Delhi Judicial Service Association, Tis Hazari Court, Delhi

Vs

State of Gujarat and Others

With

A.K. Srivastava and Others

Vs

Union of India and Others

With

N.A. Patel

Vs

State of Gujarat and Others

With

Bhushan B. Oza and Another

Vs

Union of India and Others

With

Gujarat Judicial Service Association

Vs

State of Gujarat and Others

With

Bar Council of Gujarat, Ahmedabad

Vs

State of Gujarat and Others

With

Complaint Received From Delhi Judicial Service Association, Tis Hazari, Delhi

Vs

State of Gujarat and Others

With

Delhi Judicial Service Association

Vs

State of Gujarat and Others

With

R.L. Panjwani, Advocate, Supreme Court

Vs

S.R. Sharma, Police Inspector Nadiad and Others

With

N.L. Patel, Cjm, Nadiad

Vs

State of Gujarat and Others

Writ Petition (Criminal) Nos. 517, 518, 523-24, 525-26, 527 of 1989; Contempt Petition (Criminal) No. 6 of 1989 and Criminal Miscellaneous Petition Nos. 1110 of 1990 and 4271, 4272, 4274 and 4277-4282 of 1989

(Kuldip Singh, K. N. Singh, N. M. Kasliwal JJ)

11.09.1991

JUDGMENT

K.N. SINGH, J. –

1. On September 25, 1989, a horrendous incident took place in the town of Nadiad, District Kheda in the State of Gujarat, which exhibited the berserk behaviour of police undermining the dignity and independence of judiciary. S.R. Sharma, Inspector of Police, with 25 years of service posted at the Police Station, Nadiad, arrested, assaulted and handcuffed N.L. Patel, Chief Judicial Magistrate, Nadiad and tied him with a thick rope like an animal and made a public exhibition of it by sending him in the same condition to the hospital for medical examination on an alleged charge of having consumed liquor in breach of the prohibition law enforced in the State of Gujarat. The Inspector S.R. Sharma got the Chief Judicial Magistrate photographed in handcuffs with rope tied around his along with the constables which were published in the newspapers all over the country. This led to tremors in the Bench and the Bar throughout the whole country.

2. The incident undermined the dignity of courts in the country, Judicial Officers, Judges and Magistrates all over the country were in a state of shock, they felt insecure and humiliated and it

appeared that instead of Rule of Law there was Police Raj in Gujarat. A number of Bar Associations passed Resolutions and went on strike. The Delhi Judicial Service Association, the All India Judges Association, Bar Council of Uttar Pradesh, Judicial Service of Gujarat and many others 7 approached the Apex Court by means of telegrams and petitions under Article 32 of the Constitution of India for saving the dignity and honour of the judiciary, On September 29, 1989, this Court took cognizance of the matter by issuing notices to the State of Gujarat and other police officers. The Court appealed to the members of the Bar and Judiciary to resume work to avoid inconvenience to the litigant public. Subsequently, a number of petitions were filed under Article 32 of the Constitution of India for taking action against the police officers and also for quashing the criminal proceedings initiated by the police against N.L. Patel, Chief Judicial Magistrate. A number of Bar Associations, Bar Councils and individuals appeared as interveners condemning the action of the police and urging the Court for taking action against the police officers.

3. In Petition No. 518 of 1989 along with Contempt Petition No. 6 of 1989 filed by the President, All India Judges Association, notices for contempt were issued by this Court on October 4, 1989 to even police officials, D.K. Dhagal, DSP, A.M. Waghela, Dy. SP, S.R. Sharma, Police Inspector, Kuldeep Singh Lowchab, Police Inspector (Crime), K.H. Sadia, Sub-Inspector of Police, Valjibhai Kalabhai, Head Constable and Pratap Singh, Constable. N.L. Patel, CJM, Nadiad also filed an application in W.P. No. 517 of 1989 with a prayer to quash the two FIRs lodged against him, to direct the trial of the complaint filed by him as State case and to award compensation.

4. On February 13, 1990 notices for contempt were issued to K. Dadabhoy, ex-DGP, Gujarat, Dr Bhavsar, Senior Medical Officer of Government Hospital Nadiad and M.B. Savant, Mamlatdar, Nadiad. The Court during the proceedings also issued notices to R. Bala Krishna, Additional Chief Secretary (Home), Government of Gujarat and S.S. Sudhalkar, District Judge, Nadiad to show cause why action be not taken against them in view of the Report of Justice Sahai.

5. N.L. Patel was posted as Chief Judicial Magistrate at Nadiad in October, 1988. He soon found that the local police was not co-operating with the courts in effecting service of summons, warrants and notices on accused persons, as a result of which the trials of cases were delayed. He made complaint against the local police to the District Superintendent of Police and forwarded a copy of the same to the Director General of Police but nothing concrete happened. On account of these complaints S.R. Sharma, Police Inspector Nadiad was annoyed with the Chief Judicial Magistrate, he withdrew constables posted in the CJM Court. In April 1989 Patel filed two complaints with the police against Sharma and other police officials, Nadiad for delaying the process of the court. On July 25, 1989 Patel directed the police to register a criminal case against 14 persons who had caused obstruction in judicial proceedings but subsequently since they tendered unqualified apology, the CJM directed the Police Inspector to drop the cases against those persons. Sharma reacted strongly to Patel's direction and he made complaint against the CJM to the Registrar of the High Court through District Superintendent of Police. These facts show that there was hostility between the Police of Nadiad and the CJM. On September 25, 1989, S.R. Sharma met Patel, CJM in his chambers to discuss the case of one Jitu Sport where the police had failed to submit charge-sheet within 90 days. During discussion Sharma invited the CJM to visit the police station to see the papers and further his visit would mollify the sentiments of the police officials. It is alleged that at 8.35 p.m. Sharma sent a police jeep at Patel's residence, and on that vehicle Patel went to the Police Station. What actually happened at the Police Station is a matter of serious dispute between the parties. According to the CJM, he arrived in the chamber of Sharma in the Police Station, he was forced to consume liquor and on his refusal he was assaulted, handcuffed and tied with rope by Sharma, Police Inspector, Sadia, Sub-Inspector, Valjibhai Kalabhai, Head Constable and Pratap

Singh, Constable. It is further alleged that Patel was sent to hospital for medical examination under handcuffs where he was made to sit on a bench in the veranda exposing him to the public gaze. Sharma, Police Inspector and other police officers have disputed these allegations. According to Sharma, Patel entered his chamber at the Police Station at 8.45 p.m. on September 25, 1989 in a drunken state, shouting and abusing him, he caught hold of Sharma and slapped him, since he was violent he was arrested, handcuffed and sent to hospital for medical examination. Patel himself wanted to be photographed while he was handcuffed and tied with ropes, a photographer was arranged to take his photograph which was published in the newspapers.

6. Since there was serious dispute between the parties with regard to the entire incident, the Court appointed Justice R.M. Sahai senior puisne Judge of the Allahabad High Court (as he then was) to inquire into the incident and to submit report to the Court. Justice Sahai was appointed to hold the inquiry on behalf of this Court and not under the provisions of the Commission of Inquiry Act. Justice Sahai visited Nadiad and held sittings there. The learned Commissioner/Judge invited affidavits/statements, and examined witnesses including S.R. Sharma the Police Inspector, D.K. Dhagal, DSP and other police officers, lawyers, N.L. Patel, CJM, and doctors and other witnesses. Justice Sahai afforded full opportunity to all the concerned persons including the State Government, police officers and lawyers to lead evidence and to cross-examine witnesses. He submitted a detailed Report dated November 28, 1989 to this Court on December 1, 1989. On receipt of the Report this Court directed copies to be delivered to concerned parties and permitted the parties and the contemners to file their objections, if any, before this Court. The objections were filed by the police officers and the contemners disputing the findings recorded by the Commissioner.

7. On December 12, 1989, when the matter came up for final disposal the Court issued notices to the Attorney General and Advocate General of the State of Gujarat. On January 10, 1990 the Court directed the State of Gujarat to file affidavit stating as to what action it had taken or proposed to take against the officers in the light of the Report of Justice Sahai. The Court further issued notices to R. Bala Krishnan, Additional Chief Secretary (Home), Government of Gujarat, K. Dadabhoy, Director General of Police, S.S. Sudhalkar, District Judge, to show cause as to why action should not be taken against them in view of the Report of Justice Sahai. The State Government was further directed to explain as to why action against D.K. Dhagal, DSP, S.R. Sharma, Police Inspector and other police officers had not been taken. On February 13, 1990 a notice for contempt of this Court was issued by K. Dadabhoy on the same date in view of the findings recorded by Justice Sahai, notices for contempt of the court were issued to Dr Bhavsar and M.B. Savant, Mamlatdar, Nadiad also.

8. In his affidavit, S.R. Sharma, Police Inspector has raised a number of objections to the findings recorded by the Commissioner. The objections are technical in nature, challenging the authority and jurisdiction of the Commissioner in collecting evidence and recording findings against him. Sharma has further stated in his objections that the Commissioner acted as if he was sitting in judgment over the case. Other police officers have also raised similar objections. We find no merit in the objections raised on behalf of Sharma, Police Inspector and other contemners. The Commissioner had been appointed by this Court to hold inquiry and submit his report to the Court. Justice Sahai was acting on behalf of this Court and he had full authority to record evidence and cross-examine witnesses and to collect evidence on behalf of this Court. Since the main incident of Chief Judicial Magistrate's arrest, assault, handcuffing and roping was connected with several other incidents which led to the confrontation between the Magistracy and local police, the learned Commissioner was justified in recording his findings on the background and genesis of the entire episode. The Police Inspector Sharma raised a grievance that he was denied opportunity of cross-examination of Patel, CJM and

he was not permitted to produce Dr Jhala as a witness. Sharma's application for the recall of CJM for further cross-examination and for permission to produce Dr Jhala, retired Deputy Director, Medical and Health Services, Gujarat, was rejected by a well reasoned order of the Commissioner dated November 9, 1989. We have gone through the order and we find that the Commissioner has given good reasons for rejecting the recall of CJM for further cross-examination, as he had been cross-examined by the counsel appearing on behalf of the police officials including Sharma. The police officers and the State Government and CJM were represented by counsel before the Commissioner and every opportunity was afforded to them for cross-examining the witnesses. Dr Jhala's evidence was not necessary, the Commissioner rightly refused Sharma's prayer.

9. On behalf of the contemners it was urged that in the absence of any independent testimony the Commission was not justified in accepting interested version of the incident as given by the CJM with regard to his visit to the Police Station and the incident which took place inside the Police Station. There was oath against oath and in the absence of any independent testimony the Commission was not justified in accepting the sole interested testimony of Patel, CJM. We find no merit in this objection. The learned Commissioner has considered the evidence as well as the circumstances in support of his findings that Patel had been invited by Sharma to visit the Police Station and he had sent a police jeep in which Patel went to the Police Station. This fact is supported by independent witnesses as discussed by the Commissioner. If Patel had gone on the invitation of Sharma in police jeep and not in the manner as alleged by Sharma, Patel could not be drunk and there appears no reason as to why he would have assaulted Sharma as alleged by the police. The circumstances as pointed out by the Commissioner fully justify the findings recorded against the police officers. It is settled law that even in a criminal trial, accused is convicted on circumstantial evidence in the absence of an eye-witness. Learned Commissioner acted judicially in a fair and objective manner in holding the inquiry, he afforded opportunity to the affected police officers and other persons and submitted his Report based on good reasons in respect of his findings which are amply supported by the material on record. The Commissioner did a commendable job in a record time. After hearing arguments at length and on perusal of the statements recorded by the Commissioner and the documentary evidence submitted by the parties, and a careful scrutiny of the affidavits and objections filed in this Court, we find no valid ground to reject the well reasoned findings recorded by the learned Commissioner. The Commissioner's Report runs into 140 pages, which is on record. The contemners and other respondents have failed to place any convincing material before the Court to take a different view. We accordingly accept the same.

10. After hearing learned counsel for the parties and on perusal of the affidavits, objections, applications and the Report of the Commissioner, we hold that the following facts and circumstances are fully proved :

> (1) N.L. Patel, Chief Judicial Magistrate found that the Police of Nadiad was not effective in service of summons and it had adopted an attitude of indifference to court orders. He tried to obtain the assistance of the District Superintendent of Police in February 1989 and addressed a letter to the Director General of Police but no response came from the Police Authorities, even through the government had reminded D.K. Dhagal, DSP, Kheda to do the needful. Patel, the CJM filed two complaints against police officers of Nadiad Police Station and the Inspectors, and forwarded it to the District Superintendent of Police on July 19 and 24, 1989 for taking action against them. Sharma, the Police Inspector who had by than been posted at Nadiad reacted to the CJM's conduct by withdrawing constables working in the courts of Magistrates on the alleged pretext of utilising their services for service

of summons. This led to confrontation between the local police and the Magistracy.

