P.N. Duda vs V. P. Shiv Shankar & Others on 15 April, 1988

Equivalent citations: 1988 AIR 1208, 1988 SCR (3) 547, AIR 1988 SUPREME COURT 1208, 1988 (3) SCC 167, 1988 (16) IJR (SC) 428, 1988 SCC(CRI) 589, 1988 (2) JT 102, (1988) 1 SCWR 230

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:
P.N. DUDA

Vs.

RESPONDENT:
v. P. SHIV SHANKAR & OTHERS

DATE OF JUDGMENT15/04/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1988 AIR 1208 1988 SCR (3) 547
1988 SCC (3) 167 JT 1988 (2) 102
1988 SCALE (1)728
CITATOR INFO :
RF 1989 SC 190 (20)

ACT:
Contempt of Courts Act, 1971- Praying for initiation of proceedings for Contempt of Supreme Court under section 15(1)(a) and (b) of-Read with rule 3(a), (b) and (c) supreme Court Contempt of Court Rules, 1975, in respect of a speech delivered at a meeting of Bar Council, reported in newspapers.

HEADNOTE:
The respondent No. 1, Shri P. Shiv Shankar, Minister of Law, Justice and Company Affairs at the relevant time, delivered a speech at a meeting of the Bar Council of Hyderabad. The petitioner alleged that in that speech the respondent No. 1 had made statements derogatory to the

dignity of the Supreme Court, attributing to the Court partiality towards affluent people and using extremely intemperate and undignified language, and that the speech contained slander cast on this Court both in respect of the Judges and the working of the Court. He stated that he had approached the Attorney General for India and the Solicitor General of India to give their consent for initiating Contempt proceedings. The Attorney General and the Solicitor General having declined to deal with this prayer of the petitioner, an application for initiation of Contempt under section 15(1)(a) and (b) of the Act read with Explanation (1) and Rule 3(a), (b) and (c) of the contempt of Supreme Court Rules, 1975, was made, wherein Shri P. Shiv Shankar, the Attorney General, the Solicitor General were made parties. The Court issued notice. In response, Shri P. Shiv Shankar filed an affidavit, stating that he had delivered the speech on the subject of accountability of the Legislature, Executive and the Judiciary and had made comments on the accountability of the three organs and the theoretical implications thereof, and that he had intended no disrespect to any of the institutions or its functionaries much less the Supreme Court. It was further stated that the Contempt petition was not maintainable without the consent of the Attorney General or the Solicitor General. In the meantime, Shri R.N. Trivedi, Advocate, filed an application, claiming right to be impleaded as a party, stating that the Attorney General and the Solicitor General should not have been made parties to the comtempt petition and that the alleged non-exercise of the jurisdiction by the Attorney-General and the Solicitor General had
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not constituted contempt within the meaning of section 2(c) of the Act.

Declining to initiate the contempt proceeding and dismissing the petition and disposing of the application filed by Shri R.N. Trivedi, the Court,

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HELD: Per Sabyasachi Mukharji, J.:

Before deciding the question whether this application was maintainable without the consent of the Attorney General or the Solicitor General, as contended by Dr. Chitale on behalf of Shri Shiv Shankar, and the question whether the Attorney General and the Solicitor General could be made parties to the Contempt application and whether their action or inaction was justiciable at all in any proceeding and, if so, in what proceedings it was necessary to decide the basic question whether the speech made by Shri P. Shiv Shankar had amounted to contempt of this Court, or in other words, whether the speech had the effect of bringing this Court into disrepute. [562H; 563A-B]

Administration of justice and Judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must

be judged by their conscience and oath of their office, that is to defend and uphold the Constitution and the laws without fear and favour. This the Judges must do in the light given to them to determine what is right. Any criticism about the judicial system or the Judges which hampers the administration of justice or which erodes the faith in the objective approach of Judges and brings administration of justice into ridicule must be prevented. The contempt of Court proceedings arise out of that attempt. Judgments can be criticised, motives of the Judges need not be attributed. It brings the administration of Justice into deep disrepute. Faith in the administration of justice is one of the pillars through which democratic institution functions and sustains. In the free market place of ideas, criticism about the judicial system or Judges should be welcomed, so long as such criticisms do not impair or hamper the administration of justice. This is how the courts should approach the powers vested in them as judges to punish a person for an alleged contempt, be it by taking notice of the matter suo motu or at the behest of the litigant or lawyer. [563C-F]

In this case, the Court had examined the entire speech. Shri P. Shiv Shankar had examined the class composition of the Supreme Court. His view was that the class composition of any instrument indi-

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cated its predisposition, prejudices. This is inevitable. The intuition more subtle than major premise, on which the decision will depend, is the pride and the prejudice of a human instrument of a Judge through which objectively the Judge seeks to administer justice according to law. So, in a study of accountability, if class composition of the people manning the institution is analysed, there has to be forewarning about certain inclination and it cannot be said that an expression or view or propagation of that view hampers the dignity of the Courts or impairs the administration of Justice. [565F-H; 566A]

It has to be admitted frankly and fairly that there has been erosion of faith in the dignity of the Court and in the majesty of law and that has been caused not so much by scandalising remarks made by politicians or ministers but the inability of the courts of law to deliver quick and substantial justice to the needy. It is a criticism which judges and lawyers must make about themselves. We must turn the search light inwards. At the same time, the Court cannot be oblivious of the attempts made to decry or denigrate the judicial process, if it is seriously done. This question was examined in Rama Dayal Markarha v. State of Madhya Pradesh, [1978] 3 S.C.R. 497, where it was held that fair and reasonable criticism of a judgment which is a public document or which is a public act of a Judge concerned with administration of justice would not constitute contempt. In fact, such a fair and reasonable criticism must be

encouraged because after all no one, much less Judges, can claim infallibility. Such a criticism may fairly assert that the judgment is incorrect or an error has been committed with regard to law or established facts. But when it is said that the Judge had a predisposition to convict or deliberately took a turn in discussion of evidence because he had already made up his mind to convict the accused or has a wayward bend of mind, is attributing motives, lack of dispassionate and objective approach and analysis and prejudging of issues, that would bring administration of justice into ridicule. Such criticism sometime interferes with the administration of justice and that must be judged by the yardstick whether it brings the administration of justice into ridicule or hampers administration of justice. After all, it cannot be denied that pre-disposition or subtle prejudice or unconscious prejudice or what in Indian language is called "Sanskar" are inarticulate major premises in decision making process. That element in decision making process cannot be denied, it should be taken note of. [569B-G]

It has to be borne in mind, as has been said by Banjamin N. Cardozo in "The Nature of the Judicial Process" that the judge as the
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interpreter for the community of its sense of law and order must supply omissions, correct uncertainties and harmonize results with justice through a method of free decision. Courts are to "search for light among the social elements of every kind that are the living force behind the facts they deal with". [569G-H; 570A]

Though at places, intemperate, the statement of the Minister in this case cannot be said to amount to interference with the administration of justice and to amount to contempt of court. The Administration of justice in this country stands on surer foundation. In the speech, it appears that Shri P. Shiv Shankar was making a study of the attitude of this Court. It was stated that the Supreme Court was composed of the element from the elite class. Whether it is factually correct or not is another matter. In public life, where the champions of the down trodden and the politicians are mostly from the so-called elite class, if the class composition is analysed, it may reveal interesting factor as to whether elite class is dominant as the champions' of the oppressed or of the social legislations and the same is the position in the judiciary. But the Minister went on to say that because the Judges had their 'unconcealed sympathy for the haves' they interpreted the expression 'compensation' in the manner they did. The expression 'unconcealed' was unfortunate. But this was also an expression of opinion about an institutional pattern. Then, the Minister went on to say that because of this the word 'compensation' in Article 31 was interpreted contrary to the spirit and intendment of the Constitution. The

Constitution had to be amended to remove this 'oligarchic' approach of the Supreme Court with little or no help. The inter-action of the decisions of this Court and the constitutional amendments had been viewed by the Minister in his speech, but that was nothing new. This by itself does not affect the administration of justice. On the other hand, such a study is perhaps important for the understanding of the evolution of the constitutional development. Criticisms of judgments is permissible in a free society. [573C-D; 575E-H; 576A-B,F]

There was one paragraph which appeared to be rather intemperate, it read thus:

"Anti-social elements i.e. FERA violators, bride burners and whole hordes of reactionaries have found their heaven in the Supreme Court". [576F-G]

That, if true, is a criticism of the laws. The Supreme Court, as it is bound to do, has implemented the laws and in implementing the laws it

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is a tribute to the Supreme Court that it has not discriminated between persons and persons. Criminals are entitled to be judged in accordance with law. If anti-social elements and criminals have benefited by decisions of the Supreme Court, the fault rests with the laws and the loopholes in the legislation. The Courts are not deterred by such criticisms. [576G-H]

Bearing in mind the trend in the law of contempt as noticed before, as well as in some of the decisions noticed by Krishna Iyer, J. in the case of Re: S. Mulgaokar, [1978] 3 S.C.R. 162, the speech of the Minister read in its proper perspective, did not bring the administration of justice into disrepute or impair administration of justice. In some portions of the speech, the language used could have been avoided by the Minister. The Minister perhaps could have achieved his purpose by making his language mild but his facts deadly. With these observations, it must be held that there was no imminent danger of interference with the administration of justice, nor of bringing administration of justice into disrepute. In that view, it must be held that the Minister was not guilty of contempt of Court. [577A-C]

Another question of law of some importance had arisen in this matter. Under the Act, in case of criminal contempt other than a contempt referred to in section 14 which was not this case, namely a contempt of this Court or a High Court, this Court or the High Court may take action either on its own motion or on a motion made by the Advocate-General, which in relation to this Court means the Attorney General or the Solicitor-General or any other person with the consent of the Attorney-General in terms of section 15 of the Act. Cognizance for criminal contempt could be taken by the Court by three methods, namely on its own motion, or on the motion of the Attorney-General or the Solicitor-General, or on the motion of any other person with the

consent of the Attorney General. The only course open to a citizen for initiating proceedings for contempt is to move for consent of the Attorney General or the Solicitor General. The question is, does it cast a duty upon the Attorney General or the Solicitor General to consent to application for grant of such consent and whether the granting or non-granting of such consent is justiciable by the Court and if so whether the question of non-granting can be brought up in a rolled application moved by a person to bring it to the notice of the Court to take action suo motu and at the same time to consider whether in the same proceedings the action of the Attorney General or the Solicitor General in granting or not granting consent can be challenged or it must be always by an independent proceeding. The consent certainly is linked up with
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contempt proceedings. In this case, the Minister had taken the plea that consideration of this case could not be taken up because there was no consent of the law officers. Did it or did it not tend to interfere with the due course of judicial proceedings in terms of clause (ii) of section 3(c) of the Act? The Attorney General and the Solicitor General, in respect of this Court, occupy positions of great importance and relevance. The Attorney General is a friend, philosopher, and guide of the Court (Article 76 of the Constitution). Yet, the Act, vests him with certain discretions. All statutory discretions are justiciable in a society governed by the rule of law. This Court is the finder and interpreter of law in cases of this nature with the assistance of Attorney General, and, in his absence or inability, the Solicitor General. [577C-H; 578A-C]

The petitioner in this case had approached the Attorney General and the Solicitor General to look into the matter and accord sanction. The conduct of the respondents Nos. 2 and 3 according to the petitioner, amounted to refusal to exercise jurisdiction vested in them by law, and, therefore, they were impleaded as parties in the present proceedings (as necessary and/or proper parties) in order that they might get an opportunity to justify the stand they had taken in the matter flowing fr m their refusal to exercise jurisdiction. [580E-G]

The question is whether there is a duty cast upon the Attorney General or the Solicitor General to consider the question of granting consent in terms of clause (b) of section 15(1) of the Act, and if in fact such consent is not granted, that question can be considered by the Court. It was not a question of making the Attorney General or the Solicitor General a party to a contempt proceeding in the sense that they were liable for contempt, but if the hearing of the contempt proceedings is better proceeded with by obtaining the consent of the Attorney General or the Solicitor General and the question of justiciability of giving the consent is inter-linked on the analogy of order

II, Rule I of the Code of Civil Procedure , which has application to a civil proceeding and not to a criminal proceeding, it is permissible to go into this question. In the case of Conscientious Group v. Mohammed Yunus and others, [1987] 3 S.C.C. 89, this Court went into the reasons given by the Solicitor General declining consent, and held on examination that such consent was properly refused. This is a complete answer to the contention that in a contempt petition the grounds for either giving consent or not giving consent or for not considering the application for consent are justiciable and that question cannot be gone into in that proceeding though it must be emphasised in that proceeding that 11 the Solicitor General was not made a party to the proceeding. In his
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Lordship's opinion, it will be more appropriate for an officer of the Court whose action is being investigated to be made a party in the proceedings, otherwise it would be violative of the rule of audi alteram partem. Discretion vested in the law officers of this Court to be used for a public purpose in a society governed by rule of law is justiciable. It would be more appropriate that it should be gone into upon notice to the law officer concerned. It is a case where appropriate ground for refusal to act can be looked into by the Court. It cannot be said that the refusal to grant consent decides no right and it is not reviewable. Refusal to give consent closes one channel of initiation of contempt out of the three different channels, namely, (1) the Court taking cognizance on its own motion; (2) on the motion by the Attorney General or the Solicitor General; and (3) by any other person with the consent in writing of the Attorney General or the Solicitor General. In this case, apparently the Attorney General and the Solicitor General had not moved on their own. The petitioner could not move in accordance with law without the consent of the Attorney General and the Solicitor General, though he has a right to move and the third is the Court taking notice suo motu. But irrespective of that there was the right granted to the citizen of the country to move a motion with the consent. Indubitably, cognizance could be taken suo motu by the Court but the members of the public have also the right to move the Court. That right of bringing to the notice of the Court is dependent upon consent being given either by the Attorney General or the Solicitor General, and if that consent is withheld without reasons or without consideration of that right granted to any other person under section 15 of the Act, that could be investigated in an application made to the Court. [581B-H; 582A-C; 584C-D]

