Contempt of Courts Act, 1971

1. **Module 1 – Preamble / Constitutional Aspect**
    - **1.1.** Origin, History of Contempt of Courts Act, 1971
        - 1.1.1. Overview of the Act
    - **1.2.** Powers / Objects of Courts under the Constitution of India
        - 1.2.1. Article 129
        - 1.2.2. Article 215
    - **1.3.** Interpretation of the term 'Contempt of Court' and Relevant terminology

      Important Definitions and Provisions
        - 1.3.1. Civil Contempt
        - 1.3.2. Criminal Contempt
    - **1.4.** Elements that establish Contempt
    - **1.5.** Samples, Case Laws and Case Studies
    - **1.6.** Module Round-up
    - **1.7.** Quiz 1
2. **Module 2 – Punishment for Contempt of Court**
    - **2.1.** Punishment for Contempt of court
        - 2.1.1. Contempt not punishable in certain Cases
        - 2.1.2. No court shall impose a sentence under this Act for contempt of court unless it is satisfied that the contempt is of such nature that substantially interfere, or tends substantially to interfere with the due course of justice;
        - 2.1.3. The court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bonafide;
    - **2.2.** Samples, Case Laws and Case Studies

2.3. Module Round-up

2.4. Quiz 2

3. **Module 3 - Salient Features and Important Provisions of the Act.**

3.1. Procedure where contempt is in the face of the Supreme Court or a High Court

3.2. Power of High Court to try offences committed or offenders found outside jurisdiction

3.3. Contempt by judge, magistrate or other person acting judicially

3.4. Procedure after cognizance

3.5. Appeals

3.6. Limitation for actions of contempt

3.7. Act not to apply to Nyaya Panchayats or other village courts

3.8. Act not to apply to Nyaya Panchayats or other village courts

3.9. Cases Laws

3.10. Quiz 4

4. Module 4 – When does the Acts / Actions does not Constitute an Act of Contempt

4.1. Publication of information relating to proceeding in chambers or in camera not contempt except in certain cases

4.1.1. Exemptions

4.2. Innocent Publication and Distribution of matter of Contempt

4.2.1. Publication / Distribution during Proceedings Pending before Court

4.2.2. Exemption

4.3. Act not to apply to Nyaya Panchayats or other village courts

4.3.1. Act to be in addition to, and not in derogation of, other laws relating to contempt

4.3.2. Process for proceedings – Flow charts/ Smart Art

4.4. Tips for Victims/Complainants

4.5. Landmark cases/ Situation based case studies and Samples

4.6. Module Round-up

4.7. Quiz 3

5. Module 5 – Conclusion

5.1. Critical analysis

5.2. Overview of how not to commit contempt of Court

5.3. Frequently asked questions

1. Module 1 – Preamble / Constitutional Aspect

1.1 Origin, History of Contempt of Courts Act, 1971

To understand the law pertaining to "Contempt of Court", one needs to refurbish its history regarding the great nation of India, which means dwelling into the times of ancient India. One needs to understand that the old laws were based on certain feudal principles wherein the king was supreme and the people were its subjects/servants. The people could not criticise the king who held the position of a master. As a matter of fact, people were punished for criticising the king. In many kingdoms, the kings used to decide the cases (Mughal Empire), but as a king, came many added responsibilities such as taking up cases related to administration, financial and welfare of its people. Thus, the Kings delegated its duties to people known as judges. Being delegated from the King himself, the judges bore the same dignity, pompousness, aura as the king himself. The aura and the pompousness was a result of the work they were expected to perform, such that, to maintain obedience amongst the people, similar, to that expected from the king. So, to criticise the judge, was like criticising the king, which is why it was punishable. Thus, it would be correct to say all state authorities in feudal times were delegates of the king.

However, in a democracy this relationship stands reversed, earlier the kings were supreme and its people were subordinates, whereas in a Democracy the people are supreme and all other state authorities are servants of the people whether it is the Chief Justice, Prime Minister, President or be it the Judges. After understanding the change in position one needs, to observe that "being disrespectful or disobedient towards a court of law in a form of behaviour that opposes law or defies authority of a court of law, justice and dignity of the court" is the only contempt that exist in modern era unlike the feudal times. Thus, the Origin of the concept of Contempt can be traced into Ancient India.

The other origin, comes from the British Era. The origin of the law of contempt can be traced from the English law. Britishers who were pioneers at making laws, had from the existence of ancient times, in England understood the importance of a court and the judges presiding in it. Thus, the English had come about with the concept of contempt of court, which invariably led to the imposition of their law in all the princely states, provinces and countries under the British regime. India being no different. In England, superior courts of records have from early times, exercised the power to commit for contempt persons who scandalised the court or the judges. The right of the Indian High Courts to punish for contempt, was in the first instance recognised by the judicial committee of the Privy Council which observed that the offence of the contempt of court and the powers of the High Courts to punish it, are the same in such courts as in the Supreme Court in England. It will be observed from the Historical Conduct of the High Courts of Calcutta, Madras and Bombay, that they had inherent powers to punish for contempt. It had been judicially accepted throughout India that the jurisdiction was a special one inherent in the very nature of the court. The statute on the law of contempt can be traced to have been first enacted in the year 1926. It was enacted to define and limit the powers of certain courts in punishing contempt of courts. During the existence of 1926 enactment many States in India had their corresponding enactments dealing with contempt. State enactments of the Indian States and the Contempt of Court Act, 1926 were replaced by the Contempt of Court Act, 1952. It was observed that there was a lot of uncertainty and undefined parameters in the aforesaid law, so an attempt was made for the first time, for resolving and getting about a uniform law meeting the needs of the modern times in the year 1960. An attempt was made in April, 1960 to introduce in the Lok Sabha a bill to consolidate and amend the law relating to contempt of court. On an examination of the bill, Government appears to have felt that the law relating to contempt of court was uncertain, undefined and unsatisfactory and

considering the constitutional changes that have taken place in the country. It was thus advisable to have entire law on the subject scrutinised by a special committee. In pursuance to that decision a Special Committee was set up on 29th July 1961, which submitted its report on 28th February 1963.On the recommendation of the special Committee, the Contempt of Courts Bill was introduced in the Parliament. This Committee was headed by the then Additional Solicitor General of India namely Shri.S.H.Sanyal who with his team had made a comprehensive examination of the law and problems relating to the said law. The committee had studied and made recommendation after studying laws in various foreign countries. The committee while studying the subject kept in mind the basic principles of freedom of Speech, the need for safeguarding the status and dignity of Courts, and the need for administration of justice. The recommendations of the Committee were accepted by the Government after considering the views expressed on those recommendations by the State Government, Union Territory Administrations, the Supreme Court, the High Courts and Judicial Commissioners. The Bill sought to give effect to the accepted recommendations of the Sanyal Committee. The bill was published for the first time for Public in the year 1968 in the gazette of India wherein the detailed notes on the provisions were entailed. Thereafter, there has been no looking back.

In a gist the Contempt of Courts Act, 1971 was enacted, as per the Preamble with a view "to define and limit the powers of certain courts and to regulate their procedure in relation thereto." It provides for action being taken in relation to civil as well as criminal contempt. On analysing various sections of this Act in any great detail it will be noticed that section 3 to 7 of the Contempt of Courts Act, 1971 provides for what is not to be regarded as contempt. Section 8 specifies that nothing contained in the act shall be construed as implying that any other valid defence in any proceedings for contempt of Court ceases to be available merely by reason of the provisions of the 1971 Act. Section 9 makes it clear

that the Act will not be implied as enlarging the scope of contempt. Section 10 contains the power of the High Court to punish contempt of subordinate courts while section 12 specifies punishment which can be imposed of courts and other related matters. Procedure to be followed where contempt in the face of Supreme Court or a High Court is provided in Section 14 while cognizance of criminal contempt in other cases is dealt with section 17 which provides for procedure after cognizance has been taken under Section 15. A decision of the High Court to punish for contempt is made appealable under Section 19 of the Act. Remaining provisions of the Act deal with Applicability and laws existing in derogation of the Act.

1.2 Powers / Objects of Courts under the Constitution of India

1.2.1: Article 129

The Union Chapter No. V of the Constitution of India states that Supreme Court to be a court of record-The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. If one reads Articles 129 and 142 of the Constitution, it will be observed that Supreme Court has been vested with power to punish for contempt of Court including the power to punish for contempt of itself. The power of the Supreme Court being the Courts of Record as embodies under Article.129 cannot be trammelled by any ordinary legislation including the provisions of contempt of Courts Act. Their inherent power is elastic, unfettered and not subject to any limit. The power conferred upon the Supreme court under Article 129 of the Constitution is an inherent power and the jurisdiction vested is a special one not derived from any other statute but derived only from Article.129 and therefore the constitutionally vested right cannot be either abridged by any legislation or abrogated or cut down. Nor can they be controlled or limited by any statute or by any provision of the Code of Criminal Procedure

or any rules. The caution however, has to be observed, in exercising the inherent power by summary procedure, such that, the power should be used sparingly, and the procedure to be followed should be fair. Further the contemnor should be made aware of the charges against him and given a reasonable opportunity to defend himself. Pritam Pal v. High Court of Madhya Pradesh, Jabalpur through Registrar, AIR 1992 SC 904.