(2) On July 25, 1989, the CJM had directed the registration of a case against 14 accused persons for misbehaviour and causing obstruction in the judicial proceedings. Since the accused persons had later expressed regret and tendered unqualified apology to, the court, the CJM sent a letter to the Police Inspector, Sharma to drop proceedings. Sharma went out of his way, to send a complaint to the High Court through the DSP saying that Patel was functioning in an illegal manner in the judicial discharge of his duties. The action of Sharma, Police Inspector was highly irresponsible and Dhagal DSP should not have acted in a casual manner in forwarding Sharma's letter to the Registrar of the High Court directly.

(3) Remand period of Jitu Sport was to expire on September 27, 1989, the CJM directed the Police Inspector to produce complete papers before the expiry of the period of remand but he applied for the extension of the judicial remand. The CJM directed the Police Inspector to produce papers on September 22, 1989, Sharma did not appear before the CJM as directed, on the contrary he interpolated the order set to him, indicating that he was required to appear before the CJM on September 23, 1989, which was admittedly a holiday.

(4) On September 25, 1989, Sharma met the CJM in his chamber and as a pretext requested him to come to the Police Station to see the papers which could not be brought to the Court, as that could satisfy him that the police was doing the needful for complying with the orders of the Court. Sharma pleaded with CJM that his visit to Police Station will remove the feeling of confrontation between the Police and Magistracy. The CJM agreed to visit the Police Station and Sharma offered to send police jeep to CJM's house for bringing him to the Police Station.

(5) On September 25, 1989 after the Court hours the CJM went to the officers' club where he remained in the company of Sudhalkar, District Judge and Pande, Civil Judge till 8.30 p.m. Thereafter, he went to his residence. A police jeep came to his residence at about 8.40 p.m. in the Officers Colony, he went in that police jeep to the Police Station situate at a distance of about 2 Kms. Patel had not consumed liquor before he went to the Police Station.

(6) The police version that Patel had consumed liquor before coming to the Police Station and that he assaulted the Police Inspector Sharma and misbehaved with him at the Police Station cooked up story. Patel did not go to the Police Station on foot as alleged by Sharma, instead, he went to the Police Station in a police jeep on Sharma's invitation. Patel was handcuffed and tied with rope, and he received injuries at the Police Station, he was assaulted and forced to consume liquor after he was tied to the chair on which he was sitting, Police Inspector Sharma, Sub-Inspector Sadia, Head Constable Valjibhai Kalabhai and Constable Pratap Singh took active part in this episode. They actively participated in the assault on Patel and in forcing liquor in his mount. They acted in collusion with Sharma to humiliate and teach a lesson to Patel.

(7) On the direction of Sharma, Police Inspector, Patel was handcuffed at the Police Station and he was further tied up with a thick rope by the Police Inspector, Sharma, Sadia, Sub-Inspector, Valjibhai Kalabhai, Head Constable and Pratap Singh,

Constable. This was deliberately done in defiance of Police Regulations and Criculars issued by the Gujarat Government and the law declared by this Court in Prem Shankar Shukla v. Delhi Administration ((1980) 3 SCC 526 : 1980 SCC (Cri) 815). Patel had not committed any offence nor he was violent and yet he was handcuffed and tied up with rope without there being any justification for the same. There were seven police personnel present at the Police Station and most of them fully armed while Patel was empty handed, there was absolutely no chance of Patel escaping from the custody or making any attempt to commit suicide or attacking the Policy Officers and yet he was handcuffed and tied up with a thick rope like an animal with a view to humiliate and teach him a lesson. For this wanton act there was absolutely no justification and pleas raised by Sharma that Patel was violent or that he would have escaped from the custody are a figment of imagination made for the purpose of the case.

(8) The panchnama showing the drunken state of Patel prepared on the dictation of Sharma, Police Inspector, and signed by Sharma as well as by two panchas, M.B. Savant, Mamlatdar and P.D. Barot, Fire Brigade Officer, Nadiad, did not represent the correct facts, instead, it was manufacturer for the purpose of preparing a false case against CJM Patel, justifying his arrest and detention.

(9) On examination at the Civil Hospital Patel's body was found to have a number of injuries. The injury on the left eye was very clear which appeared to have been caused by external force. His body had bruises and abrasions which could be caused by fists and blows. While in the casualty ward of the Civil Hospital, Patel requested the doctors to contact the District Judge and inform him about the incident. Dr Parashar tried to ring up the District Judge but he was prevented from doing so by Sharma and other police officers who were present there. Dr Parashar and Dr Bhavsar found the speech of Patel normal, gait steady, he was neither violent, nor he misbehaved. His blood was taken for chemical examination but the Forms used were not according to the rules and the blood was not taken in accordance with procedure prescribed by the Rules and the Circulars issued by the Director of Medical Services, Gujarat. The chemical examination of the blood sample taken in the Civil Hospital was not correctly done. The blood sample was analysed by a teenager who was not a testing officer within the Bombay Prohibition Act and necessary precautions at the time of analysis were not taken. The phial in which the blood sample had been sent to the Chemical Examiner did not contain the seal on phial and the seal was not fully legible. The Chemical Examiner who submitted the report holding that the blood sample of Patel contained alcohol on the basis of the calculation made by him in the report clearly admitted before the Commission that he had never determined the quantity of liquor by making calculation in any other case and Patel's case was his first case.

(10) When Patel was taken to Civil Hospital handcuffed and tied with thick rope he was deliberately made to sit outside in the veranda on bench for half an hour in public gaze, to enable the public to have a full view of the CJM in that condition. A press photographer was brought on the scene and the policemen posed with Patel for the press photograph. The photographs were taken by the press reporter without any objection by the police, although a belated justification was pleaded by the police that Patel desired to have himself photographed in that condition. This plea is totally

false. The photographs taken by the press reporter were published in 'Jan Satta' and 'Lokmat' on September 26, 1989 showing Patel handcuffed and tied with rope and the policemen standing beside him. This was deliberately arranged by Sharma to show to the public that police wielded real power and if the CJM took confrontation with police he will not spared.

(11) At the initial stage, one case was registered against Patel by the police under the Bombay Prohibition Act. Two Advocates Kantawala and Brahmbhatt met Sharma at 11.30 p.m. for securing Patel's release on bail, as offences under the Prohibition Act were bailable. The lawyers requested Sharma to allow them to meet the CJM who was in the police lock-up but Sharma did not allow them to do so. With view to frustrate the lawyers' attempt to get Patel released on bail, Sharma registered another case against Patel under Sections 332 and 506 of Indian Penal Code as offence under Section 332 is non-bailable.

(12) D.K. Dhagal, the then District Superintendent of Police, Kheda exhibited total indifference to CJM's complaint regarding the unsatisfactory state of affairs in the matter of execution of court processes. Dhagal identified himself with Sharma, Police Inspector who appeared to be his favourite. Instead of taking corrective measures in the service of processes, he become party along with Sharma in forwarding his complaint to the High Court against Patel's order in a judicial matter. The incident which took place in the night of September 25/26, 1989, had the blessing of Dhagal. He did not take any immediate action in the matter instead he created an alibi for himself alleging that he had gone to Lasundara and then to Balasinor Police Station and stayed there in a Government Rest House. The register at the Rest House indicating the entry regarding his stay was manipulated subsequently by making interpolation. On the direction of Additional Chief Secretary (Home) Dhagal submitted his report on September 27, 1989 but in that report he did not make any reference of handcuffing and roping of the CJM although it was a matter of common knowledge and there was a great resentment among the judicial officers and the local public. Dhagal's complicity in the sordid episode is further fortified by the fact that he permitted Sharma, the main culprit of the entire episode to carry on investigation against Patel in the case registered against him by Sharma and also in the case registered by Patel against Sharma.

(13) Police Inspector Sharma had pre-planned the entire incident and he had even arranged witnesses in advance for preparing false case against N.L. Patel, CJM, as M.B. Savant, Mamlatdar (sic) in the Police Station, immediately on the arrival of Patel, CJM, and they acted on complicity with Sharma in preparing the panchnama which falsely stated that Patel was drunk. M.B. Savant and P.D. Barot both were hand in glove with Sharma to falsely implicate Patel in Prohibition Case.

11. Learned Commissioner has adversely commented upon the conduct of various officers including K. Dadabhoy, the then Director General of Police, Gujarat, Kuldip Singh Lowchab, CID Inspector, Dr Bhavsar, Senior Medical Officer, Nadiad, M.B. Savant, Mamlatdar, P.D. Barot, Fire Brigade Officer and A.N. Patel, Chemical Examiner, Nadiad. After considering the material on record, we agree with the view taken by the Commissioner that their conduct was not above board as expected from responsible officers. We do not consider it necessary to burden the judgment by referring to the details of the findings as the same are contained in the Commissioner's Report.

12. Mr Nariman contended on behalf of the police officers that the findings recorded by the Commission cannot be taken into account as those findings are hit by Article 20(3) of the Constitution. Inspector Sharma and other police officers against whom criminal cases have been registered were compelled to be witnesses against themselves by filing affidavits and by subjecting them to cross-examination before the Commissioner. Any finding recorded on the basis of their evidence is violative of Article 20(3) of the Constitution. Article 20(3) of the Constitution declares that no person accused of any shall be compelled to be a witness against himself. In order to avail the protection of Article 20(3) three conditions must be satisfied. Firstly, the person must accused of an offence. Secondly, the element of compulsion to a witness should be there and thirdly it must be against himself. All the three ingredients must necessarily exist before protection of Article 20(3) is available. If any of these ingredients do not exist, Article 20(3) cannot be invoked see : Balkishan A. Devidayal v. State of Maharashtra ((1980) 4 SCC 600 : 1981 SCC (Cri) 62). In the instant case this Court had issued notices for contempt to Sharma, Police Inspector and other contemners. Mere issue of notice or pendency of contempt proceedings do not attract Article 20(3) of the Constitution as the contemners against whom notices were issued were not accused of any offence. A criminal contempt is punishable by the superior courts by fine or imprisonment, but it has many characteristics which distinguishes it from ordinary offence. An offence under the criminal jurisdiction is trial by a Magistrate or a Judge and the procedure of trial is regulated by the Code of Criminal Procedure, 1973 which provides an elaborate procedure for framing of charges, recording of evidence, cross-examination, argument and the judgment. But charge of contempt is tried on summary process without any fixed procedure as the court is free to evolve its own procedure consistent with fair play and natural justice. In contempt proceedings unlike the trial for a criminal offence no oral evidence is ordinarily recorded and the usual practice is to give evidence by affidavits. Under the English law a criminal offence is tried by criminal courts with the aid of jury but a criminal contempt is tried by courts summarily without the aid and assistance of jury. Ordinarily, process of trial for contempt is summary. A summary form of trial is held in the case of civil contempt and also in the case of criminal contempt where the act is committed in the actual view of the court or by an officer of justice. The summary procedure is applicable by immemorial usage when criminal contempt was committed out of court by a stranger. The practice of proceeding summarily for the punishment of contempt out of court has been the subject of comment and protest, but the practice is founded upon immemorial usage, it has, since the eighteenth century, been generally assumed. We do not consider it necessary to refer to decisions from English courts which have been discussed in detail in the History of Contempt of Court by fox J.C. (1927). Proceedings for contempt of court are taken in the exercise of original criminal jurisdiction. Proceedings for contempt of court are of a peculiar nature; though it may be that in certain aspects they are quasi-criminal, but in any view they are not exercised as part of the original criminal jurisdiction of the court, as was held in Tushar Kanti Ghosh, Re (AIR 1935 Cal 419 : 36 Cri LJ 1053 : 39 CWN 394). The Court held that since the proceedings for contempt of court do not fall within the original criminal jurisdiction of the Court no leave could be granted for appeal to Privy Council under clause 41 of the letters patent of that Court.