Where an appeal comes to this Court, which is a judicial decision, the judges who rendered the decision are not necessary parties. There is no lis between a suitor and a judge in a judicial adjudication. But the position is entirely different where there is a suitor claiming the

exercise of a statutory right in his favour which he alleges is hampered by an official act of a named official in the Act. In respect of justiciability of that act of the official there is a lis and if that lis is inter-linked with the proceeding for contempt, there is warrant for making him party in that proceeding though the prayers and the notice must be issued differently. The statute gives a right to a suitor to move the Court in one of the contingencies for contempt or bring to the notice of the Court the contempt with the advice and assistance of the Attorney General or the Solicitor General. If such right is not considered on relevant materials, then, that action is justiciable in the appropriate proceeding for contempt. [585C-G]
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Having considered the peculiar facts and circumstances of this A case and the allegations of bias made against the Attorney general and the Solicitor General, it appeared that the Attorney General and the Solicitor General acted properly in declining to deal with the matter and the Court could deal with the matter on attention being drawn to this Court. In that view of the matter, the petition failed and the application of Shri Trivedi was accordingly disposed of. [588D-E]

Per S. Ranganathan, J. (Concurring)

The impugned comments were made by the respondent No. 1 in the course of his key note address at a seminar on 'Accountability of the Legislature, Executive and Judiciary under the Constitution of India'. The speech, and, in particular, some 'sevoury' passages therefrom were highlighted in the Press. The speech had been made before an audience comprising essentially lawyers, Jurists and Judges. It represented primarily an exercise by the speaker to evaluate the roles of the executive, legislature and judiciary in the country since its independence and to put forward the theory that, like the executive and the legislature, the judiciary must also be accountable to the people. [588F-H; 589A]

The petitioner contended that certain passages in the speech seemed to attribute a sub-conscious partiality, bias or predeliction in the Judges in disposing of various matters before them and that those comments fell within the scope of the decision of this Court in the case of E.M. Sankaran Namboodripad v. T. Narayanan Nambiar, [1970] 2 SCC 325. [589A-B]

It was true, as pointed out by Sabyasachi Mukharji, J. that there were passages in the speech which torn out of context might be liable to be misunderstood, but reading the speech as a whole and bearing in mind the select audience to which it was addressed, his Lordship agreed with Sabyasachi Mukharji, J., that no contempt had been committed. The affidavit of the respondent No. 1 should be accepted at its face value that the speech was only a theoretical dissertation and that he intended no disrespect to this

Court or its functioning. [589D-E]

The second aspect of the case on which arguments were addressed before the Court, related to the procedure to be followed in such matters. This aspect raised some important issues. [589E-F]

The criminal miscellaneous petition filed by the petitioner purported to be only "information" u/s 15 (1)(a) and (b) of the

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Contempt of Courts Act, 1971 ('the Act'). The petitioner stated that he came to know from a report in the newspaper that the respondent No. 1, in the course of his speech, had made certain statements which randered him liable to be proceeded against for contempt of court, and, appending what was stated to be a full text of the said speech published in the "Newstime", prayed for initiation of contempt of court proceedings suo motu under s. 15(1) of the Contempt of Courts Act, 1971, read with rule 3(a) of the Supreme Court (Contempt of Court) Rules, 1975. Though the respondent No. 1 only, according to the petitioner, was to be charged with contempt, the petitioner had added three more respondents to the criminal miscellaneous petition, namely, the Attorney General for India (by name), the Solicitor General of India (by name) and Sri Ramji Rao, Editor of "Newstime". The petition raised certain questions of general importance for consideration to evolve a proper procedure for future guidance in these matters. [589F-H; 590A-B]

The petitioner sought to charge respondent No. 1 with "Criminal Contempt" under Section 15 of the Contempt of Courts Act, 1971.

A conjoint perusal of the Act and the rules of the Supreme Court to regulate proceedings for Contempt of Supreme Court makes it clear that so far as this Court is concerned, action for contempt may be taken by the Court on its own motion or on the motion of the Attorney General (or the Solicitor General) or of any other person with his consent in writing. There is no difficulty where the Court or the Attorney General chooses to move in the matter. When a private person desires that such action should be taken, he may place the information in his possession before the Court, requesting the Court to take action; or he may place the information before the Attorney General requesting him to take action; or he may place the information before the Attorney General requesting him to permit him to move the Court. In this case, the petitioner alleged that he had failed in the letter two courses, and he had moved this 'petition' praying that this Court should take suo motu action. On this 'petition', no proceedings could commence until and unless the Court considered the information before it and decided to initiate proceedings. [592F-H;593A-B

The form of a criminal miscellaneous petition styling the informant as the petitioner and certain persons as respondents is inappropriate for merely lodging the relevant

information before the Court under rule 3(a) of the Supreme Court (Contempt of Court) Rules. The proper title of such a proceeding should be "In re .. (the alleged contempt)". The direction given by the Delhi High Court in
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Anil Kumar Gupta v. K. Subba Rao, ILR 1974 Delhi 1 that " ..... if any information is lodged even in the form of a petition inviting this Court to take action u/s 15 of the Contempt of Courts Act or Article 212 of the Constitution, where the informant is not one of the persons named in section 15 of the said Act, it should not be styled as a petition and should not be placed before the judicial side. Such a petition should be placed before the Chief Justice for orders m chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the Court whether to take any cognizance of the information ..... " sets out the proper procedure in such cases and may be adopted in future as a practice direction or as a rule, by this Court and the High Court. However, this petition having been filed and similar petitions having been perhaps entertained earlier in several courts, his Lordship did not suggest that this petition should be dismissed on this ground. [593C-H; 594A-B]

In this case, apart from filing his information in the form of a petition, the petitioner had added as respondents to the petition not only the alleged contemner but three more persons i.e. the Attorney General, the Solicitor General and Shri Ramoji Rao, Editor of "Newstime". The Attorney General and Solicitor General were stated to be impleaded in order that they might get an opportunity to justify their stand in refusing to exercise their jurisdiction to grant consent to him to enable him to file a petition under section 15(1) read with rule 3(c), and the fourth respondent was only a possible witness, stated to be impleaded only to prove the authenticity of the speech reported in the "Newstime" in the event of a disclaimer of the respondent No. 1. This could not be done. This petition, as filed, was for initiating proceeding for contempt only against respondent No. 1. If the petitioner had any cause of action against the other persons, such persons were neither necessary nor even proper parties to this petition, because such cause of action was of a purely civil nature. At best, the petitioner could say that he was entitled to a writ of mandamus directing the Attorney General and Solicitor General to discharge their statutory obligation or a writ of certiorari to quash their decision in case they had unreasonably withheld their consent to the petitioner's filing a petition. This remedy was to be sought independently against these persons by a separate writ petition. He could not seek relief against the Attorney General and the Solicitor General by a petition mixing up his criminal charge against respondent No. 1 and his civil grievance against the Attorney General and the Solicitor

General. He could not get over the objection to the maintainability of a petition, i.e. want of cousent of the Attorney General or the Solicitor General, merely by the device of adding them as respondents
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to the petition; no relief was sought against the Attorney or the Solicitor A General. This petition, if treated as one under rule 3(c) was not maintainable for want of consent by the Attorney General and the Solicitor General and had to be dismissed as such. The inclusion of respondents 2 to 4 as respondents to the petition was totally unjustified, and if the petition was to be taken as merely laying of information under rule 3(a), the names of respondents 2 to 4 must be struck off from the array of parties. His Lordship directed accordingly. Notice of the petition should not have been issued in the form it was issued, to the Attorney General and the Solicitor General since there was no allegation of contempt and no relief had been sought against them. [594B-H; 595A-D]

The petitioner had submitted that the Attorney General and the Solicitor General had acted unreasonably in declining to act in this case. In addition to merely placing the information with him before the Attorney General/Solicitor General and seeking their consent to his filing a petition before the Court, he had written a letter containing a lot of irrelevant matter, whereby while purporting to seek the consent of the Attorney General Solicitor General, he had simultaneously expressed his lack of confidence in their judgment and ability to discharge their duties objectively and impartially. In this situation, the Attorney General/Solicitor General decided not to exercise their statutory powers at all one way or the other. the Attorney General/Solicitor General acted rightly and in the best traditions of their office by declining to deal with the petitioner's request. The petitioner had cast aspersions against both the law officers, doubting their ability to act objectively and this stultified by his conduct this course indicated by the Statute. [598G-H; 599A-C,F]

As to the question whether, in a case where neither the Attorney General nor the Solicitor General was in a position to consider a request under section 15(1)(c), the petitioner could seek the consent of some other law officers, as the Additional Solicitor General, it was not open to him to seek such consent, as under section 15, the written consent of only those officers as have been specifically authorised by the section would be taken note of for entertaining a petition under the section. [599G-H; 600A-B]

Summing up the conclusion-

(a) This petition, if treated as and filed under section 15(1) read with rule 3(a) was not in proper form, and if treated as one filed under rules 3(b) and 3(c), was not maintainable as it was not filed by the

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Attorney General/Solicitor General or any other person with his consent; [600C]

(b) In either event, the petitioner should not have added to the petition respondents other than the person, alleged to be guilty of Contempt of Court, and their names should be deleted from the array of the Parties; [600D]

(c) In case the Attorney General/Solicitor General refuse consent or decline to act, their decision is not judicially reviewable and a petitioner's remedy is to approach the Court for action under rule 3(a); [600E]

(d) In this case, the Attorney General/Solicitor General acted properly in declining to deal with the petitioner's application either way, and [600F]

(e) This petition was nothing more than information under rule 3(a) on which this Court might or might not take suo motu action and there was no need to initiate proceeding against the respondent No. I for Contempt of Court. [600F-G]

Ambard v. Attorney General for Trinidad and Tobago, [1936] A.C. 322, 325; E.M. Sankaran Namboodiripad v. T. Narayanan Nambiar, [1971] 1 SCR 697-(1970) 2 SCC 325; Joseph Loohner v. People of the State of New York, 49 Lawyers' Edition 195-198 U.S. 1904; Re: Shri S. Mulgaokar, [1978] SCR 162; New York Times Company v. L.B. Sullivan, 376 U.S. 254; Regina v. Commissioner of Police of the Metropolis, Ex Parte Blackburn, [1968] 2 W.L.R. 1204; Special Reference No. I of 1964, [1965] 1 S.C.R. 413; Shri Baradakanta Mishra v. The Registrar of Orissa High Court and another, [1974] 1 SCC 374; Ram Dayal Markarha v. State of Madhya Pradesh, [1978] 3 SCR 497; Conscientious Group v. Mohammed Yunus and others, [1987] 3 SCC 89 J.T. 1987 (2) 377; National Anthem case, [1986] 3 SCC 615; Vassiliades v. Vassiliades and others, AIR 1945 P.C. 38; S.K. Sarkar v. V.C. Misra, [1981] 2 SCR 331; C.K. Daphtary and others v. O.P. Gupta, and another, [1971] Suppl. S.C.R. 76; G.N. Verma v. Hargovind Dayal and others, AIR 1975 Allahabad 52; B. K. Kar v. The Chief Justice and his Companion Judges of the Orissa High Court and others, [1962] 1 SCR 319; Attorney General v. Iyimes Newspapers Ltd., [1973] 3 All. E.R. 54; Indian Express Newspapers (Bombay) Pvt. Ltd. and others etc. v. Union of India & others, [1985] 1 SCC 641; Gouriet and others v. H.M. Attorney General, [1978] Appeal Cases 435; Gouriet v. Union of Post office Workers, [1978] Appeal cases 435;

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Gouriet v. Union of Post offices Workers & Ors., [1977] 1 Q.B. 729 to 752; Rajagopal v. Murtza Mutjahdi, [1974] 1 Andhra Law Times 170; N. Venkataramanappa v. D.K. Naikar, A.I.R. 1978 Karnataka 57; Anil Kumar Gupta v. K. Subba Rao, ILR 1974 Delhi 1 and A.G. v. Times Newspapers, [1974] AC 277, referred to.

JUDGMENT:

CRIMINAL ORIGINAL JURISDICTION: Criminal Miscellaneous Petition No. 260 Of 1988.

Under Section 15(1)(a) and (b) of the Contempt of Courts Act,1971 read with its explanation (1) and Rule (3)(a), (b) and (c) of Contempt of Supreme Court Rules, 1965.