1.2.2: Article 215

Similarly, Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. The powers entailed in this article are similar to that entailed in Article 129 of the Constitution of India. However, it is imperative to note and observe that this Article only empowers the High Courts to hold proceedings of contempt against its own courts and courts subordinate to it.

In the case of vitusah oberoi and court of its own motion criminal appeal no.1234 of 2007: the Hon'ble Supreme Court had held 'Simple logic why Article 215 does not empower HC to punish for contempt of SC'. The bench also said that its power to punish for its contempt has been in no uncertain terms recognised by Article 129 of the Constitution. "If Supreme Court does not, despite the availability of the power vested in it, invoke the same to punish for its contempt, there is no question of a Court subordinate to the Supreme Court doing so," the bench said. The Hon'ble Supreme Court had concluded upon this point when Delhi High court had wrongly held Mid- Day City Editor M K Tayal, Publisher Vitusha Oberoi, Resident Editor S K Akhtar, and Cartoonist Irfan Khan, guilty of Contempt for creating a cartoon portraying former CJI Justice Sabharwal benefitting a partnership business of his son's estate by some orders passed by a bench headed by him.

1.3 Interpretation of the term 'Contempt of Court' and Relevant Terminology

Under the Indian law, the term Contempt of Court means Civil Contempt or Criminal Contempt. To determine whether there is contempt of Court or not, is to see whether the act complained of was calculated to obstruct or if it had any intrinsic tendency to interfere with the course of justice and the due administration of law. The idea is to see and observe whether mens rea as such is present. Mens rea is not an indispensable ingredient of the offence of contempt, the courts are loath to punish a contemnor, if the act or omission complained of, was not wilful. Further, the intention with which this law was passed was to ensure that the stream of justice has been kept clear and that no one is at liberty to despoil or plunder its purity. Any one aiming to do so, must be dealt sternly so that the message percolates loud and clear that no one can be allowed to undermine the dignity of the court and interfere with the due course judicial proceedings or the administration of justice.

Rightness or wrongness of an order cannot be urged in a contempt proceeding. The basic act of flouting an order of the court would render the party liable for contempt. To bring upon a charge of contempt of court for disobeying orders of the courts, those who assert that the alleged contemnors had knowledge of the order must prove this fact beyond reasonable doubt. That in case of doubt, the benefit ought to go to the person charged. Contempt of court means wilful act or omission which is done voluntarily and with specific intent to do something that law forbids or with specific intent fail to do something the law requires to be done with bad purpose either to disobey or to disregard the law. According to the court, it signified the act done with evil intent or with bad motive for the purpose. It is also observed that the act or omission must be judged having regard to the facts and circumstances of each case. For holding a person to have committed contempt, it must be shown that there was wilful disobedience of the judgement or order of the court.

Indian Courts have further observed that negligence and carelessness may also amount to contempt in a lot of cases. If an order passed by a competent Court is clear and unambiguous and not capable of more than one interpretation, disobedience or breach of such order would amount to contempt of Court. There can be no laxity in such a situation because otherwise the court would become the subject of mockery. Thus, Misunderstanding or own understanding of a courts order would not be permissible as a valid defence and thus the contemnor would be liable.

Thus, one could say Contempt is a disorderly conduct of a contemnor causing serious damage to the institution of justice administration. Such conduct, with reference to its adverse effects and consequences, can be discernibly classified into two categories one which has transient effect on the system and / or the person concerned is likely to wither away by the passage of time while the other causes permanent damage to the institution of justice.

1.3.1 Civil Contempt

The Bare Act has defined Civil Contempt as an act where a person is wilfully disobedient to a judgement, decree, direction, order, writ or other process of a court or one who commits a wilful breach of an undertaking given to a court. It is, therefore, clear that flouting of the directions of the court amounts to an ex facie case of contempt. Thus, any court whose orders are flouted may exercise its inherent powers of contempt law in the best interest of justice.

On keen observance of the definition of the Term Civil Contempt, it will be observed that the Legislature had specifically used the word ‘Wilful’ in section 2(b) of the Act. Wilful means an act which is done voluntarily and intentionally with the specific intent to do

something the law forbids or with the specific intent to fail to do something the law requires to be done, that is, to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. The expression "wilful" excludes casual, accidental, bonafide or unintentional acts or genuine inability. It is to be noted that a wilful act does not encompass accidental, involuntary, or negligence. It must be intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing therefrom. The expression wilful means an act done with a bad purpose, with an evil motive. "Wilful" is a word of familiar use in every branch of law, and although in some branches of law it may have a special meaning, it generally, as used in courts of law, implies nothing blameable, but merely that the person of whose action or default the expression is used is a free agent, and that what had been done arises from spontaneous action of will. It amounts to nothing more than this, that he knows what he is doing, and intends to do, as a free agent. In Re Young and Harston 31Ch.D.174. It cannot necessarily connote blame, although the word is more commonly used as a bad conduct than in a good sense. In a nutshell, whatever is intentional is wilful.

So, one might be intrigued, whether a mere Non-payment of a money decree will amount to contempt of court. The answer is no, it will not amount to contempt of court and decree holder should execute decree as per the provisions of CPC. The mere fact, that there exists, ample provisions under the Civil Procedure Code to protect the interest of a decree holder which makes a contempt application non - maintainable under the current scenario.

1.3.2 Criminal Contempt

Criminal Contempt has two categories, one is publication of any matter which scandalizes or tends to scandalize the authority of court. Second is the doing of any act whatsoever which scandalizes or tends to scandalize the authority of any court. An act is not a criminal

contempt merely because there was no publication, such an act would automatically fall within the purview of the other category because the latter consists of "the doing of any other act whatsoever." The latter category is thus a residuary category so wide enough from which no act of criminal contempt can possibly escape. The common denominator for both, is that, it scandalizes or tends to scandalize or lowers or tends to lower the authority of, any court; or of any court. The Supreme Court of India had noted that all the three clauses of Section 2(c) of the Contempt of Courts Act,1971 that define 'criminal contempt', define it, in terms of obstruction of or interference with the administration of justice. It is further noted, that broadly the act accepts that proceedings in contempt are always with reference to obstruction of justice. With reference to the three sub- clauses of section 2(c) of the Act, the Supreme Court observed that sub clause (i) and (ii) deal with obstruction and interference respectively in the particular way described therein, while sub - clause (iii) is a residuary provision by which any other type of obstruction or interference with the administration of justice is regarded as a criminal contempt. While it is accepted that every abuse of the process of the court may not necessarily amount to contempt of Court. Abuse of the process of the court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice we must say, is a Contempt of Court. It may be that certain minor abuses of the process of court may be suitably dealt with as between parties, by striking out pleadings under the provisions of Order 6 Rule 16 or in some other manner. But, on the other hand, it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The public have an interest, an abiding and real interest, and a vital stake in the effective and orderly administration of justice, because unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the

duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the court against insult or injury as the expression "Contempt of Court" may seem to suggest but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage. The law should not be seen to sit by limby, while those who defy it go free and those who seek its protection loose hope. The court is burdened with the duty of protecting the interest of the community in due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not just to protect the Court against insult or injury, but, to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with. Many may ask whether criticism of a judge amounts to contempt. The answer is no. Criticizing a judgement is no offence. However, there is a thin line distinguishing between a constructive criticism of a judges work and a hostile criticism of judges as judges or judiciary. Any personal attack upon a judge about the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the judge as a judge brings the court or judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature of a judge calculated to lower the dignity of the court would destroy undermine or tend to undermine public confidence in the administration of justice. It would, therefore, be scandalizing the judge as a judge, in other words, imputing partiality, corruption, bias, improper motives to a judge is scandalization of the court and would be contempt of the court. When the contemnor challenges the authority of the court, he interferes with the performance of judge's office or judicial process or interferes with the performance of duties of judge's office or judicial process or administration of justice or generation or production of

tendency bringing the judge or judiciary into contempt. Section 2(c) of the act, therefore, defines criminal contempt in wider articulation that any publication, whether by words, spoken or written or by signs, or by visible representations, or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to obstruct, the administration of justice in any other manner, is a criminal contempt. Therefore, a tendency to scandalize the court or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a part of criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of a court is a criminal contempt. Any conduct of the contemnor which has a tendency or produces a tendency to bring the judge or court into contempt or tends to lower the authority of the court would also be contempt, of the court. Scandalizing the court is a convenient way of describing a publication which, although it does not relate to any specific case either past or pending or any specific judge, is a scurrilous attack on the judiciary as a whole,which is calculated to undermine the authority of the courts and public confidence in the administration of justice. Contempt of Court is to keep the blaze of glory around the judiciary and to deter people from attempting to render justice contemptible in the eyes of the public. A libel upon a court is a reflection upon sovereign people themselves. The contemnor conveys to the people that the administration of justice is weal or in corrupt hands. The fountain of justice is tainted. It is true that in an indictable offence, generally mens rea, is an essential ingredient and requires to be proved for convicting the offender but for a criminal contempt as defined in section 2(c) any enumerated or any other act apart, to create disaffection, disbelief in the efficiency of judicial dispensation or tendency to obstruct administration of justice or tendency to lower the authority or majesty of law by any act of the parties constitutes criminal contempt.

