BARADAKANTA MISHRA

v.

THE REGISTRAR OF ORISSA HIGH COURT & ANR.

November 19, 1973

[A. N. RAY, C.J., D. G. PALEKAR, Y. V. CHANDRACHUD, P. N. BHAGWATI AND V. R. KRISHNA IYER, JJ]

Contempt of Courts Act 1971 (17 *of* 1971)—*Ss.* 2(*c*)(*iii*) & 13—*Scope of—Contempt of Court—Disciplinary control over Subordinate judiciary—When High Court functions in a disciplinary capacity it does so in furtherance of administration of justice—What amounts to—Attack on the administrative act of a judge, if amounts to contempt—Administration of justice meaning and scope of.*

The appellant, a judicial officer, was convicted and sentenced under the Contempt of Courts Act, 1971, by a Full Bench of the Orissa High Court. *Registrar of Orissa High Court* v. *Bardakanta Mishra & Ors.* I.L.R. [1973] Cuttack 134.

The appellant's career as a judicial officer was far from satisfactory. When he was working as Additional District and Sessions Judge he showed gross indiscipline and committed grave judicial misdemeanour. The contempt proceedings arose out of the representation he made to the Governor for cancelling the order of suspension passed against him by the High Court and the allegation he made in a memorandum of appeal he had filed earlier in the Supreme Court. In his representation to the Governor the appellant made false insinuations that the Governor cancelled the previous disciplinary proceedings against him on the ground that the same was vitiated as the High Court prejudged the matter and the government set aside the punishment because three of the judges were biased and were prejudiced against him, that the proceeding involved the Government in heavy expenses on account of the "palpably incorrect views of the High Court", that the High Court did not gracefully accept the Government's order cancelling his demotion, that the High Court resorted to "subterfuge" to counteract the said decision of the government by taking a novel step and that the High Court's action suffered from patent *malafides*. He stated that the other judges had no independent judgment of their own and were influenced by the Chief Justice to take a view different from what they had already taken and characterised the High Court as an "engine of oppression" and his order of suspension as "mysterious". In another representation made to the Governor the appellant alleged that the High Court on the administrative side was seriously prejudiced and biased against him and it acted as if the charges stood established requiring extreme punishment and as such justice may not be meted out to him by the High Court, if it conducted the departmental inquiry. He also stated that he considered it risky to submit his explanation to the High Court and that the High Court in the best interests of justice, should not inquire into these charges against him. He suggested that "the Court was not in a position to weigh the evidence and consider the materials on record and impose a sentence commensurate with his delinquency." The action taken by the High Court was branded as "unusual". A copy of this representation was sent to the High Court with the remark that since the High Court was likely to withhold the representation it was submitted direct to the Governor. In the memo of appeal filed in the Supreme Court, the appellant alleged bias and prejudice against the High Court and its Chief Justice. He took the plea that the High Court had become disqualified to deal with the case and expressed the view that "the judges of the High Court had fallen from the path of rectitude and were vindictive" and had decided to impose substantive sentence and that "they were not in a position to mete even-handed justice".

In appeal to this Court, it was contended: (i) that the passages about which the complaint was made did not amount to contempt of court since they did not purport to criticize any 'judicial' acts of the judges and criticism of the administrative acts of the High Court even in vilificatory terms did not amount

A to contempt of court, and (ii) that the acts complained of were in the course of the appellant challenging his suspension and holding of disciplinary proceedings, in an appeal or representation to the Governor from the orders of the High Court and he gave expression to his grievance or had otherwise acted not with a view to malign the court or in defiance of it but with the sole object of obtaining the reversal of the orders passed by the High Court against him.

HELD : The imputations have grossly vilified the High Court tending to
B affect substantially administration of justice and, therefore, the appellant was rightly convicted of the offence of criminal contempt. [304F]

(i) Proceedings in contempt are always with reference to administration of justice. All the three sub-clauses of s. 2(c) of the Contempt of Courts Act, 1971, define contempt in terms of obstruction or interference with administration of justice and scandalisation within the meaning of sub-clause (1) must be in respect of the court or the Judge with reference to administration of justice. [297C-D]

C

Debi Prasad Sharma v. *The King-Emperor* 70 Indian Appeals, 216, referred to.

(a) The question whether contemptuous imputations made with reference to the administrative acts of the High Court amount to contempt of court will depend upon whether the imputations affect the administration of justice. This is the basis on which the contempt is punished and must afford the necessary test. [298E]

D

(b) The mere functions of adjudication between the parties is not the whole of administration of justice for any court. The presiding judge of a Court embodies in himself the Court and when engaged in the task of administering justice is assisted by a complement of clerks and ministerial officers. The acts in which they are engaged are acts in aid of administration of justice. Therefore, when the Chief Justice appoints ministerial officers and assumes disciplinary control over them, that is a function which, though described as administrative, is really in the course of administration of justice. Judicial administration is an
E integrated function of Judge and cannot suffer any dissection so far as maintenance of high standards of rectitude in judicial administration is concerned. The whole set up of a court is for the purpose of administration of justice and the control which the judge exercises over his assistants has also the object of maintaining the purity of administration of justice. [298F-H; 299A]

(c) The disciplinary control over the misdemeanour of the subordinate judiciary in their judicial administration is a function which the High Court must exercise in the interest of administration of justice. It is a function which is
F essential for the administration of justice in the wide connotation it has received and, therefore, when the High Court functions in a disciplinary capacity, it only does so in furtherance of administration of justice. It is as important for the superior court to be vigilant about the conduct and behaviour of the subordinate judge as it is to administer the law, because both functions are essential for administration of justice. The Judge of the superior court in whom this disciplinary control is vested functions as much as a Judge in such matters as when he hears and disposes of cases before him. [300E; 299D]

G

(d) What is commonly described as an administrative function has been, when vested in the High Court, consistently regarded by statutes as a function in the administration of justice. [299F-G]

Letters Patent for the High Courts of Bombay, Calcutta and Madras Cl. 8; *High Courts Act*, 1861, s. 9; *the Government of India Act*, 1935, Ss. 223, 224; *Constitution of India*, 1950, Arts. 225, 227 235; *State of West Bengal* v. *Nripendra Nath Bagchi* [1966] 1 S.C.R. 771 referred to.

H

(e) Thus the courts of justice in a State from the highest to the lowest are by their constitution entrusted with functions directly connected with the administration of justice and it is the expectation and confidence of all those who have or likely to have business there that the courts perform all their functions

on a high level of rectitude without fear or favour, affection or ill-will. And, it in this traditional confidence in the courts that justice will be administered in them which is sought to be protected by proceedings in contempt. [300F-G]

Rex v. *Almon* [1765] Wilmot's Notes of Opinions 243, referred to.

(f) Scandalisation of the court is a species of contempt and may take several forms. A common form is the vilification of the Judge. When proceedings in contempt are taken for such vilification the question which the court has to ask is whether the vilification is of the Judge as a Judge or it is the vilification of the Judge as an individual. If the latter, the Judge is left to this private remedies and the court has no power to commit for contempt. If the former, the court will proceed to exercise the jurisdiction with scrupulous care and in cases which are clear and beyond reasonable doubt. Secondly, the court will have also to consider the degree of harm caused, as affecting administration of justice and if it is slight and beneath notice, courts will not punish for contempt. This salutary practice is adopted by s. 13 of the Contempt of Courts Act, 1971. If the attack on the Judge functioning as a Judge substantially affects administration of justice it becomes a public mischief punishable for contempt, and it matters not whether such an attack is based on what a Judge is alleged to have done in the exercise of his 'administrative' responsibilities. A Judge's functions may be divisible, but his integrity and authority are not divisible in the context of administration of justice. [301D-F]

Queen v. *Gray*, [1900] (2) Queen's Bench, 36, at page 40, referred to.

(g) "Judicial capacity" is an ambivalent term which means "capacity of or proper to a Judge" and is capable of taking in all functional capacities of a Judge whether administrative, adjudicatory or any other, necessary for the administration of justice. There is no warrant for the narrow view that the offence of scandalisation of the court takes place only when the imputation has reference to the adjudicatory functions of a Judge in the seat of justice. [302D]

Rex v. *Almon* [1765] Wilmot's Notes of Opinion 243; *Moti Lal Ghose and Others*, XLV—Calcutta, 169, *The State of Bombay* v. *Mr. P.* A.I.R. 1959 Bombay, 182, *Debi Prasad Sharma* v. *The King Emperor*, 70, Indian Appeals, 216, *Special Reference from the Bahama Islands*, A.C. 138 at 144, *Queen* v. *Gray* [1900] 2 Q.B. 36, referred to.

Brahma Prakash Sharma and others v. *The State of Uttar Pradesh*, [1953] S.C.R. 1169. *Gobind Ram* v. *State of Maharashtra*. [1971] 1 S.C.C. 740 and *State* v. *The Editors and Publishers of Eastern Times and Prajatantra*, A.I.R. 1952 Orissa, 318, held inapplicable.

(ii) If in fact the language used amounts to contempt of court it will become punishable as criminal contempt. The right of appeal does not give the right to commit contempt of court nor can it be used as a cover to bring the authority of the High Court into disrespect and disregard. [298C-D]

Jugal Kishore v. *Sitamarhi Central Co.op. Bank*, AIR 1967 S.C. 1494 referred to.

Per Bhagwati & Krishna Iyer, JJ : (Concurring in ultimate decision) : The dilemma of the law of contempt arises because of the constitutional need to balance two great but occasionally conflicting principles—freedom of expression and fair and fearless justice. It is a moot point whether we should still be bound to the regal moorings of *Rex* v. *Almon*. [306E]

(i) The emphasis in Ss. 2(c), 3 and 13 of the Contempt of Courts Act, 1971, to the interference with the *course of justice* or obstruction of the *administration of justice* or scandalising or lowering the authority of the *Court*—not the Judge—highlights the judicial area as entitled to inviolability and suggests a functional rather than a personal or 'institutional' immunity. The unique power to punish for contempt of itself inheres in a Court *qua* court, in its essential role of dispenser of public justice. The phraseological image projected

A by the catena of expressions in the Act, the very conspectus of the statutory provisions and the ethos and *raison d'etre* of the jurisdiction point to the conclusion that the text of the Act must take its colour from the general context and confine the contempt power to the judicial-*cum*-para-judicial areas, including such administrative functions as are intimately associated with the exercise of judicial power. In short the accent is on the functional personality which is pivotal to securing justice to the people. Purely administrative acts like recruitments, transfers and postings, routine disciplinary action against subordinate
B staff, executive acts in running the establishment and ministerial business ancillary to office-keeping—these are common to all departments in the public sector and merely because they relate to the judicial wing of government cannot enjoy a higher immunity from criticism. The quintessence of the contempt power is protection of the public, not judicial personnel. If the slant on judicialisation as a functional limitation on the contempt jurisdiction is accepted, it must exclude from its ambit interference with purely administrative acts of courts and non-judicial functions of judges. This dichotomy is implicit in the decided cases. To *treat* as the High Court has done. "the image and personality of the High
C Court as an integrated one" and to hold that every shadow that darkens it is contempt is to forget life, reason and political progress. The basic "public duty" of a Judge in his "judicial capacity" is to dispense public justice in Court and anyone who obstructs or interferes in this area does so at his peril. Likewise, personal behaviour of judicial personnel, if criticised severally or even sinisterly, cannot be countered by the weapon of the contempt of court. [309C-E; 310A-F]