13. In Sukhdev Singh Sodhi v. Chief Justice and Judges of the PEPSU High Court (1954 SCR 454 : AIR 1954 SC 186 : 1954 Cri LJ 460), Sukhdev Singh Sodhi approached this Court for transfer of contempt proceedings from PEPSU High Court to any other High Court under Section 527 of Criminal Procedure Code, 1898. This Court rejected the application holding that Section 527 of the Criminal Procedure Code did not apply to the contempt proceedings as the contempt jurisdiction is a special jurisdiction which is inherent in all courts of record and the CrPC excludes such a special jurisdiction from the Code. The Court further held that notwithstanding the provisions contained in

the Contempt of Courts Act, 1926 making an offence of contempt punishable, the Act does not confer any jurisdiction or create the offence, it merely limits the amount of the punishment which could be awarded and it removes a certain doubt. The jurisdiction to initiate the proceedings and take seisin of the contempt is inherent in a court of record and the procedures of the Criminal Procedure Code do not apply to contempt proceedings. Section 5 of the Code of Criminal Procedure lays down that nothing contained in this Code shall, in the absence of the specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. The power to take proceedings for the contempt of court is an inherent power of a court of record, the Criminal Procedure Code does not apply to such proceedings. Since, the contempt proceedings are not in the nature of criminal proceedings for an offence, the pendency of contempt proceedings cannot be regarded as criminal proceedings merely because it may end in imposing punishment on the contemner. A contemner is not in the position of an accused, it is open to the court to cross-examine the contemner and even if the contemner is found to be guilty of contempt, the court may accept apology and discharge the notice of contempt, whereas tendering of apology is no defence to the trial of a criminal offence. This peculiar feature distinguishes contempt proceedings from criminal proceedings. In a criminal trial where a person is accused of an offence there is a public prosecutor who prosecutes the case on behalf of the prosecution against the accused but in the contempt proceedings the court is both the accuser as well as the judge of the accusation as observed by Hidayatullah, C.J. in Debabrata Bandopadhyay case (Debabrata Bandopadhyay v. State of W.B., AIR 1969 SC 189 : (1969) 1 SCR 304 : 1969 MLJ (Cri) 404). Contempt proceeding is sui generis, it has peculiar features which are not found in criminal proceedings. In this view the contemners do not stand in the position of a "person accused of an offence" merely on account of issue of notice on behalf of this Court had full authority to record the testimony of the contemners. Commission issued notice and directed Sharma, Police Inspector and other police officials to place their version of the incident before it and there was no element of compulsion. In this view there has been no violation of Article 20(3) of the Constitution and Commissioner's findings are not vitiated.

14. Mr F.S. Nariman contended that this Court has no jurisdiction or power to indict the police officers even if they are found to be guilty as their conduct does not amount to contempt of this Court. He urged that Articles 129 and 215 demarcate the respective areas of jurisdiction of the Supreme Court and the High Courts respectively. This Court's jurisdiction under Article 129 is confined to the contempt of itself only and it has no jurisdiction to indict a person for contempt of an inferior court subordinate to the High Court. The Parliament in exercise of its legislative power under Entry 77 of List I read with Entry 14 of List III has enacted Contempt of Courts Act, 1971 (hereinafter referred to as the 'Act') and that Act does not confer any jurisdiction on this Court for taking action for contempt of subordinate courts. Instead the original jurisdiction of High Courts in respect of contempt of subordinate courts is specifically preserved by Sections 11 and 15(2) of the Act. The Supreme Court has only appellant powers under Section 19 of the Act read with Articles 134(1)(c) and 136 of the Constitution. The constitutional and statutory provisions confer exclusive power on the High Court for taking action with regard to contempt of inferior or subordinate court, and the Supreme Court has no jurisdiction in the matter. Shri Nariman further urged that in our country there is no court of universal jurisdiction, and the jurisdiction of all courts including Supreme Court is limited and this Court cannot enlarge its jurisdiction. Shri Soli J. Sorabjee learned Attorney General (as he then was) urged that power to punish contempt is a special jurisdiction which is inherent in a court of record. A superior court of record has inherent power to punish for contempt of itself and it necessarily includes and carries with it the power to punish for contempt committed in respect of subordinate or inferior courts. A superior court of record having power to

correct the order of inferior court has power to protect that court by punishing those who interfere with the due administration of justice of that court. Articles 129 and 215 do not confer any additional jurisdiction on the Supreme Court and the High Court. The constitutional provisions as well as the legislative enactment "The Contempt of Courts Act" recognise and preserve the existing contempt jurisdiction and power of the court of record for punishing for contempt of subordinate or inferior courts. The Act has not affected or restricted the suo moto inherent power of the Supreme Court being a court of record which has received constitutional sanction under Article 129. Mr Sorabjee further urged that even otherwise the Act does not restrict or affect the suo moto exercise of power by the Supreme Court as a court of record in view of Section 15(1) of Act. The Supreme Court as the Apex Court is the protector and guardian of justice throughout the land, therefore, it has a right and also a duty to protect the courts whose orders and judgments are amenable to correction, from commission of contempt against them. This right and duty of the Apex Court is not abrogated merely because the High Court also has this right and duty of protection of the subordinate courts. The jurisdictions are concurrent and not exclusive or antagonistic.

15. The rival contentions raise the basic question whether the Supreme Court has inherent jurisdiction or power to punish for contempt of subordinate or inferior courts under Article 129 of the Constitution and whether the inherent jurisdiction and power of this Court is restricted by the Act. The answer to the first question depends upon the nature and the scope of the power of this Court as a court of record, in the background of the original and appellate jurisdiction exercised by this Court under the various provisions of the Constitution. It is necessary to have a look at the constitutional provisions relating to the original and appellate jurisdiction of this Court. Article 124 lays down that there shall be a Supreme Court of India consisting of Chief Justice of India and other Judges. Article 32 confers original jurisdiction on this Court for enforcement of fundamental rights of the citizens. This jurisdiction can be invoked by an aggrieved person even without exhausting his remedy before other courts. Article 129 provides that 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. Article 131 confers original jurisdiction on the Supreme Court in certain matters. Article 132 confers appellant jurisdiction on this Court against any judgment, decree or find order of the High Courts in India. Articles 133, 134 and 134-A confer appellant jurisdiction in the Supreme Court in appeals from High Courts in regard to civil and criminal matters respectively on certificate to be issued by the High Court. Article 136 provides for special leave to appeal before the Supreme Court, notwithstanding the provisions of Articles 132, 133, 134 and 134-A. Article 136 vests this Court with wide powers to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India except a court or tribunal constituted by or under any law relating to the Armed Forces. The Court's appellate power under Article 136 is plenary, it may entertain any appeal by granting special leave against any order made by any Magistrate, tribunal on any other subordinate court. The width and amplitude of the power is not affected by the practice and procedure followed by this Court in insisting that before invoking the jurisdiction of this Court under Article 136 of the Constitution, the aggrieved party must exhaust remedy available under the law before the appellate authority or the High Court. Self-imposed restrictions by this Court do not divest it of its wide powers to entertain any appeal against any order or judgment passed by any court or tribunal in the country without exhausting alternative remedy before the appellate authority or the High Court. The power of this Court under Article 136 is unaffected by Article 132, 133, 134 and 134-A in view of the expression "notwithstanding anything in this Chapter" occurring in Article 136.

16. This Court considered the scope and amplitude of plenary power under Article 136 of the Constitution in Durga Shankar Mehta v. Thakur Raghuraj Singh ((1955) 1 SCR 267 : AIR 1954 SC

520 : 9 ELR 494). Mukherjea, J. speaking for the Court observed : (SCR p. 272)

> "The powers given by Article 136 of the Constitution however are in the nature of special or residuary powers which are exercisable outside the purview of ordinary law, in cases where the needs of justice demand interference by the Supreme Court of the land. The article itself is worded in widest terms possible. It vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing appeals, by granting of special leave, against any kind of judgment or order made by a court or tribunal in any cause or matter and the matter and the powers could be exercised in spite of the specific provisions for appeal contained in the Constitution or other laws. The Constitution for the best of reasons did not choose to fetter or circumscribe the powers exercisable under this article in any way."

17. In Arunachalam v. P.S.R. Sadhanantham ((1979) 2 SCC 297 : 1979 SCC (Cri) 454) this Court entertained an appeal under Article 136 of the Constitution of India by special leave at the instance of a complainant against the judgment and the order of acquittal in a murder case and on appraisal of evidence, it set aside the order of acquittal. Objections raised on behalf of the accused relating to the maintainability of the special leave petition under Article 136 of the Constitution, were rejected. Chinnappa Reddy, J. speaking for the Court held as under : (SCC p. 300, para 4)

> "Article 136 of the Constitution of India invests the Supreme Court with a plenitude of plenary, appellant power over all courts and tribunals in India. The power is plenary in the sense that there are no words in Article 136 itself qualifying that power. But, the very nature of the power has led the Court to set limits to itself within which to exercise such power. It is now the well established practice of this Court to permit the invocation of the power under Article 136 only in very exceptional circumstances, as when a question of law of general public importance arises or a decision shocks the conscience of the Court. But, within the restrictions imposed by itself, this Court has the undoubted power to interfere even with findings of fact, making no distinction between judgments of acquittal and conviction, if the High Court, in arriving at those findings, has acted 'perversely or otherwise improperly'."

With regard to the competence of a private party, distinguished from the State, to invoke the jurisdiction of this Court under Article 136 of the Constitution, the Court observed : (SCC pp. 300-01, para 5)

> "Appellate power vested in the Supreme Court under Article 136 of the Constitution is not to be confused with ordinary appellate power exercised by appellate courts and appellate tribunals under specific statutes. As we said earlier, it is a plenary power, 'exercisable outside the purview of ordinary law' to meet the pressing demands of justice (vide Durga Shankar Mehta v. Thakur Raghuraj Singh ((1955) 1 SCR 267 : AIR 1954 SC 520 : 9 ELR 494)). Article 136 of the Constitution neither confers on anyone the right to invoke the jurisdiction of the Supreme Court nor inhibits anyone from invoking the Court's jurisdiction. The power is vested in the Supreme Court but the right to invoke the Court's jurisdiction is vested in no one. The exercise of the power of the Supreme Court is not circumscribed by any limitation as to who may invoke it."

18. There is therefore no room for any doubt that this Court has wide power to interfere and correct the judgment and orders passed by any court or tribunal in the country. In addition to the appellate power, the Court has special residuary power to entertain appeal against any order of any court in the country. The plenary jurisdiction of this Court to grant leave and hear appeals against any order of a court or tribunal, confers power of judicial superintendence over all the courts and tribunals in the territory of India including subordinate courts of Magistrate and District Judge. This Court has, therefore, supervisory jurisdiction over all courts in India.

19. Article 129 provides that 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. Article 215 contains similar provision in respect of High Court. Both the Supreme Court as well as High Courts are courts of record having powers to punish for contempt including the power to punish for contempt of itself. The Constitution does not define "Court of Record". This expression is well recognised in juridical world. In Jowitt's Dictionary of English Law, "Court of Record" is defined as :

> "A court whereof the acts and judicial proceedings are enrolled for a perpetual memorial and testimony, and which has power to fine and imprison for contempt of its authority."

In Wharton's Law Lexicon, Court of Record is defined as :

> "Courts are either of record where their acts and judicial proceedings are enrolled for a perpetual memorial and testimony and they have power to fine and imprison; or not of record being courts of inferior dignity, and in a less proper sense the King's Courts - and these are not entrusted by law with any power to fine or imprison the subject of the realm, unless by the express provision of some Act of Parliament. These proceedings are not enrolled or recorded."

In Words and Phrases (Permanent Edition Vol. 10 page 429) "Court of Record" is defined as under :

> "Court of Record is a court where acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony which rolls are called the 'record' of the court, and are of such high and supereminent authority that their truth is not to be questioned."

Halsbury's Laws of England, 4th Edn., Vol. 10, para 709, page 319, states :

> "Another manner of division is into courts of record and courts not of record. Certain courts are expressly declared by statute to be courts of record. In the case of courts not expressly declared to be court of record, the answer to the question whether a court is a court of record seems to depend in general upon whether it has power to fine or imprison, by statute or otherwise, for contempt of itself or other substantive offences; if it has such power, it seems that it is a court of record ... The proceedings of a court of record preserved in its archives are called records, and are conclusive evidence of that which is recorded therein."

