents guilty of contempt of court. However, it was observed that the respondents did not have a deliberate intention of interfering with the administration of justice. Thus, no punishment was imposed on them and they were discharged.



Difference  
between civil and  
criminal contempt

# O'BRIEN REGINA UKSC 2/4/2014

Restraint order made against X under section 41 of Proceeds of Crime Act 2002 to prevent the disposal of realizable assets during criminal investigation against him. X held guilty for contempt of court and sentenced to 15 months prison sentence for disobeying this order. Thereafter X fled to USA. He was extradited to UK for punishing him under Proceeds of Crime Act 2002. Q arose – can X be punished for contempt of court as the same was not mentioned as the basis of his extradition?

# O'BRIEN REGINA UKSC 2/4/2014

- POCA does not provide that it is an offence to disobey or obstruct a restraint order or a receivership order, but the Crown Court has an inherent power to treat such behaviour as **contempt of court**, for which it may impose punishment under section 45 of the Senior Courts Act 1981.
- There is a distinction long recognised in English law between "civil contempt", i.e conduct which is not in itself a crime but which is punishable by the court in order to ensure that its orders are observed, and "criminal contempt".



# O'BRIEN REGINA UKSC 2/4/2014

Breach of an order made in the course of legal proceedings may result in punishment of the person against whom the order was made as a form of contempt. However, a contempt of that kind does not constitute a criminal offence. Although the penalty contains a punitive element, its primary purpose is to make the order of the court effective. A person who commits this type of contempt does not acquire a criminal record.

# O'BRIEN REGINA UKSC 2/4/2014

- A criminal contempt is conduct which goes beyond mere non-compliance with a court order or undertaking and involves a serious interference with the administration of justice. Examples include physically interfering with the course of a trial, threatening witnesses or publishing material likely to prejudice a fair trial.

# *Turner v Rogers* 564 US 1 (2011)

The US Supreme Court had to decide whether the Due Process Clause of the US Constitution granted an indigent defendant a right to state-appointed counsel in civil contempt proceedings which might lead to his imprisonment. Justice Breyer, at page 8, said that civil contempt differs from criminal contempt in that it seeks only to coerce the defendant to do what the court had ordered him previously to do.



Contempt of  
**Scandalizing the**  
court?

In the UK, Australia and New Zealand, the common law test of liability requires a substantial risk, as opposed to a remote possibility, that public confidence in the judicial system would be undermined. In practice, however, at least in the UK, there are few reported cases punishing for scandalising the court in these countries. There do not appear to be any reports of the courts exercising the power to punish for scandalising in the UK since *Colsey* in 1931. In a 1968 case, *Metropolitan Police Commissioner, ex parte Blackburn*, the court held that a robust attack on a decision of the Court of Appeal did not constitute a contempt. In 1985, *Lord Diplock, in Secretary of State for Defence v. Guardian Newspapers Ltd.*, considered the offence to be 'virtually obsolescent'.

In Canada, the common law principle has been substantially changed to bring it in line with the guarantee of freedom of expression in the Charter of Rights and Freedoms. R.v. Koptyo, involved the following comments by a lawyer in front of the public and media representatives, after losing a case: “This decision is a mockery of Justice. It stinks to high hell. It says that it is okay to break the law and you are immune so long as someone above you said to do it. Mr. Dowson and I have lost faith in the judicial system to render justice....We’re wondering what is the point of appealing and continuing this charade of the courts in this country which are warped in favour of protecting the police. The courts and the RCMP are sticking so close together you’d think they were put together with Krazy Glue.”

Despite the extreme nature of these comments, made by a lawyer, the court held that no liability should ensue.

In a case before the European Court of Human Rights, *De Haes and Gijssels v. Belgium*, the applicant journalists were penalized for several articles criticizing judges of the Antwerp Court of Appeal for awarding custody of the children in a divorce case to a father accused of incest and abuse. The European Court held that the case restriction on freedom of expression was not “necessary in a democratic society “ because the statements were not excessive and there was proportionally:

In the South African case of State v. Van Niekerk, an academic had imputed racial bias to judges in the application of the death penalty, but the court held that this did not establish a contempt. Classen J. reasoned: “B]efore a conviction can result the act complained of must not only be willful and calculated to bring into contempt but must also be made with the intention of bringing the Judges in their judicial capacity into contempt or casting suspicion on the administration of Justice.”



