conscience of the litigants who lost their cause and prevent them from moving to appellate Courts. Apart from this, it gives a signal to the whole world that India became developed country and its citizens are living in peace by getting their grievances redressed through Judiciary.

The Indian Judiciary is doing its best to solve the said problem. It is fixing targets on the judicial officers, which targets are more than their actual power. It is imbibing training and guidance to its officers by holding workshops and conferences periodically to check the performance of its officers and thereby it is delivering its best goods. Indian Judiciary is the most institutionalized institution undoubtedly with large pendency of cases. Apart from working on its regular side, it is working hard on Lok Adalats, Legal Literacy camps and mediations. It is only the Judiciary and none other which is greatly concerned about itself and its stake holders. It is very painful to say that no other wing of the country is concerned about it.

All Political parties speak about religion, castes, poverty, *etc.*, to get into absolute power. But no political party includes the concerns of the litigants in their election manifesto. No other concerned like groups or organizations of the citizens are concerned about the problems of the litigants. The Judiciary alone is fighting itself for the welfare of the litigants and for its existence in terms of true democracy.

The Chief Justice of India Justice *T.S. Thakur*, being the head of the Indian Judiciary, felt whole-heartedly the true grievances of the institution and its stake holders including the litigants and expressed his concern emotionally and his breaking down is not of his but it is the cosmic concern of the whole nation. Let us now hope at least from now onwards the legislature takes its steps towards the democratic existence of Judiciary, as reacted and promised by the Prime Minister Mr. *Narendra Modi* in the conference. The reply of Mr. Prime Minister in saying that better late than never we all will positively come up with the best solution gives a positive hope that definitely Indian Judiciary under the leadership of his Lordship Justice *Thakur* would reach to the expectations of common man of the country.

1. *Syed Kaleemulla*,
   Junior Civil Judge,
   Tadipatri, Anantapuramu District,
   Andhra Pradesh.

2. *B. Laxmi Narayana*,
   Principal Junior Civil Judge,
   Vishakapatnam, Andhra Pradesh.

3. *D. Venkatesh,*
   Junior Civil Judge,
   Medak, Medak District,
   Telangana State.

The trinity of judicial officers is serving the A.P. Judiciary and Telangana Judiciary.

WHETHER THE JUDGES ARE IMMUNE FROM THE CONTEMPT OF THE COURT PROCEEDINGS? WHAT THE LAW SAYS?

By

–KAMALAKARA RAO GATTUPALLI, B.A.L., LL.B.
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To suit the present issue properly at the outset, it is germane to understand what is the contempt of the Court? The literal meaning for the contempt of the Court is, the crime of refusing to obey an order made by a Court, not showing respect for a Court or Judge. The law relating to contempt of the Court proceedings is governed by the

Contempt of Courts Act, 1971. In legal sense, contempt of the Court is of two kinds *viz*,. 1. Civil Contempt and 2. Criminal Contempt.

Willful disobedience to any judgment, decree, direction, order, writ or other process of a Court or willful breach of an undertaking given to a Court of law in other words failure to comply with the direction of the Court of law or willful breach of undertaking given to Court. This is known as civil contempt.

Let us see what the criminal contempt is: The publication (whereby words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which—

(a) Scandalises or tends to scandalise or lowers or tends to lower the authority of, any Courts, or

(b) Prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding, or

(c) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

Instances of criminal contempt: 1) Scandalising Court or Judge, undermining public confidence in administration of justice and bringing or tending to bring the Court into disrepute or disrespect tantamount to criminal contempt. 2) Advocate making libelous allegations against sitting judges of High Court amounts to interference with administration of justice. (AIR 1992 SC 904, 1992 Cr. LJ 1269). 3) Criticism of Court when transgressess the limits of fair and bona fide criticism amounts to contempt of Court. (AIR 1953 SC 75).

Complaint against presiding officers of subordinate Courts when not contempt:

A person shall not be guilty of contempt of Court in respect of any statement made by him in good faith concerning the presiding officer of any subordinate Court to — a) any other subordinate Court, or b) the High Court, to which it is subordinate. (Section 3 of the Contempt of Courts Act, 1971)

Whether the Advocates alone are liable for the contempt of the Court proceedings, the judicial officers and the Courts are immune from the contempt of the Court proceedings?

Let us discuss what are the rights and obligations of the Advocates while addressing the Court and conducting the case.

Section 49(1)(C) of the Advocates Act, 1961 speaks about the standards of professional conduct and etiquette/decorum to be observed by Advocates—An Advocate shall, at all times, comfort himself in a manner befitting his status as an officer of the Court, a privileged member of the community and a gentleman. An Advocate shall, during the presentation of his case and while otherwise acting before a Court, conduct himself with dignity and self respect. An Advocate shall fearlessly uphold the interests of his client. He shall not be servile and whenever there is proper ground for serious complaint against the judicial officer, it shall be his right and duty to submit his grievance to proper authorities. And according to the Advocates Act, 1961 an Advocate is also officer of the Court, it is also the obligation of the Advocate to enlighten the Court/ judicial officer whenever his assistance/ knowledge is required in rendering justice. But unfortunately, not observing the provisions of the Advocates Act, 1961 the most of the judicial officers are presuming that the Advocates are subordinates to the judicial officers. Some of the grounds for prevalence of this type of tendency among judicial officers are *1. Present Recruiting scenario adopted by the Hon'ble High Courts for filling up the judicial offices*. According to the present recruiting scenario, a fresh law graduate, who enrolled as an Advocate can become a judicial officer without having minimum standing at the BAR, for instance if the Advocate without having minimum standing at the BAR occupies a judicial office as a judge, he does not know how to interact with the Advocates (Does

not know how to maintain the BAR and BENCH relations) ministerial staff of the Court and the litigant public.