20. In England a superior court of record has been exercising power to indict a person for the contempt of its authority and also for the contempt of its subordinate and inferior courts in a summary manner without the aid and assistance of jury. This power was conceded as necessary attribute of a superior court of record under Anglo-Saxon System of Jurisprudence. The concept of

inherent power of the superior court of record to indict a person by summary procedure was considered in detail in Rex v. Almon (97 ER 94 : (1765) Wilm 243) commonly known as Almon case. In that case King's Bench initiated proceedings for contempt against John Almon, a book-seller for publishing a libel on the Chief Justice, Lord Mansfield. On behalf of the contemner objection was taken to the summary procedure followed by the court. After lengthy arguments judgment was prepared by Chief Justice Wilmot holding that a libel on a Judge was punishable by the process of attachment without the intervention of a jury, as the summary form of procedure was founded upon immemorial usage. The judgment prepared with great learning and erudition could not be delivered as the proceedings were dropped following the change of government. After long interval Wilmot's judgment was published in 1802. The judgment proceeded on the assumption that the superior Common Law Courts did have the power to indict a person for contempt of court, by following a summary procedure on the principle that this power was 'a necessary incident to every court of justice'. Undelivered judgment of Wilmot, J. has been subject of great controversy in England and Sir John Fox has severely criticised Almon case (97 ER : (1765) Wilm 243), in his celebrated book. The History of Contempt of Court : The Form of Trial and Mode of Punishment. In spite of serious criticism of judgment of Wilmot, J. the opinion expressed by him has all along been followed by the English and Commonwealth Courts. In Rainy v. Justices of Seirra Leone ((1853) 8 Moore's PCC 47, 54), on an application for leave to appeal against the order of the Court of Seirra Leone for contempt of court, the Privy Council upheld the order on the ground that the Court of Seirra Leone being a Court of Record was the sole and exclusive judge of what amounted to contempt of court.

21. In India, the courts have followed the English practice in holding that a court of record has power of summarily punishing contempt of itself as well as of subordinate courts. In Surendranath Banerjea v. Chief Justice and Judges of the High Court at Fort William in Bengal (ILR 10 Cal 109 : 10 IA 171 : 4 Sar 474), the High Court of Calcutta in 1883 convicted Surendranath Banerjea, who was Editor and Proprietor of weekly newspaper for contempt of court and sentenced him to imprisonment for two months for publishing libel reflecting upon a Judge in his judicial capacity. On appeal the Privy Council upheld the order of the High Court and observed that the High Courts in Indian Presidencies were superior courts of record, and the powers of the High Court as superior courts in India are the same as in England. The Privy Council further held that by common law every court of record was the sole and exclusive judge of what amounts to a contempt of court. In Sukhdev Singh Sodhi case (1954 SCR 454 : AIR 1954 SC 186 : 1954 Cri LJ 460) this Court considered the origin, history and development of the concept of inherent jurisdiction of a court of record in India. The Court after considering Privy Council and High Courts' decisions held that the High Court being a court of record has inherent power to punish for contempt of subordinate courts. The Court further held that even after the codification of the law of contempt in India the High Court's jurisdiction as a court of record to initiate proceedings and take seisin of the matter remained unaffected by the Contempt of Courts Act, 1926.

22. Mr Nariman contended that even if the Supreme Court is a court of record, it has no power to take action for the contempt of a Chief Judicial Magistrate's court as neither the Constitution nor any statutory provision confers any such jurisdiction or power on this Court. He further urged that so far as the High Court is concerned, it has power of judicial and administrative superintendence over the subordinate courts and further Section 15 of the Act expressly confers power on the High Court to take action for the contempt of subordinate courts. This Court being a court of record has limited jurisdiction to take action for contempt of itself under Article 129 of the Constitution; it has no jurisdiction to indict a person for the contempt of subordinate or inferior courts.

23. The question whether in the absence of any express provision a Court of Record has inherent power in respect of contempt of subordinate or inferior courts, has been considered by English and Indian courts. We would briefly refer to some of those decisions. In the leading case of Rex v. Parke ((1903) 2 KB 432, 442 : (1900-3) All ER Rep 721), Wills, J. observed : (KB p. 442)

> "This Court exercises a vigilant watch over the proceedings of inferior courts, and successfully prevents them from usurping powers which they do not posses, or otherwise acting contrary to law. It would seem almost a natural corollary that it should possess correlative powers of guarding them against unlawful attacks and interferences with their independence on the part of others."

In King v. Davies ((1906) 1 KB 32 : (1904-7) All ER Rep 60) Wills, J. further held that the King's Bench being a court of record must protect the inferior courts from unauthorised interference, and this could only be secured by action of the King's Bench as the inferior courts have no power to protect themselves and for that purpose this power is vested in the superior court of record. Since the King's Bench is the custos morum of the kingdom it must apply to it with the necessary adaptations to the altered circumstances of the present day to uphold the independence of the judiciary. The principle laid down in Rex v. Davies ((1906) 1 KB 32 : (1904-7) All ER Rep 60) was followed in King v. Editor of the Daily Mail ((1921) 2 KB 733 : (1921) All ER Rep 476) where it was held that the High Court as a court of record has inherent jurisdiction to punish for contempt of a court martial which was an inferior court. Avory, J. observed : (KB p. 752)

> "The result of that judgment (Rex v. Davies ((1906) 1 KB 32 : (1904-7) All ER Rep 60)) is to show that wherever and whenever this Court has power to correct an inferior court, it also has power to protect that court by punishing those who interfere with due administration of justice in that court."

In Attorney General v. British Broadcasting Corpn. ((1980) 3 All ER 161 : (1980) 3 WLR 109) the House of Lords proceeded on the assumption that a court of record possesses protective jurisdiction to indict a person for interference with the administration of justice in the inferior courts but it refused to indict as it held that this protection is available to a court exercising judicial power of the State and not to a tribunal even though the same may be inferior to the court of record. These authorities show that in England the power of the High Court to deal with the contempt of inferior court was based not so much on its historical foundation but on the High Court's inherent jurisdiction being a court of record having jurisdiction to correct the orders of those courts.

24. In India prior to the enactment of the Contempt of Courts Act, 1926, High Court's jurisdiction in respect of contempt of subordinate and inferior courts was regulated by the principles of Common Law of England. The High Courts in the absence of statutory provision exercised power of contempt to protect the subordinate courts on the premise of inherent power of a Court of record. Madras High Court in Venkatrao, Re (21 Mad LJ 832 : 10 MLT 209 : 12 IC 293 (FB)) held that it being a court of record had the power to deal with the contempt of subordinate courts. The Bombay High Court in Mohandas Karamchand Gandhi, Re ((1920) 22 Bom LR 368 : AIR 1920 Bom 175 : 21 Cri LJ 835 (FB)) held that the High Court possessed the same powers to punish the contempt of subordinate courts as the Courts of the King's Bench Division had by virtue of the Common Law of England. Similar view was expressed by the Allahabad High Court in Abdul Hassan Jauhar case (AIR 1926 All 623 : 24 ALJ 849 (FB) (Cited in the report as In re Hadi Husain v. Nasir Uddin Haider) and Shantha Nand Gir Chela v. Basudevanand (AIR 1930 All 225 : 1930 ALJ 402 (FB)). In Abdul Hassan Jauhar case (AIR 1926 All 623 : 24 ALJ 849 (FB) (Cited in the report as In re Hadi

Husain v. Nasir Uddin Haider) and Shantha Nand Gir Chela v. Basudevanand (AIR 1930 All 225 : 1930 ALJ 402 (FB)) a Full Bench of the Allahabad High Court after considering the question in detail held :

> "The High Court as a court of record and as the protector of public justice throughout its jurisdiction has power to deal with contempts directed against the administration of justice, whether those contempts are committed in face of the court of outside it, and independently or whether the particular court is sitting or not sitting, and whether those contempts relate to proceedings directly concerning itself or whether they relate to proceedings concerning an inferior court, and in the latter case whether those proceedings might or might not at some stage come before the High Court."

Similar view was taken by the Nagpur and Lahore High Courts in Mt. Hirabai v. Mangalchand (AIR 1935 Nag 46 : 156 IC 666 : 31 NLR 154), Harkishen Lal v. Emperor (AIR 1937 Lah 497 : 38 Cri LJ 883 : 39 PLR 733 (SB)) and the Oudh Chief Court took the same view in Mohammad Yusuf v. Imtiaz Ahmad Khan (AIR 1939 Oudh 131 : 40 Cri LJ 421 : 1939 OLR 194 (FB)). But the Calcutta High Court took a contrary view in Legal Remembrancer v. Motilal Ghosh (ILR 41 Cal 173 : 17 CWN 1253 : 18 CLJ 452 (SB)) holding that there was no such inherent power with the High Court.

25. Judicial conflict with regard to High Court's power with regard to the contempt of subordinate court was set at rest by the Contempt of Courts Act, 1926. The Act resolved the doubt by recognising the power of High Courts in regard to contempt of subordinate courts, by enacting Section 2 which expressly stated that the High Courts will continue to have jurisdiction and power with regard to contempt of subordinate courts as they exercised with regard to their own contempt. Thus the Act reiterated and recognised the High Court's power as a court of record for taking action for contempt of courts subordinate to them. The only exception to this power was made in sub-section (3) of Section 2 which provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code. Section 3 of the Act restricted the punishment which could be passed by the High Court. Since doubt was raised whether the High Court as a court of record could punish contempt of itself and of courts subordinate to it if contempt was committed outside its territorial jurisdiction, the Parliament enacted the Contempt of Courts Act, 1952 removing the doubt. Section 3 of the 1952 Act again reiterated and reaffirmed the power, authority and jurisdiction of the High Court in respect of contempt of courts subordinate to it, as it existed prior to the enactment. It provided that every High Court shall have and exercise the same jurisdiction, power and authority, in accordance with the same procedure and practice in respect of contempt of courts subordinate to it as it has and exercises in respect of contempt of itself. Section 5 further expanded the jurisdiction of the High Court for indicting a person in respect of contempt committed outside the local limits of its jurisdiction. The Parliamentary legislation did not confer any new or fresh power or fresh power or jurisdiction on the High Courts in respect of contempt of courts subordinate to it, instead it reaffirmed the inherent power of a Court of Record, having same jurisdiction, power and authority as it has been exercising prior to the enactments. The effect of these statutory provisions was considered by this Court in Sukhdev Singh Sodhi case (1954 SCR 454 : AIR 1954 SC 186 : 1954 Cri LJ 460), and the Court held that contempt jurisdiction was a special one inherent in the very nature of a court of record and that jurisdiction and power remained unaffected even after the enactment of 1926 Act as it did not confer any new jurisdiction or create any offence, it merely limited the amount of punishment which could be awarded to a contemner. The jurisdiction of the High Court to initiate proceedings or taking action for contempt of its subordinate courts remained as it was prior to the 1926 Act. In R.L. Kapur v. State of T.N. ((1972) 1

SCC 651 : 1972 SCC (Cri) 380 : AIR 1972 SC 858) the Court again emphasised that in view of Article 215 of the Constitution, the High Court as a court of record possesses inherent power and jurisdiction, which is a special one, not arising or derived from Contempt of Courts Act and the provisions of Section 3 of 1926 Act, do not affect that power or confer a new power or jurisdiction. The Court further held that in view of Article 215 of the Constitution, no law made by a legislature could take away the jurisdiction conferred on the High Court nor it could confer it afresh by virtue of its own authority.

26. The English and the Indian authorities are based on the basic foundation of inherent power of a Court of Record, having jurisdiction to correct the judicial orders of subordinate courts. The King's Bench in England and High Courts in India being superior Courts of Record and having judicial power to correct orders of subordinate courts enjoyed the inherent power of contempt to protect the subordinate courts. The Supreme Court being a Court of Record under Article 129 and having wide power of judicial supervision over all the courts in the country, must possess and exercise similar jurisdiction and power as the High Courts had prior to Contempt Legislation in 1926. Inherent powers of a superior Court of Record have remained unaffected even after codification of Contempt Law. The Contempt of Courts Act, 1971 was enacted to define and limit the powers of courts in punishing contempts of courts and to regulate their procedure in relation thereto. Section 2 of the Act defines contempt of court including criminal contempt. Sections 5, 6, 7, 8 and 9 specify matters which do not amount to contempt and the defence which may be taken. Section 10 relates to the power of High Court to punish for contempt of subordinate courts. Section 10 like Section 2 of 1926 Act and Section 3 of 1952 Act reiterates and reaffirms the jurisdiction and power of a High Court in respect of its own contempt and of subordinate courts. The Act does not confer any new jurisdiction instead it reaffirms the High Court's power and jurisdiction for taking action for the contempt of itself as well as of its subordinate courts. We have scanned the provisions of the 1971 Act, but we find no provision therein curtailing the Supreme Court's power with regard to contempt of subordinate courts, Section 15 on the other hand expressly refers to this Court's power for taking action for contempt of subordinate courts. Mr Nariman contended that under Section 15 Parliament has exclusively conferred power on the High Court to punish for the contempt of subordinate courts. The legislative intent being clear, this Court has no power under its inherent jurisdiction or as a court of record under Article 129 of the Constitution with regard to contempt of subordinate courts. Section 15 of the Act reads as under :

> "15. Cognizance of criminal contempt in other cases. - (1) In the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or a motion made by -
>
> (a) the Advocate General, or
>
> (b) any other person, with the consent in writing of the Advocate General, or
>
> (c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may by notification in the official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.
>
> (2) In the case of any criminal contempt of a subordinate court the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the official Gazette, specify in this

behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation. - In this section, the expression 'Advocate General' means -

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

(b) in relation to the High Court, the Advocate General of the State or any of the States for which the High Courts has been established;

(c) in relation to the Court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the official Gazette, specify in this behalf."