Randhir Jain for the Petitioner.

B. Datta, Additional Solicitor General, Dr. Y.S. Chitale, A.K. Ganguli, N. Nettar, G.S. Narayan, Gopal Subramanian, Mukul Mudgal, P.H. Parekh, Sanjay Bharthari and R K. Joshi for the Respondents.

The following Judgments of the Court were delivered:

SABYASACHI MUKHARJI, J. By an order dated 15th March, 1988 we declined in this matter to initiate contempt proceedings under section 15(1) (a) and (b) of the Contempt of Courts Act, 1971 (hereinafter called 'the Act') read with rule 3(a), (b) and (c) of the Supreme Court Contempt of Court Rules, 1975. We also on that date disposed of the application for intervention filed by Shri R.N. Trivedi. We stated that we will indicate our reasons by a separate judgment. We do so herein Shri P. Shiv Shankar who at the relevant time was the Hon'ble Minister for Law, Justice and Company Affairs delivered a speech before a meeting of the Bar Council of Hyderabad on 28th November, 1987. Shri P.N. Duda, who is an advocate practising in the Supreme Court, has drawn our attention to that speech. According to him, by that speech respondent No. 1, Shri P. Shiv Shankar has made statements against the Supreme Court which are derogatory to the dignity of this Court, attributing this Court with partiality towards economically affluent sections of the people and has used language which is extremely intemperate, undignified, and unbecoming of a person of his stature and position It was stated that Shri P. Shiv Shankar formerly held the office of a Judge of the High Court before he resigned and took to politics.

We have read the entire speech. It is not necessary to set out the A entire speech. The relevant portions of the said speech for the present purpose are as follows:

"(a) The Supreme Court composed of the element from the elite class had their unconcealed sympathy for the haves i.e. the Zamindars. As a result, they interpreted the word 'compensation' in Article 31 contrary to the spirit and the intendment of the Constitution and ruled the compensation must represent the price which a willing seller is prepared to accept from a willing buyer The entire programme of Zamindari abolition suffered a setback. The Constitution had to be amended by the 1st, 14th and 17th Amendments to remove this oligarchic approach of the Supreme Court with little or no help. Ultimately, this rigid reactionary and traditional outlook of property, led to the abolition of property as a fundamental right."

He inter alia further observed:

> "(b) Holmes Alexander in his column entitled '9 Men of Terror Squad' made a frontal attack on the functions of the U.S. Supreme Court. It makes an interesting reading:
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> 'Now can you tell what that black-robed elite are going to do next. Spring more criminals, abolish more protections. Throw down more ultras. Rewrite more laws. Chew more clauses out of the Constitution. May be, as a former Vice-President once said, the American people are too dumb to understand, but I would bet that the outcropping of evidence at the top in testimony before the US Senate says something about the swelling concern among the people themselves.' Should we not ask how true Holmes Alexander was in the Indian context."

The Minister further stated:

> "(c) Twenty years of valuable time was lost in this confrontation presented by the Judiciary in introducing and implementing basic agrarian reforms for removal of poverty what is the ultimate result. Meanwhile even the political will seems to have given way and the resultant effect is the improper and ineffective implementation of the land reform laws by the Executive and the Judiciary supplimenting and complementing each other."

It was further stated by him:

> "(d) The Maharajas and the Rajas were anachronistic in independent India. They had to be removed and yet the conservative element in the ruling party gave them privy purses. When the privy purses were abolished, the Supreme Court, contrary to the whole national upsurge, held in favour of the Maharajas".
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> "(e) Madhadhipatis like Keshavananda and Zamindars like Golaknath evoked a sympathetic cord nowhere in the whole country except the Supreme Court of India. And the bank magnates, the representatives of the elitist culture of this country, ably supported by industrialists, the beneficiaries of independence, got higher compensation by the intervention of the Supreme Court in Cooper's case. Antisocial elements i.e. FERA violators, bride burners and a whole horde of reactionaries have found their heaven in the Supreme Court."

Shri P.N. Duda brought the newspaper version of the said speech to our notice. He further stated that the said speech contains slander which was cast on this Court, both in respect of the Judges and its working. It was alleged that Shri P. Shiv Shankar has done this to malign this Court. Shri Duda further stated that he read the speech in the News Times and he had approached the learned Attorney General of India and the learned Solicitor General of India to give their consent for initiating contempt proceedings. In those circumstances, the petitioner claimed that he also made the Editor and Publisher of the newspaper-News Times as one of the respondents. The learned

Attorney General and the learned Solicitor General have declined to deal with this prayer of the petitioner for the reasons stated in the letter which is an annexure to this petition. We shall refer to that part of the letter later. In those circumstances an application for initiation of contempt entitled "Information under Section 15(1)(a) and (b) of the Act read with Explanation (19 and Rule 3(a), (b) and (c) of Contempt of Supreme Court Rules, 1975" in the matter of said Shri P.N. Duda was made wherein Shri P. Shiv Shankar, the learned A Attorney General, the learned Solicitor General and the Editor of News Times were made parties. The application having been moved before this Court on 10th February, 1988 we directed issue of notice returnable on 15th March, 1988 to the respondents, namely, Shri P. Shiv Shankar, Shri K. Parasaran, Shri Milon Banerji and Shri Ramji Rao, Editor, News Times confined only to the question to consider whether action, if any, need be taken on the said petition of the petitioner. We requested the First Additional Solicitor General, Shri B. Datta to appear as Amicus Curiae to assist the Court. On 11th February, 1988 Shri Duda mentioned the matter and this Court clarified that the respondents need not appear in the first instance in person. In the meantime, pursuant to the notice Shri P. Shiv Shankar has filed an affidavit on 8th March, 1988 in which he has stated that he had delivered a speech on the Silver Jubilee Celebration of the Bar Council of Andhra Pradesh at Hyderabad where the audience consisted of Judges and lawyers. On that occasion he had made a speech on the subject of accountability of the Legislature, the Executive and the Judiciary. He further stated that during the speech, he made comments on the accountability of the three organs and theoretical implications thereof. The Minister has further reiterated with utmost emphasis at his command that he intended no disrespect to any of the institutions or its functionaries much less this Hon'ble Court. He further stated that he has high regard for this Hon'ble Court. He further stated that the contempt petition is not maintainable in law without the consent of the Attorney General or the Solicitor General and it was liable to be dismissed. In the Meantime an application has been filed by Shri R.N. Trivedi who is an advocate of 25 years' standing at the Bar in which he has claimed the right to be impleaded as a party. He has stated in the petition that the learned Attorney General and the Solicitor General should not have been made parties to the contempt petition and the alleged non-exercise of jurisdiction by the Attorney General and the Solicitor General did not constitute contempt within the meaning of section 2(c) of the Act. The remedy, if any, in respect of the alleged non-exercise of jurisdiction and power would lie somewhere else, according to Shri Trivedi. Shri B. Datta at our request appeared as Amicus Curiae and made his submissions. We express our gratitude to him.

Before deciding the question whether this application was maintainable without the consent of the Attorney General or the Solicitor General as contended by Dr. Chitale on behalf of Shri Shiv Shanker and the question whether the Attorney General and the Solicitor General could be made parties to the contempt application and whether their action or inaction was justiciable at all in any proceeding and if so in what proceedings, it is necessary to decide the basic question whether the speech made by Shri P. Shiv Shankar and published throughout the length and breadth of the country amounted to contempt of this Court, or in other words, whether the speech has the effect of bringing this Court into disrepute.

> "Justice is not a cloistered virtue. she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men." - said Lord Atkin in Ambard v. Attorney-General for Trinidad and Tobago, [1936] A.C. 322 at 335.

Administration of justice and Judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by their conscience and oath of their office, that is, to defend and uphold the Constitution and the laws without fear and favour. This the Judges must do in the light given to them to determine what is right. And again as has been said in the famous speech of Abraham Lincoln in 1865 "With malice towards none, with charity for all, we must strive to do the right, in the light given to us to determine that right." Any criticism about the judicial system or the Judges which hampers the administration of justice or which erodes the faith in the objective approach of Judges and brings administration of justice into ridicule must be prevented. The Contempt of Court proceedings arise out of that attempt. Judgment can be criticised; the motives of the Judges need not be attributed, it brings the administration of justice into deep disrepute. Faith in the administration of justice is one of the pillars through which democratic institution functions and sustains. In the free market place of ideas criticisms about the judicial system or Judges should be welcomed, so long as such criticisms do not impair or hamper the administration of justice. This is how Courts should approach the powers vested in them as Judges to punish a person for an alleged contempt, be it by taking notice of the matter suo motu or at the behest of the litigant or a lawyer.

In E.M. Sankaran Namboodiripad v. T. Narayanan Nambiar, [1971] I S.C.R. 697, this Court had to deal with this jurisdiction in respect of Mr. Namboodiripad who at the relevant time was the Chief Minister of Kerala. He had held a press conference in November, 1976 and made various critical remarks relating to the judiciary which inter alia was described by him as "an instrument of oppression" and the Judges as "dominated by class hatred, class prejudices", "instinctively" favouring the rich against the poor. He also stated that as part of the ruling classes the judiciary "works against workers, peasants and A other sections of the working classes" and "the law and the system of judiciary essentially served the exploiting classes" (emphasis supplied) It was found that these remarks were reported in the newspapers and thereafter proceedings commenced in the High Court of Kerala. The appellant Shri Namboodiripad was called upon to show cause why he should not be committed for contempt. In his affidavit the appellant stated that the reports were "substantially correct", though incomplete in some respects. The appellant further claimed that his observations did no more than give expression to the Marxist Philosophy and what was contained in the programme of the Communist Party of India. By a majority judgment of the High Court the appellant was convicted for contempt of court and fined Rs. 1000 or simple imprisonment for one month. He moved this Court by an appeal. He contended that the law of contempt must be read without encroaching upon the guarantee of freedom of speech and expression under Article 19(1)(a) of the Constitution and that the intention of the appellant in making his remarks at the press conference should be examined in the light of his political views which he was at liberty to put before the people. He sought to justify the remarks as an exposition of his ideology which he claimed was based on the teachigs of Marx and Engels and

on this ground claimed protection of the first clause of Article 19(1) of the Constitution. The conviction of the appellant was upheld by this Court. It was observed by Hidayatullah, C.J speaking for the Court that the law punishes not only acts which do not in fact interfere with the courts and administration of justice but also those which have that tendency, that is to say, are likely to produce a particular result. Judged from the angle of courts and administration of justice, there was no doubt that the appellant was guilty of contempt of court. The Chief Justice observed whether the appellant misunderstood the teachings of Marx and Engels or deliberately distorted them was not to mush purpose. The likely effect of his words must be seen and they clearly had the effect of lowering the prestige of judges and courts in the eyes of the people. (emphasis supplied) That he did not intend any such result may be a matter for consideration in the sentence to be imposed on him but could not serve as a justification. This Court further held that the appellant had misguided himself about the true teachings of Marx, Engles and Lenin. According to the Chief Justice he had misunderstood the attack by them on State and the laws as involving an attack on the Judiciary. No doubt the courts, while upholding the laws and enforcing them, do give support to the State but they do not do so out of any impure motives. To charge the Judiciary as an instrument of oppression, the Judges as guided and dominated by class hatred, class interests and class prejudices, instinctively favouring the rich against the poor is to draw a very distorted and poor picture of the Judiciary. It A was clear that the appellant bore an attack upon judges which was calculated to raise in the minds of the people a general dissatisfaction with and distrust of all judicial decisions. According to the Chief Justice it weakened the authority of law and law courts (emphasis supplied). It was further held that while the spirit underlying Article 19(1)(a), must have due play, the Court could not overlook the provisions of the second clause of that Article. Its provisions are to be read with Articles 129 and 215 which specially confer on this Court and the High Courts the power to punish for contempt of themselves. Although Article 19(1)(a) guaranteed complete freedom of speech and expression, it also made an exception in respect of contempt of court. While the right is essential to a free society, the Constitution had itself imposed restrictions in relation to contempt of court and it could not therefore be said that the right abolished the law of contempt or that attack upon judges and courts would be condoned. We are not concerned here whether the appellant in that case properly understood the communist manifesto or the views of the Marx, Engles and Lenin. While respectfully accepting the ratio and the observations of the learned Chief Justice made in that decision we must recognise that times and clime have changed in the last two decades. There have been tremendous erosions of many values. In this connection it is interesting to note that little over sixty years ago, on 1st March, 1928, Justice Holmes wrote to Prof. Harold Laski " . . .You amaze me by saying, if I understand you, that criticism of an opinion or judgment after it has been rendered, may make a man liable for contempt. I thought that notion was left for some of our middle western states. I must try to get the book and the decision .. " (Holmes-Laski Letters Vol. I 1916-1925 Page 1032).

> In the instant case we have examined the entire speech. In the speech Shri P. Shiv Shankar has examined the class composition of the Supreme Court. His view was that the class composition of any instrument indicates its pre- disposition, its prejudices. This is inevitable. Justice Holmes in his dissenting opinion in Joseph Lochner v. People of the State of New York, 49 Lawyers' Edition 195-198 U.S. 1904 had observed "General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise."