Thereby it excludes the proof of men rea. What is relevant is that the offending or afferent act produces interference with or tendency to interfere with the natural course of justice.

The other relevant Terminology in the act would include the definition of "High Court" which means to include the High Court for a State or Union Territory, and includes the Court of the Judicial Commissioner in any Union Territory.

1.4. Elements that establish Contempt

Courts have believed it is rather hazardous to impose sentence for contempt on authorities in exercise of contempt jurisdiction on mere probabilities. Thus, it is the duty of every court to see on record whether the act of contempt was done in a wilful manner.

Disobedience of the order of the court must be "wilful" and the proof of mere disobedience is not sufficient. Where there is no deliberate flouting of the orders of the court but a mere misinterpretation of the executive instruction, it would not be a case of Civil Contempt.

From the above analysis of the two types of contempt, it will be observed that Contempt jurisdiction is a special jurisdiction and the same ought to be practised by authorised courts, only in cases where the conduct of the contemnor tends to make a substantial interference with the course of justice. Thus, to sum it up, the elements that establish contempt include wilful disobedience with the objective to disrupt the path of justice.

1.5 Case Laws Samples, Case Laws and Case Studies

a. **Everest Coal Company Ltd vs. State of Bihar, 1978 (1) SCC 12 :** Act of Contempt Alleged –(i) Unauthorisedly dealing with property custodial egis and (ii) violating orders of Court. There is and can be no doubt that either of these two acts

if established would tantamount to contempt. Property in custodial egis means that the property is kept in possession and under the protection of Court. Monies deposited in Court by way of security are held by the Court in Custodia Legis to the Credit of the party who is ultimately successful. Any other person dealing with the account so deposited does so at his peril and "any litigative disturbance of the Courts possession without its permission amounts to contempt of its authority".

b. R.N Dey and others v. Bhagya bati Pramanik and others, (2000) 4 SCC 400:

The weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of the 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. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between contemnor and the court. Further, it has been held that, a person who does not take steps to execute the decree/order in accordance with the procedure prescribed by law, should not be encouraged to invoke the contempt jurisdiction of the court for non-satisfaction of the decree or order.

1.6 Module Round-up

This module seems to be dealing with the objective of this Act, which was to introduce the law relating to contempt of courts, which was somewhat uncertain, undefined and unsatisfactory until 1971. After studying this module, one will observe that any action on part of any person who is a (Contemnor), wherein such act has the tendency to interfere with or obstruct the due course of justice has to be

dealt with sternly and firmly. Thus no one can make scandalous or unwarranted moves against any legal authority or direction by legal authority discharging their functions for the betterment of society.

1.6 Quiz 1

1. The law of Contempt of Courts was a scrutinized by a special Committee in the year 1961 Who was the Committee headed by?
    a. Justice Venugopal
    b. Shri. S.H. Sanyal (Additional Solicitor General of India)
    c. Jon Quincy Adams
    d. Justice Lodha Committee
2. Under what articles of the Constitution of India is the Supreme Court vested with the Power to Punish for Contempt of Courts?
    a. Article 129
    b. Article 125
    c. Article 219
    d. Article 215
3. What was the principle laid down in the Case of Vitusah Oberoi and court of its own motion criminal appeal no.1234 of 2007?
    a. “If Supreme Court despite the availability of the power vested in it, doesn’t invoke the same to punish for its contempt, subordinate courts may invoke the same for the Supreme Court of Indai.”

b. “If Supreme Court does not, despite the availability of the power vested in it, invoke the same to punish for its contempt, there is no question of a Court subordinate to the Supreme Court doing so,”
c. Supreme Court may seek help of lower courts to take action of contempt on its behalf.
d. All of the above.

4. Can a plea of misunderstanding or own understanding of a courts be permissible as a valid defence for a contemnor in cases of civil contempt. If not, why not and under what circumstances?
    a. Misunderstanding or own understanding of a courts order would not be permissible as a valid defense and thus the contemnor would be liable.
    b. Yes, it could be a valid defense
    c. No, not a valid defense
    d. If an order passed by a competent Court is not clear and ambiguous and is capable of more than one interpretation, disobedience or breach of such order would not amount to contempt of Court.
    e. C & D.
5. Whether a mere Non-payment of a money decree will amount to contempt of court. If not, why so?
    a. Non-payment of a money decree will amount to contempt of court.
    b. It will not amount to contempt of court and decree holder should execute decree as per the provisions of CPC.
    c. Both A and B.
    d. None of the Above

Module 2 – Punishment for Contempt of Court

2.1 Punishment for Contempt of court

The clause 12 of the act is self – explanatory, when a contemnor has intentionally and deliberately violated the orders of the court. And the orders were unambiguous and unequivocal having one and only one meaning. Then the Wilfull and deliberate disobedience of the order of any court cannot be said to be bonafide, honest or in good faith. If it is so, the action calls for serious view to ensure proper administration of justice. On many occasion the so-called apology may be considered by the court as an act of penitence, contrition or regret. It may be perceived by the courts as a "tactical move" with a view to ward off the court. And thus, courts are on many occasions of the view that allowing acceptance of apology of contemnors under such circumstance would be gross misuse of the law. Thus, on many occasions while determining the quantum of punishment Courts indirectly also delves into the fact whether the apology tendered by the contemnor is supported by factors such as unconditional terms and conditions, whether the same is supported by a bona fide application. And where the court finds that the application for the apology tendered is a sheer after thought and such apology is neither sincere nor substantial, then the courts is free to order for immediate custody of the contemnor and the same may be sentenced to jail on the above terms and conditions. A full bench of the Delhi high Court in the matter of State v. Bhavani Singh ILR(1968) Delhi 1 observed "In order to be a mitigating factor, the apology must be tendered at the earliest opportunity and it must be outpouring of a penitent heart moved by a genuine feeling of remorse and overcome by sense of one's guilt. It should not be merely an apology for an apology for an apology or a convenient device to escape punishment. Belated apology as an afterthought thus serves no purpose. It must be indicative of repentant regret and contrition tendered at the earliest

opportunity, exhibiting realization of wrong having been done by the contemnor and it must be free and frank expressions of his feelings."

A bearing reading of the clause will convey that the legislators intended to convey special powers to the Courts. A close and carful interpretation of the extracted section leaves no room for doubt that the legislature intended that a sentence of fine alone should be imposed under normal circumstances. The statute, however, confers special power on the court to pass a sentence of imprisonment if it thinks that ends of justice so require. Thus, before a court passes the extreme sentence of imprisonment, it must give special reason after proper application of its mind that a sentence for imprisonment alone is called in for a particular situation. Thus, the sentence of imprisonment is an exception while sentence is the rule. It is true that freedom of speech and expression by Article 19(1)(a) of the Constitution is one of the most precious liberties in any democracy. But equally important is the maintenance of respect for judicial independence which alone would protect life, liberty and reputation of the citizen. So, the nation's interest requires that criticism of judiciary must be measured, strictly, rationally, in a sober manner and should proceed from highest motives without being colored by partisan spirit or pressure tactics or an intimidatory attitude. The court must, therefore, harmonize constitutional values of free criticism and the need for a fearless curial process and its presiding functionary, the judge. If the freedom of expression sub serves public interest in reasonable measure, public justice cannot gag it or manacle it; but if the court considers the attack on the judge or Judges scurrilous offensive or intimidatory or malicious, beyond consolable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of rule of law by fouling its source and stream.

2.1.1 Contempt not punishable in certain Cases

Holding a dharna (Protest) in front of the court itself may not amount to contempt but if by holding a dharna access to the courts is disrupted and the officers of the court and members of the public are not allowed free ingress and egress, or the proceedings in court are otherwise hindered, disrupted or hampered, the dharna may amount to contempt because the administration of justice would be obstructed. Thus, it is facts and circumstances of each case will determine whether the other person is guilty of contempt or not.

2.1.2 No court shall impose a sentence under this Act for contempt of court unless it is satisfied that the contempt is of such nature that substantially interfere, or tends substantially to interfere with the due course of justice;

In the case of Rajesh Kumar Singh vs High Court of Judicature of Madhya Appeal (crl.) 321 of 2001: The supreme court clearly seems to be concerned over growing popular perception about the judges being over-sensitive in contempt matters, the Supreme Court had released a note of caution that misuse of contempt jurisdiction could erode the public confidence in the judiciary. Justice R V Raveendran said: "It is possible that it is done to uphold the majesty of courts, and to command respect. But judges, like everyone else, will have to earn respect. They cannot demand respect by demonstration of 'power' (of contempt)." Further it is observed that a bench at the US Supreme Court had held "the power of Judiciary lies, not in deciding cases, nor in imposing sentences, nor in punishing for contempt, but in the trust, confidence and faith of the common man." In a matter before the Madhya Pradesh High Court, the Court had sentenced a police officer to seven-day imprisonment and a imposed a fine of Rs 2,000 in a contempt case which was set aside on the ground that the alleged act of contempt was done with a bona fide intent and in the course of discharge of his duties and while complying with his superior's directions. Thus, it will be observed even the Supreme Court of India seems to be repeatedly cautioning that

the power to punish for contempt is not intended to be invoked or exercised routinely or mechanically, but with circumspection and restraint. Laying down norms to deal with contempt cases, the court said: “courts should not readily infer an intention to scandalize courts or lowering the authority of courts unless such intention is clearly established. Nor should they exercise power to punish for contempt where mere question of propriety is involved. It said jurisdiction in contempt should not be invoked unless there is a real prejudice, which can be regarded as a substantial interference with the due course of justice.”