27. Under sub-section (1) the Supreme Court and High Court both have power to take cognizance of criminal contempt and it provides three modes for taking cognizance. The Supreme Court and the High Court both may take cognizance on its own motion or on the motion made by the Advocate General or any other person with the consent in any writing of the Advocate General. Sub-section (2) provides that in case of any criminal contempt of subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate General, and in, relation to a Union territory, on a motion made by any officer as may be specified by the government. Thus Section 15 prescribes modes for taking cognizance of criminal contempt by the High Court and Supreme Court, it is not a substantive provision conferring power or jurisdiction on the High Court or on the Supreme Court for taking action for the contempt of its subordinate courts. The whole object of prescribing procedural modes of taking cognizance in Section 15 is to safeguard the valuable time of the High Court and the Supreme Court being wasted by frivolous complaints of contempt of court. Section 15(2) does not restrict the power of the High Court to take cognizance of the contempt of itself or of a subordinate court on its own motion although apparently the section does not say so. In S.K. Sarkar, Member, Board of Revenue, U.P. Lucknow v. Vinay Chandra Misra ((1981) 1 SCC 436 : 1981 SCC (Cri) 175 : (1981) 2 SCR 331) this Court held that Section 15 prescribed procedure for taking cognizance and it does not affect the High Court's suo moto power to take cognizance and punish for contempt of subordinate courts.

28. Mr Nariman urged that under Entry 77 of List I of the Seventh Schedule the Parliament has legislative competence to make law curtailing the jurisdiction of Supreme Court. He further urged that Section 15 curtails the inherent power of this Court with regard to contempt of subordinate courts. Entry 77 of List I states : "Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such court), and the fees taken therein; persons entitled to practise before the Supreme Court." This entry read with Article 246 confers power on the Parliament to enact law with respect to the constitution, organisation, jurisdiction and powers of the Supreme Court including the contempt of this Court. The Parliament is thus competent to enact a law relating to the powers of Supreme Court with regard to 'contempt of itself'; such a law may prescribed procedure to be followed and it may also prescribed the maximum punishment which could be awarded and it may provide for appeal and for other matters. But the Central legislature has no legislative competence to abridge or extinguish the jurisdiction or power conferred on this Court under Article 129 of the Constitution. The Parliament's power to legislate in relation to law of contempt relating to Supreme Court is limited, therefore the Act does not impinge upon this Court's

power with regard to the contempt of subordinate courts under Article 129 of the Constitution.

29. Article 129 declares the Supreme Court a court of record and it further provides that the Supreme Court shall have all the powers of such a court including the power to punish for contempt of itself. The expression used in Article 129 is not restrictive instead it is extensive in nature. If the Framers of the Constitution intended that the Supreme Court shall have power to punish for contempt of itself only, there was no necessity for inserting the expression "including the power to punish for contempt of itself." The article confers power on the Supreme Court to punish for contempt of itself and in addition, it confers some additional power relating to contempt as would appear from the expression "including". The expression "including" has been interpreted by courts, to extend and widen the scope of power. The plain language of Article 129 clearly indicates that this Court as a court of record has power to punish for contempt of itself and also something else which could fall within the inherent jurisdiction of a court of record. In interpreting the Constitution, it is not permissible to adopt a construction which would render any expression superfluous or redundant. The courts ought not to accept any such construction. While construing Article 129, it is not permissible to ignore the significance and impact of the inclusive power conferred on the Supreme Court. Since the Supreme Court is designed by the Constitution as a court of record and as the Founding Fathers were aware that a superior court of record had inherent power to indict a person for the contempt of itself as well as of courts inferior to it, the expression "including" was deliberately inserted in the article. Article 129 recognised the existing inherent power of a court of record in its full plenitude including the power to punish for the contempt of inferior courts. If Article 129 is susceptible to two interpretations, we would prefer to accept the interpretation which would preserve the inherent jurisdiction of this Court being the superior court of record, to safeguard and protect the subordinate judiciary, which forms the very backbone of administration of justice. The subordinate courts administer justice at the grassroot level, their protection is necessary to preserve the confidence of people in the efficacy of courts and to ensure unsullied flow of justice at its base level.

30. Disputing the inherent power of this Court with regard to the contempt of subordinate courts, Mr Nariman contended that inherent powers are always preserved, but they do not authorise a court to invest itself with jurisdiction when that jurisdiction is not conferred by law. He urged that the status of an appellant court like High Court, does not enable the High Court to claim original jurisdiction not vested by law. Similarly, the Supreme Court having appellant jurisdiction under Section 19 of the Contempt of Courts Act, 1971, cannot invest itself with original jurisdiction for contempt of subordinate courts. He placed reliance on the decision of this Court in Raja Soap Factory v. S.P. Shantharaj ((1965) 2 SCR 800 : AIR 1965 SC 1449). We are unable to accept the contention. In Raja Soap Factory case ((1965) 2 SCR 800 : AIR 1965 SC 1449), High Court had entertained an original suit and issued injunction under the Trade and Merchandise Marks Act, 1958 although under the Act the suit was required to be instituted in the District Court. In appeal before this Court, order of the High Court was sought to be justified on the ground of High Court's power of transfer under Section 24 read with its inherent power under Section 151 of the Code of Civil Procedure. This Court rejected the submission on the ground that exercise of jurisdiction under Section 24 of Code of Civil Procedure was conditioned by lawful institution of the proceeding in a subordinate court of competent jurisdiction, and transfer thereof to the High Court. The Court observed that power to try and dispose of proceedings, after transfer from a court lawfully seized of it, does not involve a power to entertain a proceeding which is not otherwise within the cognizance of the High Court. Referring to the claim of inherent powers under Section 151 to justify entertainment of the suit and grant of injunction order, the Court observed that the inherent power could be exercised where there is a proceeding lawfully before the High Court; it does not, however,

authorise the High Court to invest itself with jurisdiction where it is not conferred by law. The facts and circumstances as available in the Raja Soap Factory case ((1965) 2 SCR 800 : AIR 1965 SC 1449), were quite different and the view expressed in that case do not have any bearing on the inherent power of this Court. In Raja Soap Factory case ((1965) 2 SCR 800 : AIR 1965 SC 1449), there was no issued before the Court regarding the inherent power of a superior court of record; instead the entire case related to the interpretation of the statutory provisions conferring jurisdiction on the High Court. Where jurisdiction is conferred on a court by a statute, the extent of jurisdiction is limited to the extent prescribed under the statute. But there is no such limitation on a superior court of record in matters relating to the exercise of constitutional powers. No doubt this Court has appellate jurisdiction under Section 19 of the Act, but that does not divest it of its inherent power under Article 129 of the Constitution. The conferment of appellant power on the court by a statute does not and cannot affect the width and amplitude of inherent powers of this Court under Article 129 of the Constitution.

31. We have already discussed a number of decisions holding that the High Court being a court of record has inherent power in respect of contempt of itself as well as of its subordinate courts even in the absence of any express provision in any Act. A fortiori the Supreme Court being the Apex Court of the country and superior court of record should possess the same inherent jurisdiction and power for taking action for contempt of itself as well as for the contempt of subordinate and inferior courts. It was contended that since High Court has power of superintendence over the subordinate courts under Article 227 of the Constitution, therefore, High Court has power to punish for the contempt of subordinate courts. Since the Supreme Court has to supervisory jurisdiction over the High Court or other subordinate courts, it does not possess powers which High Courts have under Article 215. This submission is misconceived. Article 227 confers supervisory jurisdiction on the High Court and in exercise of that power High Court may correct judicial orders of subordinate courts, in addition to that, the High Court has administrative control over the subordinate courts. Supreme Court's power to correct judicial orders of the subordinate courts under Article 136 is much wider and more effective than that contained under Article 227. Absence of administrative power of superintendence over the High Court and subordinate court does not affect this Court's wide power of judicial superintendence of all courts in India. Once there is power of judicial superintendence, all the courts whose orders are amenable to correction by this Court would be subordinate courts and therefore this Court also possesses similar inherent power as the High Court has under Article 215 with regard to the contempt of subordinate courts. The jurisdiction and power of a superior Court to Record to punish contempt of subordinate courts was not founded on the Court's administrative power of superintendence, instead the inherent jurisdiction was conceded to superior Court of Record on the premise of its judicial power to correct the errors of subordinate courts.

32. Mr Nariman urged that assumption of contempt jurisdiction with regard to contempt of subordinate and inferior courts on the interpretation of Article 129 of the Constitution is foreclosed by the decisions of Federal Court. He placed reliance on the decisions of Federal Court in K.L. Gauba v. Hon'ble the Chief Justice and Judges of the High Court of Judicature at Lahore and Purshottam Lal Jaitly v. King-Emperor (1944 FCR 364). He urged that this Court being successor to Federal Court was bound by the decisions of the Federal Court under Article 374(2) of the Constitution. Mr Sorabjee, the learned Attorney General, seriously contested the proposition. He contended that there is a marked difference between the Federal Court and this Court, former being established by a statute with limited jurisdiction while this Court is the apex constitutional court with unlimited jurisdiction, therefore, the Federal Court decisions are not binding on this Court. He urged that Article 374(2) does not bind this Court with the decisions of the Federal Court, instead it

provides for meeting particular situation during transitory period. In the alternative learned Attorney General urged that the aforesaid two decisions of Federal Court in Gauba case (AIR 1942 FC 1 : 43 Cri LJ 311 : 1941 FCR 54) and Jaitly case (1944 FCR 364) do note affect the jurisdiction and power of this Court with regard to contempt of subordinate and inferior courts as the Federal Court had no occasion to interpret any provision like Article 129 of the Constitution in the aforesaid decisions. Article 374 made provision for the continuance of Federal Court Judges as the Judges of the Supreme Court on the commencement of the Constitution and it also made provisions for transfer of the proceedings pending in the Federal Court to the Supreme Court. Clause (2) of Article 374 is as under :

> "374. (2) All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same, and the judgments and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court."

On the promulgation of the Constitution, Federal Court ceased to exist and the Supreme Court was set up and with a view to meet the changed situation, provisions had to be made with regard to the matters pending before the Federal Court. Article 374(2) made provision for two things, firstly it directed the transfer of all suits, appeals and proceedings, civil or criminal, pending before the Federal Court to the Supreme Court. Secondly, it provided that any orders and judgments delivered or made by the Federal Court before the commencement of the Constitution shall have the same force and effect as it those orders or judgments had been delivered or made by the Supreme Court. This was necessary for the continuance of the proceedings before the Supreme Court. The Federal Court may have passed interlocutory orders, it may have delivered judgments in the matters before it and in order to maintain the continuance of validity of orders or judgments of Federal Court a legal fiction was created stating that those judgments and orders shall be treated as of Supreme Court. Article 374(2) is in the nature of transitory provision to meet the exigency of the situation on the abolition of the Federal Court and setting up of the Supreme Court. There is no provision in the aforesaid article to the effect that the decisions of the Federal Court shall be binding on the Supreme Court. Similar view was taken by the Allahabad High Court in Om Prakash Gupta v. United Provinces (AIR 1951 All 205, para 43 : ILR (1952) 2 All 467) and Bombay High Court in State of Bombay v. Gajanan Mahadev Badley (AIR 1954 Bom 351, para 14 : 56 Bom LR 172 : 9 DLR Bom 55). The decisions of Federal Court and the Privy Council, made before the commencement of the Constitution are entitled to great respect but those decisions are not binding on this Court and it is always open to this Court to take a different view. In State of Bihar v. Abdul Majid (1954 SCR 786, 795 : AIR 1954 SC 245 : (1954) 2 LLJ 678) and Shrinivas Krishnarao Kango v. Narayan Devji Kango ((1955) 1 SCR 1, 24 and 25 and 25 : AIR 1954 SC 379), Federal Court decisions were not followed by this Court. There is, therefore, no merit in the contention that this Court is bound by the decisions of the Federal Court.