That intuition more subtle than major premise is the pride and the prejudice of a human instrument of a Judge through which objectively the Judge seeks to administer justice according to law. So, therefore, in a study of accountability if class composition of the people manning the institution is analysed we forewarn ourselves of certain inclination it cannot be said that an expression or view or propagation of that view hampers the dignity of the Courts or impairs the administration of justice.

The question of contempt of court by newspaper article criticising the Judges of the Court came up for consideration in the case of Re: Shri S. Mulgaokar, [1978] 3 S.C.R. 162. In order to appreciate the controversy in this case it has to be stated that the issue dated 13th December, 1977, of the Indian Express published a news item that the High Courts had reacted very strongly to the suggestion of introducing a code of judicial ethics and propriety and that "so adverse has been the criticism that the Supreme Court Judges, some of whom had prepared the draft code, have disowned it". In its issue dated December 21, 1977 an article entitled "behaving like a Judge" was published which inter alia stated that the Supreme Court of India was "packed" by Mrs. Indira Gandhi "with pliant and submissive judges except for a few". It was further stated that the suggestion that a code of ethics should be formulated by Judges themselves was "so utterly inimical to the independence of the judiciary, violative of the Constitutional safeguards in that respect and offensive to the self-respect of the Judges as to make one wonder how it was conceived in the first place". A notice had been issued to the Editor-in-Chief of the Newspaper to showcause why proceedings for contempt under Article 129 of the Constitution should not be initiated against him in respect of the above two news items It was observed by Chief Justice Beg in that decision that national interest required that all criticisms of the judiciary must be strictly rational and sober and proceed from the highest motives without being coloured by any partisan spirit or tactics. This should be apart of national ethics. The comments about Judges of the Supreme Court suggesting that they lack moral courage to the extent of having "disowned" what they had done or in other words, to the extent of uttering what was untrue, at least verge on contempt. None could say that such suggestions would not make Judges of this Court look ridiculous or even unworthy, in the estimation of the public, of the very high office they hold if they could so easily "disown" what they had done after having really done it. It was reiterated that the judiciary can not be immune from criticism. But, when that criticism was based on obvious distortion or gross mis- statement and made in a manner which seems designed to lower respect for the judiciary and destroy public confidence in it, it could not be ignored. A decision on the question whether the discretion to take action for Contempt of Court should be exercised must depend on the totality of facts and circumstances of the case. The Chief Justice agreed with the other two learned Judges in that decision that in those facts the proceedings should be dropped. Krishna Iyer, J. in his judgment observed that the Court should act with seriousness and severity where justice is jeopardised by a gross and/or unfounded attack on the Judges, where the attack was

calculated to obstruct or destroy the judicial process. The Court must harmonise the constitutional values of free criticism, and the need for a fearless curial process and its presiding functionary, the judge. To criticise a judge fairly albeit fiercely, is no crime but a necessary right. Where freedom of expression subserves public interest in reasonable measure, public justice cannot gag it or manacle it. The Court must avoid confusion between personal protection of a libelled judge and prevention of obstruction of public justice and the community's confidence in that great process. The former is not contempt but latter is, although overlapping spaces abound. The fourth functional canon is that the Fourth Estate should be given free play within responsible limits even when the focus of its critical attention is the court, including the highest court. The fifth normative guideline for the Judges to observe is not to be hypersensitive even where distortions and criticisms overstep the limits, but to deflate vulgar denunciation by dignified bearing, and the sixth consideration is that if the Court considers the attack on the judge or judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of law by fouling its sources and stream.

It is well to remember the observations of Justice Brennan of U.S. Supreme Court (though made in the context of law of libel) in New York Times Company v. L.B. Sullivan, 376 U.S. 254 that it is a prized privilege to speak one's mind, although not always with perfect good taste, on all public institutions and this opportunity should be afforded for vigorous advocacy no less than abstract discussion.

Lord Denning in Regina v. Commissioner of Police of the Metropolis, Ex parte Blackburn, [1968] 2 W.L.R. 1204 observed as follows.

> "Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.
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> 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 con- troversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.
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> Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done."

The aforesaid observations were made in respect of an article written by Mr. Quintin Hogg in "Punch" (as later Lord Hailsham then was) more or less in a critical language as the Hon'ble Minister's speech in the instant case.

Gajendragadkar, C.J. in Special Reference No. 1 of 1964, [1965] 1 SCR 413 observed as follows:

> "We ought never to forget that the power to punish for contempt, large as it is, must always be exercised cautiously, 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 dignity 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."

It has been well said that 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, per Krishna Iyer, J. in Shri Baradakanta Mishra v. The Registrar of Orissa High Court and another, [1974] 1 S.C.C. 374. It has to be admitted frankly and fairly that there has been erosion of faith in the dignity of the court and in the majesty of law and that has been caused not so much by the scandalising remarks made by politicians or ministers but the inability of the courts of law to deliver quick and substantial justice to the needy. Many today suffer from remedyless evils which courts of justice are incompetent to deal with. Justice cries in silence for long, far too long. The procedural wrangle is eroding the faith in our justice system. It is a criticism which the Judges and lawyers must make about themselves. We must turn the search light inward. At the same time we cannot be oblivious of the attempts made to decry or denigrate the judicial process, if it is seriously done. This question was examined in Rama Dayal Markarha v. State of Madhya Pradesh, [1978] 3 S.C.R. 497 where it was held that fair and reasonable criticism of a judgment which is a public document or which is a public act of a Judge concerned with administration of justice would not constitute contempt. In fact such fair and reasonable criticism must be encouraged because after all no one, much less Judges, can claim infallibility. Such a criticism may fairly assert that the judgment is incorrect or an error has been committed both with regard to law or established facts. But when it is said that the Judges had a pre-disposition to convict or deliberately took a turn in discussion of evidence because he had already made up his mind to convict the accused, or has a wayward bend of mind, is attributing motives, lack of dispassionate and objective approach and analysis and pre-judging of the issues which would bring administration of justice into ridicule. Criticism of the Judges would attract greater attention than others and such criticism sometime interferes with the administration of justice and that must be judged by the yardstick whether it brings the administration of justice into a ridicule or hampers administration of justice. After all it cannot be denied that pre-disposition or subtle prejudice or unconscious prejudice or what in Indian language is called "Sanskar" are inarticulate major premises in decision making process. That element in the decision making process cannot be denied, it should be taken note of.

It has to be borne in mind, as has been said by Benjamin N. Cardozo in "The Nature of the Judicial Process"

> at pages 16-17 that the Judge as the interpreter for the community of its sense of law and order must supply omissions, correct uncertainties, and harmonize results with justice through a method of free decision. Courts are to "search for light among the social elements of every kind that are the A living force behind the facts they deal with". The power thus put in their hands is great, and subject, like all power, to abuse; but we are not to flinch from granting it. In the long run "there is not guaranty of justice," said Ehrlich, "except the personality of the judge. Justice Benjamin N. Cardozo further says at page 112 of the said book that judicial process comes then to this, and little more logic, history, custom and utility, and the accepted standards of right conduct, are the forces which singly or in combination shape the progress of the law. Judges try to see things as objectively as they please. Nonetheless, we can never see them with any eyes except our own. Therefore, the perception of a judge is important and relevant. Judicial process is not only a path of discovery but a path of creation (Cardozo "the Nature of the Judicial Process").
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> President Roosevelt in his message to the Congress of the United States on December 8, 1908 stated thus:
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> "The chief lawmakers in our country may be, and often are, the judges, because they are the final seat of authority. Every time they interpret contract, property, vested rights, due process of law, liberty, they necessarily enact into law parts of a system of social philosophy; and as such interpretation is fundamental, they give direction to all lawmaking. The decisions of the courts on economic and social questions depend upon their economic and social philosophy; and for the peaceful progress of our people during the twentieth century we shall owe most to those judges who hold to a twentieth century economic and social philosophy and not to a long outgrown philosophy, which was itself the product of primitive economic conditions."

Justice Benjamin N. Cardozo says that he remembers when the statement made aroused a storm of criticism. (Cardozo- The Nature of the Judicial Process-pages 171-173). It betrayed ignorance, he said, of the nature of the judicial process. Justice Benjamin N. Cardozo tells us that the business of the judge, was to discover objective truth. His own little individuality, his tiny stock of scattered and unco-ordinated philosophies, these, with all his weaknesses and unconscious prejudices, were to be laid aside and forgotten. According to Cardozo the truth is, however, that all these inward questionings are born of the hope and desire to transcend the limitations which hedge our human nature. According to Cardozo, Roosevelt, who knew men, had no illusions on this score. He was not positing an ideal. He was not fixing a goal. He was measuring the powers and the endurance of those A by whom the race was to be run. It is well to remember the words of Justice Cardozo where he says as follows:

"I have no quarrel, therefore, with the doctrine that the judges ought to be in sympathy with the spirit of their times. Alas! assent to such a generality does not carry us far upon the road to truth. In every court there are likely to be as many estimates of the 'Zeitgeist' as there are judges on its bench. Of the power of favour or prejudice in any sordid or vulgar or evil sense, I have found no trace, not even the faintest, among the judges whom I have known. But every day there is borne in on me a new conviction of the inescap- able relation between the truth without us and the truth within. The spirit of the age, as it is revealed to each of us, is too often only the spirit of the group in which the accidents of birth or education or occupation or fellowship have given us a place. No effort or revolution of the mind will overthrow utterly and at all times the empire of these subconscious loyalties. "our beliefs and opinions," says James Harvey Robinson (32 Political Science Quarterly 315), "like our standards of conduct come to us insensibly as products of our companionship with our fellow men, not as results of our personal experience and the inferences we individually make from our own observations. We are constantly misled by our extraordinary faculty of 'rationalizing' -that is, of devising plausible arguments for accepting what is imposed upon us by the traditions of the group to which we belong. We are adjectly credulous by nature, and instinctively accept the verdicts of the group. We are suggestible not merely when under the spell of an excited mob or a fervent revival, but we are ever and always listening to the still small voice of the herd, and are ever ready to defend and justify its instructions and warnings, and accept them as the mature results of our own reasoning. " This was written, not of judges specially, but of men and women of all classes. The training of the judge, if coupled with what is styled the judicial temperament, will help in some degree to emancipate him from the suggestive power of individual dislikes and prepossessions. It will help to broaden the group to which his subconscious loyalties are due. Never will these loyalties be utterly extinguished while human nature is what it is. We may wonder sometimes how from the play of all these forces of individualism, there can come anything coherent, anything but chaos and the void. Those are the moments in which we exaggerate the elements of difference. In the end there emerges some thing which has a composite shape and truth and order. It has been said that "History, like mathematics, is obliged to assume that eccentricities more or less balance each other, so that something remains constant at last" (Henry Adams, "The Degradation of the Democratic Dogma," pages 291 and 292). The like is true of the work of courts. The eccentricities of judges balance one another. One judge looks at problems from the point of view of history, another from that of philosophy, another from that of social utility, one is a formalist, another a latitudinarian, one is timorous of change, another dissatisfied with the present; out of the attrition of diverse minds there is beaten something which has a constancy and uniformity and average value greater than its component elements. The same thing is true of the work of juries. I do not mean to suggest that the product in either case does not betray the flaws inherent in its origin. The flaws are there as in every human institution. Because they are not only there but visible, we have faith that they will be corrected. There is no assurance that the rule of the majority will be the expression of perfect reason when embodied in constitution

or in statute. We ought not to expect more of it when embodied in the judgments of the courts. The tide rises and falls, but the sands of error crumble.

The work of a judge is in one sense enduring and in another sense ephemeral. What is good in it endures. What is erroneous is pretty sure to perish. The good remains the foundation on which new structures will be built. The bad will be rejected and cast off in the laboratory of the years. Little by little the old doctrine is undermined. Often the encroachments are so gradual that their significance is at first obscured. Finally we discover that the contour of the landscape has been changed, that the old maps must be cast aside, and the ground charted anew. The process, with all its silent yet inevitable power, has been described by Mr. Henderson with singular felicity: "When an adherent of a systematic faith is brought continuously in touch with influences and exposed to desires inconsistent with that faith, a process of unconscious cerebration may take place, by which a growing store of hostile mental inclinations may accumulate, strongly motivating action and decision, but seldom emerging clearly into consciousness. In the meantime the formulas of the old faith are retained and repeated by force of habit, until one day the realization comes that conduct and sympathies and fundamental desires have become so inconsistent with the logical framework that it must be discarded. Then begins the task of building up and rationalizing a new faith." (Cardozo- The Nature of the Judicial Process pages 174-179) If any-one draws attention to this danger and aspect and measures an institution by the class content he does not minimise its dignity or denigrate its authority. Looked in that perspective though at places little intemperate, the statement of the Minister in this case cannot be said to amount to interference with the administration of justice and as to amount to contempt of court. The Minister's statement does not interfere with the administration of justice. Administration of justice in this country stands on surer foundation.

J.A.G. Griffith in "The Politics of the Judiciary", Part I has two interesting passages on the judiciary which are worth quoting:

"There is one matter which I ought to mention. All the judges, without exception, are members of the Athenaeum, and I presume you will wish to be a member. If so, may I have the pleasure of proposing you? There is a meeting of the Committee early next week."