# Het Ram Beniwal and Ors. Raghuvveer Singh and Ors. MANU/SC/1343/2016

A prominent trade union activist was murdered on 18/12/2000. Some of the accused were granted anticipatory bails by HC of Rajasthan. Appellants were advocates who addressed large gathering of party workers against grant of this anticipatory bail. Their statements were

- There are 2 types of justice in the courts. A thief of Rs 100 cannot get bail, if the lathi is hit then the courts ask for the statements of witnesses & diary but Miglani and Gurdayal Singh committed the murder even then anticipatory bail had been granted on an application without diary.
- The general public has lost confidence in law & justice.
- All around there is Rule of rich people whether it is bureaucracy / judiciary.
- Sarpanch told that there was influence of money behind the anticipatory bail of the occurred.

Advocate general gave consent to respondent to initiate contempt proceedings on 16/1/2002. Nevertheless his contempt petition was admitted and appellants were held guilty of contempt and sentenced to 2month SI and fine of Rs. 2000 each. The SC in appeal appointed AC to assist the court. Though AC did nothing but only reiterated legal provisions and the position of respondent who filed contempt petition in the HC. The SC affirmed HC order with modification that only time would suffice for committed and appellants need not be jailed in view of 15 years that have passed since the date of commission of offence.

## **Bal Kishan Giri vs. State of U.P, (2014)7SCC280 –**

When those accused of murder of brother and nephew of B applied for bail before the High Court of Allahabad, B submitted an application to the CJ of Allahabad HC and Chairman, Bar Council of U.P. alleging that accused were closely related and had links with the Judges of the High Court including Justice S.K. Jain who had earlier served as a judicial officer in the district Court. Apprehension against Justice S.K. Jain that he would favour the accused persons in getting bail was expressed. HC issued a show cause notice to B as to why the criminal contempt proceedings be not initiated against him. B submitted an unconditional apology and stated he was in great mental tension as his nephew was murdered. SC held that allegations against the Judges were serious and sufficient to undermine dignity of court. It was the duty of the appellant not to demean and disgrace the majesty of justice dispensed by court of law.

# Contempt proceedings against Bar



## **In Re: Proceedings Against An Attorney-At-Law For Contempt Of Court, LEX/SLSC/0034/1992**

An application for certain violations of fundamental rights of some client was filed by attorney on 9/3/92 with a typed written motion that the case be called in open Court on 16/3/92 and a handwritten endorsement on the face of the petition. When his application was called on 16/3/92, attorney submitted that it had been included in that day's list by an error, and that he had been informed by the officer-in-charge of the Courts Branch in the Registry that it was in fact listed for 17/3/92. Thereupon he was shown handwritten endorsement and asked whether it had been made by him. Attorney without answering, immediately altered the date "16th" so that it then read "17th". Upon being questioned why he made such alteration, he pleaded ignorance, mistake, misunderstanding. The SC held him guilty of contempt and observed that a counsel, advocate, or pleader, appearing for a party to litigation, can claim no immunity from the operation of the law of contempt.

# Amit Chanchal Jha vs. Registrar High Court of Delhi, 2014(13)SCALE750

Male advocate of 7 years standing abused a lady advocate during proceedings before Joint Registrar in the High Court of Delhi. DB of the HC held that advocate interfered in judicial proceedings and obstructed administration of justice and convicted him for criminal contempt. Against this order, an application for recall the order on the ground that the case did not fall in the definition of 'criminal contempt' Under Section 2(c) of the Contempt of Courts Act- was made. Further defence was taken that the action was not willful as it was at the spur of the moment. Further, regret and remorse was expressed without any loss of time. Same was rejected. Advocate thereafter, filed the appeal before the SC disputing occurrence of incident at all, incorrect recording of facts by the Joint Registrar of the HC. He further filed *Affidavit tendering unconditional and unqualified apology to the lady advocate in respect of the incident*. The SC held that the apology was not sincere enough to be accepted so as to set aside the conviction. *Even though* the power of contempt should not be lightly initiated, particularly against a lawyer, but the fact remains that exercise of such power becomes necessary in the interest of public and also in the interest of due administration of justice.

## **In Re: Rameshwar Prasad Goyal Advocate, AIR2014SC850**

The SC found that Rameshwar Prasad Goyal, Advocate-on-Record (AOR) had filed large number of cases in different courts but does not appear in those cases. His refusal to appear in the court to explain the factual controversy led to dismissal of matter before the court. The SC thereupon issued a show cause notice to the said AOR as to why his name should not be removed from the register of AOR, as his conduct was 'unbecoming' of an AOR. The Supreme Court held that the conduct of AOR was not worth pardoning but considering the fact and circumstances involved, his conduct is censured with warning to behave in future and to appear in court in all the cases wherever he has entered appearance.