2.1.3The court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bonafide;

The common law of many countries provides that truth could be a defense, if the comment was also for the public benefit. Long back the Privy Council in Ambard v. Attorney-General for Trinidad and Tobago; [(1936) AC 322]. held that reasoned or legitimate criticism of judges or courts is not contempt of court. The Privy Council held: "The path of criticism is a public way; the wrongheaded are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.

Further, In the case of Nationwide News Pty. Ltd. v. Wills; [(1992) 177 CLR 1] the High Court of Australia suggested that truth could be a defense if the comment was also for the public benefit. It said, "...The revelation of truth - at all events when its revelation is for the

public benefit - and the making of a fair criticism based on fact do not amount to a contempt of court though the truth revealed or the criticism made is such as to deprive the court or judge of public confidence...".

In line with the aforesaid principles the aforesaid Justice R.M Lodha of the Supreme Court had held in the matter of Dr. Subramanian Swamy Vs. Arun Shourie [Contempt Petition (CRL.) No. 11 of 1990] and [Contempt Petition (CRL.) No. 12 of 1990] that if a speech or article, editorial, etc. contains something which appears to be contemptuous and this Court or the High Court is called upon to initiate proceedings under the Act and Articles 129 and 215 of the Constitution, the truth should ordinarily be allowed as a defense unless the Court finds that it is only a camouflage to escape the consequences of deliberate or malicious attempt to scandalize the court or is an interference with the administration of justice.

2.2 Case Laws

a. Hari Singh Nagra vs. Kapil Sibal, 2011 Cri LJ 102 (SC): Article 19(1)(a) of the Constitution contemplates that freedom of expression is available to press albeit fiercely is no crime but a necessary right. A fair and reasonable criticism of a judgement 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.

b. Kali Bogo and Ors. V. Tabom Bam & Ors, 2008 Cri Lj (NOC) 515 (Gau): Under the amended provisions of Section 13 of the Act, the court may permit, in any proceeding for contempt of Court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bonafide. Notwithstanding, whether this amended provision has been brought in

force or not ,as noted earlier , on consideration of additional affidavit filed by the respondent, we are satisfied that the request made for leading the evidence was not in the public interest and it was not intended as a bonafide defence for examining such witnesses who had allegedly approached the respondent purportedly stated about Shri Khodade being a corrupt judge, The reference of contempt is in relation to a specific incident i.e. the order passed in Scheme Application No. 28 of 2000 on 29-03-2001. By the press conference the respondent certainly acted in a manner creating a wrong impression in the mind of the people regarding the integrity and fairness of the concerned Deputy Charity Commissioner and it cannot be in realm of freedom of speech and expression.

2.4 Module Round-up

From the above study, it will be seen that for holding a person to have committed a contempt, it must be shown there was the element of wilful disobedience of the judgement or order of court. Further, it will be observed that even negligence and carelessness may amount to contempt. The module shows how issuance of notice of contempt of court and the power to punish will have far reaching consequences. The power to punish for contempt is clearly intended to maintain effective legal system. It is primarily practiced in order to prevent prevision of the court of justice.

2.4 Quiz 2

1. Under what circumstances can an apology be a mitigating factor in a case dealing with the contemnor?
    a. If the apology is a genuine apology with no conditions attached.
    b. When the apology is an act of penitence, contrition or regret.
    c. When apology is a “tactical move” with a view to ward off the court.

d. When apology is aimed to misuse the law.

4. In the case of Rajesh Kumar Singh vs High Court of Judicature of Madhya Appeal (crl.) 321 of 2001: The supreme court had released a note of caution with respect to erosion of public confidence, what was the Note and its under lying principle?

   a. While determining the quantum of punishment Courts indirectly should also delves into the fact whether the apology tendered by the contemnor is supported by factors such as unconditional terms and conditions.

   b. Whether the same is supported by a bona fide application.

   d. The apology must be tendered at the earliest opportunity and it must be outpouring of a penitent heart moved by a genuine feeling of remorse and overcome by sense of one's guilt.

   e. Courts should not readily infer an intention to scandalize courts or lowering the authority of courts unless such intention is clearly established. Nor should they exercise power to punish for contempt where mere question of propriety is involved. It said jurisdiction in contempt should not be invoked unless there is a real prejudice, which can be regarded as a substantial interference with the due course of justice."

5. Is a legitimate, reasoned, truthful criticism of a judge, Contempt? If Not, why?

   a. No.

   b. Yes.

   c. Rreasoned or legitimate criticism of judges or courts is not contempt of court. The path of criticism is a public way;

   d. A and C.

6. Which Country's Law in the Nationwide News Pty. Ltd. v. Wills; [(1992) 177 CLR 1] had suggested that a revelation of truth does not amount to Contempt?

   a. India

   b. Denmark

   c. China

   d. Australia

Module 3 – Salient Features and Important Provisions of the Act.

3.1 Procedure where contempt is in the face of the Supreme Court or a High Court

Section 14 deals with the procedure when the action is taken for the contempt in the face of the Supreme Court and the High Court. Sub Section (3) of the said section deals with a situation where in facie curiae contempt is tried by a judge or other than judge or judges in whose presence or hearing the offence is alleged to have been committed. The provision in specific terms and for obvious reasons, states that in such cases it shall not be necessary for the judge or judges in whose presence or hearing the offence is alleged to have committed, to appear as witness and statement placed before the chief justice shall be treated as evidence in the case. Section 14, further states contemplates for an issuance of the notice as part of the procedure but in case wherein an incident occurs in the presence of the judge then the contemnor need not be issued with a notice and the matter is dealt at the time of incident itself.(When the contemnor, throws an object such as footwear, at the presiding officer of the court, during a court proceeding, the object is not merely to scandalize the institution itself but to also lower the dignity of court in the eyes of the public. Thus, the matter needs to be dealt that very moment and the need for issuance of notice need not be required.) To initiate contempt proceedings there needs to be a written consent for initiating criminal contempt, if the same is pursued by a private party. The framers of the Act consciously wanted to put a bar on the power of private individuals while charging any person for having committed criminal contempt of court with an object to curtail vexatious petitions for settling personal scores, being filed by persons who are purporting to uphold the majesty and dignity of the court. A criminal contempt is primarily a matter between citizen and contemnor. Sometimes citizens, may set more out of personal prestige and vendetta, than in favor of the dignity of the court. To safeguard such a situation, the framers of the act thought it that a restriction should be imposed on such applications being filed

with the written consent of the Advocate General who holds a constitutional position and can scrutinize any such application before coming to court. The application filed on behalf of the petitioners without the consent in writing of the Advocate General is not maintainable. In Bal thakray vs Harish Pimpalkhute (2005) 1 SCC 254: 2005 Cri LJ 659 held that requirement of obtaining consent in writing of the Advocate General for making a motion is mandatory.

3.2 Power of High Court to try offences committed or offenders found outside jurisdiction

This section provided for the extra-territorial jurisdiction of High Courts to commit a person for contempt even though the alleged act was committed outside its territorial jurisdiction of the concerned High Court. This section expands the ambit of the act and it merely widens the scope of existing jurisdiction of a very special kind.

3.3 Contempt by judge, magistrate or other person acting judicially

Section 16, acts as a discipline deterrent for the Adjudicating Authorities. In some sense, the section can said to be doing its work quite diligently as it is not easy to come across cases and convictions against judges. This provision applies specifically to "judges, magistrates or other persons acting judicially". They are liable for contempt of their own court or any other court in the same manner as any other individual, except when they make observations while hearing appeals against judgments passed by lower courts. Contempt of court is invoked when someone acts in a way that scandalizes the authority or lowers the dignity of a court or interferes in the due course of a judicial proceeding or in the administration of justice. An incident abstracted India Times reflects that in 1973, a member of the UP Revenue Board, a quasi-judicial authority, was alleged to have abused a lawyer appearing before him with the words "Nalayak gadhe saale ko jail bhijwa doonga; kis idiot ne advocate bana diya hai?" and to have ordered the court peon to throw the lawyer

physically out of the court. The lawyer filed a contempt of court petition in the Allahabad high court against the member, saying that he deserved to be punished "to save the dignity, honour and decorum of his court". The High court issued notice to the member, who appealed to the Hon'ble Supreme Court on the question of procedure. Upholding the procedure, the Supreme Court sent it back to the high court to be decided on merits. But there is no mention in law journals whether he was convicted. "Judges don't normally behave like this," says Justice (Retd) P B Sawant, "but this section serves as a warning to them.