D The paramount but restrictive jurisdiction to protect the public against substantial interference with the stream of justice cannot be polluted or diffused into an intimidatory power for the judges to strike at adverse comments on administrative, legislative (as under articles 225, 226 and 227) and extra-judicial acts. Commonsense and principle can certainly accept a valid administrative area so closely integrated with court work as to be stamped with judicial character such as constitution of benches, transfer of cases, issue of administrative directions regarding submission of findings or disposal of cases by subordinate courts
E and the like. Not everything covered by art. 225, 227 and 235 will be of this texture. Thus even though Judges and courts have diverse duties functionally and historically and jurisprudentially, the value which is dear to the community and the function which deserves to be cardoned off from public molestation is judicial. Vicious criticism of personal and administrative acts of Judges may indirectly mar their image and weaken the confidence of the public in the judiciary but the countervailing good, not merely of free speech but also of greater faith generated by exposure to the actinic light of *bona fide* even if marginally overzealous, criticism cannot be over-looked. [315B-E]

F In the instant case the suspension of the District Judge was so woven into and integrally connected with the administration of justice that it can be regarded as not purely an administrative act but a para-judicial function. The appeal was against the suspension which was a preliminary to contemplated disciplinary action which was against the appellant in his judicial capacity for acts of judicial misconduct. The control was, therefore, judicial and hence the unbridled attack on the High Court for the step was punishable as contempt. The
G impugned conduct of the contemner was *qua* Judge and the evil criticism was of a supervisory act of the High Court. [315G-H]

(ii) A large margin must be allowed for allegations in remedial representation; but extravagance forfeits the protection of good faith. [315H]

H *In the matter of a Special Reference from the Bahama Islands*, [1893] A.C. 139; 149; *Debi Prasad Sharma* v. *The King Emperor*, [1942] 70 I.A. 216, *Kayiath Damodaran* v. *Induchoodan*, A.I.R. 1961 Kerala 321, *K. L. Gauba's case*, I.L.R. [1942] Lah. 411, 419, *Rex* v. *B. S. Nayyar*, A.I.R. 1950 All. 549; 551; 555, *In re S. B. Sarbadhicary*, [1906] 34 XX I.A. 41, *Brahma Prakash Sharma* v. *State of Uttar Pradesh*, [1953] S.C.R. 1169, *State* v. *N. Nagamani*, A.I.R. 1959 Pat. 373 and *In the matter of an Advocate of Allahabad*, A.I.R. 1935 All. 1, referred to.

Remedial process cannot be a mask to malign a judge. Irrelevant or unvarnished imputations under the pretext of grounds of appeal amount of foul play and perversion of the legal process. In the instant case the appellant, a senior officer who professionally weighs his thoughts and words has no justification for the immoderate abuse he has resorted to. In this sector even truth is no defence, as in the case of criminal insult—in the latter because it may produce violent breaches and is forbidden in the name of public peace, and in the former it may demoralise the community about courts and is forbidden in the interest of public justice as contempt of court. The Court being the guardian of the people's rights, it has been held repeatedly that the contempt jurisdiction should be exercised with scrupulous care and only when the case is clear and beyond reasonable doubt. [317C-E; 318H]

State of Uttar Pradesh v. *Shyam Sunder Lal*, A.I.R. 1954 All. 308, *Rex* v. *R. S. Nayyar*, A.I.R. 1950 All. 549; 554, *State of Madhya Pradesh* v. *Ravi Shanker*, [1959] S.C.R. 1367; *Govind Ram* v. *State of Maharashtra*, [1972] 1 S.C.C. 740, *Swarnamayi Panigrahi* v. *B. Nayak*, A.I.R. 1959 Orissa 89, *Quintin Hogg*, 1968 2 W.L.R. 1204; 1206-7, *C. K. Daphtary* v. *O. P. Gupta*, A.I.R. 1971 S.C. 1132-1141 para 52, *R* v. *Gray*, [1900] 2 Q.B. 36, *Special Reference No. 1 of 1964*, [1965] 1 S.C.R. 413; 501; referred to.

(iii) In sum, the key note word is 'justice', not 'judge'; the key note thought is unobstructed public justice, not the self defence of a judge; the corner-stone of the contempt law is the accommodation of two constitutional values—the right of free speech and the right to independent justice. The ignition of contempt action should be substantial and *mala fide* interference with fearless judicial action, not fair comment or trivial reflections on the judicial process and personnel. [319E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 41 and 77 of 1973.

Appeals under Section 19 of the Contempt of Courts Act, 1971 from the Judgment and Order dated the 5th February, 1973 of the Orissa High Court at Cuttack in Criminal Miscellaneous Case No. 8 of 1972.

A. K. Sen, G. L. Mukhoty and *C. S. S. Rao*, for the appellant (in Cr.A. 41/73).

G. Rath, and *B. Parthasarathy*, for the appellant (In Cr. A. 77/73).

F. S. Nariman, Additional Solicitor General, B. M. Patnaik and *Vinoo Bhagat*, for respondent No. 1 (in Cr. A. 41/73) and respondent No. 2 (in Cr. A. 77/73).

G. Rath and *U. P. Singh*, for respondent No. 2 (in Cr. A. 41/73).

A. K. Sen and *C. S. S. Rao*, for respondent No. 1 (in Cr. A. 77/73).

The Judgment of the Court were delivered by

PALEKAR, J.—This is (Criminal Appeal No. 41 of 1973) an appeal by one Baradakanta Mishra from his conviction and sentence under the Contempt of Courts Act, 1971 by a Full Bench of five Judges of the Orissa High Court. The Judgment is reported in I.L.R. [1973] Cuttack, 134 (*Registrar of the Orissa High Court* v. *Baradakanta Mishra and Ors.*).

The appellant started his career as a Munsif in 1947. His career as a Judicial Officer was far from satisfactory. In 1956 he was promoted on trial basis to the rank of a Sub-Judge with the observation

A that if he was found incompetent, suitable action would be taken. In due course, he was confirmed as a Subordinate Judge. On April, 2, 1962 he was promoted, again on trial basis, to the rank of Additional District Magistrate (Judicial) which is a post in the cadre of the Orissa Superior Judicial Service (Junior Branch). As his work was found unsatisfactory, he was reverted to his substantive post of a Subordinate Judge on January 4, 1963. The order of reversion was challenged by B him in a Writ Petition which was dismissed by a Bench of Ahmad, C.J. and Barman, J. The case is reported in [I.L.R.] 1966, Cuttack, 503. An appeal to the Supreme Court was dismissed on February 6, 1967. While working as a Subordinate Judge, after reversion, he was suspended from service from 15th May, 1964 to 9th April, 1967 during the pendency of a disciplinary proceeding against him. That C proceeding ended in a light punishment of two of his increments being stopped. From the above order of punishment, the appellant filed on 10-10-1967 an appeal to the State Government. The State Government by its order dated 15-7-1970 allowed the appeal on the ground that the Public Service Commission had not been consulted by the High Court before imposing the punishment, and that the Charge-Sheet served on the appellant having indicated the proposed punishment vitiated the disciplinary proceedings. After the case was D sent back to the High Court the charges which had been earlier established, were framed again and served on him on 13-2-1971 and we are informed that the proceeding is still pending.

In the meantime, it appears, he was promoted to the post of the Additional District Magistrate in February, 1968 though the High Court was of opinion that he was unbalanced, quarrelsome, reckless E and indisciplined. The High Court specifically observed that though the appellant suffered from these defects, he was sincere and hard-working and the other officers who had superseded him as Additional District Magistrates were not much better. The promotion was made on trial basis for a period of one year with the observation that if during that period his work was found to be unsatisfactory, he would be reverted to the rank of Sub-Judge.

F In that year the High Court had to face an abnormal situation by the retirement of many District Judges on account of the decision of the Government reducing the age of retirement from 58 to 55 years. Many vacancies occurred and the appellant was then promoted as an Additional District and Sessions Judge on trial basis for six months in July, 1968. In January, 1969 he was allowed to continue G on a temporary basis till further orders subject to further review of his work at the time of confirmation. It is worthy of note that this decision to continue was taken on the report of the present Chief Justice G. K. Misra who was at that time the Administrative Judge.

On May 12, 1969 his services were placed at the disposal of the Government in the Law Department, who appointed him as Joint Secretary, Law, till October 12, 1969. From October 13, 1969 to H December 4, 1970 he was appointed by the Government as the Commissioner of Endowments. The Government was thoroughly dissatisfied with his work and on December 5, 1970 his services were replaced at the disposal of the High Court. The appellant went on leave.

On his return to the Judicial cadre, he functioned as Additional District and Sessions Judge, Cuttack till July 14, 1971 when he was posted to act as District and Sessions Judge for 12 days in the temporary leave vacancy of the permanent District Judge Mr. P. K. Mohanty. When he was thus acting as District and Sessions Judge for a short period by way of stop-gap arrangement, the High Court placed several restrictions on his administrative powers. A

In the brief period that he was working as Additional District and Sessions Judge, Cuttack, the appellant showed gross indiscipline by defying a request made by the District Judge in due course of administration. He also committed a grave judicial misdemeanour. He heard an appeal and posted it for judgment on June 22, 1971. The judgment was delivered on that date and the appeal was dismissed. The Order-Sheets of the judgment were signed by the appellant and the judgment was duly sealed. Later in the day, however, the appellant scored through his signatures both in the Order-Sheet and in the judgment and returned the record of the appeal to the District Judge for disposal by making a false statement that the judgment had not been delivered and that the parties being known to him it was not desirable that he should further hear the appeal, after taking additional evidence for which a petition had been filed. This was something quite extraordinary from a Judge of the appellant's standing. When these matters were brought to the notice of the High Court the Registrar by Order of the High Court recommended to the Government that the appellant be reverted to the post of the Additional District Magistrate (Judicial). There were already three departmental proceedings pending against the appellant and he had also been convicted in a contempt case. The High Court expressly informed the Government that these four matters had not been taken into consideration in recommending his reversion and that his reversion was solely due to the fact that his work was found unsatisfactory. The recommendation was accepted by the Government who on September 1, 1971 reverted the appellant to the post of the Additional District Magistrate. B C D E

On September 10, 1971 the appellant made a representation to the Chief Minister praying for the withdrawal of the order of reversion and, if necessary, to suspend him after drawing up a regular departmental proceeding. The representation was forwarded to the Government with the comments of the High Court. F

Something unusual happened. Without any further consultation with the High Court, the Governor cancelled the reversion order by notification dated March 21, 1972 and on the same day the Chief Minister wrote a confidential D.O. to the Chief Justice by name explaining the circumstances under which the reversion order was cancelled. The Chief Minister appeared to rely upon a decision of the Orissa High Court which had no application to the facts of this particular case. But any way, it would appear that by reason of the Order dated March 21, 1972 the reversion of the appellant to the post of the Additional District Magistrate stood cancelled and he continued to act in the post of the Additional District & Sessions Judge, Cuttack. G H

A The D.O. letter of the Chief Minister remained unopened till the return of the Chief Justice from New Delhi where he had gone to attend the Chief Justices Conference. It was opened by the Chief Justice on return on March 26, 1972. But in the meantime the appellant, who had gone on leave, having known about the order passed on March 21, 1972 asked for his posting. The rules required that on return from leave he should produce a medical certificate and B he was, accordingly directed to produce one.

On March 28, 1972 the Chief Justice placed the letter of the Chief Minister for consideration before the Full Court. The Full Court took the decision to start a disciplinary proceeding against the appellant and, pending the same, to place him under suspension in exercise of their powers under Article 235 of the Constitution. Accordingly C on March 30, 1972 the appellant was placed under suspension and his headquarters were fixed at Cuttack.

The present contempt proceedings arise out of events which took place after the suspension order. On receiving the suspension order the appellant addressed by letter an appeal to the Governor of Orissa for cancelling the order of suspension and for posting him directly D under the Government. That is Annexure 8. As the High Court was of the view that no appeal lay from an order of suspension pending disciplinary charges, it did not forward the appeal to the Governor. In fact on April 28, 1972 the Registrar of the High Court intimated the State Government that the appeal filed by the appellant to the Governor had been withheld by the High Court as no such appeal lies against the order of suspension pending disciplinary proceedings. E The appellant was also intimated accordingly.

