The Lok Adalat system which is evolved as one of the modes of alternate dispute resolution is not a new concept evolved in our country. The panchayat system, a very popular system for resolution of disputes has been prevalent in our country from ancient times even from Vedic period. No doubt this system had been styled with different names at different times in different parts of this country. Whatever may be the names the substance of all these had been one and the same. This system had a set back upto a limited extent during Muslim rule but had been virtually destroyed on the advent of the British rule by the introduction of common law jurisprudence. Though the popularity of the system had been well reduced, the features of the system never had disappeared in *toto* in our traditional, multi-religious and multi-lingual society. This concept is more based on the faith in the panchas or mediators. Arbitration and Conciliation Act, 1996 at present and Arbitration Act, 1940 prior thereto are also certain examples of well recognised alternative dispute resolution system.

The reports and statistics from different States are really encouraging which go to show that popularity of the system is being well received by the public at large. Not only post litigative settlements, even pre-litigative settlements are reported. This trend shows the awareness of the public and their reception with conscious. By and large these settlements relate to matrimonial disputes, accident claims, labour disputes, land acquisition matters, civil and criminal litigations, insurance claims *etc*. In the conferences, annual meets, meetings, periodical scrutiny, repeatedly the intellectuals, voluntary organisations, public spirited individuals and concerned authorities have been suggesting several methods for improvement of the system and better implementation. Though there are a few ills reported from certain quarters about the functioning of system and the notable variance in between theory and practice, this system has been well recognised by the general public, in the short time itself, to be really a better working system to have quick redressal of their grievances. Let us hope that this system will prove to be better in the coming days ahead of us so that we will have the satisfaction that the objectives of the legislation have been achieved.

SOME ASPECTS OF THE LAW OF CONTEMPT

By

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The law of contempt as now enforced is statutory. In the Constitution, Article 215 states that every High Court shall be a Court of record and shall have all the powers of such a Court including the power of punishing for contempt of itself. Article 129 speaks of the Supreme Court in similar terms. After the enactment of the Constitution the High Court's powers are traceable to this Article and the earlier concepts regarding this subject are no longer relevant. The earliest statute on the law of contempt was Act 12 of 1926, which was later replaced by Act 32 of 1952. In 1971 the present Contempt of Courts Act was enacted. For the first time a specific definition of Contempt of Court was adopted. For a more elaborate discussion on the history of law of contempt (See 1954 Crl.LJ 1141 (FB)). The purpose of the 1971 Act was to define and limit the power of certain Courts for punishing contempt of Courts

and to regulate the procedure. In a country governed by the rule of law a particular type of sanctity attaches itself to the orders of Courts the preservation of the dignity of judicial authority and the necessity to ensure due obedience to the orders of Court. Over the years a number of principles have been formulated in this branch of law, not necessarily new. In the actual administration of the law of contempt and the consideration of cases instituted under this law certain basic principles have not always been adhered to. The purpose of this Article is to remind Judges and Lawyers of some of these basic principles.

Firstly, the power to punish for contempt is not to be exercised lightly. In *Babu Ram Gupta v. Sudhir Bhasin and another*, 1979 SC 1528, the Court observed "it is well settled that while it is the duty of the Court to punish a person who tries to obstruct the course of justice or brings into disrepute the institution of judiciary, this power has to be exercised not casually or lightly but with great care and circumspection and only in such cases where it is necessary to punish the contemnor in order to uphold the majesty of law and the dignity of the Courts." (See also 1998 (3) SCC 303).

The orders passed by Courts should be clear and unambiguous and easily comprehensible. (See 1999 (7) SCC 569). Such orders should not command a party to transgress the law. (See 1996 (3) SCC 493, 1994 (2) SCC 630). If there is *bona fide* difficulty in obeying the order no proceedings for contempt can legitimately be instituted or pursued (See AIR 2000 SC 1717). Where the order is incapable of implementation for one reason or the other the proceedings under the Contempt of Courts Act are not called for. In 1994 (4) SCC 34, the Supreme Court pointed out that "the Court has got to balance the dignity of; the Court in requiring obedience to its orders as against the performance of an act contrary to rules compelled by the Court's direction. The law of contempt is based on sound public policy by punishing any conduct which shakes the public confidence in the administration of justice..... Normally speaking, it cannot be gainsaid that the order ought to have been obeyed but it appears that there are insuperable difficulties in implementing the order..... In such a situation the insistence of the Courts on implementation may not square with realities of the situation and the practicability of implementation of the Court's direction. In our considered view, booking a party to contempt proceedings and enforcing obedience to such orders hardly lends credence to judicial process and authority..... The Court must always be zealous in preserving its authority and dignity but at the same time it will be inadvisable to require compliance of an order impossible of compliance..... Practically, what the Court by means of the contempt proceedings seeks is an execution, which cannot meet with our approval."

The power of contempt cannot be utilised to execute decrees. In 2000 (4) SCC 400, the Supreme Court observed in para 7 "we may reiterate that the weapon of contempt is not to be used in abundance or mis-used. Normally, it cannot be used for execution of a decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for maintenance of the Court's dignity and majesty of law". In that case the initiation of contempt proceedings for failure to pay compensation as decreed in a land acquisition case was held to be wholly unjustified.

Where the Court directs consideration of a particular issue or passing of an order, once the order is passed a fresh cause of action arises and it is for the person aggrieved by that order to take appropriate proceedings challenging that order. The contempt petition cannot thereafter be pursued. The merits of that order passed pursuant to the directions of the Court cannot be gone into by the contempt Court (See 1996 (6) SCC 291; 2000 (10) SCC 285; 1998 (2) ALT 449; 1997 (2) ALT 818).