"The most politically influential of the judges, however, has been the Master of the Rolls, Lord Denning . . . With his own modest roots he dismisses the attacks on a classbased judiciary:

The youngsters believe that we come from a narrow background-it's all nonsense-they get it from that man Griffith."

Griffith in his book "The Politics of the Judiciary" at page 234 has tried to incite the concept of the class interest of the judges. Judges he says are concerned to preserve and protect the existing order. This does not mean that no judges are capable of moving with the times, of adjusting to changed circumstances. But, according to him, their func-

tion in our society is to do so belatedly. He further says thus:

> "Law and order, the established distribution of power both public and private, the conventional and agreed view amongst those who exercise political and economic power, the fears and prejudices of the middle and upper classes, these are the forces which the judges are expected to up hold and do uphold."

No contempt proceedings were taken in England in respect of these and one would like to think rightly. Faith in the administration of justice is not shaken by such criticism.

Reference may also be made to the decision of this Court in Conscientious Group v. Mohammed Yunus and others, [1987] 3 S.C.C. 89. In that case there was publication in the Indian Express which carried the news that Mr. Mohammed Yunus, Chairman, Trade Fair Authority of India said that the Supreme Court Judge who held that the singing of the National Anthem was not compulsory had no right to be called either an Indian or a Judge. The Conscientious Group approached this Court for contempt alleging that the conduct of Mr. Mohammed Yunus in making certain adverse comments about the Judges who delivered the judgment of this Court in Civil Appeal No. 860 of 1986 National Anthem case (1986 3 S.C.C. 615) constituted criminal contempt and it should be so dealt with. Notice on this petition was issued. When the matter subsequently came up before a Bench of three Judges consisting of Bhagwati, C.J., Oza and K.N. Singh, JJ., the contemnor filed a reply stating that the petition was not maintainable inasmuch as the petitioner had not obtained the consent in writing of the Attorney General as required under section 15 of the Act. It appears that the petitioner was directed by the Division Bench to move the Attorney General for his consent and the petition was adjourned. The Attorney General on being moved by the petitioner for the grant of consent replied to the petitioner stating that since he was himself a party in his capacity as Attorney General in the National Anthem case, it was not appropriate for him to deal with the petitioner's application. When the case later on came up before the same three Judges Bench on December 12, 1986, the learned Judges directed the withdrawal of the petition with liberty to the petitioner to refile the application after obtaining consent of the Attorney General as soon as the National Anthem case was over. It was further observed by this Court that everyone is entitled to criticise the judgment of the court but no one should attack the Judges who delivered the judgment as that denigrates the judicial institution and in the long term impairs the democratic process.

Subsequently the petitioner in that case filed Criminal Miscellaneous Petition No. 5244 of 1986 praying for recalling the aforesaid order on the ground that at the time when he applied to the court for withdrawal of the petition he was not aware that under Rule 3(c) of the Rules framed by this Court, the contempt petition could be maintained with the consent of the Solicitor General, if the Attorney General, for any reason, was not in a position to give consent to the filing of the petition. He was so allowed. Thereafter the petitioner approached the Solicitor General. But the Solicitor

General declined to give the consent in public interest. He gave certain reasons in support of his conclusion. The Court in the aforesaid decision by scrutinising reasons was of the opinion that the reasons stated by the Solicitor General refusing to grant consent could not be said to be irrelevant and the petition was dismissed. In dismissing this application this Court observed at page 93 of the report "No doubt, by the last of the sentence of the said order, the Bench has also observed that 'the petitioner will not be without remedy, if the Solicitor General refuses his consent on any irrelevant ground' but this only means that such a refusal can be called in question before this Court by the petitioner by appropriate process". In other words, the effect of the decision is that the reasons given by the Attorney General or the Solicitor General in giving or not giving his consent were justiciable.

As we have mentioned before the speech of the Minister has to be read in its entirety. In the speech as we have set out hereinbefore it appears that Shri P. Shiv Shankar was making a study of the attitude of this Court. In the portion set out hereinbefore, it was stated that the Supreme Court was composed of the element from the elite class. Whether it is factually correct or not is another matter. In our public life, where the champions of the down-trodden and the politicians are mostly from the so-called elite class, if the class composition is analysed, it may reveal interesting factors as to whether elite class is dominant as the champions of the oppressed or of social legislations and the same is the position in the judiciary. But the Minister went on to say that because the Judges had their 'unconcealed sympathy for the haves' interpreted the expression 'compensation' in the manner they did. The expression 'unconcealed' is unfortunate. But this is also an expression of opinion about an institutional pattern. Then the Minister went on to say that because of this the word 'compensation' in Article 31 was interpreted contrary to the spirit and the intendment of the Constitution. The Constitution therefore had to be amended by the 1st, 14th and 17th Amendments to remove this 'oligarchic' approach of the Supreme Court with little or no help. The inter-action of the decisions of this Court and the Constitutional amendments have been viewed by the Minister in his speech, but that is nothing new. This by itself does not affect the administration of justice. On the other hand, such a study perhaps is important for the understanding of the evolution of the constitutional development. The next portion to which reference may be made where the speaker has referred to Holmes Alexander in his column entitled '9 Men of Terror Squad' making a frontal attack on the functions of the U.S. Supreme Court. There was a comparison after making the quotation as we have set out hereinbefore: "one should ask the question how true Holmes Alexander was in the Indian context. " This is also a poser on the performance of the Supreme Court. According to the speaker twenty years of valuable time was lost in this confrontation presented by the judiciary in introducing and implementing basic agrarian reforms for removal of poverty what is the ultimate result. The nation did not exhibit the political will to implement the land reform laws. The removal of the Maharajas and Rajas and privy purses were criticised because of the view taken by this Court which according to the speaker was contrary to the whole national upsurge. This is a study in the historical perspective. Then he made a reference to the Keshavananda Bharati's and Golaknath's cases and observed that a representative of the elitist culture of this country, ably supported by industrialists and beneficiaries of independence, got higher compensation by the intervention of the Supreme Court in Cooper's case. This is also a criticism of the judgment in R.C. Cooper's case. Whether that is right or wrong is another matter, but criticism of judgments is permissible in a free society. There is, however, one paragraph which appears to us to be rather intemperate and that is to the following effect:

> "Anti-social elements i.e. FERA violators, bride burners and a whole horde of reactionaries have found their heaven in the Supreme Court".

This, of course, if true, is a criticism of the laws. The Supreme Court as it is bound to do has implemented the laws and in implementing the laws, it is a tribute to the Supreme Court that it has not discriminated between persons and persons. Criminals are entitled to be judged in accordance with law. If anti-social elements and criminals have benefited by decisions of the Supreme Court, the fault rests with the laws and the loopholes in the legislation. The Courts are not deterred by such criticisms.

Bearing in mind the trend in the law of contempt as noticed before, as well as some of the decisions noticed by Krishna Iyer, J. m S. Mulgaokar's case (supra) the speech of the Minister read in its proper perspective, did not bring the administration of justice into disrepute or impair administration of justice. In some portions of the speech the language used could have been avoided by the Minister having the background of being a former Judge of the High Court. The Minister perhaps could have achieved his purpose by making his language mild but his facts deadly. With these observations, it must be held that there was no imminent danger of interference with the administration of justice, nor of bringing a institution into disrepute. In that view it must be held that the Minister was not guilty of contempt of this Court.

The view we have taken on this aspect of the matter would have been sufficient to dispose of this petition. But another question of law of some importance has arisen in this matter. Under the Act in case of criminal contempt other than a contempt referred to in section 14 which is not the facts of this case, namely, a contempt in the fact of this Court or a High Court, this Court or the High Court may take action either on its own motion or on a motion made by the Advocate General which in relation to this Court means the Attorney General or the Solicitor General or any other person with the consent of the Attorney General in terms of section 15 of the Act. Therefore, cognizance for criminal contempt could be taken by the Court by three methods namely, on its own motion, or on the motion of the Attorney General or the Solicitor General or on motion by any other person with the consent of the Attorney General or the Solicitor General. Therefore, the only course open to a citizen for initiating proceedings for contempt where the Court does not take cognizance on its motion or where the Attorney General or the Solicitor General does not take action is to move for consent in writing of the Attorney General or the Solicitor General. The question is, does it cast a duty upon the Attorney General or the Solicitor General to consider application for grant of such consent and whether the granting or non-granting of such consent is justiciable by the Court and if so whether the question of non-granting can be brought up in a rolled application moved by a person to bring it to the notice of the Court to take action suo motu and at the same time to consider whether in the same proceeding the action of the Attorney General or the Solicitor General in granting or not granting consent can be challenged or it must be always by an independent proceeding. The consent certainly is linked up with contempt proceedings. Indeed Mohammed Yunus' case (supra) was dismissed because no consent was obtained. In the instant case the Minister has taken the plea that consideration of this case cannot be taken because there is no consent of the law officers. Does it or does it not "tend to interfere with due course of judicial proceedings" in terms of clause (ii) of section 3(c) of the Act? If so is it justiciable in these proceedings? Attorney General

and Solicitor General of India in respect of this Court occupy positions of great importance and relevance. Attorney General, though unlike England is not a member of the Cabinet yet is a friend of the Court, and in some respects acts as the friend, philosopher and guide of the Court. (See Art. 76 of the Constitution). Yet the Act vests him with certain discretions. All statutory discretions are justiciable in a society governed by the rule of law. one must remember the remarks of Thomas Fuller- "Be you ever so high, the law is above you" and this Court is the finder and interpreter of that law in cases of this nature with the assistance of Attorney General and in his absence or inability the Solicitor General.

It is well to remember what Burke said in the House of Commons in 1772 in connection with the motion for select committee for enquiry into the affairs of the East India Company and Clive. He said that when discretionary power is lodged in the hands of any man or class of men, experience proves that it will always be abused. Where no laws exist men must be arbitrary and very necessary acts of government will often be, in such cases, represented by the interested and malevolent as instances of wanton oppression (Clive of India - Nirad C. Chaudhry, page 381). Times have changed here, the discretion is vested on a very high dignitary and a friend of the Court, yet it is subject to scrutiny.

On this aspect it is necessary to refer to the letter dated 3rd December, 1987, which Shri P.N. Duda, petitioner herein wrote to the Attorney General wherein he requested for grant of consent for initiating contempt proceedings against Shri P. Shiv Shankar and others namely, the Editor, Hindustan Times and the Printer and Publisher, Hindustan Times. After setting out the contempt as alleged by him in that letter, he stated, inter alia, as follows:

> "I am more aware than any that you may feel embarrassed in giving consent for prosecution of Shri Shiv Shankar, who happens to be the Minister who effectively hires and fires law officers, and for all purposes during whose pleasure they hold their offices. Since emergency period we have seen the modalities of this hiring and firing which causes apprehensions in my mind about the possible outcome of this request. I, however, thought it fit to make this request, reminding you of your duties as the ex-officio leader of the bar to give your consent for prosecution of the persons named. The other two are being named because the one is the Editor and the other the Printer and Publisher of the paper, viz. the Hindustan Times, which published the report.
>
> I will expect you to take a decision in this matter within a week of the receipt of this request. If I do not hear from you in either way, I will presume that you have declined the consent. In that event I will consider myself free to move the court for taking action on its own motion under section 15(1)(a) of the Contempt of Courts Act 1971 seeking my participation as an amicus curiae."

A copy of the said letter was sent to the Solicitor General of India with request to treat it as a request made to him independently also under section 15(1)(b) of the Act read with Rule 3(3) of the Supreme Court Contempt of Court Rules, 1975. He wrote another letter on 8th December, 1987 in

which he reminded the Attorney General of certain stand taken by him in respect of Shri Charanjit Lal Sahu. The relevant portion of the said letter reads as follows:

> "I may invite your attention to the remarkable stand you took when a PIL matter initiated by Shri Charanjit Lal Sahu came before a bench of the Supreme Court, and how concerned you felt in seeing Shri Sahu being prosecuted for having made some statements about the Court, which were more foolish than intemperate, for maintaining the dignity of the court. No-one would have taken Mr Shau's statement seriously, nor was it addressed to a large audience. Shri Shiv Shankar's diatribe against the Supreme Court is more intemperate, is addressed to a very nation-wide large audience, and the maker of the statement is a man of status, whom no-one will ignore. I think you will keep this aspect in mind in considering my request."

A copy of the said letter was also forwarded to the Solicitor General of India. In reply the Attorney General wrote a letter on 14th December, 1987 in which he stated, inter alia, as follows:

> "You suggest that we cannot discharge our duties impartially. In other words, you have sought to undermine the credibility of any decision we may take. These two deeply hurtful allegations are calculated to ensure that in which ever way we exercise our function, justice will not be seen to be done. Therefore, we feel that in the circumstances no useful purpose will be served in exercising our function at all.
>
> This letter has the approval of the Solicitor General to whom a copy of your letter was sent. "

Shri Duda wrote another letter on 19th December, 1987 both to the Attorney General and the Solicitor General, in which he stated, inter alia, as follows:

> "Needless to point out that your letter is suggestive of your refusal to discharge your duty to accede or not to accede to my request of granting sanction and legally I am entitled to a mandamus against you from an appropriate court seeking direction against you to decide the matter, one way or the other. I have thought it fit to make an alternative request to you to relieve me of the unpleasant duty of seeking relief in any other way."