33. But even otherwise the decisions of Federal Court in K.L. Gauba case (AIR 1942 FC 1 : 43 Cri LJ 311 : 1941 FCR 54) and Purshottam Lal Jaitly case (1944 FCR 364) have no bearing on the interpretation of Article 129 of the Constitution. In K.L. Gauba case (AIR 1942 FC 1 : 43 Cri LJ 311 : 1941 FCR 54) the facts were that K.L. Gauba, an Advocate of Lahore High Court was involved in litigation of various kinds including a case connected with his insolvency. A Special Bench of the High Court of Lahore was constituted to decide his matters. His objection against the sitting of a particular Judge on the Special Bench, was rejected. His application for the grant of

certificate under Section 205 of the Government of India Act to file appeal against the order of the High Court before the Federal Court was refused. Gauba filed a petition before the Federal Court for the issue of direction for the transfer of his case to Federal Court from High Court. The Federal Court held that appeal against the order of the High Court refusing to grant certificate was not maintainable. Gauba argued that the High Court was guilty of contempt of Federal Court as it had deliberately and maliciously deprived the Federal Court's jurisdiction to hear the appeal against its orders. Gwyer, C.J. rejected the contention in the following words : (AIR p. 2)

> "We have had occasion more than once to construe the provisions of Section 205, and we repeat what we have already said, that no appeal lies to this Court in the absence of the certificate prescribed by that section : a certificate is the necessary condition precedent to every appeal. We cannot question the refusal of a High Court to grant a certificate or investigate the reasons which have prompted the refusal; we cannot even inquire what those reasons were, if the High Court has given none. The matter is one exclusively for the High Court; and, as this Court observed in an earlier case, it is not for us to speculate whether Parliament omitted per incuriam to give a right of appeal against the refusal to grant a certificate or trusted the High Courts to act with reasonableness and impartiality : 1939 FCR 13 at 16 (Pashupati Bharti v. Secretary of State, AIR 1938 FC 1). The jurisdiction of the Court being thus limited by the statute in this way, how could it be extended by a High Court acting even perversely or maliciously in withholding the certificate ?"

34. In Purshottam Lal Jaitly case (1944 FCR 364) an application purporting to invoke extraordinary original jurisdiction of the Federal Court under Section 210(2) of the Government of India Act, 1935 was made with a prayer that the Federal Court should itself deal directly with an alleged contempt of a civil court, subordinate to the High Court. By a short order the Court rejected the application placing reliance on its decision in K.L. Gauba case (AIR 1942 FCR 1 : 43 Cri LJ 311 : 1941 FCR 54). The Court observed as under :

> "The expression 'any contempt of Court' in that provision must be held to mean 'any act amounting to contempt of this Court'. This was the view expressed in Gauba case (AIR 1942 FC 1 : 43 Cri LJ 311 : 1941 FCR 54) and we have been shown no reason for departing from that view. Under the Indian law the High Courts have power to deal with contempt of any court subordinate to them as well as with contempt of the High Courts. It could not have been intended to confer on the Federal Court a concurrent jurisdiction in such matters. The wider construction may conceivably lead to conflicting judgments and to other anomalous consequences."

In the case of K.L. Gauba (AIR 1942 FC 1 : 43 Cri LJ 311 : 1941 FCR 54) the Federal Court found itself helpless in the matter as the Government of India Act, 1935 did not confer any power on it to entertain an appeal against the order of High Court refusing to grant certificate. The decision has no bearing on the question with which we are concerned. In Purshottam Lal Jaitly case (1944 FCR 364) the decision turned on the interpretation of Section 210(2) of the 1935 Act. Section 210 made provisions for the enforcement of decrees and orders of Federal Court. Sub-section (2) provided that Federal Court shall have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents or the investigation or "punishment of any contempt of court", which any High Court has power to make as respects the territory within its jurisdiction, and further the Federal Court shall have power to award costs and its orders shall be enforceable by all courts. While interpreting Section 210(2) the Federal Court held that it had no

power to deal with contempt of any court sub-ordinate to High Court and it further observed that the wider constructions may lead to conflicting judgments and to other anomalous consequences. It is not necessary for us to consider the correctness of the opinion expressed by the Federal Court, as in our view the Federal Court was a court of limited jurisdiction, it was not the Apex Court like this Court as against the judgment, order and decree of the Federal Court appeals lay to the Privy Council. The Federal Court exercised limited jurisdiction as conferred on it by the 1935 Act. The question regarding the inherent power of the Superior Court of Record in respect of the contempt of subordinate court was neither raised nor discussed in aforesaid decisions. The Federal Court observed that if the High Court and the Federal Court both have concurrent jurisdiction in contempt matters it could lead to conflicting judgments and anomalous consequences. That may be so under the Government of India Act as the High Court and the Federal Court did not have concurrent jurisdiction, but under the Constitution, High Court and the Supreme Court both have concurrent jurisdiction in several matters, yet no anomalous consequences follow.

35. While considering the decision of Federal Court, it is necessary to bear in mind that the Federal Court did not possess wide powers as this Court has under the Constitution. There are marked differences in the constitution and jurisdiction and the amplitude of powers exercised by the two courts. In addition to civil and criminal appellate jurisdiction, this Court has wide powers under Article 136 over all the courts and tribunals in the country. The Federal Court had no such power, instead it had appellate power but that too could be exercised only on a certificate issued by the High Court. The Federal Court was a court of record under Section 203 but it did not possess any plenary or residuary appellate power over all the courts functioning in the territory of India like the power conferred on this Court under Article 136 of the Constitution, therefore, the Federal Court had no judicial control or superintendence over subordinate courts.

36. Advent of freedom, and promulgation of Constitution have made drastic changes in the administration of justice necessitating new judicial approach. The Constitution has assigned a new role to the Constitutional Courts to ensure rule of law in the country. These changes have brought new perceptions. In interpreting the Constitution, we must have regard to the social, economic and political changes, need of the community and the independence of judiciary. The court cannot be a helpless spectator, bound by precedents of colonial days which have lost relevance. Time has come to have a fresh look at the old precedents and to lay down law with the changed perceptions keeping in view the provisions of the Constitution. "Law", to use the words of Lord Coleridge, "grows; and though the principles of law remain unchanged, yet their application is to be changed with the changing circumstances of time". The considerations which weighed with the Federal Court in rendering its decision in Gauba (AIR 1942 FC 1 : 43 Cri LJ 311 : 1941 FCR 54) and Jaitly case (1944 FCR 364) are no more relevant in the context of the constitutional provisions.

37. Since this Court has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country, it has a corresponding duty to protect and safeguard the interest of inferior courts to ensure the flow of the stream of justice in the courts without any interference or attack from any quarter. The sub-ordinate and inferior courts of not have adequate power under the law to protect themselves, therefore, it is necessary that this court should protect them. Under the constitutional scheme this court has a special role, in the administration of justice and the powers conferred on it under Articles 32, 136, 141 and 142 form part of basic structure of the Constitution. The amplitude of the power of this Court under these articles of the Constitution cannot be curtailed by law made by Central or State legislature. If the contention raised on behalf of the contemners is accepted, the courts all over India will have no protection from this Court. No doubt High Courts have power to persist for the contempt of subordinate courts but that

does not affect or abridge the inherent power of this Court under Article 129. The Supreme Court and the High Court both exercise concurrent jurisdiction under the constitutional scheme in matters relating to fundamental rights under Articles 32 and 226 of the Constitution, therefore this Court's jurisdiction and power to take action for contempt of subordinate courts would not be inconsistent to any constitutional scheme. There may be occasions when attack on Judges and Magistrates of subordinate courts may have wide repercussions throughout the country, in that situation it may not be possible for a High Court to contain the same, as a result of which the administration of justice in the country may be paralysed, in that situation the Apex Court must intervene to ensure smooth functioning of courts. The Apex Court is duty bound to take effective steps within the constitutional provisions to ensure a free and fair administration of justice throughout the country, for that purpose it must wield the requisite power to take action for contempt of subordinate courts. Ordinarily, the High Court would protect the subordinate court from any onslaught on their independence, but in exceptional cases, extraordinary situation may prevail affecting the administration of public justice or where the entire judiciary is affected, this Court may directly take cognizance of contempt of subordinate courts. We would like to strike a note of caution that this Court will sparingly exercise its inherent power in taking cognizance of the contempt of subordinate courts, as ordinarily matters relating to contempt of subordinate courts must be dealt with by the High Courts. The instant case is of exceptional nature, as the incident created a situation where functioning of the subordinate courts all over the country was adversely affected, and the administration of justice was paralysed, therefore, this Court took cognizance of the matter.

38. Mr Nariman contended that in our country there is no court of universal jurisdiction, as the jurisdiction of all courts including the Supreme Court is limited. Article 129 as well as the Contempt of Court Act, 1971 do not confer any express power on this Court with regard to contempt of the subordinate courts, this Court cannot by construing Article 129 assume jurisdiction in the matter which is not entrusted to it by law. He placed reliance on the observations of this Court in Naresh Shridhar Mirajkar v. State of Maharashtra ((1966) 3 SCR 744, 771 : AIR 1967 SC 1). We have carefully considered the decision but we find nothing therein to support the contention of Mr Nariman. It is true that courts constituted under a law enacted by the Parliament or the State legislature have limited jurisdiction and they cannot assume jurisdiction in a matter, not expressly assigned to them, but that is not so in the case of a superior court of record constituted by the Constitution. Such a court does not have limited jurisdiction instead it has power to determine its own jurisdiction. No matter is beyond the jurisdiction of a superior court of record unless it is expressly shown to be so, under the provisions of the Constitution. In the absence of any express provision in the Constitution the Apex Court being a court of record has jurisdiction in every matter and if there be any doubt, the Court has power to determine its jurisdiction. If such determination is made by High Court, the same would be subject to appeal to this Court, but if the jurisdiction is determined by this Court it would be final. Halsbury's Laws of England, 4th Edn., Vol. 10, para 713 states :

> "Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court."

The above principle of law was approved by this Court in Special Reference No. 1 of 1964 ((1965) 1 SCR 413, 499 : AIR 1965 SC 745) in holding that the High Court being a superior court of record was entitled to determine its own jurisdiction in granting interim bail to a person against whom warrant of arrest had been issued by the Speaker of a State legislature. In Mirajkar case ((1966) 3

SCR 744, 771 : AIR 1967 SC 7) this Court again reiterated the principles that a superior court of record unlike a court of limited jurisdiction is entitled to determine about its own jurisdiction. In Ganga Bishan v. Jai Narain ((1986) 1 SCC 75) the Court emphasised that the Constitution has left it to the judicial discretion of Supreme Court to decide for itself the scope and limits of its jurisdiction in order to render substantial justice in matters coming before it. We therefore hold that this Court being the Apex Court and a superior court of record has power to determine its jurisdiction under Article 129 of the Constitution, and as discussed earlier it has jurisdiction to initiate or entertain proceedings for contempt of subordinate courts. This view does not run counter to any provision of the Constitution.

39. Constitutional hurdles over, now we would revert back to the incident which has given rise to these proceedings. The genesis of the unprecedented attack on the subordinate judiciary arose out of confrontational attitude of the local police against the Magistracy in Kheda. The Chief Judicial Magistrate is head of the Magistracy in the district. Under the provisions of Chapter XII of the Code of Criminal Procedure, 1973, he exercises control and supervision over the investigating officer. He is an immediate officer on the spot at the lower rung of the administration of justice of the country to ensure that the police which is the law enforcing machinery acts according to law in investigation of crimes without indulging in excesses and causing harassment to citizens. The main objective of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect the citizens' life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender. The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of police officers and police excesses in dealing with the law and order situation have been the subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police to take maximum care in exercising that power. The police must bear in mind, as held by this Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated. See Sunil Batra v. Delhi Administration ((1978) 4 SCC 494 : 1979 SCC (Cri) 155). In Prem Shankar Shukla case ((1980) 3 SCC 526 : 1980 SCC (Cri) 815) this Court considered the question of placing a prisoner under handcuff by the police. The Court declared that no prisoner shall be handcuffed or fettered routinely or merely for the convenience of custody or escort. The Court emphasised that the police did not enjoy any unrestricted or unlimited power to handcuff an arrested person. If having regard to the circumstances including the conduct, behaviour and character of a prisoner, there is reasonable apprehension of prisoner's escape from custody or disturbance of peace by violence, the police may put the prisoner under handcuff. If a prisoner is handcuffed without there being any justification, it would violate prisoner's fundamental rights under Articles 14 and 19 of the Constitution. To be consistent with Articles 14 and 19 handcuffs must be the last refuge as there are other ways for ensuring security of a prisoner. In Prem Shankar Shukla case ((1980) 3 SCC 526 : 1980 SCC (Cri) 815), Krishna Iyer, J. observed : (SCC p. 529, para 1)

> "If today freedom of the forlorn person falls to the police somewhere, tomorrow the freedom of many may fall elsewhere with none to whimper unless the court process invigilates in time and polices the police before it is too late."