On April 29, 1972 charges in the disciplinary proceeding were framed by the High Court and communicated to the appellant and the appellant was directed to file his reply to the charges by a certain date.

On May 14, 1972 the appellant wrote three letters. One was F to the Registrar and is Annexure 13. By this letter the appellant intimated that he had moved the Governor to transfer the disciplinary proceedings to the Administrative Tribunal and that he would take all other alternative steps—administrative and judicial—to avoid the proceeding being dealt with by the High Court. The second letter was addressed to the Governor and is Annexure 15. It purports to be a representation with a prayer to direct the High Court to forward G the appeal withheld by it. There was a third letter of the same date addressed directly to the Governor purporting to be a representation. That is Annexure 16. The prayer was that the departmental proceedings be referred to the Administrative Tribunal. A copy of this letter was sent to the Registrar of the High Court with the following remark :

H "As the Honourable Court are likely to withhold such petitions, this is submitted direct with copy to the Honourable Court for information. Honourable Court may be pleased to send their comments on this petition to the Governor."

On May 22, 1972 the appellant addressed a letter (Annexure 14) to the Registrar intimating him that he would not submit any explanation to the charges framed against him until his representation to the Governor was disposed of. He also stated therein that he may file a writ application for the purpose and would take the matter to the Supreme Court, if necessary. He also stated that he cannot wait for the permission of the High Court for leaving the Headquarters.

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It is the contents of these letters on which a show-cause notice for contempt was issued to the appellant under the orders of the Full Court on July 3, 1972.

On 27-7-1972 the appellant filed his preliminary objection to the show-cause notice challenging its maintainability on the ground that whatever he had said had no reference to the judicial functions of any Judge of the High Court and, therefore, no contempt proceedings would lie. He pressed for a decision on the point. When the matter came before a Division Bench on 3-8-1972 the appellant was directed to file his full reply to the show-cause notice. Accordingly, it was filed on 7-8-1972 and the appellant again pressed for a decision on his preliminary objection. The Division Bench refused to deal with the preliminary objection and so on 30-8-1972 the appellant filed Criminal Appeal No. 174 of 1972 in this Court praying for cancellation of the contempt proceedings challenging therein the maintainability of the proceedings and complaining of bias and prejudice of the High Court particularly the Honourable the Chief Justice and Mr. Justice R. N. Mishra. He said he apprehended that he would not get a fair deal if the matter is disposed of by the High Court.

C

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On 21-11-1972 the Supreme Court appeal was withdrawn. At the instance of the Division Bench, a Full Bench of five Judges was constituted by the Chief Justice and the case came on for hearing before the Full Bench on 4-12-1972. In the meantime the appeal memo filed by the appellant in the Supreme Court was available and since it contained matter which amounted to contempt, additional charges were framed and a show-cause notice was issued to the appellant in respect of these additional charges. A copy of the appeal memo containing the statements amounting to contempt is Annexure 20.

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The Annexures were examined by the court with a view to consider whether the statements therein amount to a criminal contempt. On a full and prolonged consideration the Full Bench came to the unanimous conclusion that Annexures 8, 13, 14, 16 and 20 contain matters which amounted to gross contempt of court and since the appellant had not even offered an apology, this was a matter in which serious notice ought to be taken, especially, in view of previous convictions for contempt, and, accordingly sentenced the appellant to two months simple imprisonment though in their opinion he deserved the maximum sentence of six months.

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The several Annexures referred to above have been extracted by the Full Bench in its judgment and it is not necessary to reproduce them here. It will be sufficient to reproduce only those portions

A which were regarded as grossly contemptuous and had been underlined in the judgment.

Annexure 8.

As already stated this is a letter in the form of an appeal addressed to the Governor of Orissa complaining against the suspension and praying for stay of operation of the suspension order on the basis
B of the advance copy sent to the Governor for its cancellation and for posting the appellant directly under the Government. It is dated 10-4-1972. The appeal had been routed through the High Court but the High Court did not forward the same. In this annexure reference is made to the previous appeal filed by him against the order of the High Court stopping his two increments after a departmental proceeding and how the Governor in appeal had cancelled even the
C very departmental proceeding in the appeal. An interpretation was put on that order which it did not bear and it was made out, though falsely, that the punishment had been set aside on the basis of the allegations made by the appellant that some Honourable Judges of the High Court had been biased and prejudiced against him. The appellant also asked the Governor to appreciate that by the said departmental proceedings the High Court had put the Exchequer to a
D very heavy loss *"all on account of the palpable incorrect views of the High Court."* Then the appellant says that the present action, namely, the order of suspension clearly disclosed *malafides*. He suggested that there were several "embarrassing events" which he could offer for consideration of the Governor but he was content at this stage to refer to only one of them. In this connection he referred to the fact that when he intimated to the High Court that he desired
E to join duties after his leave on March 20, 1972 he was informed by the High Court on March 23, 1972 that his re-posting after leave would be decided after the medical board reported as to his fitness to join after leave. This, according to the appellant, showed that the High Court had already taken a decision in the absence of the Chief Justice that the appellant should be re-posted. But on the return of the Chief Justice from New Delhi there was a sudden
F change. He clearly suggested that after the Chief Justice's return the court took the decision to suspend him and in this connection he made the following observations :

> "This decision of the High Court, reached at before the Honourable the Chief Justice attended the High Court on the 27th March after his 10 days of absence, clearly indi-
> G cates that no proceeding, much less suspension, against the appellant was under contemplation till that day, but on the other hand, the appellant's place of posting was under consideration of the High Court. Circumstances clearly disclose that after the return of the Honourable Chief Justice, the Government's order, disapproving the High Court's views about the appellant's demotion, was not accepted gracefully
> H by the High Court, and so subterfuge was adopted to counteract the said decision of the Government by a novel step, thus to deprive the appellant of the result of the said decision. In view of this patent *mala fide* alone, such an action

is liable to be quashed, by any competent Court of law." A

Then at a later stage the appellant says :

"The appellant happens to be the senior-most judicial officer in the State as regards length of service, and he has already 20 more months before attaining the age of superannuation. Hence, he may not deserve the present unwarranted, sudden and mysterious suspension, giving rise to speculations, touching his integrity." B

Then again he says :

"..... the treatment of the High Court may require that after cancellation of this order of suspension, he be brought under the direct control of the Government in a special post for the rest of his service career of hardly 20 months more." C

The High Court at para 61 of the judgment has observed as follows :

"In the appeal memo (Annexure-8) the contemner attributed *mala fides*, bias and prejudice to the High Court. He made false insinuations that the Governor cancelled the previous disciplinary proceeding against the contemner on the ground that the same was vitiated as the High Court had prejudged the matter and the Government set aside the punishment on the ground that three of the Honourable Judges were biased and prejudiced against him. He alleged that the disciplinary proceeding involved the Government in heavy expenses on account of the palpably incorrect views of the High Court. He asserted that the order of suspension as per Annexure-6 was *mala fide*. He stated that he would produce more facts relating to the *mala fides* of the High Court before the Governor. He alleged that the High Court did not gracefully accept the Government's order cancelling his demotion, and the High Court resorted to a subterfuge to counter-act the said decision of the Government by taking a novel step, and that the High Court's action suffered from patent *mala fide*. He stated that there was a turn of event after return of the Chief Justice from the Chief Justices' Conference and that the High Court did not accept Government's decision gracefully, and that the other Judges had no independent judgment of their own, and were influenced by the Chief Justice to take a view, different from what they had already taken, to give a posting order to the contemner, and that the High Court resorted to a subterfuge. He wanted protection of the Governor against the High Court which he insinuates as an engine of oppression. He characterised the High Court's order of suspension as mysterious and prayed that the Government should post him directly under it." D E F G H

We have no doubt that the Full Bench has correctly summarized the effect of Annexure-8, and we have nothing more to add.

A Annexures 13 and 14 should go together. Annexure 13 is a letter by the appellant to the Registrar dated May 14, 1972 in which he told him that he had moved the Governor, Orissa with a prayer to refer his matter to the Tribunal under the provisions of the Disciplinary Proceedings Rules, 1951 and also that he would take all other alternative steps "administrative and judicial" to avoid this proceeding being dealt with by the High Court and for this purpose would have B to consult some prominent Advocates of Calcutta and Delhi. Annexure-14 is a further letter dated May 22, 1972 to the Registrar intimating him that he would not submit any explanation to the charges framed until his representation to the Governor was disposed of. In this letter he further pointed out that it would not be possible for him to wait for the permission of the High Court to leave headquarters, because he may be called by his legal advisers at any mo- C ment and in those circumstances he said "I hereby inform the Honourable Court that I may be absent during the entire period mentioned in my letter dated the 14th May, 1972 and the Honourable Court may kindly approve of the same."

The effect of Annexures—13 and 14 has been summarised by the Full Bench in these words :

D "Thus, in Annexures—13 and 14, the contemner exhibited a contemptuous defiance of the Court's order, by declaring that he would not obey the order, and would leave the station without waiting for permission from the High Court, as his first consideration was to "go out in connection with legal advice and filing applications and appeals in the Supreme Court" in matters connected with his suspension, and E to take all steps to avoid the proceeding being dealt with by the High Court. These passages depict, in unequivocal terms, that the dispensation of justice by the Judges of the High Court on its administrative side, is most atrocious and vindictive and it is on that ground, the contemner would not obey the Court's order, would not submit any explanations, and would take all possible measures before the F Supreme Court, the Governor and the Chief Minister not to surrender to the jurisdiction of the High Court. His entire attempt has been to present a lurid picture of the administration of justice, by the High Court."

In the context, we are not prepared to say that this summary of the effect of Annexures 13 and 14 is far wrong.

G *Annexure* 16.

That brings us to Annexure 16. It is dated May 14, 1972 and purports to be a representation made by the appellant direct to the Governor without routing it through the High Court. The following passages have been underlined by the Full Bench as being grossly contemptuous.

H "..... the High Court have already contemplated in this departmental proceedings, a very heavy punishment for the petitioner."

"If on two such allegations, bias and prejudice of the High Court was disclosed by strongly pleading for demotion of the petitioner, the multiple number of such charges may naturally make the petitioner, apprehensive of the result of the proceedings, if conducted by the High Court." A

"..... the High Court even without any authority or jurisdiction in this regard and on the face of the directions of the Government in Political and Services Department communicated in the Government's Memo No. 3559-Gen., dated the 15th March 1958, have placed the petitioner under suspension." B

"The High Court have also taken unusual move in placing the petitioner under suspension in a 'contemplated proceeding'" C

"..... the High Court on the administrative side, is seriously prejudiced and biased against him, and they act, as if the charges stand established, requiring extreme punishment and as such, justice may not be meted out to the petitioner by the High Court, if they conduct this departmental inquiry." D

"..... the petitioner considers it risky to submit his explanation to the High Court."

"..... the High Court in the best interest of justice, should not enquire into these charges."

A copy of the above representation was sent to the Registrar and the following endorsement appears thereon. E

"As the Honourable Court are likely to withhold petitions this is submitted direct with copy to the Honourable Court for information. The Honourable Court may be pleased to send their comments on this petition to the Governor."

The summary of the effect of Annexure-16 is given by the Full Bench in para 70 of the judgment which is as follows: F

"In Annexure-16 the contemner has suggested that the Court has already prejudged the matter and has taken a previous decision to impose a heavy punishment. Bias and prejudice on the part of the Court were also alleged by the contemner. He suggested that the Court is not in a position to weigh the evidence and consider the materials on record and to impose a sentence commensurate with his delinquency. The action taken by the High Court has been branded as 'unusual' ....." G

"A copy of this Annexure 16 was sent to the High Court with a contemptuous remark that since the High Court was likely to withhold the representation it was submitted direct to the Governor. Not being satisfied with that, he issued a further directive to the court to send their comments on his representation to the Governor." H

A

The above summary of the effect of Annexure-16 is, in our view, correct.