After setting out the facts in the petition, the petitioner inter alia, stated that he had approached the learned Attorney General and the Solicitor General to look into these aspects of the matter and accord sanction. The conduct of the said respondent No. 2 and respondent No. 3, according to the petitioner, amounted to refusal to exercise jurisdiction vested in them by law and, therefore, they were impleaded as parties in the present proceedings (as necessary and/or proper parties) in order that they may get an opportunity to justifying the stand they have taken in the matter flowing from their refusal to exercise jurisdiction. Upon this notice was issued by this Court to all the respondents in the manner indicated above.

Shri Gopal Subramaniam has appeared before us and filed a statement signed by the learned Attorney General and also made his oral submissions. Shri Trivedi, intervener has also made his submissions. The main plank of their submissions is that the actions of the Attorney General and the Solicitor General to act were motivated because of the allegation of bias in the aforesaid letter. Reliance was placed in the case of Vassiliades v. Vassiliades and another, A.I.R. 1945 P.C. 38 where the Judicial Committee reiterated that it was highly desirable that all proceedings should be dealt with by persons who are above any suspicion, however, unreasonable, of being biased. It was reiterated that in any case, there was no question of the petitioner being without remedy because the Court can always take action suo motu. The question, therefore, is whether there was a duty cast upon the Attorney General or the Solicitor General to consider the question of granting consent in terms of clause (b) of section 15(1) of the Act in an appropriate case and if in fact such consent was not granted that question could be considered by the Court. It is not a question of making the Attorney General or the Solicitor General a party to a contempt proceeding in the sense that they are liable for contempt, but if the hearing of the contempt proceedings can be better proceeded by obtaining the consent of the Attorney General or the Solicitor General and the question of justifiability of giving the consent is interlinked on the analogy of Order II Rule I of the Code of Civil Procedure which has application to a civil proceeding and not to a criminal proceeding, it is permissible to go into this question. Indeed, in the case of Conscientious Group (supra) precisely this was done, where an application for contempt was filed and which was revived pursuant to the previous order and the Court while doing so had reserved the right to consider on the previous occasion the question if the Solicitor General refuses to give consent improperly or on irrelevant ground the Court could consider that question. In the case of Conscientious Group, (supra) the Court went into the reasons given by the Solicitor General declining consent. This Court in that case held on examination that such consent was properly refused. This is a complete answer to the contention that in a contempt petition the grounds for either giving consent or not giving consent or for not considering the application for consent are justiciable and that question can not be gone into in that proceeding though it must be emphasised in that proceeding that the Solicitor General was not made a party to the proceeding. In my opinion it will be more appropriate for an officer of the Court whose action is being investigated to be made a party in the proceedings otherwise it would be violative of the rule of audi alteram partem. On behalf of the learned Solicitor General, Shri A.K. Ganguly has made elaborate submissions. It was submitted by Shri Ganguly that the procedure followed by the petitioner simultaneously seeking the consent of the Attorney General was not proper and the Solicitor General had been invoked and that was not proper and legal. It is not possible to accept this submission. It was contended that there was no doctrine of necessity applicable in this case because even if the Attorney General or the Solicitor General does not give consent a party is not without a remedy and can bring this to the notice of the Court. Discretion vested in law officers of this Court to be used for a public purpose in a society governed by rule of law is justiciable. Indeed, it was gone into in the case of Conscientious Group (supra) and it will be more appropriate that it should be gone into upon notice to the law officer concerned. It is a case where appropriate ground for refusal to act can be looked into by the Court. It cannot be said as was argued by Shri Ganguly that the refusal to grant consent decides no right and it is not reviewable. Refusal to give consent closes one channel of initiation of contempt. As mentioned hereinbefore there are three different channels, namely, (1) the Court taking cognizance on its own motion; (2) on the motion by the Attorney General or the Solicitor General; and (3) by any other person with the

consent in writing of the Attorney General or the Solicitor General. In this case apparently the Attorney General and the Solicitor General have not moved on their own. The petitioner could not move in accordance with law without the consent of Attorney General and the Solicitor General though he has a right to move and the third is the court taking notice suo motu. But irrespective of that there was right granted to the citizen of the country to move a motion with the consent. In this case whether consent was to be given or not was not considered for the reasons stated by the Attorney General. Those reasons are linked up with the Court taking up the matter on its own motion. these are inter-linked. In that view of the matter these are justiciable and indeed it may be instructive to consider why this practice grew up of having the consent . This was explained in S. K. Sarkar v. V. C. Misra, [1981] 2 S.C.R. 331 where Sarkaria, J. speaking for the Court observed at page 339 of the report that the whole object of prescribing these procedural modes of taking cognizance under section 15 of the Act was to safeguard the valuable time of the High Court or the Supreme Court being wasted by frivolous complaints of contempt of court. Frequent use of this suo motu power on the information furnished by an incompetent petition, may render these procedural safeguards provided in subsection (2), otiose. In such cases, the High Court may be well advised to avail of the advice and assistance of the Advocate-General before initiating proceedings. In this connection the Court referred to the observations of Sanyal Committee appointed to examine this question where it was observed: "In the case of criminal contempt, not being contempt committed in the face of the court, we are of the opinion that would lighten the burden of the court, without in any way interfering with the sanctity of the administration of justice, if action is taken on a motion by some other agency. Such a course of action would give considerable assurance to the individual charged and the public at large. Indeed, some High Courts have already made rules for the association of the Advocate-General in some categories of cases at least . . . " It was the practice that except where the Court feels inclined to take action suo motu parties were entitled to move only by the consent. If no justiciable reason was given in an appropriate case and such consent was refused can it be said that it would not be proper for the Court to investigate the same?

The question of contempt of court came up for consideration in the case of C. K. Daphtary and others v. O. P. Gupta and others, [1971] Suppl. S.C.R. 76. In that case a petition under Article 129 of the Constitution was filed by Shri C.K. Daphtary and three other advocates bringing to the notice of this Court alleged contempt committed by the respondents. There this Court held that under Article 129 of the Constitution this Court had the power to punish for contempt of itself and under Article 143(2) it could investigate any such contempt. This Court reiterated that the Constitution made this Court the guardian of fundamental rights. This Court further held that under the existing law of contempt of court any publication which was calculated to interfere with the due course of justice or proper administration of law would amount to contempt of court. A scurrilous attack on a judge, in respect of a judgment or past conduct has in our country the inevitable effect of undermining the confidence of the public in the Judiciary; and if confidence in Judiciary goes administration of justice definitely suffers. In that case a pamphlet was alleged to have contained statements amounting to contempt of the Court. As the Attorney General did not move in the matter, the President of the Supreme Court Bar and the other petitioners chose to bring the matter to the notice of the Court. It was alleged that the said President and the other members of the Bar have no locus standi. This Court held that the Court could issue a notice suo motu. The President of the Supreme Court Bar and other petitioners were perfectly entitled to bring to the notice of the Court any

contempt of the Court. The first respondent referred to Lord Shawcross Committee's recommendation in U.K. that "proceedings should be instituted only if the Attorney- General in his discretion considers them necessary." This was only a recommendation made in the light of circumstances prevailing in England. But that is not the law in India, this Court reiterated. It has to be borne that decision was rendered on 19th March, 1971 and the present Act in India was passed on 24th December, 1971. Therefore that decision cannot be of any assistance. We have noticed Sanyal Committee's recommendations in India as to why the Attorney General should be associated with it, and thereafter in U.K. there was report of Phillimore Committee in 1974. In India the reason for having the consent of the Attorney General was examined and explained by Sanyal Committee Report as noticed before.

Our attention was drawn by Shri Ganguly to a decision of the Allahabad High Court in G.N. Verma v. Hargovind Dayal and others, A.I.R. 1975 Allahabad 52 where the Division Bench reiterated that Rules which provide for the manner in which proceedings for Contempt of Court should be taken continue to apply even after the enactment of the Contempt of Courts Act, 1971. Therefore cognizance could be taken suo motu and information contained in the application by a private individual could be utilised. As we have mentioned hereinbefore indubitably cognizance could be taken suo motu by the Court but members of the public have also the right to move the Court. That right of bringing to the notice of the Court is dependent upon consent being given either by the Attorney General or the Solicitor General and if that consent is withheld without reasons or L) without consideration of that right granted to any other person under section 15 of the Act that could be investigated on an application made to the Court.

It was contended that neither the Attorney General nor the Solicitor General were proper or necessary parties. Reliance was placed on B. K. Kar v. The Chief Justice and his Companion Judges of the Orissa High Court and others, [1962] 1 S.C.R. 319. In that case under an order passed by the appellant, a Magistrate, one was put in possession of some property on October 14, 1955. In revision the order was set aside by the High Court on August 27, 1957 and the opposite party S applied on November 20, 1957 to the appellant for redelivery of possession. applied to the High Court for a review of its previous order and on November 25, 1957, the application was admitted and an interim stay was granted of the proceedings before the appellant. A telegram addressed to a pleader, not the counsel for G, was filed along with the application. The appellant refused to act on this application and telegram and on November 27, 1957, he allowed the application of S for restitution. On November 28, 1957, a copy of the order of the High Court was received and thereupon the writ for redelivery of possession was not issued. The High Court convicted the appellant for contempt of court for passing the order for restitution on November 27, when the High Court had stayed the proceedings. The appellant appealed to this Court and impleaded the Chief Justice and Judges of the High Court as respondents. This Court held that the appellant was not guilty of contempt of court. It further held that in a contempt matter the Chief Justice and Judges of the High Court should not be A made parties and the title of such a proceeding should be "In re ..... the alleged contemnor". Mudholkar, J. speaking for the Court observed at page 321 of the report that the decision of Judges given in a contempt matter is like any other decision of those Judges, that is, in matters which come up before them by way of suit, petition, appeal or reference. Since that was the real position, this Court observed that there was no warrant for the practice which was in vogue in India there, and

which had been in vogue for over a century, of making the Chief Justice and Judges parties to an appeal against the decision of a High Court in a contempt matter. The said observations were sought to be relied in aid of the proposition that where the decision of the Attorney General or the Solicitor General was involved, they were not necessary or proper parties. Reliance on this decision for this purpose is entirely misconceived. Where an appeal comes to this Court, which is a judicial decision, the Judges who rendered the decision are not necessary parties. There is no lis between a suitor and a judge in a judicial adjudication. But the position is entirely different where there is suitor claiming the exercise of a statutory right in his favour which he alleges is hampered by an official act of a named official in the Act. In respect of justiciability of that act of the official there is a lis and if that lis is inter- linked with the proceeding for contempt, there is warrant for making him party in that proceeding though the prayers and the notice must be issued differently.

As mentioned hereinbefore in the case of S.C. Sarkar v. V.C. Misra (supra) this Court had observed that it may well be advices to avail of the advised and assistance of the Advocate General before initiating proceedings. Shri Ganguly appearing for the Solicitor General sought to urge before us that advice and assistance could not be compelled by a suitor. This cannot be agreed to. The statute gives a right to a suitor to move the Court in one of the contingencies for contempt or bring to the notice of the Court the contempt with the advice and assistance of the Attorney General or the Solicitor General. If such right is not considered on relevant materials then that action is justiciable in an appropriate proceeding for contempt.

Reference may be made to the case of Attorney General v. Times Newspapers Ltd., [1973] 3 All E.R. 54. In that case a drug company began to- make and sell in the United Kingdom a sedative which contained the drug thalidomide. Lord Morris observed in that case that the purpose and existence of courts of law is to preserve freedom within the law for all well disposed members of the community and anything which hampers the administration of law should be prevented but it does not mean that if some conduct ought to be stigmatised as being contempt of court it could receive absolution and be regarded as legitimate because it had been inspired by a desire to bring about a relief of some distress which was a matter of public sympathy and concern. Dealing with this aspect Lord Cross of Chelsea has observed that 'contempt of court' means an interference with the administration of justice and it is unfortunate that the offence should continue to be known by a name which suggests to the modern mind that its essence is a supposed affront to the dignity of the court. 'Justice' he said is an ambiguous word. When we speak of the administration of justice we mean the administration of the law, but often the answer which the law gives to some problem is regarded by many people as unjust. Lord Cross further observed that there must be no prejudging of the issues in a case is one thing. To say that no one must in any circumstances exert any pressure on a party to litigation to induce him to act in relation to the litigation in a way in which he would otherwise not choose to act is another and a very different thing. Lord Cross at page 87 of the report observed as follows:

> "In conclusion I would say that I disagree with the views expressed by Lord Denning MR and Phillimore LJ (1973 1 All E.R. 815) as to the 'role' of the Attorney-General in cases of alleged contempt of court. If he takes them up he does not do so as a Minister of the Crown 'putting the authority of the Crown behind the complaint'-but as 'amicus curiae' bringing to the notice of the court some matter of which he considers

that the court shall be informed in the interests of the administration of justice. It is, I think, most desirable that in civil as well as in criminal cases anyone who thinks that a criminal contempt of court has been or is about to be committed should, if possible, place the facts before the Attorney-General for him to consider whether or not those facts appear to disclose a contempt of court of sufficient gravity to warrant his bringing the matter to the notice of the court. Of course, in some cases it may be essential if an application is to be made at all for it to be made promptly and there may be no time for the person affected by the 'contempt' to put the . facts before the attorney before moving himself. Again the fact that the attorney declines to take up the case will not prevent the complainant from seeking to persuade the court that notwithstanding the refusal of the attorney to act the matter complained of does in fact constitute a contempt of which the court should take notice. Yet, again, of course, there may be cases where a serious contempt appears to have been committed but for one reason or another none of the parties affected by it wishes any action to be taken in respect of it. In such cases if the facts come to the knowledge of the attorney from some other source he will naturally himself bring the matter to the attention of the court. Lord Cross has noticed in his speech that if the Attorney General declines to take up the case, it will not prevent the complainant from seeking to persuade the Court that notwithstanding refusal of the Attorney General to act, the matter complained of does, in fact, constitute a contempt of which the Court should take notice. But that does not derogate the rights of the individual to move the Court. See the observations of Lord Reid. In Indian Express Newspapers (Bombay) Pvt. Ltd. and Ors. etc. v. Union of India and others, [1985] 1 S.C.C. 641, the observations of the aforesaid decision in Thalidomide case were relied upon.