The prophetic words of Krishna Iyer, J. have come true as the facts of the present case would show.

40. In the instant case, Patel, CJM, was assaulted, arrested and handcuffed by Police Inspector Sharma and other police officers. The police officers were not content with this, they tied him with a thick rope round his arms and body as if N.L. Patel was a wild animal. As discussed earlier, he was taken in that condition to the hospital for medical examination where he was made to sit in veranda exposing him to the public gaze, providing opportunity to the members of the public to see that the police had the power and privilege to apprehend and deal with a Chief Judicial Magistrate according to its sweet will. What was the purpose of unusual behaviour of the police, was it to secure safety and security of N.L. Patel, or was it done to prevent escape or any violent activity on his part justifying the placing of handcuffs and ropes on the body on N.L. Patel ? The Commission has recorded detailed findings that the object was to wreak vengeance and to humiliate the CJM who had been policing the police by his judicial orders.

41. We agree with the findings recorded by the Commission that there was no justification for this extraordinary and unusual behaviour of Police Inspector Sharma and other police officers although they made an attempt to justify their unprecedented dehumanising behaviour on the ground that Patel was drunk, and he was behaving in violent manner and if the had not been handcuffed or tied with ropes, he could have snatched Sharma's revolver and killed him. We are amazed at the reasons given by Sharma justifying the handcuffs and ropes on the body of N.L. Patel. Patel was unarmed, he was at the Police Station in a room, there were at least seven police officials present in the room who were fully armed, yet, there was apprehension about Patel's escape or violent behaviour justifying handcuffs and roping. The justification given by them is flimsy and preposterous. S.R. Sharma acted in utter disregard of this Court's direction in Prem Shankar Shukla case ((1980) 3 SCC 526 : 1980 SCC (Cri) 815). His explanation that he was not aware of the decision of this Court is a mere pretence as the Commissioner has recorded findings that Gujarat Government had issued circular letter to the police incorporating the guidelines laid down by this Court in Prem Shanker Shukla case ((1980) 3 SCC 526 : 1980 SCC (Cri) 815) with regard to the handcuffing of prisoners.

42. What constitutes contempt of court ? The Common Law definition of contempt of court is : "An act or omission calculated to interfere with the due administration of justice." (Bowen L.J. in Helmore v. Smith (No. 2) ((1886) 35 Ch D 436, 455 : (1886) 31 Sol Jo 60)). The contempt of court as defined by the Contempt of Courts Act, 1971 includes civil and criminal contempt. Criminal contempt as defined (in Section 2(c)) by the Act :

> "means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter of the doing of any other act whatsoever which
>
> (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or
>
> (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
>
> (iii) interferes, or tends to interfere with, or obstructs or tends to obstruct the administration of justice in any other manner;"

The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake in effective and orderly administration of justice. The Court has the duty of

protecting the interest of the community 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, but, to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, in its active manifestation, against obstruction and outrage." (Frankfurter, J. in Offutt v. U.S. ((1954) 348 US 11, 14 : 99 L ed 11)). The object and purpose of punishing contempt for interference with the administration of justice is not to safeguard or protect the dignity of the Judge or the Magistrate, but the purpose is to preserve the authority of the courts to ensure an ordered life in society. In Attorney General v. Times Newspapers ((1974) AC 273, 302 : (1973) 3 All ER 54), the necessity for the law of contempt was summarised by Lord Morris as : (AC p. 302)

> "In an ordered community courts are established for the pacific settlement of disputes and for the maintenance of law and order. In the general interests of the community it is imperative that the authority of the courts should not be imperilled and that recourse to them should not be subject to unjustifiable interference. When such unjustifiable interference is suppressed it is not because those charged with the responsibilities of administering justice are concerned for their own dignity : it is because the very structure of ordered life is at risk if the recognised courts of the land are so flouted and their authority wanes and is supplanted."

43. The Chief Judicial Magistrate is head of the Magistracy in the district who administers justice to ensure, protect and safeguard the rights of citizens. The subordinate courts at the district level cater to the need of the masses in administering justice at the base level. By and large the majority of the people get their disputes adjudicated subordinate courts, it is, in the general interest of the community that the authority of subordinate courts is protected. If the CJM is led into trap by unscrupulous police officers and if he is assaulted, handcuffed and roped, the public is bound to lose faith in courts, which would be destructive of basic structure of an ordered society. If this is permitted Rule of Law shall be supplanted by Police Raj. Viewed in this perspective the incident is not a case of physical assault on an individual judicial officer instead it is an onslaught on the institution of the judiciary itself. The incident is a clear interference with the administration of justice, lowering its judicial authority. Its effect was not confined to one District or State, it had a tendency to effect the entire judiciary the country. The incident highlights a dangerous trend that if the police is annoyed with the orders of a presiding officer of a court, he would be arrested on flimsy manufactured charges, to humiliate him publicly as has been done in the instant case. The conduct of police officers in assaulting and humiliating the CJM brought the authority and administration of justice into disrespect, affecting the public confidence in the institution of justice. "The summary power of punishment for contempt has been conferred on the courts to keep a blaze of glory around them, to deter people from attempting to render them contemptible in the eyes of the public. These powers are necessary to keep the course of justice free, as it is of great importance to society." (Oswald on Contempt of Court). The power to punish contempt is vested in the Judges not for their personal protection only, but for the protection of public justice, whose interest requires that decency and decorum is preserved in Courts of Justice. Those who have to discharge duty in a Court of Justice are protected by the law, and shielded in the discharge of their duties, any deliberate interference with the discharge of such duties either in court or outside the court by attacking the presiding officers of the court, would amount to criminal contempt and the courts must take serious cognizance of such conduct.

44. It takes us to the question against which of the contemners contempt is made out. On behalf of the petitioners it was urged that the police officers' conduct amounts to criminal contempt as their

action lowered the authority of the Chief Judicial Magistrate and it further caused interference with the administration of justice. Mr Soli J. Sorabjee, learned Attorney General contended that all those who abetted and helped the police officers in their conduct and design are also guilty of contempt of court. On behalf of the contemners it was urged that the incident which took place in the Police Station does not make out any contempt of court. The Chief Judicial Magistrate had consumed liquor and in drunken state he went to the Police Station and slapped the Police Inspector, Sharma, thereby the committed offence under the Bombay Prohibition Act as well as under Sections 332, 504 and 506 of the Indian Penal Code. Criminal cases have been registered against N.L. Patel, CJM and after investigation charge-sheets have been submitted to the court. In this context, it was urged that no action could be taken against the contemners as the facts in issue in the present proceedings are the same as involved in the criminal prosecutions pending against N.L. Patel, CJM. The question raised on behalf of the contemners need not detain us long. Proceedings for contempt of court are different than those taken for the prosecution of a person for an offence under the criminal jurisdiction. Contempt proceedings are peculiar in nature although in certain aspects they are quasi-criminal in nature but they do not form part of criminal jurisdiction of the court. Criminal prosecution pending against the CJM or against the contemners has no bearing on the contempt proceedings initiated by this Court as the present proceedings are not for the purpose of punishing the contemners for the offence of wrongful detention and assault on N.L. Patel Chief Judicial Magistrate, instead these proceedings have been taken to protect the interest of the public in the due administration of justice and to preserve the confidence of people in courts. We, accordingly, reject the contemner's objection.

45. We have already recorded findings that Sharma, Police Inspector, Nadiad had preplanned the entire scheme, he deliberately invited Patel to visit Police Station where he was forced to consume liquor and on his refusal he was assaulted, arrested, handcuffed and tied with rope. S.R. Sharma, K.H. Sadia, Sub-Inspector, Valjibhai Kalabhai, Head Constable and Pratap Singh, Constable, all took active part in this shameful episode with a view to malign and denigrate the CJM on account of his judicial orders against the police. We, therefore, hold S.R. Sharma, Police Inspector, K.H. Sadia, Sub-Inspector, Valjibhai Kalabhai Head Constable and Pratap Singh, Constable guilty of contempt of court. M.B. Savant, Mamlatdar had been summoned by Sharma, Police Inspector, or the Police Station in advance for purposes of being witness to the panchnama drawn up by Sharma describing drunken condition of Patel, CJM. The document was false and deliberately prepared to make out a case against Patel, CJM. M.B. Savant was in complicity with Sharma, he actively participated in the preparation of the document to malign and humiliate the CJM and to prepare a false case against him, he is also, therefore, guilty of contempt of court.

46. As regards D.K. Dhagal, the then District Superintendent of Police, Kheda, we have already recorded findings that he was hand in glove with Sharma, Police Inspector. The circumstances pointed out by the Commission and as discussed earlier, show that though D.K. Dhagal, had not personally participated in the shameful episode but his conduct, act and omission establish his complicity in the incident. It is difficult to believe or imagine that a Police Inspector would arrest, humiliate, assault and handcuff a CJM and the Police Chief in the district would be indifferent, or a mute spectator. The circumstances unequivocally show that Sharma was acting under the protective cover of Dhagal as he did not take any immediate action in the matter instead be created an alibi for himself by interpolating the entries in the register at the Government Rest House, Balasinor. In his report submitted to the Addl. Chief Secretary (Home) on September 27, 1989, Dhagal did not even remotely mention the handcuffing and roping of the CJM. It is unfortunate that Dhagal as the District Superintendent of Police did not discharge his duty like a responsible police officer instead he identified himself with Sharma, Police Inspector and actively abetted the commission of

onslaught on the CJM. We, accordingly, hold D.K. Dhagal, the then DSP, Kheda guilty of contempt of court.

47. This takes us to the petition filed by N.L. Patel for quashing the criminal cases initiated against him on the basis of two first information reports made by Police Inspector S.R. Sharma. As noticed earlier Sharma, Police Inspector, had registered two FIRs on September 25, 1989 against N.L. Patel for the offences under Section 85(1)(3) read with Section 66(1)(b) and also under Section 110 of Bombay Prohibition Act on the allegations that Patel had consumed liquor without permit or pass and under the influence of alcohol entered into Sharma's chamber and behaved in an indecent manner. The FIR further alleged that Patel caught hold of Police Inspector Sharma and slapped him. The second FIR was lodged by Sharma against Patel for offences under Sections 332, 353, 186 and 506 of the Indian Penal Code on the same allegations as contained in the earlier FIR. During the pendency of the contempt proceedings before this Court, the police continued the investigation and submitted charge-sheet in both the cases against N.L. Patel and at present Criminal Cases Nos. 1998 of 1990 and 1999 of 1990 are pending in the Court of Chief Judicial Magistrate, Nadiad. These proceedings are sought to be quashed.

48. On behalf of the State of the police officers, it was urged that since charge-sheets have already been submitted to the court, Patel will have full opportunity to defend himself before the court where witnesses would be examined and cross-examined and therefore, this Court should not interfere with the proceedings. The gravamen of the charge in the two cases registered against N.L. Patel is that he had consumed liquor without a pass or permit and under the influence of liquor, he entered the chamber of Police Inspector Sharma at the Police Station and assaulted him. The police overpowered and arrested him and a panchnama was prepared and he was taken to the hospital for medical examination, and the report of medical examination indicates that he had consumed liquor. These very facts have been inquired into by the Commissioner and found to be false. We have recorded findings that Police Inspector Sharma and other police officers manipulated records and manufactured the case against N.L. Patel with a view to humiliate and teach him a lesson as the police was annoyed with his judicial orders. We have already recorded findings holding S.R. Sharma, Police Inspector, Sadia, Sub-Inspector, Valjibhai Kalabhai, Head Constable, Pratap Singh, Constable, M.B. Savant, Mamlatdar, and D.K. Dhagal, DSP guilty of contempt of court. These very persons are specified as witnesses in the two charge-sheets. The Commission's as well as our findings clearly demonstrate that the allegations contained in the two FIRs are false. If police is permitted to prosecute Patel on those allegations merely on the basis that charge-sheets have been submitted by it, it would amount to gross abuse of the process of the court. In the circumstances, proceedings against N.L. Patel are liable to be quashed.