In 1996 (6) SCC 291, the parameters of the power of a contempt Court in regard to orders passed pursuant to a direction of the Court was explained. Following that judgment, the A.P. High Court in 1997 (2) ALT 818 (DB), summarised the legal position as follows :

> "In *J.S. Parihar v. Ganpat Duggar*, it is held by the Apex Court that once there is an order passed by the Government on the basis of directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The order may be wrong or may be right or may or may not be in conformity with the directions, but that would be a fresh cause of action for the aggrieved party to avail of the opportunity of assailing the same in appropriate proceedings. The same cannot be reviewed in a contempt proceeding."

The issue once again cropped up before the Supreme Court and that Court observed in 2000 (10) SCC 285 as follows :

> "The above will show that the High Court has directed the State Government to absorb the respondent against a suitable post either in a Government Department or in any public sector undertaking. This order, in our opinion, is wholly without jurisdiction and could not have been made in proceedings under the Contempt of Courts Act or under Article 215 of the Constitution.
>
> The High Court in the writ petition had issued a direction for the consideration of the respondent's representation by the State Government. This direction was carried out by the State Government which had considered and thereafter rejected the representation on merits. Instead of challenging that order in a fresh writ petition under Article 226, the respondent took recourse to contempt proceedings, which did not lie as the order had already been complied with by the State Government which had considered the representation and rejected it on merits."

Thus, when the order of the Court contemplates passing of an order and an order is actually passed pursuant thereto, it is not for the Court to examine on merits the question whether such order is correct or not or give other directions. The possible exception is that if the order passed is a *mala fide* order deliberately intended to evade the direction of the Court, perhaps the Court can treat it as non-compliance with its direction, but the Court should not be astute to detect *mala fides*. The aggrieved party can resort to the appropriate remedy challenging the order passed. By and large, contempt Courts should not seek to enlarge their jurisdiction by examining the merits. The jurisdiction is confined to judging whether the order has been obeyed or not.

In cases where contempt petitions are instituted for failure to obey the Court's direction or order, a question has arisen as to whether a contempt case is maintainable for non-fulfilment of the direction or command of a particular Court where the judgment of that Court has been carried in appeal. The appellate Court may either confirm the order or vary it or totally set it aside. In all these contingencies, it is the appellate order, which holds the field by virtue of the doctrine of merger as pointed out by the Supreme Court in AIR 1955 SC 633 at 648, paragraph 25. The original order gets merged in the appellate order and ceases to exist thereafter. Under the Contempt of Courts Act obviously there can be no-contempt for disobeying a non-existent order. In such a case, the remedy if any of the aggrieved litigant is to move the appellate Court for contempt of disobedience of the appellate order if actually there be any failure to obey that order. The Supreme Court in AIR 2000 SC 2587 (paragraphs 12,

41 and 43) explained when and under what circumstances the doctrine of merger would be operative. A Division Bench of the A.P. High Court accepted the proposition that after the order is carried in appeal and the appeal decided, a contempt case for failure of the original order is not maintainable. (See CC No.292 of 2001 judgment dated 31-7-2001).

The issue of limitation is also an important aspect of the Law of Contempt. At one time, a view existed that Section 20 of the Contempt of Courts Act, which prescribes a one year period of limitation was inapplicable to contempt cases instituted *suo motu* by the Court. The Supreme Court in the case reported in AIR 2001 SC 2763 = 2001 (5) ALD 51, held that the period of limitation applies even to contempt cases instituted *suo motu* under Article 215 of the Constitution or otherwise. It, however, clarified overruling the earlier adjudication reported in 2000 (3) SCC 171 and held that the contempt case should be deemed to be instituted on the very day it is filed into Court and not when the Court takes cognizance of it and issues notice to the alleged contemnor. In the case of *suo motu* contempt cases, the relevant date would be the date on which the Court decides to institute contempt proceedings. It is the duty of Court to apply the law of limitation in all cases, whether such plea has been raised or not. See 1993 (1) SCC 572 and 1995 (4) SCC 683. This principle applies to contempt cases also.

When contempt of Court is established, it is an invariable rule that punishment should be imposed. However, the Court has always abundant jurisdiction and power to extend its grace in appropriate cases for example when the contemnor comes forward with an apology. Certain principles have been evolved in regard to acceptance of apologies. An apology *per se* does not purge guilt. It is only an appeal for mercy. In AIR 1972 SC 1197, the Court observed "Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace apology is shorn of penitence. If apology is offered at a time when the contemnor finds that the Court is going to impose punishment it ceases to be an apology and it becomes an act of cringing cowardice". Acceptable apologies should be genuine expressions of penitence. At one time Courts took the view that an apology cannot co-exist with justification. This view requires modification in view of the explanation to Section 12(1) of the Contempt of Courts Act, which lays down that "an apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it *bona fide*". By and large Courts have been gracious enough to accept apologies and close contempt cases. At the same time, it cannot be gainsaid that a routine acceptance of an apology is also not desirable. In cases of serious contempt like maligning the Judges of the Court or the institution of justice, it may not be desirable to accept an apology. Too liberal an approach to the issue of contempt of Court by kind Judges may defeat the very object and purpose of the law of Contempt.

Finally Judges should bear in mind that contempt jurisdiction is confined to judging whether the alleged contemnor is guilty of contempt of Court and if so what punishment should be meted out to him. In many cases, Judges are exercising powers under Article 226 while dealing with cases of contempt. The original orders are sought to be executed by issuance of fresh directions. This is impermissible. The Contempt of Courts Act is a penal law and its ambit should not be enlarged.