Reliance was also placed on the observations of the House of Lords in Gouriot and others v. H.M. Attorney General, [1978] Appeal Cases 435. There it held the initiation of litigation and the determination of the question whether it is a proper case for the Attorney General to proceed in, is a matter entirely beyond the jurisdiction of that or any other Court. It is a question which the law has made, to reside exclusively in the Attorney General. The House of Lords was reversing the decision of the Court of Appeal in the celebrated case of Gouriet v. Union of Post office Workers, [19781 Appeal Cases 435 where the House of Lords could find no legal basis for the lower courts' attempt to outflank the Attorney General's refusal to grant his fiat to Mr. Gouriet. In the Court of Appeal, all the three Judges, Denning M.R., Lawton and Ormrod LJ, upheld the plaintiff's claim for declaration and interim injunction even in the absence of fiat by the Attorney General. The statutory provisions were entirely different. It may be in the context that the Attorney General had to move in his discretion which is not justiciable. But in our opinion it is justiciable. English decisions are of persuasive value and we would prefer to rest out decision on the observations of Lord Denning in Gouriet v. Union of Post office Workers & Ors., [1977] 1 Q.B. 729 at 752 to 763 though made in connection with the Attorney General's discretion in giving consent in instituting a suit for injunction by a member of the public. In U.K. the position of Attorney General as a member of the Cabinet is

different. There the contempt of Court is regulated by different statutory provisions which were examined by a Committee known as Phillimore Committee Report. See also the observations of Sikri J. as the Chief Justice then was, in C.K. Daphtary & Ors. (supra) at page 109 of the report.

Our attention was drawn to the decision of the Andhra Pradesh High Court in Rajagopal Rao v. Murtza Mutjahdi, [1974] 1 Andhra Law Times 170. We are unable to accept the ratio stated in view of the terms of section 15 of the Act. Our attention was also drawn to the case of N. Venkataramanappa v. D.K. Naikar, A.I.R. 1978 Karnataka 57. It is also not possible to accept the position that under no circumstances the exercise of discretion by the Attorney General or Solicitor General cannot be enquired into.

Having considered the peculiar facts and circumstances of this case and the allegation of bias which were made against the Attorney General and the Solicitor General, it appears that the Attorney General and the Solicitor General acted properly in declining to deal with the matter and the Court could deal with the matter on attention being drawn to this Court.

In the aforesaid view of the matter, this petition fails and it is accordingly dismissed and the application of Shri Trivedi is accordingly disposed of.

RANGANATHAN, J. I agree with the conclusion of my learned brother that no case has been made but for initiating contempt proceedings against respondent No. 1. The principles applicable to, and the case law on the subject have been discussed by him at length and I do not have much to add. The impugned comments were made by respondent No. 1 in the course of his key note address at a seminar on 'Accountability of the Legislature, Executive and Judiciary under the Constitution of India' organised by a Bar Council. Though, in view of the position held by the speaker, the contents of the speech, and. in particular, some 'savoury' passages therefrom have been highlighted in a section of the Press, the speech was made before an audience comprising essentially of lawyers, jurists and judges. The speech represented primarily an exercise by the speaker to evaluate the roles of the executive, legislature and judiciary in this country since its independence and to put forward the theory that, like the executive and the legislature, the judiciary must also be accountable to the people. The petitioner contends that there are certain passages in the speech which seem to attribute a sub- conscious partiality, bias or predeliction in judges in disposing of various matters before them and that these comments fall within the scope of the decision of this Court in the case of E.M. Sankaran Namboodiripad v. T. Narayanan Nambiar, [1970] 2 S.C.C. 325. Barrie & Lowe in their "Law of Contempt," (Second Edition, PP. 233, 240-1) and Arlidge and Eady in their "Law of Contempt" (Second Edition, PP. 162-3,

168), on a review of the judicial decisions on the topic, seem to suggest that even allegation of partiality and bias on the part of judges may not amount to contempt so long as it is free from the taint of 'scurrilous abuse' and can be considered to be 'fair comment'. The observations made by the Lord Justice Phillimore Committee on Contempt of Court in 1974 on this type of contempt (Paras 160 & 161) also make interesting reading. I do not, however, think it is necessary to pursue this aspect of the matter. In the present case, it is true, as pointed out by my learned brother, there are passages in the speech which, torn out of context, may be liable to be misunderstood. But reading the speech as a whole and bearing in mind the select audience to which it was addressed, I agree with my learned brother no contempt has been committed. I think that we should accept, at its face value, the affidavit of respondent No. 1 that the speech was only a theoretical dissertation and that he intended no disrespect to this Court or its functioning.

2. The second aspect of the case on which arguments have been addressed before us relate to the procedure to be followed in such matters. As this aspect raises some important issues, I would like to state my views thereon separately.

3. The criminal miscellaneous petition filed by the petitioner purports to be only "information" u/s 15(1)(a) and (b) of the Contempt of Courts Act, 1971 ('the Act'). The petitioner seeks to inform this Court that he came to know from a report in 'Hindustan Times' that respondent No. 1, in the course of a speech delivered by him at Hyderabad on November 28, 1987, had made certain statements which, in the petitioner's opinion, rendered him liable to be proceeded against for contempt of court. Appending what is stated to be a full text of the said speech as published in the 'Newstime", the petitioner prays that this Court should be pleased to "initiate contempt of court proceedings suo motu under S. 15(1) of the Contempt of Court Act, 1971 read with rule 3(a) of the Supreme Court (Contempt of Court) Rules, 1975". Though the prayer is vague as to the person against whom the proceedings are to be initiated, the allegations in the petition leave no doubt that it is respondent No. l, and only he, who, even according to the petitioner, is to be charged with contempt. Nevertheless, the petitioner has added three more respondents to the Criminal Miscellaneous Petition, namely the Attorney General of India (by name), the Solicitor General of India (by name) and Sri 13 Ramoji Rao, Editor of "Newstime". In my opinion, this petition raises certain question of general importance which need to be discussed so as to evolve a proper procedure, at least for future guidance in these matters. I proceed to discuss these aspects.

4. Article 129 of the Constitution declares that the Supreme Court shall be a court of record and that it shall have all the powers of such a court including the power to punish for contempt of itself. However, the powers of the Supreme Court and High Court in this regard have been recently classified in the Contempt of Courts Act, 1971. This Act defines "contempt of court" and classifies it into two categories, "civil contempt" and "criminal contempt". These definitions need not be set out here, particularly as the petitioner has filed a 'criminal miscellaneous petition and it is quite clear that what he seeks to charge respondent No. 1 with is "criminal contempt". Section 14 deals with contempt in the face of the court and we are not concerned with it here. Section 15 specifies how criminal contempt is to be taken cognizance of. It will be useful to set out here the relevant portions

of this section:

> " 15. Cognizance of criminal contempt in other cases-
>
> (1) In the case of a criminal contempt, other than a con tempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by-
>
> (a) the Advocate-General, or
>
> (b) any other person, with the consent in writing of the Advocate-General, or
>
> (c) in relation to the High Court for the Union Territory of Delhi, such law officer as the Central Government may, by notification in the official Gazette, specify in this behalf, or any other person, with the consent in writing of such law officer.
>
> xxx xxx xxx (3) Every motion or reference made under the section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation-In this section, the expression "Advocate-general" means

(a) In relation to the Supreme Court, the Attorney-General or the Solicitor-General;

xxx xxx xxx"

5. This Court has, with the approval of the President, framed, in exercise of its powers under section 23 of the Act read with article 145 of the Constitution, rules to regulate proceedings for contempt of the Supreme Court. The rules relevant for our present purpose are the following:

> 3. In case of contempt other than the contempt referred to in rule 2, the Court may take action:
>
> (a) suo motu, or
>
> (b) on a petition made by Attorney General, or Solicitor General or
>
> (c) on a petition made by any person, and in the case of a criminal contempt, with the consent in writing of the Attorney General or the Solicitor General.

4.(a) Every petition under rule 3(b) or (c) shall contain:

> (i) the name, description and place of residence of the petitioner or petitioners and of the persons charged;

(ii) nature of the contempt alleged, and such material facts, including the date or dates of commission of the alleged contempt as may be necessary for the proper determination of the case;

(iii) if a petition has previously been made by him on the same facts, the petitioner shall give the details of the petition previously made and shall also indicate the result thereof;

(b) The petition shall be supported by an affidavit.

(c) where the petitioner relies upon a document or documents in his possession or power, he shall file such document or documents of true copies thereof with the petition.

(d) No court-fee shall be payable on the petition, and on any documents filed in the proceedings.

5. Every petition under rule 3(b) and (c) shall be posted before the Court for preliminary hearing and for orders as to issue of notice. Upon such hearing, the Court, if satisfied that no prima facie case has been made out for issue of notice, may dismiss the petition, and, if not so satisfied direct that notice of the petition be issued to the contemner.

6.(1) Notice to the person charged shall be in Form I. The persons charged shall, unless otherwise charged shall, unless otherwise ordered, appear in person before the Court as directed on the date fixed for hearing of the proceedings, and shall continue to remain present during hearing till the proceedings is finally disposed of by order of the Court. F. (2) When action is instituted on petition, a copy of the petition along with the annexures and affidavits shall be served upon the person charged.

10. The Court may direct the Attorney- General or Solicitor General to appear and assist the Court.

6. A conjoint perusal of the Act and rules makes it clear that, so far as this Court is concerned, action for contempt may be taken by the Court on its own motion or on the motion of the Attorney General (or Solicitor General) or of any other person with his consent in writing. there is no difficulty where the court or the Attorney-General choose to move in the matter. But when this is not done and a private person desires that such action should be taken, one of three courses is open to him. He may place the information in his possession before the Court and request the Court to take action: (vide C.K. Daphtary v. O.P. Gupta, [1971] Suppl. S.C.R. 76 and Sarkar v. Misra, [1981] 2 S.C.R. 331); he may place the information before the Attorney General and request him to take action; or he may place the information before the Attorney General and request him to permit him to move the Court. In the present case, the petitioner alleges that he has failed in the latter two courses-this will be considered a little later-and has moved this "petition" praying that this Court should take suo motu action. The "petition" at this stage, constitutes nothing more than a mode of laying the relevant information before the Court for such action as the Court may deem fit and no proceedings can

commence until and unless the Court considers the information before it and decides to initiate proceedings. Rules 3 and 4 of the Supreme Court (Contempt of Court) Rules also envisage a petition only where the Attorney General or any other person, with his written consent, moves the Court. Rule 5 is clear that only a petition moved under rule 3(b) and (c) is to be posted before the Court for preliminary hearing. The form of a criminal miscellaneous petition styling the informant as the petitioner and certain other persons as respondents is inappropriate for merely lodging the relevant information before the Court under rule 3(a). It would seem that the proper title of such a proceeding should be " In re .. (the alleged contemner)" (see: Kar v. Chief Justice, [1962] 1 SCR 320 though that decision related to an appeal from an order of conviction for contempt by the High Court). The form in which this request has to be sought and considered in such cases has also been touched upon by the Delhi High Court in Anil Kumar Gupta v. K. Subba Rao, ILR 1974 Delhi 1. This case, at the outset, pointed out that the information had been erroneously numbered by the office of the Court as Criminal original No. 51 of 1978 and concluded with the following observations:

> "The office is to take note that in future if any information is lodged even in the form of a petition inviting this court to take action u/s 15 of the Contempt of Courts Act or Article 215 of the Constitution, where the information is not one of the persons named in section 15 of the said Act, it should not be styled as a petition and should not be placed before the judicial side. Such a petition should be placed before the Chief Justice for orders in chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the court whether to take any cognizance of the information. The office to direct to strike off the information as "Criminal original No. 51 of 1973" and to file it"

I think that the direction given by the Delhi High Court sets out the proper procedure in such cases and may be adopted, atleast in future, as a practice direction or as a rule, by this Court and other High Courts. However, a petition having been filed and similar petitions having perhaps been entertained earlier in several courts, I do not suggest that this petition should be dismissed on this ground.