Annexure-20.

This annexure is the memo of appeal filed by the appellant in the Supreme Court in Criminal Appeal No. 174 of 1972. The appeal had
B been filed because the Division Bench had refused to consider his preliminary objection with regard to the maintainability of the present contempt proceedings. The grievance before the Supreme Court was that the Orissa High Court had taken six contempt proceedings against him and in view of what happened in some of those proceedings, the appellant entertained apprehension that the court may impose sub-
C stantive punishment and may refuse bail or time to the appellant for getting redress from the Supreme Court if the present contempt proceedings were also to go on before the same High Court. In the first contempt proceeding though the proceedings were dropped, adverse comments were made against his conduct thus depriving him of an opportunity to go in appeal and have the adverse comments expunged. In one of the other cases he says "..... the appellant was brought
D down to the Court-hall, and the Honourable Judges convicted and sentenced the appellant and without affording him an opportunity to obtain stay of the sentence from this Honourable Court, executed the sentence by administering admonition in the open court and sounding warning that, if at any time such contumacious conduct of his was noticed, a very serious view would be taken about punishment."

In the other contempt matter, he alleged, a Judge wanted to add
E a new charge. The appellant objected to the same and went in appeal to the Supreme Court. The appellant says that when the appellant filed his appeal in this Court and brought this fact to the notice of the Honourable Judges, they dropped the additional charge. In another proceeding, he says, the Honourable Judges while dropping the proceeding found out a very innocent and inconsequential mistake in the sworn counter-affidavit of the appellant and on that account
F ordered the filing of a criminal complaint for an offence under section 199 of the I.P.C. In ground (1) the appellant alleged that the appellant fears bias of the Honourable High Court against him in view of the facts and circumstances stated above.

The Full Bench in its judgment has considered each one of the allegations in the appeal memo and shown how the insinuations were
G false and how plain facts were distorted. They are entirely right in summarising these facts of Annexure 20 in these words :

> "Thus in Annexure-20 the contemner has, in clearest terms, alleged bias and prejudice against the High Court and its Chief Justice. He has taken the plea that the court itself has become disqualified to deal with the case. In his view
H the Judges of this Court have fallen from the path of rectitude, and are vindictive, and have already decided to impose substantive sentence and refuse bail, and they are not in a position to mete out even-handed justice."

Even if we dismiss Annexures 13 and 14 as nothing more than disrespectful fulminations of an angry insubordinate officer, there is hardly any doubt that Annexures 8, 16 and 20 contain statements which are deliberately made to grossly scandalize the High Court. The Judges of the High Court and especially the Chief Justice are charged with *mala fides*, improper motives, bias and prejudice. It is insinuated that they are oppressing the appellant, have become vindictive and are incapable of doing him justice. It is also suggested that they do not administer justice fearlessly because in one matter affecting the appellant, they dropped a charge against him for fear of the Supreme Court. All this, *prima facie*, amounts to gross scandalization of the High Court.

The law applicable to this case is the law as contained in the Contempt of Courts Act, 1971 No. 17 of 1971. Section 2 defines "Contempt of Court", as either "civil contempt" or "criminal contempt". Clause (c) defines "criminal contempt" as follows :

> (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
>
> (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
>
> (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"

It will be seen that the terminology used in the definition is borrowed from the English law of Contempt and embodies concepts which are familiar to that law which, by and large, was applied in India. The expressions "scandalize", "lowering the authority of the court", "interference", "obstruction" and "administration of justice" have all gone into the legal currency of our sub-continent and have to be understood in the sense in which they have been so far understood by our courts with the aid of the English law, where necessary.

The first sub-clause generally deals with what is known as the scandalization of the court discussed by Halsbury 3rd Edition in Volume 8, page 7 at para 9 : "Scandalous attacks upon Judges are punished by attachment or committal upon the principle that they are, as against the public, not the judge, an obstruction to public justice; and a libel on a judge, in order to constitute a contempt of court, must have been calculated to cause such an obstruction..... The punishment is inflicted, not for the purpose of protecting either the court as a whole or the individual judges of the court from a repetition of the attack, but of protecting the public, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the court, from the mischief they will incur if the authority of the tribunal is undermined or impaired." Sub-clause (i) embodies the above concept and takes in cases when by the publication or the fact the

A administration of justice is held to ridicule and contempt. This is regarded as an "obstruction" of public justice whereby the authority of the court is undermined. Sub-clause (i) refers to one species of contempt of which "obstruction" is an important element. Sub-clause (ii) speaks of interference with due course of judicial proceedings and is directly connected with administration of justice in its common B acceptance.

While clauses (i) and (ii) deal with obstruction and interference respectively in the particular way described therein, clause (iii) is a residuary provision by which any other type of obstruction or interference with the administration of justice is regarded as a criminal contempt.

C In other words, all the three sub-clauses referred to above define contempt in terms of obstruction of or interference with administration of justice. Broadly speaking our statute accepts what was laid down by the Privy Council and other English authorities that proceedings in contempt are always with reference to the administration of justice. It is enough for our purpose to refer to *Debi Prasad Sharma* v. *The King-Emperor*(1) in which Lord Atkin delivering the judgment of D the Judicial Committee observed at page 223 as follows :

"In 1899 this Board pronounced proceedings for this species of contempt (scandalization) to be obsolete in this country, though surviving in other parts of the Empire, but they added that it is a weapon to be used sparingly and always with reference to the administration of Justice : *McLeod* v. *St. Aubyn* (I) [1899] A.C. 549. In *In re a* E *Special Reference from the Bahama Islands*—[1893] A.C. 138) the test applied by the very strong Board which heard the reference was whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due administration of the law. In *Queen* v. *Gray*—[1900] (2) Q. B. 36 it was shown that the offence of scandalizing the court itself was not obsolete in this country. A very scandalous attack had been made on a Judge F for his judicial utterances while sitting in a criminal case on circuit, and it was with the foregoing opinions on record that Lord Russell of Killowen, C.J., adopting the expression of Wilmot, C.J. in his opinion in Rex. v. Almon—(1765 Wilmot's Notes of Opinions, 243 97 E.R. 94) which is the source of much of the present law on the subject, spoke of the article complained of as calculated to lower the authority of the judge."

G It is, therefore, clear that scandalization within the meaning of sub-clause (i) must be in respect of the court or the Judge with reference to administration of justice.

The contention of Mr. Sen on behalf of the appellant is that, in the first place, it must be remembered that the publication or acts complained of are in the course of the appellant challenging his suspen- H sion and holding of disciplinary proceedings in an appeal or representation to the Governor from the orders passed by the High Court. In Annexure-20 he was challenging the Order of the High Court before

(1) 70 Indian Appeals, 216.

the Supreme Court. The appellant in his submission, *bona fide* believed that he had a right to appeal and, in pursuance of the right he thus claimed he had given expression to his grievance or had otherwise acted, not with a view to malign the court or in defiance of it, but with the sole object of obtaining the reversal of the orders passed by the High Court against him. In the second place, Mr. Sen contended, the passages about which the complaint was made did not amount to contempt of court since they did not purport to criticize any 'judicial' acts of the judges sitting in the seat of justice. It may be that in some places disrespectful references have been made to the Judges which Mr. Sen assures us, he should have never done. At the same time, in his submission, criticism of administrative acts of the High Court even in vilificatory terms did not amount to contempt of court.

So far as the first part of the argument is concerned, the same must be dismissed as unsubstantial because if, in fact, the language used amounts to contempt of court it will become punishable as criminal contempt. The right of appeal does not give the right to commit contempt of court, nor can it be used as a cover to bring the authority of the High Court into disrespect and disregard. It has been held by this Court in *Jugal Kishore* v. *Sitamarhi Central Co-op. Bank*(1) that allegations of *mala fides* in the grounds of appeal to the Joint Registrar of Cooperative Societies from the Order of the Assistant Registrar would constitute gross contempt.

A point of some substance is in the second part of Mr. Sen's argument and it will be necessary to decide in the present case whether contemptuous imputations made with reference to "the administrative acts" of the High Court do not amount to contempt of Court.

The answer to the point raised by Mr. Sen will depend upon whether the imputations referred to above do or do not affect administration of justice. That is the basis on which contempt is punished and must afford the necessary test.

We have not been referred to any comprehensive definition of the expression "administration of justice". But historically, and in the minds of the people, administration of justice is exclusively associated with the Courts of justice constitutionally established. Such courts have been established throughout the land by several statutes. The Presiding Judge of a court embodies in himself the court, and when engaged in the task of administering justice is assisted by a complement of clerks and ministerial officers whose duty it is to protect and maintain the records, prepare the writs, serve the processes etc. The acts in which they are engaged are acts in aid of administration of justice by the Presiding Judge. The power of appointment of clerks and ministerial officers involves administrative control by the Presiding Judge over them and though such control is described as administrative to distinguish it from the duties of a Judge sitting in the seat of justice, such control is exercised by the Judge as a Judge, in the course of judicial administration. Judicial administration is an integrated function of the Judge and cannot suffer any dissection so far as maintenance of high standards of rectitude in judicial administration is con-

(1) A.I.R. 1967 S.C. 1494

A cerned. The whole set up of a court is for the purpose of administration of justice, and the control which the judge exercises over his assistants has also the object of maintaining the purity of administration of justice. These observations apply to all courts of justice in the land whether they are regarded as superior or inferior courts of justice.

B Courts of justice have, in accordance with their constitutions, to perform multifarious functions for due administration of justice. Any lapse from the strict standards of rectitude in performing these functions is bound to affect administration of justice which is a term of wider import than mere adjudication of causes from the seat of justice.

C In a country which has a hierarchy of courts one above the other, it is usual to find that the one which is above is entrusted with disciplinary control over the one below it. Such control is devised with a view to ensure that the lower court functions properly in its judicial administration. A Judge can foul judicial administration by misdemeanours while engaged in the exercise of the functions of a Judge. It is therefore as important for the superior court to be vigilant about D the conduct and behaviour of the Subordinate Judge as a Judge, as it is to administer the law; because both functions are essential for administration of justice. The Judge of the superior court in whom this disciplinary control is vested functions as much as a Judge in such matters as when he hears and disposes of cases before him. The procedures may be different. The place where he sits may be different. But the powers are exercised in both instances in due E course of judicial administration. If superior courts neglect to discipline subordinate courts, they will fail in an essential function of judicial administration and bring the whole administration of justice into contempt and disrepute. The mere function of adjudication between parties is not the whole of administration of justice for any court. It is important to remember that disciplinary control is vested in the court and not in a Judge as a private individual. Control, F therefore, is a function as conducive to proper administration of justice as laying down the law or doing justice between the parties.