2. Lack of professional proficiency among the Advocates:

Lack of competency among the legal practitioners, if the advocates are not well equipped with the law, they may applause the judicial officers for getting favourable order or judgment (Advocates' presumption), which may also leads to superiority complex among the Judges. It is quite common in Subordinate Courts/Trial Courts that the Advocates are often facing with the "contempt of Court proceedings" by the judicial officers for the petty issues.

The Advocates alone are liable for the contempt of the Court proceedings and the Judges are exempted from the contempt of the Court proceedings? What the law says?

Section 16 of the Contempt of Courts Act, 1971 reads as infra:

Subject to the provisions of any law for the time being in force, a Judge, Magistrate, or other person acting judicially shall also be liable for contempt of his own Court or of any other Court in the same manner as any other individual is liable and the provisions of this Contempt of Courts Act shall, so far as may be, apply accordingly.

Nothing in this section shall apply to any observations or remarks made by a Judge, Magistrate or other person acting judicially, regarding a subordinate Court in an appeal or revision pending before such Judge, Magistrate or the person against the order or judgment of the subordinate Court.

For instance, if the judicial officer, presiding the Court, after completion of administration of oath to the witness, humorously told to the witness that "now you can say anything" is it amounting to contempt of Court? Certainly it is amounting to contempt of the Court since the utterance may cause loss of public trust/credibility over the judiciary/Courts of law. It was held that the High Court can take action for contempt of subordinate Court for defamation of Judge, though the aggrieved officer may have remedies, such as, Section 499 of Indian Penal Code (AIR 1952 SC 149).

Whether the subordinate Courts are empowered to take the cognizance for the offence of the contempt of the Court? According to Section 15 of the Contempt of Courts Act, 1971 the subordinate Courts have no such power to take the cognizance for the offence of contempt of Court.

In the case of a criminal contempt, other than a contempt referred to in Section 14 (contempt committed in the presence or hearing before the Supreme Court or a High Court), the Supreme Court or the High Court may take action on it's own motion or on a motion made by the Advocate General, or any other person, with the consent in writing of the Advocate General.

Section 15(2), Contempt of Courts Act bars the subordinate Courts for taking cognizance for the offence of criminal contempt. In the case of any criminal contempt of a subordinate Court, the High Court may take action on a reference made to it by the subordinate Court on a motion made by the Advocate General or, in relation to a Union Territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf. Furthermore every motion or reference pertains to the offence of criminal contempt, made to the High Court shall specify the contempt of which the person charged is alleged to be guilty.

Power of High Court to punish contempts of subordinate Courts: As per Section 10 of the Contempts of Courts Act, 1971 every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of Courts subordinate to it as it has and exercises in respect of contempts of itself, provided that no High Court shall take cognizance of a

contempt alleged to have been committed in respect of a Courts subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

In the light of the statutory provisions as discussed supra we can understand that the Judges and subordinate Courts are equally liable for the offence of contempt of Court like other individual persons/civilians/general public and they are not exempted. And the subordinate Courts have no powers to take cognizance for the offence of contempt of Court and the subordinate Courts can only refer the matter to the High Court to take the cognizance.

Judiciary means not mere judicial officers which includes advocates too. BENCH and BAR are two wheels to the chariot.

Desirability of effective inspection of subordinate Courts:

Inspection of subordinate Courts by the Hon'ble High Court is of vital importance for satisfactory judicial system. Inspection to be effective it ought to be well regulated. Necessity of devising a proper and uniform system of inspection of subordinate Courts is desirable.

I may conclude this article with my humble submission/appeal/request to the Hon'ble High Court for the State of Andhra Pradesh and for the State of Telangana to put minimum standing at the BAR, for the Advocates to appoint as judicial officers thereby we may expect some good environment in the subordinate Courts.

(Views expressed are personal, not intended to criticise any Court of law/judicial officer or any advocate).

DAUGHTER/WOMAN AS KARTA OF HINDU UNDIVIDED FAMILY – CONSTITUTIONAL AND LEGAL PERSPECTIVES – A CRITICAL STUDY

By

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The recent decision of the Delhi High Court in *Sujatha Sarma v. Manu Gupta*[1], (hereinafter referred to as the case) has settled the position as to the right of a daughter-coparcener becoming Karta (Manager) of a Hindu Undivided Family (HUF). The rule of primogeniture, which preferred eldest son as Karta, applied for centuries in determining succession to the position of Karta stands modified accommodating the eldest daughter of the deceased Karta. The Delhi High Court in unequivocal terms has held that a female-coparcener can be the Karta. The Court held that "the impediment which prevented a female member of a HUF from becoming its Karta was that she did not possess the necessary qualification of co-parcenership. Section 6 of the Hindu Succession Act is a socially beneficial legislation; it gives equal rights of inheritance to Hindu males and females. Its objective is to recognize the rights of female Hindus as co-parceners and to enhance their right to equality apropos succession. Therefore, Courts would be extremely vigilant apropos any endeavor to curtail or fetter the statutory guarantee of enhancement of their rights. Now that this disqualification has been removed by the 2005 Amendment, there is no reason why Hindu Women should be denied the position of a Karta. If a male member of an HUF, by virtue of his being the first born eldest, can be a Karta, so can be a female member. The Court finds no restriction in the law preventing the eldest female co-parcener of an HUF, from being its Karta. The plaintiff's father's right in the HUF did not dissipate but was inherited by

1. Delhi High Court site