3.4 Procedure after cognizance

Initiation of the contempt proceedings is the time when the court applies its mind to the allegation in the petition and decides to direct, under Section 17 the alleged contemnor to show cause why he should not be punished. When the order passed at the preliminary hearing of the contempt records "Issue Notice", as is passed in most case after the filing of a contempt petition, it presupposes that the court has expressed its intention to proceed with the contempt action and which order is referable to order under Rule 8(1). In such case, show cause notices are issued by the Registry, in terms of Form I of the Rules contained in the Act therein and the court may proceed to hear the matter finally or may choose to assign some date for hearing.

3.5 Appeals

Section 19 of the Contempt Act 1971, makes it clear that an order or decision of the High Court is appealable. Thereby he requirement is that whenever the High court is in exercise of its jurisdiction to punish for contempt has dealt with the matter and passed any order that order will be appealable under Section 19 of the Contempt of Courts Act. Therefore, it naturally flows from the language of section 19 of the Contempt of Courts Act that it need not be an order of conviction, but any order including the order of conviction can be

challenged under Section 19 of the Contempt of Courts Act. The only requirement is that the order must have been passed by the High Court in its jurisdiction to punish for Contempt. The words "in its jurisdiction to punish" cannot be interpreted to mean that there should be necessarily punishment and thereby an appeal will lie.

The provisions of Section 19 of the Act are explicit, unambiguous and provide restricted right of appeal. It states that an appeal shall lie as of right from an order of decision of the High Court in exercise of its jurisdiction to punish for contempt to the specified bench. It is a right granted under the statute and has to be controlled strictly in terms of the said provisions. It is only an order or decision punishing the contemnor that this statutory right is available. The expression "any order or decision" is wide enough to include and take it within the ambit of all orders passed in that direction in exercise of its jurisdiction to punish for contempt. In other words, it may not necessarily be an order of actual punishing the contemnor but may be a direction which is prejudicial to the contemnor and has been passed in exercise of contempt jurisdiction by the court of competent jurisdiction but it shall not be applicable when court does not exercise its jurisdiction to punish for contempt and discharge of notice. A reference can be drawn in this aspect to the principle contained in Bombay Diocesan Trust Association Pvt. Ltd vs Pastorate Committee of the Saint Andrews Church, Mumbai and Ors 2008(5) MH Lj 661. Wherein after referring to the various judgments of the Supreme Court Bombay High court had held that – the principles which emerge from the consistent view taken by the courts including the Supreme Court is, there must be a conscious determination of rights and liabilities between parties to a lis before the court of competent jurisdiction. Undisputedly, contempt is a matter primarily between the court and the contemnor. The proceedings of the Contempt of Court would be initiated against the contemnor through any or without consent of the specified authorities depending upon the facts and circumstances of each Case. The contempt jurisdiction vested

in the court by the development of law as well as under the statutory provision is very wide and is of pervasive magnitude. A party to the proceeding before the court may bring to the notice of the court any matter which invites the attention of the court for taking any action under the provisions of the Contempt Act. Once such act is done, the matter squarely falls in the exclusive domain of the court of competent jurisdiction, as the purpose of competent jurisdiction is primarily to ensure enforcement of the order of the court and to maintain the dignity of the judicial system. The contempt proceedings per se are not taken or declined for the benefit or interest of the individual party. When the court passes an order of discharge or holds that no case of contempt is made out and declines to act, no right or interest of the parties to the lis are determined by the court much less finally. Such an order besides being not appealable on the bare reading of the provisions of Section 19 of the contempt of court act, would also not be a judgement within the meaning of clause 15 of the Letters Patent and as such, not appealable. The provisions of Section 19 are not ambiguous and do not leave any scope for addition or substitution of a word. Definitive legislative intent is clear that right to appeal shall only be available in the cases where there is clear that right to appeal shall and shall not be available in the cases where there is no order of punishment. The matter primarily and substantially being between the contemnor, parties to the lis cannot be permitted to raise issues or litigate on the view of the court that a case of contempt is made out or not. Where the court in exercise of its judicial discretion and keeping in mind the well settled principles of contempt jurisdiction finds that contempt proceedings need not be initiated, or no contempt is made out or discharges the contemnor on the merits of the case, the appeal before the division bench even with the aid of clause 15 would not be maintainable.

3.7 Limitation for actions of contempt

Action for contempt must be initiated, either by filing of an application or by the court issuing notice Sou Moto, within a period of one year from the date on which the contempt is alleged to have been committed.

Section 5 of the limitation Act will not be applicable contempt proceedings and Section 20 of the Contempt of Courts Act, 1971, strictly speaking, does not provide limitation in the sense in which the term is understood in the limitation act. It has time and again been held that the action for contempt can be condoned only on a genuine apology tendered by the contemnor.

On the other hand, there exists a section of the judiciary that has strictly interpreted the action of contempt as concept which is divisible into two categories, namely, that is initiated Sou Moto by the Court and that instituted otherwise than Courts own motion. The mode of initiation in each case would necessarily be different. While in the case of Sou Moto proceedings, it is the court itself which must initiate by issuing a notice. In other cases, initiation can only be by a party filing an application. Therefore, strict adherence and proper construction of the provisions of Section 20 demand that contempt must be initiated within a period of one year from the date on which the contempt is alleged to have been committed.

Section 20 of the act is a mandatory provision and contempt action can be initiated by Supreme Court and High Court under Article 129 and 215 of the Constitution of India as contempt runs only within the period of one year mentioned under Section 20 of the Contempt of Courts Act. It is true that a contrary view was expressed by the Full bench in the matter of Mayilsawmi vs State of Kerela 1995 (2) KLT 178: 1995 Cri LJ 3820 (FB), wherein the courts had held that the limitation prescribed under Section 20 of the Contempt of Courts Act is not applicable when action is taken under Article 129 and 215 of the Constitution of India and the said provision holds no good law in view of the judgements

that followed in the judgements of the Apex Court in the matter of Om Prakash Jaiswal v. D.K Mittal (2000) 3 SCC 171 :AIR 2001 SC 1136.

3.8 Act not to apply to Nyaya Panchayats or other village courts

To answer as to why the Contempt Act does not apply to the Nyaya Panchayats or Village Panchayats is to first infer and answer the important question of "Whether Nyaya Panchayats are 'courts' subordinate to the High Court within the meaning of Section 3 of the Contempt of Courts Act. Under Indian Legislature no law declares a court to be inferior to another; on the other hand, there are provisions to be found in the principal codes of procedure and other statutes declaring a court to be subordinate to another either generally or for particular purposes. The question of subordination in the sense of subservience arises when one court claims to exercise some authority over another and then one has to look for statutory authority in support of its claim. As one can see the Statutory and Constitutive / Legislative Intent of the Contempt Act 1971 very clearly indicates that it intended to keep Act Nyaya Panchayats and other village courts aloof to the applicability of the Act. However, it may be interesting to note that Allahabad High in the matter of Ram Saran Tewari vs Raj Bahadur Varma And Ors. on 22nd December 1961 AIR 1962 All 315 had held Nyaya panchayats as at present constituted no doubt have many shortcomings and have been subjected to criticism from very high quarters; but the fact remains that they are part of the hierarchy of Courts established by law in this country and so long as they continue to function they must be held to be entitled to the privilege that all Courts enjoy of being immune from attacks that tend to scandalise them or undermine their dignity and prestige.

3.8 Case Laws

a. **A.R.C v. B.Naik, AIR 1974 Ori 1:** The learned Advocate General has brought to our notice today the provision of Section 15 of the Contempt of Courts Act, 1971. Sub- Section (1) whereof provides. In the case of a criminal contempt, other than a contempt referred in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by – (a) Advocate General , or (b) any other person, with the consent in writing of the Advocate General, or The learned Advocate General contends that there are three modes only of initiating a proceeding for criminal contempt- (i) by the court on its own motion , (ii) on a motion by the Advocate General , and (iii) by any other person with the consent in writing of the Advocate General. The petitioner has asked for initiating a proceeding for contempt. Such a motion at the instance of the petitioner without the consent of the Advocate General is not in accordance with the requirement of Section 15(1) of the Act and hence not maintainable.

b. **Andre Paul Terenee Ambard v. Attorney General of Trinadad and Tobago, AIR 1936 PC 141; Aswini Kumar Ghose v. Arabinda Bose, AIR 1953 SC 75; Rama Dayal Markahra v. State of Madhya Pradesh, AIR 1978 Sc 921; 1978(3) SCR 497; Re: V. Ajay Kumar Pandey, Advocate, JT 1998(6) SC 571; Rustom Cawasjee Cooper v. Union of India, Air 1970 SC 1318; Re:Sanjiv Datta, 1995 (3) SCC 619; Perspective Publications v. The state of Maharastra:** No wrong is committed by any member of the public who exercises its right to criticise in good faith in public or in private. The path of criticism is a public way: the wrong – headed are permitted to eo err therein; provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice , and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered

virtue; she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.