What is commonly described as an administrative function has been, when vested in the High Court, consistently regarded by the statutes as a function in the administration of justice. Take for example the Letters Patent for the High Court of Calcutta, Bombay G and Madras. Clause 8 thereof authorises and empowers the Chief Justice from time to time as occasion may require "to appoint so many and such clerks and other ministerial officers it shall be found necessary *for the administration of justice* and the due execution of all the powers and authorities granted and committed to the said High Court by these Letters Patent." It is obvious that this authority of the Chief Justice to appoint clerks and ministerial officers for the H administration of justice implies an authority to control them in the interest of administration of justice. This controlling function which is commonly described as an administrative function is designed with the primary object of securing administration of justice. Therefore,

when the Chief Justice appoints ministerial officers and assumes disciplinary control over them, that is a function which though described as administrative is really in the course of administration of justice. Similarly section 9 of the High Courts Act, 1861 while conferring on the High Courts several types of jurisdictions and powers says that all such jurisdiction and powers are "for and in relation to the *administration of justice* in the Presidency for which it is established." Section 106 of the Government of India Act, 1915 similarly shows that the several jurisdictions of the High Court and all their powers and authority are "in relation to *the administration of justice including power to appoint clerks and other ministerial officers of the court.*" Section 223 of the Government of India Act, 1935 preserves the jurisdictions of the existing High Courts and the respective powers of the Judges thereof in relation *to the administration of justice* in the court. Section 224 of that Act declares that the High Court shall have superintendence over all courts in India for the time being subject to its appellate jurisdiction and this superintendence, it is now settled, extends both to administrative and judicial functions of the subordinate courts. When we come to our constitution we find that whereas Articles 225 and 227 preserve and to some extent extend these powers in relation to administration of justice, Article 235 vests in the High Court the control over District Courts and Courts Subordinate thereto. In the *State of West Bengal* v. *Nripendra Nath Bagchi*(1) this Court has pointed out that control under Article 235 is control over the conduct and discipline of the Judges. That is a function which, as we have already seen, is undoubtedly connected with administration of justice. The disciplinary control over the misdemeanours of the subordinate judiciary in their judicial administration is a function which the High Court must exercise in the interest of administration of justice. It is a function which is essential for the administration of justice in the wide connotation it has received and, therefore, when the High Court functions in a disciplinary capacity, it only does so in furtherance of administration of justice.

We thus reach the conclusion that the courts of justice in a State from the highest to the lowest are by their constitution entrusted with functions directly connected with the administration of justice, and it is the expectation and confidence of all those who have or likely to have business therein that the courts perform all their functions on a high level of rectitude without fear or favour, affection or ill-will.

And it is this traditional confidence in the courts that justice will be administered in them which is sought to be protected by proceedings in contempt. The object, as already stated, is not to vindicate the Judge personally but to protect the public against any undermining of their accustomed confidence in the Judges' authority. Wilmot C.J. in his opinoin in the case of *Rex* v. *Almon* already referred to says: "The arraignment of the justice of the Judges, is arraigning the King's justice; it is an impeachment of his wisdom and goodness in the choice of his Judges, and excites in the minds of the people a general dissatisfaction with all judicial determinations, and indisposes their minds to obey them; and whenever men's allegiance to the laws is so fundamen-

(1) [1966] (1) S.C.R. 771.

A tally shaken, it is the most fatal and most dangerous obstruction of justice, and in my opinion, calls out for a more rapid and immediate redress than any other obstruction whatsover; not for the sake of the Judges, as private individuals, but because they are the channels by which the King's justice is conveyed to the people. To be impartial, and to be universally thought so, are both absolutely necessary for the giving justice that free, open, and uninterrupted current, which it has, B for many ages, found all over this kingdom,....." Further explaining what he meant by the words "authority of the court", he observed "the word "authority" is frequently used to express both the right of declaring the law, which is properly called jurisdiction, and of enforcing obedience to it, in which sense it is equivalent to the word power : but by the word "authority", I do not mean that coercive power of the Judges, but the deference and respect which is paid to them and their C acts, from an opinion of their justice and integrity."

Scandalization of the court is a species of contempt and may take several forms. A common form is the vilification of the Judge. When proceedings in contempt are taken for such vilification the question which the court has to ask is whether the vilification is of the Judge as a Judge. See *Queen* v. *Gray*(1) or it is the vilification of the Judge D as an individual. If the latter, the Judge is left to his private remedies and the court has no power to commit for contempt. If the former, the court will proceed to exercise the jurisdiction with scrupulous care and in cases which are clear and beyond reasonable doubt. Secondly, the court will have also to consider the degree of harm caused as affecting administration of justice and, if it is slight and beneath notice, courts will not punish for contempt. This salutary practice is adopted E by section 13 of the Contempt of Courts Act, 1971. The jurisdiction is not intended to uphold the personal dignity of the Judges. That must rest on surer foundations. Judges rely on their conduct itself to be its own vindication.

But if the attack on the Judge functioning as a Judge substantially F affects administration of justice it becomes a public mischief punishable for contempt, and it matters not whether such an attack is based on what a Judge is alleged to have done in the exercise of his administrative responsibilities. A Judge's functions may be divisible, but his integrity and authority are not divisible in the context of administration of justice. An unwarranted attack on him for corrupt administration is as potent in doing public harm as an attack on his adjudicatory G function.

The Full Bench has considered a very large number of cases and come to the conclusion that there is no foundation for the view that an attack on the court in its exercise of administrative functions does not amount to contempt. In *Brahma Prakash Sharma and others* v. *The State of Uttar Pradesh*(2) it is pointed out that the object of contempt proceedings is not to afford protection to Judges personally from impu- H tations to which they may be exposed as individuals but is intended as protection to the public whose interest would be very much affected,

(1) [1900] (2) Queen's Bench, 36 at page 40. (2) [1953] S.C.R. 1169.

if by the act or by the conduct of any party the authority of the court is lowered and the sense of confidence which the people have in the administration of justice by it is weakened. The case is no athority to the proposition put forward by Mr. Sen. In *Gobind Ram* v. *State of Maharashtra*(1) some observations of Jagannadhadas, C.J. (as he then was) in the *State* v. *The Editors and Publishers of Eastern Times and Prajatantra*(2) were quoted by this Court with approval. These observations are : "A review of the cases in which a contempt committed by way of scandalization of the court has been taken notice of for punishment shows clearly that the exercise of the punitive jurisdiction is confined to cases of very grave and scurrilous attack on the court or on the Judges in their judicial capacity the ignoring of which could only result encouraging a repetition of the same with the sense of impunity which would thereby result in lowering the prestige and authority of the court." Mr. Sen has particularly emphasised the words "judicial capacity" and argued that this only refers to the Judge functioning in the seat of justice. It does not appear from the report of the Orissa case that the High Court was in any way, concerned with the alleged dichotomy between the Judge's administration functions and his adjudicatory functions. "Judicial capacity" is an ambivalent term which means "capacity of or proper to a Judge" and is capable of taking in all functional capacities of a Judge whether administrative, adjudicatory or any other, necessary for the administration of justice. There is no sufficient warrant to hold that the Orissa High Court used the words "judicial capacity" with a view to exclude all other capacities of the Judges except the capacity to adjudicate, nor for holding that this Court approved the use of the expression as limited to the Judges' adjudicatory function.

On the other hand, there is high authority for the proposition that vilificatory criticism of a Judge functioning as a Judge even in purely administrative or non-adjudicatory matters amounts to criminal contempt. The case of *Rex* v. *Almon* already referred to is a case of this kind. Almon published a pamphlet in which the Chief Justice and, impliedly, all the Judges of the court of King's Bench were accused of deliberately delaying or defeating the issue of the process of *habeas corpus* by introducing a new rule that a petition praying for the issue of that process should be accompanied by an affidavit. It was held that this constituted contempt of court. The Chief Justice and the Judges were not criticized for what they were doing in a judicial proceeding from the "seat of justice" but for making a rule which, in the opinion of the writer was deliberately designed to delay or defeat the process of *habeas corpus*. Apparently the rule had been made by the court under its power to regulate proceedings in court and not in any judicial proceeding between parties to a cause. The rule was made under the rule making function of the court and not in exercise of any adjudicatory function as narrowly interpreted now, and still it was held that the court was scandalized and its authority lowered. In *Motl Lal Ghose and others*(3) a strong special bench of five Judges held that an imputation made against the Chief Justice of the Calcutta High Court suggesting that he was improperly motivated in constituting a packed bench

(1) [1971] I.S.C.C. 740.

(2) A.I.R. 1952 Orissa, 318.

(3) XLV—Calcutta 169.

A to hear a particular class of appeals was held to amount to contempt. Sanderson, C. J. observed at page 180 : "I have no doubt that this article, read by itself, constitutes a very serious reflection upon the administration of the court, which everyone knows is in the hands of the Chief Justice." Woodroffe, J. at page 199 observed : "The Court, however, in such cases does not seek to vindicate any personal interests of the Judges, but the general administration of justice, which B is a public concern." Mookerjee, J at page 231 observed : "it seems to me indisputably plain that the implication of the second article, whether taken along with or independently of the first, is that, at the instance of persons interested in the Calcutta Improvement Trust, the Chief Justice has constituted a Special Bench to ensure a decision favourable to the Trust in the appeals against the judgment of Mr. C Justice Greaves." Proceeding further he held "an imputation of this character constitutes a contempt of court." It was the function of the Chief Justice as Chief Justice of the Court to administratively form, from time to time, benches for the disposal of the business of the court. To attribute improper motives to him in the exercise of this function was held to be a contempt because that was bound to undermine the confidence of the people in the High Court and its D Judges in relation to administration of justice. Similarly, in *The state of Bombay* v. *Mr. P.*(1)" "a scurrilous attack on the court receiver for alleged misbehaviour in his official duties and a charge against the Chief Justice and the administrative judges for deliberately conniving at it were held to constitute contempt. The same argument as is now put forward was made in that case. (See para 14 of the report), but was rejected in these words : "By making these foul attacks upon the E Judges, the respondent has tried to create an apprehension in the mind of the public regarding the integrity of these Judges and has done a wrong to the public. He has attempted to shake the confidence of the public in the Judges of this Court and in the justice that is being administered by these judges of this Court." There is no such thing as a denigration of a Judge function-wise. This is brought out clearly in the judgment of the Judicial Committee in *Debi Prasad Sharma* v. *The* F *King Emperor*(2) referred to earlier. In that case the appellant had suggested falsely that the Chief Justice of the Allahabad High Court had in his administrative capacity, issued a circular to the Judicial Officers under his jurisdiction enjoining on them to raise contributions to the warfunds which, it was said, would lower the prestige of the court in the eyes of the people. In holding that the imputation did not constitute contempt of court but at the most, a personal defamation of the G Chief Justice in his individual capacity, Lord Atkin said at page 224, "When the comment in question in the present case is examined it is found that there is no criticism of any judicial act of the Chief Justice, or any imputation on him for anything done or omitted to be done by him in the administration of justice. *It can hardly be said that there is any criticism of him in his administrative capacity, for, as far as their* H *Lordships have been informed, the administrative control of the subordinate courts of the Province, whatever it is, is exercised, not by the Chief Justice, but by the court over which he presides.*"

(1) A.I.R. 1959 Bombay 182. (2) 70 Indian Appeals 216.

The words underlined above are important. In holding that only ordinary remedies for defamation were open to the Chief Justice, their Lordships had to ask the substantial question, as suggested by Lord Watson during the course of the arguments in *Re : Special Reference from the Bahama Islands*(1) "whether the letter complained of referred to him in his official capacity." With that case obviously in mind—and the case was referred to earlier in the judgment—Lord Atkin showed in the words quoted above that the criticism did not refer (i) to any judicial act, meaning thereby any adjudicatory act and (ii) to any administrative act, because the Chief Justice alone had no administrative control over the subordinate courts but only the High Court as a whole. The plain implication is that if the circular had been alleged to have been issued by the Chief Justice under the authority of the High Court, then the imputation having the effect of lowering the prestige and authority of the High Court could conceivably have been regarded as contempt. Their Lordships of the Privy Council are not known to waste their words over matters not relevant to the issue. It was absolutely necessary for their Lordships to eliminate the possibility of the alleged action of the Chief Justice being connected in any manner with any adjudicatory or administrative function of the High Court by pointing out that it did not refer to any official act in the administration of justice or, as stated in *Queen* v. *Gray* already referred to, "the act of a Judge as a Judge", in which case alone the imputation would have amounted to scandalization of the court. The above authorities are sufficient to show that there is no warrant for the narrow view that the offence of scandalization of the court takes place only when the imputation has reference to the adjudicatory functions of a Judge in the seat of justice. We are unable, therefore, to accept the submission of Mr. Sen on this aspect of the case.