7. In this case, apart from filing his information in the form of a miscellaneous petition, the petitioner has added as respondents to the petition not only the alleged contemner but three more persons. He says that he approached the Attorney General of India and the Solicitor General of India for their written consent to enable him to file a petition under Section 15(1) read with rule 3(c) but that they have refused to exercise the jurisdiction vested in them by law and that, therefore, "they have been impleaded as parties in the present proceedings (as necessary and/or proper parties) in order that they may get an opportunity to justify the stand they have taken in the matter flowing from their refusal to exercise jurisdiction." So far as respondent No. 4, is concerned, the only reason given for impleading him is that the full text of the speech of respondent No. 1 has come out in the newspaper published by him and placed before the court and that he was being impleaded only to prove the authenticity of the speech, in the event of possible disclaimer of the respondent No. 1. In other words, respondent No. 4 is only a possible witness through whom he proposes to prove the authenticity of the speech which contains the words of alleged contempt. In my opinion this cannot be done. Assuming that a petition is the proper form of approach to the court under rule 3(a), I have

indicated earlier the proper title to such a petition. It will have no respondents and it will be for the court to issue notice to persons against whom a case for contempt needs examination. Viewed as a petition under rule 3(c), rule 4 envisages only that the petition should contain the name, description and place of residence of the petitioner(s) and the persons charged. It does not contemplate any other person being made a party to it. Under rule 6 the notice to the person charged is to be in the form appended to the rules and the form of notice not only makes it clear that it is to be addressed only to a person charged with contempt of court but also contains certain directions appropriate only to such a person. This is naturally so, for it is obvious that the only persons who can be respondents in such a petition are the persons who are charged with criminal contempt. The petition, as filed here, is a petition for initiating proceedings for contempt of court only against respondent No. 1. Even if the petitioner has any other cause of action against other persons, such persons are neither necessary nor even proper parties to the petition.

This is especially so because such cause of action is of a purely civil nature. At best the petitioner can say that he is entitled to a writ of mandamus directing the Attorney General and Solicitor General to discharge their statutory obligation in case they fail to do so or a writ of certiorari to quash their decision in case they withhold unreasonably their consent to the petitioner filing a petition. But this is a remedy to be sought independently against these persons by a separate writ petition. He cannot seek to get relief against the Attorney General and Solicitor General by a petition mixing-up his criminal charge against respondent No. 1 and his civil grievances against the Attorney General and Solicitor General. It is true that on the terms of Section 15(1) and rule 3(c), a petition for contempt will not be maintainable by a private person without the written consent of the Attorney General or the Solicitor General. But he cannot seek to get over this objection to the maintainability of a petition without such consent merely by the device of adding them as respondents to the petition, even if he had added, in the petition, a prayer for some relief against them. But, in this case, even such a prayer is not there and no relief is sought against the Attorney General or Solicitor General. This petition, therefore, if treated as a petition under rule 3(c), is not maintainable for want of consent by the Attorney General and the Solicitor General and has to be dismissed as such. That apart, as I have already pointed out, the inclusion of respondents 2 to 4 as respondents to the petition is totally unjustified and, even if the petition is to be taken on record as a mere laying of information under rule 3(a), the names of respondents 2 to 4 must be struck off from the array of parties. I would direct accordingly.

8. This case itself illustrates the type of difficulties which can arise by filing such a rolled up petition. Having regard to the nature of the allegations against respondent No. 1 and the form in which the petition had been presented, we were of opinion that the question as to "what action, if any, need be taken" by this Court on such a petition called for consideration and we directed the issue of such a notice by our order dated 10.2.1988. The terms of the order make it clear that we wanted to hear the parties mentioned in the petition and the Additional Solicitor General on the above question. Some aspects that arise for consideration are: whether the petition is properly framed; what is the relief, if any, that can be given to the petitioner against the alleged refusal of the Attorney General and Solicitor General to give consent to the petitioner to file a contempt petition; and whether, in case they considered themselves disabled from acting on the application, the Additional Solicitor General can be called upon to exercise the said function. We needed assistance on these issues. If the

Attorney A General/Solicitor General had not been made parties, we would have called upon them to assist us under rule 10. Since, however, they had been added as parties, we directed notices to issue to them "as to what action, if any, need be taken on the petition." Unfortunately, we find that a notice was issued not only to the first respondent named in the petition (the alleged contemner) but also to the other "respondents" named in the petition, in the form prescribed under the rules containing recitals which are appropriate only in the case of a person charged with contempt of court, though a mention was specifically made that the contempt charge was only against respondent No. 1. The issue of notices in the prescribed form to the other respondents was unjustified. This type of difficulty arose only because the petition joined, as respondents, persons who are totally unnecessary for deciding the issue of contempt. There was no question of any 'contempt' notice being issued to the Attorney General/Solicitor General as there was not even a suggestion of any such allegation against them and no other relief had also been sought against them. I think that, in the circumstances, notices should not have been issued to them in the form in which they were issued.

9. I may next consider the question whether even if the petitioner was particular about his right to file a petition under rule 3(C), he can have any recourse against the Attorney General and the Solicitor General in case they refuse their consent or, as alleged in this case, refuse to deal with the petitioner's application. One possible view is that the discretion to be exercised by the Attorney General/ Solicitor General is a quasi-judicial discretion and that its exercise is subject to judicial review by this court. In this connection, reference was made to the judgment of this Court in Conscientious Group v. Mohammed Yunus and ors., J.T. 1987(2) 377. In that case, the petitioner had withdrawn a contempt petition filed by it as the Attorney General had expressed his inability to exercise his jurisdiction for reasons stated by him. Subsequently, the petitioner on learning that it could get the consent of the Solicitor General, sought to have the earlier order recalled. Bhagwati C. J. Observed:

> " .. we would make it clear that it would be open to the petitioner to approach the Solicitor General and to revive the petition after obtaining the consent of the Solicitor General under Rule 3(c). Since this remedy is available to the petitioner for reviving the petition for contempt, we do not propose to recall the order permitting withdrawal of the petition. The petition can be revived by the petitioner after obtaining the consent of the Solicitor General. We may point out that the petitioner will not be without remedy, if the Solicitor General refuses his consent on any irrelevant ground. "

The matter was then referred to the learned Solicitor General who declined consent stating that it would not be in public interest to give his consent. The court then considered the reasons given by the learned Solicitor General and came to the conclusion that the ground stated by him for declining the consent could not be said to be irrelevant in the eye of the law or characterised as arbitrary, illegal or unreasonable. The petition for contempt was, threfore, dismissed. From these circumstances, it is sought to be suggested that the action of the Attorney General/Solicitor General is subject to judicial review by this Court.

10. In my opinion this is not the necessary conclusion that follows from the observations extracted above. Our attention has been drawn by Sri Ganguly, appearing for the learned Solicitor General, to the decision in Rajagopal Rao v. Murtza Mutjahdi, [1974] 1 Andhra Law Times, 170 and N. Venkataramarlappa v. D.K. Naikar, A.I.R. 1978 Kar. 57, that the grant or refusal of consent is not justiciable. My learned brother has not accepted the correctness of these decisions on the ground that the statute confers a duty and discretion on these law officers and that their action cannot be beyond judicial review as no person can be above law. I am, however, inclined to think there is something to be said in favour of the view taken by the two High Courts for two reasons.

11. In the first place the role of the Attorney General/Solicitor General is more akin to that of an amicus curiae to assist the court in an administrative matter rather than a quasi-judicial role determining a lis involving rights of a member of the public vis-a-vis an alleged contemner. As pointed out by the Supreme Court in S.C. Sarkar v. V.C. Misra, [1981] 2 S.C.R. 331, there are difficulties in the Court making frequent use of the suo motu power for punishing persons guilty of contempt. The Attorney General offers his aid and assistance in two ways. On the one hand, he moves the Court for action when he comes across cases where he thinks there is necessity to vindicate the dignity and reputation of the Court. On the other, he helps in screening complaints from the public to safeguard the valuable time of the Court The observations of Lord Reid and Lord Cross in the Thalidomide case: A.G. v. Times Newspapers, [1972] A.C. 277, of the House of Lords, in a different context, in Gouriet v. Union of Post office Workers, [1978] A.C. 435 and of Lord Denning and Lawton LJ, in the same case in the Court of Appeal (1977-1 Q.B. 729) bring but this aspect of the Attorney General's functions.

12. Secondly, if we analyse the types of action which the Attorney General/Solicitor General may take on an application made to him, the position will be this. Firstly, he may grant permission in which case no further question will arise. I do not think it will be open to any other person to come to the court with a prayer that the Attorney General/Solicitor General ought not to have given his con sent. For, it would always be open to the Court, in case they find no reason to initiate action, to dismiss the petition. Secondly, it is possible that the Attorney General/Solicitor General may not be able to discharge his statutory function in a particular case for one reason or other. This was what happened in the case of Mohammed Yunus cited earlier. In that case it was only the Attorney General who was unable to discharge his functions under Section 15 and the petitioner could move the Solicitor General, who declined consent. But there might be cases in which both the Attorney General and the Solicitor General are not in a position to take a decision on the application made to them by a private party. Thirdly, both of them may refuse their consent. In the latter two cases, I am unable to see what purpose would be served by the Court spending its time to find out whether the Attorney General/Solicitor General should have given a decison one way or the other. For, the petitioner is not without remedy. It is open to him always to place the information in his possession before the Court and request the Court to take action. (see, Lord Cross in A.G. v. Times Newspaper, [1974] A.C. 277 at p. 321. Bhagwati, C.J. could have meant this when he said that, if the consent of the Solicitor General was withheld on irrelevant grounds, the petitioner was not without remedy.

13. the petitioner has submitted that the Attorney General and Solicitor General acted unreasonably in declining to act in the present case. Though, as indicated earlier, it will not be a fruitful exercise to

review such decision, particularly when a request for suo motu action under rule 3(a) has been made, the point having been raised, I shall consider how valid this complaint is. What the petitioner here did was that, instead of merely placing the information with him before the Attorney General/Solicitor General and seeking their consent to his filing a petition before the Court, the petitioner wrote a letter contain-

ing a lot of other irrelevant matter. In particular, in paragraph 7, he suggested that the Attorney General/Solicitor General might feel embrassed in giving consent for the prosecution as the person sought to be charged happened to be the Minister "who effectively hires and fires law officers and for all purposes at whose pleasure they hold their office." He also expressed his apprehensions about the possible outcome of his request. In other words, the petitioner, while purporting to seek the consent of the Attorney General/Solicitor General, simultaneously expressed his lack of confidence in their judgment and their ability to discharge their duties objectively and impartially. It is not surprising that, in this situation, the learned Attorney General/ Solicitor General decided not to exercise their statutory powers at all one way or the other. The learned Attorney General has placed before us a statement explaining his stand in the matter. He has pointed out that two occasions had arisen in the past when, for compelling reasons, he could not deal with an application for consent filed before him. So far as the present case is concerned, he has stated:

> "The Attorney General has declined to exercise his functions under Section 15 of the Contempt of the Courts Act in view of the allegations of lack of impartiality and independence. These allegations contain a reflection of bias and foreclosure on the part of the Atorney Genera. The Attorney General declined to investigate the matter since the allegation of bias should normally disentitle him from proceeding further with the matter. The Attorney General has followed this course consistently."

From the above narration, it is clear that the Attorney General/ Solicitor General acted rightly and in the best traditions of their office by declining to deal with the petitioner's request and leaving it to the petitioner to follow such other course as he considered advisable. The petitioner had cast aspersions agaist both the Law officers doubting their ability act objectively and thus stultified by his own conduct this course indicated by the statute.

14. The last question that remains to be touched upon is whether, in a case where neither the Attorney General nor the Solicitor General is in a position to consider a request under Section 15(1)(c), it is open to the petitioner to seek the consent of some other law officer such as the Additional Solicitor General. Apart from the fact that, in the present case, the petitioner would have had the same criticism against the Additional Solicitor General as he had against the Attorney General/Solicitor General, the clear answer to the question appears to be that it is not open to him to seek such consent. Section 15 is quite clear that the written consent of only those officers as have been specifically authorised by the section would be taken note of for entertaining a petition under the section. But this does not, in any way, deprive the petitioner of his remedy as he can come to Court, as indeed he has done, requesting the court to take suo motu action.

15. For purposes of convenience, I may sum up my conclusions. They are:

(a) This petition, if treated as one filed under Section 15(1) read c. with rule 3(a) is not in proper form and, if treated as one filed under rules 3(b) and 3(c), is not maintainable as it is not filed by the Attorney General/Solicitor General or by any person with his consent.

(b) In either event the petitioner should not have added to the petition respondents other than the person who, according to the petitioner, is guilty of contempt of court and so their names should be deleted from the array of parties.

(c) In case the Attorney General/Solicitor General refuse con sent or decline to act, their decision is not judicially reviewable and petitioner's remedy is to approach the Court for action under rule 3(a).

(d) In this case, the Attorney General/Solicitor General acted properly in declining to deal with the petitioner's application either way; and

(e) Considering the petition as nothing more than information under rule 3(a) on which this Court may or may not take suo motu action and, after hearing counsel for the alleged contemner, we think there is no need to initiate proceedings against respondent No. 1 for contempt of court.

I, therefore, agree that the petition should be dismissed.

S.L. Petition dismissed.