3.9 Quiz 4

1. What is the Legislative Intent of the framers of the Act when they introduced a restriction in the filing of a criminal contempt such that there should be a written consent of the Advocate General?
    a. To curtail vexatious petitions.
    b. To prevent individuals from settling personal scores
    c. To uphold the majesty and dignity of the court.
    d. All of the above.
2. An application filed without the consent of the Advocate General not maintainable in Court, in a case of criminal contempt, why?
    a. The framers of the act, aimed to restrict such applications so that Advocate General may scrutinize such applications and filter vexatious ones by providing written consent.
    b. Requirement of obtaining consent in writing of the Advocate General for making a motion is mandatory.
    c. It is a mandatory requirement under the statute.
    d. All of the above.
3. When is an Order of Contempt not appealable under Section 19?
    a. If no order of punishment is passed.
    b. Court discharges the notice of contempt and drops proceedings.
    c. Only when a contemnor is punished.
    d. A and B.

4. What is the time - period in terms of Limitation for Initiating a Contempt proceeding under the Contempt of Courts Act, 1971?
    a. Action for contempt must be initiated, either by filing of an application or by the court issuing notice Sou Moto, within a period of two year from the date on which the contempt is alleged to have been committed.
    b. Strict adherence and proper construction of the provisions of Section 20 demand that contempt must be initiated within a period of one year from the date on which the contempt is alleged to have been committed.
    c. There is no time limit for initiating contempt proceedings.
    d. Section 5 of the limitation Act will not be applicable contempt proceedings.
    e. Both b & d.

Module 4– When does the Acts / Actions does not Constitute an Act of Contempt

4.1 Publication of information relating to proceeding in chambers or in camera not contempt except in certain cases

The Act has a provision dealing with Publication of Information relating to proceedings in chambers or in Camera and under what circumstances does the same, not result in contempt. Section 7 of the Act is a non – obstante clause which means the said clause is independent of other provisions contained in law. A non-obstante clause is used in a provision to indicate that an expressed situation shall prevail despite anything to the contrary. Further, this clause resolves any inconsistency or a departure between the non-obstante clause and another provision.

The objective of such a clause is to indicate that it is the non-obstante clause which would prevail over the other clauses.

What does "sitting in chambers" or "in camera" stand for. These are proceedings which are conducted in a special manner whereby the public and the process of law is kept at bay from the public at large. In these proceedings, usually only the presiding officer, such as the authority of the Court, their respective advocates and witnesses are the only ones allowed behind the closed doors of the court room. Remaining all parties and convened personals are kept at bay for the larger interest of the Masses.

On careful construction of the clause, one will observe from the language of Section 7, that the legislature has clearly marked that any such person shall not be guilty of contempt who makes or publishes a fair and accurate report of a judicial proceedings whether or not sitting in chambers or in camera unless he publishes something which is contrary to the provisions of the enactment for the time being in force; where the court has on the grounds of public policy expressly prohibited the publication of any such

information; where the court sits in camera or in chambers for reason of public order and security; And lastly where the information relates to a secret process, discovery or invention which is an issue in the proceedings. The Exemptions are more elaborately enumerated herein below:

a. Where the Publication is contrary to the provisions of any enactment for the time being in force:

   A person may be held in contempt for publishing any information of a proceeding In chambers or In camera if the statute of the Act prohibits the same. Wherein a Rape trial or gruesome murder is being conducted in camera for the protection of the victim and for the society at large. A person is prohibited by law to publish information regarding such matters. Indian law does not prohibit just the disclosure of the names of rape victims but of information potentially leading to the identification of rape victims. The protection of identity of rape victims could be considered to be requirements both criminal law and civil law — the identity of rape victims is protected under statutory law, case law and (presumably) tort law relating to privacy (not to mention constitutional law).

   Under Section 228A(3), IPC, whoever publishes any matter in relation to any proceeding before a court with respect to an offence under Section 376, 376A, 376B, 376C, 376D or 376E, IPC, without the previous permission of such court may be punished with either simple or rigorous imprisonment for up to two years and are be liable to be fined unless the publication is of a judgment of any High Court or the Supreme Court.

Similarly, Section 23 of the Protection of Children from Sexual Offences Act, 2012, which defines a 'child' as 'any person below the age of eighteen years' contains a procedure for the media: No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy. Further, No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighborhood or any other particulars which may lead to disclosure of identity of the child. A publication of Information the aforestated circumstances will amount to Contempt of Court.

b. Where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published.

Public Policy in the present sense would stand for interest of India; Justice or morality and along with these statements, the right and obligation of the courts to protect its people in the larger interest of the nation. Once a court in exercise of the powers vested in it prohibits the publication of any sensitive information for the larger interest of the nation, it expressly prohibits the same vide an order/corrigendum stating that a publication / Interview of connected parties to the case / quoting documents will fall within the purview of interfering and prejudicing the administration of justice.

In common law jurisdictions, perhaps the most significant role of contempt of court law is the application of the sub judice rule: no one should interfere with legal proceedings which are pending. In practice, this rule is usually used to prohibit

publication of matters which are likely to prejudice the right of a fair trial when legal proceedings are pending, or in a more colloquial sense, to prevent “trial by media”.

c. Where the court sits in chambers or in camera for reason connected with public order or the security of the State, the publication of information relating to those proceedings:

When the very crux of the matter shocks the “conscience of a Nation”, such as the rule states that as per 327 (2) of the Criminal Procedure Code, inquiry into and trial of a rape (or gangrape) case by a court shall be conducted in-camera. The publication of information is strictly prohibited. The objective of in-camera is to protect the identity of victim and to protect the victim of the ignominy of an open trial. Also, to keep the gory incident outside public view to prevent further embarrassment to the victim." Thus, for security of the State and order, such proceedings are conducted in camera.

d. Where the information relates to secret process, discovery or invention which is an issue in the proceedings.

4.2 Innocent Publication and Distribution of matter of Contempt

For a better understanding of this section, one needs to dwell into the legislative intent of this very section. A bare reading of section 3 of the Contempt of Courts Act 1971 specifically contains a scenario as to what would constitute contempt when a judicial proceeding is said to be pending. The legislators have via this section clarified the meaning of pending judicial proceedings: - where after they have laid down specific scenarios and grounds as to which acts would constitute an Innocent Publication and Distribution of Contempt.

The Legislators have stated that a judicial proceeding is said to be pending when

a. In a Civil Proceedings when the case is said to be instituted.
b. In a Criminal Proceeding when it relates to commission of an offence, wherein a charge sheet or challan has been filed, or where the concerned court has issued warrant or summons, against the accused.
c. The above Civil and Criminal Case is said to pending until it is finally heard and decided or where no appeal has been preferred until the expiry of the period of limitation.

4.1.1 Publication / Distribution during Proceedings Pending before Court

What would constitute Innocent Publication is a question of fact and would depend upon the existence of circumstances. A person shall not be guilty of contempt of court on the following grounds whether his actions be by words, spoken or written, or by signs, or by visible representations or otherwise under the following circumstances.

a. When at the time of making such publication, the publisher was not aware or had no reasonable grounds to be aware that the proceedings where pending in a court of law. This is considered as innocent publication in spite of the fact that the same interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceedings.
b. A publication in connection with a civil or criminal proceeding which is not pending at the time of publication shall not deemed to constitute contempt of court.
c. Similarly, the clause entails and states that no person distributing such publication shall be guilty of contempt if at the time of distribution, he had no reasonable grounds for believing that it contained or was likely to contain any such matter in contravention to smooth conduct of the proceedings.

4.1.2 Exemptions:

There are few more exemptions where the act of the alleged contemnor will not act as an act of contempt. The Act very clearly lays out that

a. Fair and accurate criticism of Judicial Proceedings will not amount to contempt.

In a democracy, the judges and courts are alike, therefore, subject to criticism and if reasonable argument or tempered with moderation is offered against any judicial act as contrary to law or public good, no court would treat criticism as contempt of court.

The administration of justice and judges are open to public criticism and public scrutiny. The Judges have their accountability to the society and their accountability must be judged by the conscience and oath to their office, i.e to defend and uphold the constitution and the law without fear and favour. Thus, 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 to ridicule must be prevented.

b. Fair Criticism of judicial Act would not amount to contempt

The institution of Judiciary and its functioning has no escape from the opinion of the public. However, every comment may not amount to contempt. To ascertain the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which comments are made and the intended purpose sought to be achieved. All citizens cannot be

permitted to comment upon the conduct of the courts in the name of fair criticism which, if not checked, would destroy the institution itself.

For example, Litigants losing in the court would be the first to impute motives to the judges and the institution in the name of fair criticism which cannot be allowed for preserving the public faith in an important of democratic set up i.e judiciary.

b. Complaint against presiding officers of subordinate courts when not contempt.

c. Publication of Information relating to proceedings in chambers or in camera not contempt except in certain cases.

4.3 Act not to apply to Nyaya Panchayats or other village courts

On 22nd December 1961, the Allahabad High Court had vide its judgement in the matter of Ram Saran Tewari vs Raj Bahadur Varma And Ors. AIR 1962 All 315 :Had held that the Contempt Act 1962 would apply to Nyaya Panchayats by laying down a Test , Wherein they had held that A true judicial decision presupposes an existing dispute between two or more parties and then involves four requisites:- (1) the presentation (not necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal arguments by the parties; and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law." Thus, the question whether Nyaya Panchayats are

courts and would they fall within the purview of this Act, has thus to be decided with reference to the tests enumerated above.