We have already shown that the imputations in Annexures 8, 16 and 20 have grossly vilified the High Court tending to affect substantially administration of justice and, therefore, the appellant was rightly convicted of the offence of criminal contempt.

As regards the sentence, it is enough to say that the Full Bench has considered the question at great length. There were six contempt proceedings against the appellant and the court had treated him generously. In two proceedings he was let off with a fine. Even in the present case the Full Bench was of the opinion that the maximum sentence under the law was deserved by the appellant but imposed on him only a sentence of simple imprisonment for two months. The appellant, throughout, took a defiant attitude and did not even think it necessary to offer an apology. Ordinarily we would be most reluctant to interfere with the sentence imposed by the High Court, but for the fact that we notice that he has almost come to the end of his judicial career and during the last few years has been gripped by a sort of mania against the High Court which clouded his reason. We think the object of punishment will be served by directing him to pay

(1) [1893] A. C. 138 at 14.

A a fine of Rs. 1,000/- or in default to suffer simple imprisonment for 3 months in substitution of the sentence inflicted by the High Court.

It remains now to point out that when dealing principally with the contempt of the appellant, the court also thought it fit to hear the parties including the Advocate-General on some subsidiary but important questions on the relative position of the Government of Orissa B and the High Court in the matter of disciplinary control over Subordinate Judges. It appears that the State Government framed what are known as the Orissa Civil Services (Classification and Control) Rules, 1962 and they appear to apply to all Government servants under the State. The Full Bench held that some of the rules, in their application to the Subordinate judiciary of the State, contravened C Articles 235 which vested control over the Subordinate Judiciary in the High Court. From these findings the State of Orissa has come in appeal and that appeal is numbered Criminal Appeal No. 77/1973. In our opinion, the principal matter before the Full Bench was in relation to the contempt committed by the appellant. The constiutional issue between the State Government and the High Court came in only by way of a side-wind. In fact it would appear from the judgment D that the learned Advocate-General had requested the court not to express any opinion on these constitutional matters, and the court also seems to have thought that the constitutionality of the rules had no relation to the commission of the contempt. However, the court thought that the issue became relevant, especially, on the question of sentence and hence applied its mind to the constitutionality of some of the rules. It has struck down those rules which, in the opinion of the E court, contravened Article 235 in their application to the Subordinate Judiciary. We have considered whether it is necessary for us to deal with those questions here, but are inclined to think that we should express no opinion on the constitutionality of the impugned rules.

Accordingly, appeal No. 41 is dismissed with the modification in the sentence as suggested above and criminal appeal No. 77 of 1973 F is permitted to be withdrawn without prejudice to the contentions raised by the State in regard to the constitutionality of the rules struck down by the High Court.

KRISHNA IYER, J. We have had the advantage of reading the leading opinion of our learned brother, Palekar, J., and, concurring as we do in the ultimate conclusion, to depart from the option of silence G needs a word of explanation. Graver issues bearing on free speech raised in these proceedings and the correct approach to be made to what in substance is a criminal charge, bring to the fore our divergence in legal reasoning and constitutional perspective which we proceed to set out in a separate opinion.

The facts of the present case, fully laid bare in the judgment H of Palekar, J., are in a sense peculiar. The contemnor is himself a senior district judge. The alleged multiple contempt relates partly to (i) an *administrative* act of the High Court preliminary to disciplinary proceedings and is stated to be contained in a representation filed

by him before the Governor, under a rule which apparently authorises such appeals, against the suspension order of the High Court, and (ii) averments in a special leave petition filed by him in this Court, aggrieved by the refusal of the High Court to decide a preliminary objection in these very contempt proceedings on the judicial side. A full Bench of the High Court convicted the appellant for contempt, the action itself having been initiated by an administrative full court. The questions we are called upon to decide are (a) whether criticism of an administrative act of the High Court or of any court could at all amount to contempt of court; (b) whether pejorative imputations about a court or judge, however offensive, true or honestly held even if contained in an appeal to a higher court or in a remedial representation to a correctional authority, constitute contempt. The legal touchstone adopted by the High Court is that any statement which in some manner may shake the confidence of the community in a judge or in the judicial system, is straightway contempt, regardless of context or purpose or degree of publication or absence of any clear and present danger of disaffection or its being a *bona fide* plea for orderly change in the judicature and its process. On the facts, we agree that the spirit of defiance, extenuated partly by a sense of despair, is writ large in the writings of the appellant but wish to warn ourselves that his reported past violations should not prejudice a judicial appraisal of his alleged present criminal contempt. And the benefit of doubt, if any, belongs to the contemner in this jurisdiction.

The dilemma of the law of contempt arises because of the constitutional need to balance two great but occasionally conflicting principles freedom of expression and fair and fearless justice remembering the brooding presence of arts. 19(1)(a), 19(2), 129 and 215 of the Constitution.

In a sense, the Indian approach is a little different from the Engilsh and its orientation is more akin to American jurisprudence, although there is much that is common to all the three. The pronouncement of Wilmot, C.J., posthumously published, has influenced the law of contempt in the United States and the Commonwealth countries, but it is a moot point whether we should still be bound to the regal moorings of the law in *Rex* v. *Alman*(1)

> "...by our constitution the King is the fountain of justice and....he delegates the power to the judges.... arraignment of the justice of the judges is arraigning the King's justice. It is an impeachment of his wisdom in the choice of his judges.... it excites dissatisfaction with judicial determination and indisposes the minds of people to obey them"....

Maybe we are nearer the republican justification suggested in the American system(2) :

(1) Wilmot's notes 243 (Wilmot ed. 1802 =97 ER 94. as cited in Fox, Contempt of Court (1927).

(2) 18 U.S.C.A. 3691 (formerly 28 U. S. C. 386, 389.

A

> "In this country, all courts derive their authority from the people, and hold it in trust for their security and benefit. In this state, all judges are elected by the people, and hold their authority, in a double sense, directly from them; the power they exercise is but the authority of the people themselves, exercised through courts as their agents. It is the
B authority and laws emanating from the people, which the judges sit to exercise and enforce. Contempt against these courts, the administration of their laws, are insults offered to the authority of the people themselves, and not to the humble agents of the law, whom they employ in the conduct of their government."

C This shift in legal philosophy will broaden the base of the citizen's right to criticise and render the judicial power more socially valid. We are not subjects of a king but citizens of a republic and a blanket ban through the contempt power, stifling criticism of a strategic institution, namely, Administration of Justice, thus forbidding the right to argue for reform of the judicial process and to comment on the performance of the judicial personnel through outspoken or marginally excessive criticism of the instrumentalities of law and justice, may be a tall order.
D For, change through free speech is basic to our democracy, and to prevent change through criticism is to petrify the organs of democratic government. The judicial instrument is no exception. To cite vintage rulings of English courts and to bow to decisions of British Indian days as absolutes is to ignore the law of all laws that the rule of law must keep pace with the rule of life. To make our point, we cannot resist
E quoting McWhinney(1), who wrote :

> "The dominant theme in American philosophy of law today must be the concept of change—or revolution—in law. In Mr. Justice Oliver Wendell Holmes' own aphorism, it is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV. The prestige
F argument, from age alone, that because a claimed legal rule has lasted a certain length of time it must automatically be valid and binding at the present day, regardless of changes in basic societal conditions and expectations, is no longer very persuasive. According to the basic teachings of the Legal Realist and policy schools of law, society itself is in continuing state of flux at the present day; and the positive law,
G therefore, if it is to continue to be useful in the resolution of contemporary major social conflicts and social problems, must change in measure with the society. What we have, therefore, concomitantly with our conception of society in revolution is a conception of law itself, as being in a condition of flux, of movement. On this view, law is not a frozen, static body of rules but rules in a continuous process of
H change and adaptation and the judge, at the final appellate level anyway, is a part— determinant part—of this dynamic process of legal evolution."

(1) Canadian Bar Review (Vol. 45) 1967, 582-583.

This approach must inform Indian law, including contempt law. A

It is very necessary to remember the legal transformation in our value system on the inauguration of the Constitution, and the dogmas of the quiet past must change with the challenges of the stormy present. The great words of Justice Homles uttered in a different context bear repetition in this context :

> "But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country."(1)

B C D

Before stating the principles of law bearing on the facets of contempt of court raised in this case we would like to underscore the need to draw the lines clear enough to create confidence in the people that this ancient and inherent power, intended to preserve the faith of the public in public justice, will not be so used as to provoke public hostility as overtook the Star Chamber. A vague and wandering jurisdiction with uncertain frontiers, a sensitive and suspect power to punish vested in the prosecutor, a law which makes it a crime to publish regardless of truth and public good and permits a process of *brevi manu* conviction, may unwittingly trench upon civil liberties and so the special jurisdiction and jurisprudence bearing on contempt power must be delineated with deliberation and operated with serious circumspection by the higher judicial echelons. So it is that as the palladium of our freedoms, the Supreme Court and the High Courts, must vigilantly protect free speech even against judicial umbrage—a delicate but sacred duty whose discharge demands tolerance and detachment of a high order.

E F

The present proceedings challenge the projection of the power to punish for contempt into administrative domains of the Court and its extension to statements in remedial proceedings. One recalls the observations of the American Supreme Court : (2) G

> "Contempt of Court is the Proteus of the Legal World, assuming an almost infinite diversity of forms."

(1) The Supreme Court and Civil Liberties by Osmond K. Fracknel—Published for the American Civil Liberties Union in its 40th anniversery year—Pornea Publications, Inc. New York (1960)—page 40. H

(2) Moskovitz, *Contempt of Injunctions*, Criminal and Civil, 43 Colum. L. Rev. 780 (1943).

A Considerations such as we have silhouetted led to the enactment of the Contempt of Court Act, 1971, which makes some restrictive departures from the traditional law and implies some wholesome principles which serve as unspoken guidelines in this branch of law. Section 5 protects *fair comment* on the merits of cases finally decided, and s. 13 absolves from sentence all contempts which do not *substantially* interfere or tend *substantially to interfere with the due course of* B *justice*. Statements which disparage a subordinate judicial officer presiding over a court are not contempt if made in *good faith* to the High Court or any other lower Court to which the offended judge is subordinate. The emphasis in s. 2(c), s. 3 and s. 13 to the interference with the *course of justice* or obstruction of the *administration of justice* or scandalising or lowering the authority of the *Court*—not the C judge—highlights the judicial area as entitled to inviolability and suggests a functional rather than a personal or 'institutional' immunity. The unique power to punish for contempt of itself inheres in a Court *qua* Court, in its essential role of dispenser of public justice. The phraseological image projected by the catena of expressions like court, course of justice, administration of justice, civil and criminal proceedings, judicial proceedings, merits of any case, presiding officer of the Court, judicial proceeding before a court sitting in chamber or in D camera undertaking given to a court, substantial interference with the due course of justice, etc., occurring in the various sections of the Act, the very conspectus of the statutory provisions and the ethos and *raison d'etre* of the jurisdiction persuade us to the conclusion that the text of the Act must take its colour from the general context and confine the contempt power to the judicial-cum-para-judicial areas including those administrative functions as are intimately associated with the E exercise of judicial power.