49. Learned counsel, appearing on behalf of the State of Gujarat and the police officers, urged that in the present proceedings this Court has no jurisdiction or power to quash the criminal proceedings pending against N.L. Patel, CJM. Elaborating his contention, learned counsel submitted that once a criminal case is registered against a person the law requires that the court should allow the case to proceed to its normal conclusion and there should be no interference with the process of trial. He further urged that this Court has no power to quash a trial pending before the criminal court either under the Code of Criminal Procedure or under the Constitution, therefore, the criminal proceedings pending against Patel should be permitted to continue. Learned Attorney General submitted that since this Court has taken cognizance of the contempt matter arising out of the incident which is the subject matter of trial before the criminal court, this Court has ample power under Article 142 of the Constitution to pass any order necessary to do justice and to prevent abuse of process of the court. The learned Attorney General elaborated that there is no limitation on the power of this Court under

Article 142 in quashing a criminal proceeding pending before a sub-ordinate court. Before we proceed to consider the width and amplitude of this Court's power under Article 142 of the Constitution it is necessary to remained ourselves that though there is no provision like Section 482 of Criminal Procedure Code conferring express power on this Court to quash or set aside any criminal proceedings pending before a criminal court to prevent abuse of process of the court, but this Court has power to quash any such proceedings in exercise of its plenary and residuary power under Article 136 of the Constitution, if on the admitted facts no charge is made out against the accused or if the proceedings are initiated on concocted facts, or if the proceedings are initiated for oblique purposes. Once this Court is satisfied that the criminal proceedings amount to abuse of process of court it would quash such proceedings to ensure justice. In State of W.B. v. Swapan Kumar Guha ((1982) 1 SCC 561 : 1982 SCC (Cri) 283 : (1982) 3 SCR 121), this Court quashed first information report and issued direction prohibiting investigation into the allegations contained in the FIR as the Court was satisfied that on admitted facts no offence was made out against the persons named in the FIR. In Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre ((1988) 1 SCC 692 : 1988 SCC (Cri) 234), criminal proceedings were quashed as this Court was satisfied that the case was founded on false facts, and the proceedings for trial had been initiated for oblique purposes.

50. Article 142(1) of the Constitution provides that Supreme Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any 'cause' or 'matter' pending before it. The expression 'cause' or 'matter' would include any proceeding pending in court and it would cover almost every kind of proceeding in court including civil or criminal. The inherent power of this Court under Article 142 coupled with the plenary and residuary powers under Articles 32 and 136 embraces power to quash criminal proceedings pending before any court to do complete justice in the matter before this Court. If the court is satisfied that the proceedings in a criminal case are being utilise for oblique purposes or if the same are continued on manufactured and false evidence or if no case is made out on the admitted facts, it would be in the ends of justice to set aside or quash the criminal proceedings. It is idle to suggest that in such a situation this Court should be a helpless spectator.

51. Mr Nariman urged that Article 142(1) does not contemplate any order contrary to statutory provisions. He placed reliance on the Court's observations in Prem Chand Garg v. Excise Commissioner, U.P., Allahabad (1963 Supp 1 SCR 885, 899 : AIR 1963 SC 996) and A.R. Antulay v. R.S. Nayak ((1988) 2 SCC 602 : 1988 SCC (Cri) 372), where the Court observed that though the powers conferred on this Court under Article 142(1) are very wide, but in exercise of that power the Court cannot make any order plainly inconsistent with the express statutory provisions of substantive law. It may be noticed that in Prem Chand Garg (1963 Supp 1 SCR 885, 899 : AIR 1963 SC 996) and Antulay case ((1988) 2 SCC 602 : 1988 SCC (Cri) 372) observations with regard to the extent of this Court's power under Article 142(1) were made in the context of fundamental rights. Those observations have no bearing on the question in issue as there is no provision in any substantive law rusticating this Court's power to quash proceedings pending before subordinate court. This Court's power under Article 142(1) to do "complete justice" is entirely of different level and of a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court. Once this Court has seisin of a cause or matter before it, it has power to issue any order or direction to do "complete justice" in the matter. This constitutional power of the Apex Court cannot be limited or restricted by provisions contained in statutory law. In Harbans Singh v. State of U.P. ((1982) 2 SCC 101 : 1982 SCC (Cri) 361 : (1982) 3 SCR 235, 243), A.N. Sen, J. in his concurring opinion observed : (SCC pp. 107-08, para 20)

> "Very wide powers have been conferred on this Court for due and proper administration of justice. Apart from the jurisdiction and powers conferred on this Court under Articles 32 and 136 of the Constitution I am of the opinion that this Court retains and must retain, and inherent power and jurisdiction for dealing with any extraordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice."

No enactment made by Central or State legislature can limit or restrict the power of this Court under Article 142 of the Constitution, though while exercising power under Article 142 of the Constitution, the Court must take into consideration the statutory provisions regulating the matter in dispute. What would be the need of "complete justice" in a cause or matter would depend upon the facts and circumstances of each case and while exercising that power the Court would take into consideration the express provisions of a substantive statute. Once this Court has taken seisin of a case, cause or matter, it has power to pass any order or issue direction as may be necessary to do complete justice in the matter. This has been the consistent view of this Court as would appear from the decisions of this Court in State of U.P. v. Poosu ((1976) 3 SCC 1 : 1976 SCC (Cri) 368 : (1976) 3 SCR 1005), Ganga Bishan v. Jai Narain ((1986) 1 SCC 75), Navnit R. Kamani v. R.R. Kamani ((1988) 4 SCC 387), B.N. Nagarajan v. State of Mysore ((1966) 3 SCR 682 : AIR 1966 SC 1942 : (1967) 1 LLJ 698), Special Reference No. 1 of 1964 ((1965) 1 SCR 413, 499 : AIR 1965 SC 745) and Harbans Singh v. State of U.P. ((1982) 2 SCC 101 : 1982 SCC (Cri) 361 : (1982) 3 SCR 235, 243). Since the foundation of the criminal trial of N.L. Patel is based on the facts which have already been found to be false, it would be in the ends of justice and also to do complete justice in the cause to quash the criminal proceedings. We accordingly quash the criminal proceedings pending before the Chief Judicial Magistrate, Nadiad in Criminal Cases Nos. 1998 of 1990 and 1999 of 1990.

52. The question arises what punishment should be awarded to the contemners found guilty of contempt. In determining the punishment, the degree and the extent of part played by each of the contemners has to be kept in mind. Sharma, Police Inspector who was the main actor in the entire incident and who had planned the entire episode with a view to humiliate the CJM in the public eye is the main culprit, therefore, he deserves maximum punishment. Sadia, Sub-Inspector took active part in assaulting and tying the CJM at the behest of Sharma, Police Inspector. Valjibhai Kalabhai, Head Constable and Pratap Singh, Constable also took active part in handcuffing and tying the CJM with ropes, but as sub-ordinate officials they acted under the orders of his superior officer. M.B. Savant, Mamlatdar was friendly to Sharma, Police Inspector, he had no axe to grind against the CJM but he acted under the influence of Sharma, Police Inspector. So far as D.K. Dhagal is concerned, he actively abetted the commission of onslaught on the CJM. Having regard to the facts and circumstances and individual part played by each of the aforesaid contemners we hold them guilty of contempt and award punishment as under :

S.R. Sharma, the then Police Inspector, Nadiad shall undergo simple imprisonment for a period of six months and he shall pay fine of Rs 2000. K.H. Sadia, Sub-Inspector, Nadiad shall undergo simple imprisonment for a period of five months and will pay a fine of Rs 2000 and in default he will undergo one month's simple imprisonment. Valjibhai Kalabhai, Head Constable and Pratap Singh, Constable, both are convicted and awarded simple imprisonment for a period of two months and a fine of Rs 500 each, in default they would undergo simple imprisonment for a further period of 15 days. M.B. Savant, Mamlatdar is convicted and awarded two month's simple imprisonment and a fine of Rs 1000 and in default he would undergo one month's simple imprisonment. D.K.

Dhagal, the then District Superintendent of Police, Kheda, is convicted and sentenced to imprisonment for a period of one month and to pay a fine of Rs 1000 and in default to undergo simple imprisonment for 15 days. So far as other respondents against whom notices of contempt have been issued by the Court, there is no adequate material on record to hold them guilty of contempt of court, we accordingly discharge the notices issued to them.

53. Before we proceed further, we would like to express the Court's displeasure on the conduct of K. Dadabhoy, the then Director General of Police, Gujarat. As the head of the police in the State he was expected to intervene in the matter and to ensure effective action against the erring police officers. We are constrained to observe that he was totally indifferent to the news that a CJM was arrested, handcuffed, roped and assaulted. He took this news a routine matter without taking any steps to ascertain the correct facts or effective action against the erring police officers. If the head of the police administration in the State exhibits such indifference to a sensitive matter which shook the entire judicial machinery in the State, nothing better could be expected from his sub-ordinate officers. K. Dadabhoy did not act like a responsible officer. The State Government should take action against him departmentally on the basis of the findings recorded by the Commission. The State Government has initiated proceedings against other erring officers in respect of whom the Commission has adversely commented, we would make it clear that discharge of contempt notices does not absolve those officers of their misconduct, the State Government is directed to proceed with the disciplinary proceedings for taking appropriate action against them.

54. We are constrained to observe that the State Government did not immediately take effective steps against the erring officials. In spite of the direction issued by this Court the erring police officers were neither arrested nor placed under suspension. It was only after this Court took serious view of the matter and directed the State Government to suspend the erring police officers and arrest them, the State Government moved in the matter. The apathy of the State Government in taking effective action against the erring police officers leads to an impression that in the State of Gujarat, police appears to have upper hand, as the administration was hesitant in taking action against the erring police officers. If this practice and tendency is allowed to grow it would result in serious erosion of the Rule of Law in the State. We hope and trust that the State Government will take effective measures to avoid reoccurrence of any such instance. The State Government should further take immediate steps for the review and revision of the Police Regulations in the light of the findings recorded by the Commission.

55. The facts of the instant case demonstrate that a presiding officer of a court may be arrested and humiliated on flimsy and manufactured charges which could affect the administration of justice. In order to avoid any such situation in future, we consider it necessary to lay down guidelines which should be followed in the case of arrest and detention of a Judicial Officer. No person whatever his rank, or designation may be, is above law and he must face the penal consequences of infraction of criminal law. A Magistrate, Judge or any other Judicial Officer is liable to criminal prosecution for an offence like any other citizen but in view of the paramount necessity of preserving the independence of judiciary and at the same time ensuring that infractions of law are properly investigated, we think that the following guidelines should be followed :

> (A) If a Judicial Officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.
>
> (B) If facts and circumstances necessitate the immediate arrest of a Judicial Officer of the subordinate judiciary, a technical or formal arrest may be effected.

(C) The fact of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court.

(D) The Judicial Officer so arrested shall not be taken to a police station, without the prior order or directions of the District and Sessions Judge of the concerned district, if available.

(E) Immediate facilities shall be provided to the Judicial Officer for communication with his family members, legal advisers and Judicial Officers, including the District and Sessions Judge.

(F) No statement of a Judicial Officer who is under arrest be recorded nor any panchnama be drawn up nor any medical tests be conducted except in the presence of the Legal Adviser of the Judicial Officer concerned or another Judicial Officer of equal or higher rank, if available.

(G) There should be no handcuffing of a Judicial Officer. If, however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be overpowered and handcuffed. In such case, immediate report shall be made to the District and Sessions Judge concerned and also to the Chief Justice of the High Court. But the burden would be on the police to establish the necessity for effecting physical arrest and handcuffing the Judicial Officer and if it be established that the physical arrest and handcuffing of the Judicial Officer was unjustified, the police officers causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally liable for compensation and/or damages as may be summarily determined by the High Court.

56. The above guidelines are not exhaustive but these are minimum safeguards which must be observed in case of arrest of a Judicial Officer. These guidelines should be implemented by the State Government as well as by the High Courts. We, accordingly, direct that a copy of the guidelines shall be forwarded to the Chief Secretaries of all the State Governments and to all the High Courts with a direction that the same may be brought to the notice of the concerned officers for compliance.

57. We do not approve N.L. Patel's conduct in visiting the Police Station on the invitation of Police Inspector Sharma. In our opinion, no Judicial Officer should visit a Police Station on his own except in connection with his official and judicial duties and functions. If it is necessary for Judicial Officer or a Subordinate Judicial Officer to visit the Police Station in connection with his official duties, he must do so with prior intimation of his visit to the District and Sessions Judge.

58. Pursuant to this Court's appeal made on September 29, 1989, the members of the Bar as well as the members of the Judiciary throughout the country refrained from going on strike as a result of which inconvenience to general public was avoided and the administration of justice continued. The Court is beholden to the members of the Bar and members of the Judiciary for their response to this Court's appeal.

59. We record our appreciation of the able assistance rendered to the Court by the learned counsel for the parties. We are beholden to Sri Soli J. Sorabjee, the then Attorney General, who at our

request ably assisted the Court in resolving complex questions of law.

60. The writ petitions, contempt petitions and criminal miscellaneous petitions are disposed of accordingly.

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