The court vide this Judgement had further concluded " Nyaya panchayats as at present constituted no doubt have many shortcomings and have been subjected to criticism from very high quarters; but the fact remains that they are part of the hierarchy of Courts established by law in this country and so long as they continue to function they must be held to be entitled to the privilege that all Courts enjoy of being immune from attacks that tend to scandalise them or undermine their dignity and prestige."

However, the special committee vide its reports submitted on 28th February 1963 on the recommendation of the Special Committee of Contempt of Courts Bill introduced several amendments before the parliament. One of which removed the uncertainty of the applicability of the Contempt of Courts Act, 1971 to Nyaya Panchayats. And once the Bill received assent of the President on 24th December 1971. The applicability of the Contempt of Courts Act, 1971 to Nyaya Panchayats and other village Courts stood amended.

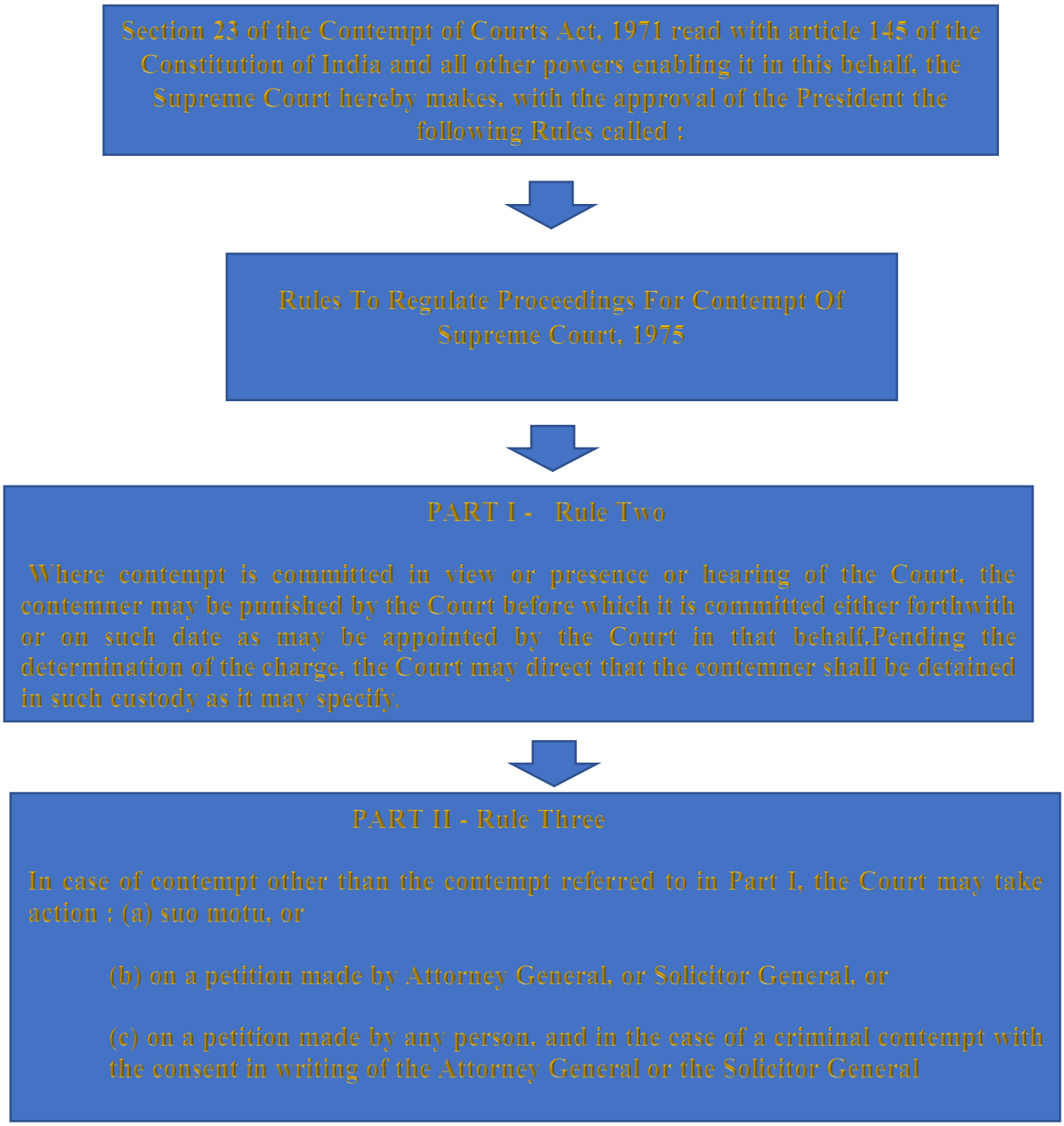
4.3.1 Act to be in addition to, and not in derogation of, other laws relating to contempt

In order to understand the meaning of this legislation, one needs to acquaint one self with the meaning of derogation – Derogation as per blackslaw means "The partial repeal or abolishing of a law, as by a subsequent act which limits its scope or impairs its utility and force. Distinguished from abrogation, which means the entire repeal and annulment of a law. The legislative intent of this Act clearly states vide this provision that this act continues as an addition to all the other laws existing in the past be it concerning Contempt or other laws. The language is provided in many acts on a routinely basis to underline that other relevant laws continue to be operable

in their respective domains. Thus, Contempt of Courts Acts 1971 is an addition to all the other laws relating to contempt and unlike derogation or abrogation which means the partial repealment or entire repeal and annulment of a law. Thus, the intention of the Legislation is very clear, that this law is a double safeguard to all other laws which existed safeguarding the administration of the Judicial Process.

4.3.2 History and Process for proceedings – At the Supreme Court of India

The act provides Rules to regulate proceedings for Contempt of the Supreme Court 1975.



Rule Four

(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) Whether the petitioner relies upon a document or documents in his possession or power, he shall file such document or documents or 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.

The Court if satisfied that no prima facie case has been made out for issue of notice, may dismiss the petition.

Case Closed

Prima facie case has been made out for issue of notice, notice of the petition be issued to the contemner.

FORM I NOTICE TO PERSON CHARGED WITH CONTEMPT OF COURT IN THE SUPREME COURT OF INDIA

Rule Eleven (One)

If a person is absconding or is found to be evading service of Notice. Or if the person fails to appear in court . A bailable or Non-bailable Warrant may be issued .

Form Two and Form Three

The Warrant shall be Form II in the manner provided for execution of warrants under CrPC.

Rule Sixteen

Where a person charged with Contempt is adjudged guilty and is sentenced to suffer imprisonment , a warrant of Commitment and detention shall be made out under the Signature of the Registrar

Form Four

Every such warrant shall remain in force until it is cancelled by order of the court on until it is executed. The Supretendent of the Jail shall in pursuance of the Order receive the person so adjudged and detain him in custody for the period specified therein, or until further orders.

4.4 Tips for Victims/Complain

If you are a Litigant in a Proceedings of Contempt. The said proceedings can often cause a mild trauma for any person. Often emotions and tempers run high causing one to interrupt proceedings with some exclamation. One should always cooperate and work in harmony with the Courts functioning. Sometimes Contempt can be caused by being ignorant: Many litigants who get caught up in such proceedings are often aloof to the basic compliance of Court proceedings: Some broader principles if violated that would indefinitely cause contempt are as enumerated below:

a. If you deliberately interrupt the court proceedings verbally, misbehave in court or insult anyone who constitutes the court – that is, those who form part of the court officials and other concerns.
b. If you insult or obstruct a person who constitutes the court as they are going into the court or out.
c. If you refuse to take an oath or affirmation when requested in court.
d. If you refuse to give evidence when you are able to do so and compellable.
e. If you do not comply with a lawful direction of the court.
f. If you don't attend as a witness or otherwise, when you've been summoned and have no reasonable excuse not to go.
g. If the court requires you to produce an item and you don't and have no reasonable excuse for not doing so.
h. Breaking a court order. Reading it and manipulating the meaning to ones own benefit when the directions so provided by the court leave no room for ambiguity.

These are broader principles confining different acts which may constitute an act of contempt. So mainly keeping in mind the aforesaid principles, one can safeguard its self from committing any wrong doing against the smooth functioning of a court proceedings.

The above violations can be committed by attorneys / officers of court/ court personnel / witnesses / protestors / any party directly or indirectly involved with the court proceedings.

Landmark cases/ Situation based case studies and Samples

a. **C. Ravichandran Iyer's Case, (1995) 5 SCC 457:** In Halsbury's laws of England (4th Edition) Vol.9 , Para 27, at Page 21, it is stated that scandalizing the court would mean any act done or writing published which is calculated to bring a court or a judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the court. Scurrilous abuse of a judge, are punishable contempt's. Punishment is inflicted, not for the purpose of protecting either the Court as a whole or the individual judges of the court from repetition of the attack, but for protecting the public, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the court, from the mischief they will incur if the authority of the tribunal is undermined or impaired.