What then is a Court? It is

> "an agency of the sovereign created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purposes of hearing and determining issues of law and fact regarding legal F rights and alleged violations thereof, and of applying the sanctions of the law, authorised to exercise its powers in due course of law at times and places previously determined by lawful authority. *Isbill* v. *Stovall*, Rex. Civ. App. 92 S.W. 2d 1057, 1070."
>
> "... An organised body with defined powers, meeting at certain times and places for the hearing and decision of G causes and other matters brought before it, and aided in this, its proper business, by its proper officers, viz., attorneys and counsel to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands, and secure due order in its proceedigs. *Ex parte Gardner*,, 22 Nev. 280, 39 p. 570: *Hertman* v. *Hertman* 104 Cr. 423, 208 P. 580, 582."(1). H

In short the accent is on the functional personality which is pivotal to securing justice to the people. Purely administrative acts,

(1) Black's Law Dictionary, Fourth Edu. 425.

like recruitments, transfers and postings, routine disciplinary action against subordinate staff, executive acts in running the establishment and ministerial business ancillary to office-keeping—these are common to all departments in the public sector and merely because they relate to the judicial wing of government cannot enjoy a higher immunity from criticism. The quintessence of the contempt power is protection of the public, not judicial personnel. Excerpts from a few Anglo-American authorities will attest our standpoint :

> "The object of the discipline enforced by the Court in case of contempt of Court is not to vindicate the dignity of the Court or the person of the Judge, but to prevent undue interference with the administration of justice." [Bowen, L.J.—*Helmore* v. *Smith* (1887) 35 Ch. D. 449, 455]

> "The law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate. "[Douglas, J. *Craig* v. *Harney* : 331 U.S. 367, 376 (1947)].

> Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions. Just because the holders of judicial office are identified with the interests of justice they may forget their common human frailties and fallibilities. There have sometimes been martinets upon the bench as there have also been pompous wielders of authority who have used the paraphernalia of power in support of what they called their dignity. Therefore, judges must be kept mindful of their limitations and their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt. [*Frankfurter, J., Bridges* v. *California* (314 U.S. 252, 289 (1941)]

If we accept this slant on judicialisation as a functional limitation on the contempt jurisdiction we must exclude from its ambit interference with purely administrative acts of courts and non-judicial functions of judges. This dichotomy is implicit in the decided cases although the twilight of the law blurs the dividing lines now and then. To cast the net wider is unreasonable and unwarranted by precedent. To treat, as the High Court has done, "the image and personality of the High Court as an integrated one" and to hold that every shadow that darkness it is contempt is to forget life, reason and political progress. For, if a judge has an integrated personality and his wife openly accuses him of neglect or worse, she would certainly reduce the confidence of the public in him as judge ! Will her accusation be personalised contempt? If a judge expresses on a platform crude views on moral lapses and is severely criticised in public for it, it will undoubtedly debunk him as a judge. Will such censure be branded contempt?

A As early as 1892, the Privy Council in *The matter of a Special Reference from the Bahama Islands*(1) had to upset a sentence of indefinite imprisonment imposed by the Chief Justice of Bahmas on one Mr. Moseley for two 'letters to the editor' full of snub and sarcasm about Yelverton, Esq., Chief Justice. In these there was cynical reference to the Chief Justice's incompetence and imprudence, couched in stinging satire. The Judicial Committee held :

B

> "(a) That the letter signed "Colonist" in *The Nassau Guardian* though it might have been made the subject of proceedings for libel was not, in the circumstances, calculated to obstruct or interfere with the course of justice or the due administration of the law, and therefore did not constitute a contempt of Court."

C The Attorney-General struck a sound note when in the course of the arguments he summed up the law thus :

> "A libel upon a judge, holding him up to contempt and ridicule *in his character as a* judge, so as to lower him in the estimation of the public amongst whom he exercises office is a contempt of court." (emphasis supplied)

D

Lord Atkin, in the celebrated case of *Debi Prasad Sharma* v. *The King-Emperor*(2), where the printer, publisher and editor of the Hindustan Times were found guilty of contempt by the Allahabad High Court for criticising the Chief Justice by falsely imputing to him a circular communication to the subordinate judiciary to raise collections for the war fund, set asida the conviction holding that the proE ceedings in contempt were misconceived. The learned Law Lord observed :

> "When the comment in question in the present case is examined it is found that there is no criticism of any judicial act of the Chief Justice, or any imputation on him for anything done or omitted to be done by him in the administration of justice. It can hardly be said that there is any criF ticism of him in his administrative capacity, for, as far as their Lordships have been informed, the administrative control of the subordinate courts of the Province, whatever it is, is exercised, not by the Chief Justice, but by the court over which he presides. The appellants are not charged with saying anything in contempt of the subordinate courts or the administration of justice by them. In truth, the G Chief Justice is alleged, untruly, as is now admitted, to have committed an ill-advised act in writing to his subordinate judges asking (as the news item says), enjoining (as the comment says) them to collect for the War Fund. If the facts were as alleged they admitted of criticism. No doubt it is galling for any judicial personage to be criticised publicly H as having done something outside his judicial proceedings which was ill-advised or indiscreet. But judicial personages can afford not to be too sensitive. A simple denial in public

(1) [1893] A.C. 139, 149. (2) (1942) 70 I.A. 216.

of the alleged request would at once have allayed the trouble. If a judge is defamed in such a way as not to affect the administration of justice he has the ordinary remedies for defamation if he should feel impelled to use them." A

The whole emphasis and ratio of the decision consists in the impugned editorial not being an attack on the administration of justice and, therefore, not amounting to contempt of court. The learned Additional Solicitor General, however, stressed the significance of the passing observation made in the judgment that the administrative control of the subordinate judiciary vested in the whole court and not only in the Chief Justice, and argued that by implication their Lordships must be deemed to have regarded animadversion on even acts of administrative control as potential prey to the contempt law. An obscure reference to the Chief Justice not being even the exclusive administrative authority over the lower judiciary, meant perhaps to bring into bold relief the irrelevance of the criticism as reflecting even on the executive functions of the Chief Justice, cannot be considered to reach a reverse result, ignoring the setting and the thrust of the whole dictum. B C

A Division Bench of the Kerala High Court, in *Kaviath Damodaran* v. *Induchoodan*(1), has relied on this Privy Council ruling for the proposition that administrative acts of the court—in that case the transfer of a Magistrate criticised as promoted by extraneous pressure—was not a fit subject for punitive action. (In that case, of course, the contemnor was convicted for another publication). The deep concern of the law of contempt is to inhibit sullying essays on the administration of justice in which the public have a vital interest and not to warn off or victimise criticisms, just or unjust, of judges as citizens, administrators, non-judicial authorities, etc. D E

K. L. Gauba's(2) case was naturally pressed into service at the Bar against the contemnor but such an extreme case of wild and vicious attacks on the Chief Justice rarely serves in the search for any abiding principle in an excited setting. That ruling reminds us that, whatever the provocation, a Judge by reason of his office, has to halt at the gates of controversy but as enlightenment spreads and public opinion ripens this judicial self-abnegation will be appreciated better and not "embolden the licentious to trample upon everything sacred in society and to overthrow those institutions which have hitherto been deemed the best guardians of civil liberty." Again, while Young, C.J., in that case rules out the tenability of truth as a valid defence against contempt actions, we observe, not without pertinence in the constitutional context of restrictions on free expression having to be reasonable, that in most of the reported cases courts have hastened to hold the imputations false before proceeding to punish. Contempt is no cover for a guilty judge to get away with it but a shield against attacks on public justice. *Gauba's* case, on the facts, was a mud-slinging episode on the judicial target as such—and the conviction accords with the policy of the law we have set out. F G H

(1) A.I.R. 1961 Kerala 321. (2) I.L.R. [1942] Lah. 411, 419.

A Division Bench of the Allahabad High Court, in *Rex.* v. *B. S. Nayyar*,(1) had to deal with a representation by a litigant against a magistrate with reference to a case adversely decided, and Kidwai, J. cleared the confused ground right in the beginning by observing :

> "The first thing to be remembered is that Courts are not concerned with contempt of any authority except Courts of law in the exercise of their judicial functions. Thus, any speech, writing or act which does not have the effect of interfering with the exercise of their judicial functions by the Courts cannot be the subject of proceedings in contempt. In India very often the same officers exercise executive as well as judicial functions. Sometimes it becomes difficult to draw a distinction between their two capacities but nevertheless a distinction must be drawn and it is only if the criticism is of judicial acts that action by way of proceedings in contempt may be taken."

A letter to the President of the Congress party complaining about the appointment of a judicial officer who was the brotherin-law of the Private Secretary of a Minister (belonging to that party) and of the transfer of cases to his Court wherein Congressmen were involved, was sought to be punished as contempt of court. Kidwai, J, made the following useful remarks exonerating the contemnor :

> "In this passage also the attack is on the appointment of the judicial officer and the transfer of cases to him but there is no attack upon the officer himself. Both these attacks are upon the system and not upon any Magistrate in respect of the performance by him of his judicial functions. They wish to see laid down a salutary principle by which justice should not only be done but should also appear to be done. There is no contempt of Court in this—rather it is an endeavour to free Courts from all extraneous shackles and proceedings to contempt are wholly uncalled for."

The Judicial Committee in *In re. S. B. Sarbadhicary*(2) considered the misconduct of a barrister for publishing an article where he cast reflections upon judges of the Allahabad High Court. The merits of the case apart, the Judicial Committee emphasized the judicial capacity of the judges which attracted the contempt jurisdiction. Sir Andrew Seoble observed :

> "There is no doubt that the article in question was a libel reflecting not only upon Richards J., but other judges of the High Court *in their judicial capacity* and in reference to their conduct in the discharge of their *public duties.*" (emphasis added).

"The public duty" in their "judicial capacity" was obviously in contradistinction to merely personal activities or administrative functions. It is not as if a judge doing some non-judicial public duty is protected from criticism in which case any action by him as Dean of Law or Vice-Chancellor in a University or as Acting Governor or President

(1) A.I.R. 1950 All. 549; 551, 555. (2) (1906) 34 XX I A. 14.

or Member of the Law or Finance Commission would also be punishable as contempt. The basic public duty of a judge in his judicial capacity is to dispense public justice in court and anyone who obstructs or interferes in this area does so at his peril. Likewise, personal behaviour of judicial personnel, if criticized severely or even sinisterly, cannot be countered by the weapon of contempt of court, for to use the language of Mukherjee, J. in *Brahma Prakash Sharma* v. *State of Uttar Pradesh*,(1) "the object of contempt proceedings is not to afford protection to Judges *personally* from imputations to which they may be exposed as individuals" (emphasis added). Otherwise, a grocer who sues a judge for price of goods with an imputation that the defendant has falsely and maliciously refused to honour the claim, or a servant of a judge who makes personal allegations of misconduct against his master may be hauled up for contempt. This is no amulet worn by judges for all purposes. "The punishment is inflicted not for the purpose of protecting either the Court as a whole or the individual judges of the Court from a repetition of the attack, but of protecting the public, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the Court, from the mischief they will incur if the authority of the Tribunal is undermined or impaired." (*Vide* para 9, Halsbury's Laws of England, 3rd Edn. Vol. VIII). Indeed, if we peer through the mists of English Judicial history, Courts of record were not *qua* such courts, acting in any administrative capacities. How then could contempt action, going by genesis, be warranted purely administrative matters of courts.

Of course, there have been cases sounding a different note. In *State* v. *H. Nagamani*,(2) one Mr. Nagamani, an impetuous I.A.S. officer, wrote a letter making critical remarks couched in disrespectful and improper language about the inspection report of his court by a Judge of the High Court of Patna. However, Mr. Nagamani tendered an unqualified apology and the court discharged the rule for contempt since in their view the contempt was purged by the apology. Of course, there was no need to consider in detail whether the letter reflecting upon the Judge who held the inspection was contempt; it was treated as such and the apology accepted. And the High Court's inspection of the judicial work of the sub-ordinate judiciary is a judicial function or is at least para-judicial. The Allahabad High Court punished the late Shri C. Y. Chintamani and Shri K .D. Malaviya for publishing a criticism to the effect that comparatively undeserving lawyers were being frequently raised to the Bench. The Court held them guilty of contempt holding the criticism of the judges as a vicious reflection and a case of contempt. [see *In the matter of an Advocate of Allahabad*(3)]. Borderline cases draw up to the pneumbra of law and cannot light up dark corners.

The learned Additional Solicitor General, in an endeavour to expand the meaning of "administration of justice" so to rope in criticisms of executive acts of judges, drew our attention to arts. 225, 227 and 235, and the provisions of earlier Government of India Acts (c.f. sec. 224(1) 1935 Act) which vest the power to appoint the staff and do

(1) [1953] S.C.R. 1169.
(2) A.I.R. 1959 Pat. 373
(3) A.I.R. 1935 All. 1.

A other incidental management functions, in the High Court as part of the administration of justice. Several High Court Acts clothe Chief Justices with administrative powers and Civil Courts Acts and Letters Patents charge judges with administrative duties the goal being effective administration of justice. If the appointment of clerks is part of the administration of justice, denunciation of the judges in these acts interferes with the administration of justice, liable to be visited B with punishment. This means that if a judge in charge of appointments chooses relations or unqualified men or takes other consideration, the public must hold its tongue on pain of contempt. The paramount but restrictive jurisdiction to protect the public against substantial interference with the stream of justice cannot be polluted or diffused into an intimidatory power for the judges to strike at adverse comments on administrative, legislative (as under arts. 225, 226 and 227) C and extra-judicial acts. Commonsense and principle can certainly accept a valid administrative area so closely integrated with court work as to be stamped with judicial character such as constitution of benches, transfer of cases, issue of administrative directions regarding submission of findings or disposal of cases by subordinate courts, supervision of judicial work of subordinate courts and the like. Not everything covered by art. 225, 227 and 235 will be of this texture. To overkill is D to undermine—in the long run.

We may now sum up. Judges and Courts have diverse duties. But functionally, historically and jurisprudentially, the value which is dear to the community and the function which deserves to be cordoned off from public molestation, is judicial. Vicious criticism of personal and E administrative acts of judges may indirectly mar their image and weaken the confidence of the public in the judiciary but the countervailing good, not merely of free speech but also of greater faith generated by exposure to the actinic light of bona fide, even if marginally overzealous, criticism cannot be overlooked. Justice is no cloistered virtue.

F The first part of the present case directly raises the question whether statements made in an appeal to the Governor against an order of the High Court on the administrative side attracts the contempt law. To our mind the answer arises from another question. Is the suspension of the District Judge so woven into and integrally connected with the administration of justice that it can be regarded as not purely an G administrative act but a para-judicial function? The answer must, on the facts here, be in the affirmative. The appeal was against the suspension which was a preliminary to contemplated disciplinary action. What was that action about? Against the appellant in his judicial capacity, for acts of judicial misconduct. The control was, therefore, judicial and hence the unbridled attack on the High Court for the step was punishable as contempt. A large margin must be allowed for allegations in remedial representations but extravagance H forfeits the protection of good faith. In this case reckless excess has vitiated what otherwise could have been legitimate grievance at least in one flagrant instance, the others being less clear. One of the

grounds for taking disciplinary action was based on the disposal of a civil appeal by the contemnor as Additional District Judge. He heard it, delivered judgment dismissing the appeal, signed the order sheet and judgment and sealed the judgment. Later in the day, the contemnor scored off his signatures in the order sheet and judgment, and returned the record to the principal District Judge for disposal falsely stating that the judgment had not been delivered. The High Court took the view that this action was without jurisdiction and revealed utter disregard of truth and procedure deserving disciplinary action. Obviously, the impugned conduct of the contemnor was *qua* judge and the evil criticism was of a supervisory act of the High Court and the critic would—and should—necessarily court contempt action. And in his memorandum of appeal the contemnor used expressions like *'mala-fides'* and 'subterfuge' without good faith, and in such a case no shelter can be sought in the alibi of 'administrative act.'

The second part of the charge relates to objectionable statements in the special leave petition to this Court. Ordinarily they must be out of bounds for the contempt power; for, fearless seeking of justice will otherwise be stifled.

In *State of Uttar Pradesh* v. *Shyam Sunder Lal*(1) a complaint about the conduct of a judicial officer in a petition to the Prime Minister was held not to constitute contempt. The representation was forwarded by the Prime Minister's office to the Chief Secretary from whom it reached the District Magistrate. Certainly there was therefore sufficient publication in the law of libel but the Court held :

> "A letter sent to the Prime Minister and not intended to be broadcast to the public or any section of the public cannot create an apprehension in the mind of public. . . . regarding the integrity, ability or fairness of the judge."

Similarly, in *Rex.* v. *R. S. Nayyar*,(2) the Court considered a representation made to the Premier of the State about a judicial officer and also to the President of the All India Congress Committee. The Court took the view that such complaints may be addressed to the Premier about judicial officers since Government had to consider under the then rules the conduct of judicial personnel. "If these complaints are genuine and are made in a proper manner with the object of obtaining redress, and are not made *mala fide* with a view either to exert pressure upon the Court in the exercise of its judicial functions or to diminish the authority of the Court by vilifying it, it would not be in furtherance of justice to stifle them by means of summary action for contempt, *but rather the reverse*" (emphasis added). A pregnant observation made by the Court deserves mention :

> "It would indeed be extraordinary if the law should provide a remedy—the conduct of even a member of the highest Judicial Tribunal in the exercise of his judicial office may be the subject of enquiry with a view to see whether he is fit to continue to hold that office—and yet no one should be able to initiate proceedings for an enquiry by a complaint

(1) A.I.R. 1954 All 308. (2) A.I.R. 1950 All. 549: 554.

A to the appropriate authority by reason of a fear of being punished for contempt, and I can find no justification for this view."

At this stage it must be noticed that in the *State of Madhya Pradesh* v. *Ravi Shanker*(1) this Court ruled that aspersions of a serious nature made against a Magistrate in a transfer petition could be punishable as a contempt if made without good faith. However, in *Govind Ram* v. *State of Maharashtra*,(2) this Court reviewed the decisions on the point and ruled that if in the garb of a transfer application scurrilous attacks were made on a court imputing improper motives to the Judge there may still be contempt of court, although the court referred with approval to the ruling in *Swarnamayi Panigrahi* v. *B. Nayak*(3) that a latitudinarian approach was permissible in transfer applications. The core of the pronouncement is that a remedial process like a transfer application cannot be a mask to malign a judge, a certain generosity or indulgence is justified in evaluating the allegations against the judge. Eventually, Grover J., held that the allegations made in the proceeding in question were not sufficiently serious to constitute contempt. A liberal margin is permissible in such cases but batting within the crease and observing the rules of the game are still necessary. Irrelevant or unvarnished imputations under the pretext of grounds of appeal amount to foul play and perversion of legal process. Here, the author, a senior judicial officer who professionally weighs his thoughts and words, has no justification for the immoderate abuse he has resorted to. In this sector even truth is no defence, as in the case of criminal insult—in the latter because it may produce violent breaches and is forbidden in the name of public peace, and in the former because it may demoralise the community about courts and is forbidden in the interests of public justice as contempt of court.

Even so, if judges have frailities—after all they are human—they need to be corrected by independent criticism. If the judicature has serious shortcomings which demand systemic correction through socially-oriented reforms initiated through constructive criticism, the contempt power should not be an interdict. All this, far from undermining the confidence of the public in courts, enhances it and, in the last analysis, cannot be repressed by indiscriminate resort to contempt power. Even bodies like the Law Commission or the Law Institute and researchers, legal and sociological, may run 'contempt' risks because their professional work sometimes involves unpleasant criticism of judges, judicial processes and the system itself and thus hover perilously around the periphery of the law if widely construed. Creative legal journalism and activist statesmanship for judicial reform cannot be jeopardised by an undefined apprehension of contempt action.

Even in England a refreshingly pro-free-speech approach has been latterly adopted. Any episode in the administration of justice may be publicly or privately criticised, provided that the criticism is fair and

(1) [1959] S.C.R. 1367. (2) [1972] 1 S.C.C. 740.

(3) A.I.R. 1959 Orissa 89.

temperate and made in good faith. Lord Denning, in the famous *Quintin Hogg* case(1) laid down remarkable guidelines in the matter of actions for contempt. The learned Law Lord said :

> "It is a jurisdiction which undoubtedly belongs to us but which we will most sparingly exercise; more particularly as we ourselves have an interest in the matter.
>
> 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 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."

This Court has held that the law of contempt is valid notwithstanding art. 19(1). The contention was persisted in *C. K. Daphtary* v. *O. P. Gupta.*(2) This Court came to the conclusion that the existing law of contempt imposes reasonable restrictions within the meaning or art. 19(2). "Apart from this, the Constitution makes this Court a guardian of fundamental rights conferred by the Constitution and it would not desire to enforce any law which imposes unreasonable restrictions on the precious right of freedom of speech and expression guaranteed by the Constitution." (Sikri C.J.)

The Court being the guardian of people's rights, it has been held repeatedly that the contempt jurisdiction should be exercised "with scrupulous care and only when the case is clear and beyond reasonable doubt. (*vide R.* v. *Gray*)(3)

(1) (1968) 2 W.L.R. 1204 : 1206-07. (2) A.I.R. 1971 S.C. 1132-1141, para 52.
(3) [1900] 2 O.B. 36.

A The policy directive can be gleaned from the ruling in *Special Reference No. 1 of* 1964(1) where Gajendragadkar, C.J., speaking for the Court, observed :

> "We ought never to forget that the power to punish for contempt large as it is, must always be exercised cautionsly, wisely, and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dginity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct."

If judges decay the contempt power will not save them and so the other side of the coin is that judges, like Caesar's wife, must be above suspicion.

To wind up, the key word is "justice", not "judge"; the key-note thought is unobstructed public justice, not the self-defence of a judge; the corner-stone of the contempt law is the accommodation of two constitutional values—the right of free speech and the right to independent justice. The ignition of contempt action should be substantial and *mala fide* interference with fearless judicial action, not fair comment or trivial reflections on the judicial process and personnel.

We have sought to set our legal sights in line with the new constitutional order and endeavoured so to draw the grey contours of the contempt law that it fulfils its high purpose but the more. We have tried to avoid subjectivism in the law, recognising by a re-statement, the truth that "the great tides and currents which engulf the rest of men do not turn aside in their course and pass the judges by.(2)"

The facts of the present case disclose that an incorrigible contemnor, who had made it almost his latter-day professional occupation to cross the High Court's path, has come to this Court in appeal. He has been reckless, persistent and guilty of undermining the High Court's authority in his intemperate averments in both petitions. But having regard to the fact that he is a senior judicial officer who has at some stage in his career displayed zeal and industry and is now in the

(1) [1965] 1 S.C.R. 413 ; 501.

(2) Benjamin N. Cardozo—*The Nature of the Judicial Process*—New Haven : Yale University Press—Page 163.

sombre evening of an official career, a punishment short of imprisonment would have met the ends of justice and inspired in the public mind confidence in the justice administration by showing that even delinquent judges will be punished if they play with or pervert the due course of justice, as the contemnor here has done. A heavy hand is wasted severity where a lighter sentence may serve as well. A fine of Rs. 1000/- with three months' imprisonment in default of payment will meet the ends of justice and we impose this sentence in substitution of the infliction of imprisonment by the High Court. With this modification Civil Appeal No. 41 of 1973 is dismissed. On the appeal by the State the course adopted in the leading judgment of Palekar J. has our concurrence.

Appeal No. 41 *dismissed.*

P.B.R. *Appeal No.* 77 *allowed to be withdrawn.*