   In C. Ravichandran Iyer's Case, (1995) 5 SCC 457, their Lordship stated in paragraph 3 regarding the freedom of expression and duty of an advocate in the following words: -

   " It is true that freedom of speech and expression guaranteed by Article 19 (1)(a) of the Constitution is one of the most precious liberties in any democracy. But equally important is the maintenance of respect for judicial independence which alone would protect the life, liberty and reputation of the citizen. So, the nation's Interest requires that criticism of the judiciary must be measured, strictly rational, sober and proceed from the highest motives without being colored by partisan spirit or pressure tactics or intimidatory attitude. The court must, therefore, harmonies constitutional values of free criticism and the need for a fearless curial process and its presiding functionary, the judge. If the freedom of expression sub serves public

interest in reasonable measure, public justice cannot gag or manacle it; but if the court considered 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 the law by fouling its source and stream. The power to punish the contemnor is, therefore, granted to the court not because judges need protection but because citizens need an impartial and strong judiciary.

b. **P.N Duda v. P.Shiva Shanker, 1998 (3)SCC 167:** In the Case of P.N Dudda v. P Shivshankar, hon'ble SC observed that "Reasonable and fair criticism of the judicial system and Judges, not interfering with administration of justice and not bringing the administration of justice in to disrepute, does not constitute criminal contempt. In this case the Apex Court was considering whether the speech made by the law minster was contemptuous and as such, any action should be initiated against him under the provisions of the Contempt of Courts Act. The apex Court has observed that:- "Speech delivered by the Law Minster in a seminar organized by Bar Council expressing his critical views in respect of the Apex Court, held on facts, though at places intemperate, but reading the speech as a whole and having regard to the select audience, it did not constitute to the select audience, it did not constitute any contempt of Supreme Court.

4.4 Module Round-up

One will observe that the purpose of the contempt law is to keep the administration of justice pure and defiled. The dignity of the court has to be maintained at all costs. If the Litigants have the privilege to say that judgement is wrong and Judge has committed mistake or error by delivering the judgement, such privilege to say that

the judgement is wrong and judge has committed mistake or error by delivering the judgement, such privilege has to be used in a decent manner without any vilificatory criticism adverse and unwarranted comments or without scandalizing the courts and judges.

5.4. Quiz 3

1. When is a judicial proceeding said to be pending under the Act
    a. In a Civil Proceedings when the case is said to be instituted.
    b. In a Criminal Proceeding when it relates to commission of an offence, wherein a charge sheet or challan has been filed, or where the concerned court has issued warrant or summons, against the accused.
    c. The above Civil and Criminal Case is said to pending until it is finally heard and decided or where no appeal has been preferred until the expiry of the period of limitation.
    d. All of above

2. If the Litigants have the privilege to say that judgement is wrong and Judge has committed mistake or error by delivering the judgement, such privilege to say that the judgement is wrong and judge has committed mistake or error by delivering the judgement, such privilege has to be used in a
    a. vilificatory Manner
    b. by way of unwarranted comments
    c. In a scandalizing tone
    d. In a decent Manner

3. A person shall not be guilty of contempt of court on the following grounds, when publication interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceedings.
    a. When at the time of making such publication, the publisher was aware and had reasonable grounds to be aware that the proceedings where pending in a court of law.
    b. Publisher had no reasonable grounds for believing that it contained or was likely to contain any such matter in contravention to smooth conduct of the proceedings.
    c. When at the time of making such publication, the publisher was not aware or had no reasonable grounds to be aware that the proceedings where pending in a court of law.
    d. B and C

4. If a senior citizen who is dissatisfied by the long delay of proceedings, decides to write a letter to the magistrate to take up the case at the earliest. And the letter in some parts of its language appeared to be objectionable, as per the definition if criminal contempt, defined under section 2(C) of the act.

    a.Will the same amount to contempt always.

    b. Depends on the language of the letter

    c. the matter does not amount to scandalising or tending to scandalise or lower the authority or causing disrepute to the due course of any judicial proceeding or affecting administration of justice. Hence, initiation of contempt proceedings is not maintainable and contempt petition ought to be dismissed.

d. Sou – Moto Contempt of Registry will also not be maintainable

e. C and D.

5. Module 5 – The Conclusion

5.1 Critical analysis

The framers of this Act have very flamboyantly and thoughtfully laid out the basic structure of the Act. They have successfully been able to define and limit the powers of certain courts in punishing for contempt of Courts and regulate their procedure in relation thereto.

The framers have dealt with every aspect of the Act whether it be regarding the concept of Contempt and what not ought to form contempt. They have successfully bifurcated the escape route via strongly defining the various Innocent Publication, distribution, fair criticism and other judicial related activities which would not form a matter of contempt. The scope and the definitions of the Act very clearly met out powers of High Court, Supreme Court and its subordinate Courts and the procedure to adopted for punishing under the Act.

The act has successfully and explicitly laid down provisions as to which activities would be barred and not be labelled as Contempt. The Act goes on to finely define the parameters of criminal contempt and special / unique procedure to be adopted under it.

The Act does not even lack in providing provisions to keep Power / Adjudicating Authorities in Check. The Act lays out provision for the Contempt by Judge, Magistrate and other person acting judicially, however one may note that practically finding rulings and convictions in this regard is not easy. Reason for this cannot be ascertained. The act expressly provides a detailed procedure for Appeal and the limitation that come into play on the occurrence of cause of Action of Contempt. All in the Legislators have successfully bifurcated the different stages in which a contempt proceeding be initiated and has successful culled out Nyaya Panchayats and other village courts and forums from this procedure.

The Constitution overrides a statute, but a statute, if consistent with the Constitution, overrides the law of judges. In this sense, judge-made law is secondary and subordinate to the law that is made by legislators. And Contempt of Courts Act, 1971 is an absolute masterpiece over-riding not just every authority starting from the framers of this Act to the appointed authorities under the statute only to protect the Majesty of Law.

5.2 Overview of how not to commit contempt of Court

The law of Contempt of Courts is for keeping the administration of justice pure and undefiled. The dignity of the court must prevail and be maintained at all costs. So keeping the said principle in mind one should keep their conduct in line with the process of court.

One should avoid any disobedience to any judgement, decree, direction, order writ or any other process of a court. The disobedience should not be wilful because that will indefinitely call in for a punishment and no scope will be left for tendering an unqualified and unconditional apology. Any sort of reckless deliberate disobedience of the order of the court will not be tolerated. In many a case a small disobedience may invite Exemplary Costs along with the imposing of Fine.Thus, one needs to be upto its best behaviour while appearing before a Court Proceedings to say the least.

One the other hand one may also refrain from conducting whether by words, spoken or written, or by signs, or by visible representation or otherwise whatsoever or by doing any such act which will scandalise or tends to scandalise the courts authority, prejudices or interferes with judicial process, and or interferes or tends to interfere with the administration of justice.

5.3 **Frequently asked questions**

5.3.1 What amounts to civil or criminal contempt

Civil Contempt would be willful breach of an undertaking given to the court or wilful disobedience of any judgement or order of the court, while criminal contempt would deal with the cases whereby the words, spoken or written, signs or any other

matter or doing of any act which scandalises, prejudices or interferes , obstructs or even tends to obstruct the due course of any judicial proceeding of any court and the administration of justice in any manner.

5.3.2 When is Consent of Advocate General for initiating Contempt Proceedings not necessary

If the issue involved in the proceedings had greater impact on the administration of justice and on the justice delivery system, the court is competent to go into the contempt proceedings even without the Consent of the Advocate general.

5.3.3 What is hierarchy of Appeal in Contempt Proceedings.

If the order of committal of contempt of court is made (a) by single Judge of High Court, an appeal lies to a Division Bench thereof; or (b) by a Division Bench of the High Court, an appeal lies to the Supreme Court, as a statutory right;

5.3.4 Is an Apology always acceptable in the cases of Contempt of Court.

Before an apology is accepted or can be accepted, the court general finds out that whether the case before it makes a case of an apology being tendered in the most bonafide manner and to the satisfaction of the Court. And court may still choose to reject an apology as the same was qualified and conditional. Thus, an Apology may or may not be accepted.

5.3.5 Do I need a lawyer if I am accused of Contempt?

It is almost always better to have a lawyer, especially when you stand a chance of going to jail or being ordered to pay money. You should at least consult with a knowledgeable attorney to determine your risks.

5.3.6 What is the Legal Position of a Contemnor

The legal position of a contemnor is that of an accused.

5.3.7 Is a personal appearance of a Contemnor Mandatory?

Personal Appearance of a contemnor is mandatory unless dispensed with via a Court Order.

5.3.8 Is it open for High Court to take Sou Moto Action in respect of a subordinate court?

It is always open to the High Court to take action sou moto in respect of a Subordinate Court.

5.3.9 If an order is capable of more than one interpretation giving rise to a variety of consequences, will the non- compliance of the same amount to Contempt?

The same cannot be held willful disobedience of order so as to make out a case of contempt enabling the serious consequence including imposition of punishment. Thus one can always defend itself under such circumstances.

5.3.10 How long does a Contempt case take?

Contempt cases are quicker than all other forms of Litigation as they focus is generally on one or two straightforward issues (was there a violation of an Order and what should the Court do about it). Thus, contempt cases are usually three to four hearing on the maximum side. Most cases get resolved on the first date of hearing itself.