IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Surendra Kumar Sinha, Chief Justice

Mr. Justice Md. Abdul Wahhab Miah

Mrs. Justice Nazmun Ara Sultana

Mr. Justice Syed Mahmud Hossain

Mr. Justice Muhammad Imman Ali

Mr. Justice Hasan Foez Siddique

CONTEMPT PETITION NO.19 OF 2015.

The State: Petitioner.

=Versus=

Mr. Swadesh Roy, (author of the article under the caption "সাকার পরিবারের ততপরতা। পালাবার পথ কমে গেছে" in the issue of "The Daily Janakantha" and another: Contemnors/Respondents.

For the Petitioner: Mr. Mahbubey Alam, Attorney General.

For the Contemnors/Respondents: Mr. Salahuddin Dolan, Advocate, instructed by Mrs. Shirin Afroz, Advocate-on-Record.

Date of hearing : 10th and 13th August, 2015.

O R D E R

For the reasons to be expressed later on, this petition is disposed of by this order. Since various questions arise in the mind of the people of the country, the litigants, the lawyers, persons in the print, electronic and social media regarding the power of this Court to punish for contempt of Court any citizen of the country, this Division being the

highest Court of the country, feels it proper to give some guidelines which will be reflected in our detailed judgment. It is to be borne in mind that the Contempt of Courts Act, 1926, is not applicable in this Division and in that regard we have expressed our opinion in Mahmudur Rahman's case. Even then, in different media, the civil society, including eminent lawyers, participated in various talk shows pointed out that the Contempt of Courts Act is an obsolete law and it should be amended, meaning thereby, that the said Act is applicable to this Division. At the outset, we would like to point out that though the Parliament is comprised of the People's representatives and it can promulgate any law, including the amendment of the Constitution, the power of such amendment is circumscribed by certain limitations. Parliament in exercise of its amending power cannot arrogate to itself the role of official liquidator of the Constitution. Our

Constitution is a controlled Constitution par excellence. All institutions, including the Parliament and the Supreme Court of Bangladesh are merely creatures of the Constitution and none of them is its master. The Constitution must continue to be amendable without being alterable in its essentials. Clause (2) of Article 7 of the Constitution clearly says:

"This Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void."

Thus, the Parliament may amend the Constitution or promulgate any law but that amendment or law shall be subject to clause (2) of Article 7 that such amendment shall be void to the extent of its inconsistency with the Constitution. It is only this Court that has been given the authority to decide

the issue of the vires of any amendment or enactment. This power has been given upon this Court by the Constitution itself and this power cannot be assumed by any other organ of the State.

This Court has power to draw a contempt proceeding if any person undermines the authority or lowers the dignity of the Court, or if any person scandalizes the Court or any Judge interferes with the administration of justice, or if any person makes comments calculated to undermine public confidence in the Judges and the justice delivery system.

Article 39 of the Constitution has given freedom of thought and conscience to the citizens of the country but such freedom of thought and conscience is subject to reasonable restrictions imposed by law in the interest of the security of the State, decency or morality or in relation to contempt of Court. That is to say, any publication

during the pendency of any matter in any Court of law, which tends to interfere with the course of justice in any substantial or real manner by prejudicing the mind of the public against persons concerned in the case before the cause is finally heard, is also contempt. In determining this effect, the intention of the printer or author in the publication is not of any consequence. What we are concerned with is that we should not permit any one to poison the fountain of justice. This would be a grave interference with the administration of justice.

Scandalization, to express shortly, includes an attack upon any Judge in his public capacity for, such attack would be calculated to malign the Judge and to lower the authority of the Court over which the Judge performs his judicial function. At the same time, it also amounts to interference with course of justice and the proper administration

thereof. Criticism of Judges of the highest Court in respect of acts done in their administrative capacity, which contain improper imputation, amounts to contempt. If the Chief Justice is criticized for acts done in his administrative capacity this also amounts to contempt. The criticism should be fair and not made with oblique motive or with the object of maligning the justice delivery system and lowering the majesty of the law and dignity of the Court in the estimation of the public.

A litigant or Judge is not entitled to have any say in the selection of any Judge or Judges who are to constitute a particular Bench. It is the Chief Justice of Bangladesh who exercises the power under Article 107(3) of the Constitution and is to decide such constitution of Benches.

A lawyer should not forget that his own dignity as a lawyer obliges him to place before the Court in the traditional language of courtesy that is due to a Court of justice. It is his duty to see that no

statement is made to scandalize a Judge or Court by imputing to him motive or judicial dishonesty. He is expected at all times to maintain the dignity of the Court regardless of shortcomings of any individual Judge of the Court. We are conscious that excessive authority, without liberty is intolerable, but excessive liberty, without authority and without responsibility, soon becomes equally intolerable. The administration of justice suffers from the intractable complexity of modern society, which should be known to all who are involved in the justice delivery system.

All elements of grave contempt of court are present in the impugned article. Mr. Swadesh Roy, the writer and Mr. Atiqullah Khan Masud (M.A.Khan Masud), editor, printer and publisher of the Daily Janakantha are found guilty of contempt. The contempt proceeding succeeds. Contemnors Mr. Swadesh Roy (author) and Mr. Mohammad Atiqullah Khan Masud (M.A. Khan Masud) are sentenced to confinement till

rising of this Court, this day and to pay a fine of Tk.10,000/- (Ten thousand) each to be contributed to two charitable organizations within one week from date, failing which, they shall suffer seven days simple imprisonment.

J U D G M E N T

Surendra Kumar Sinha,CJ: Professor T.R. Powell in an article "The Logic and Rhetoric of Constitutional Law", (1918)15, *Journal of Philosophy, Psychology and Scientific Method*', stated that 'the accepted theory of "Judicial Process" has been that the Judge is like the oracle of Jupiter at Dodona who, upon being presented with the problem that called for decision, stupefied himself with vapours and listened to the dim voices that came to him. In other words, the Judge brought ancient lights to illumine modern instances. The Judge brought to bear his current outlook to manipulate the ancient rules'. In conclusion, he

said, ‘let us sing in chorus a final tribute to our Constitution and our Supreme Court in words similar to those of New York lawyer Henry Eastbrook eulogizing the American Constitution and its Supreme Court song by Henry R. Eastbrook of the New York Bar, 1913 as reproduced in Alexander M. Bickel. The Supreme Court and the Idea of Progress. (New Haven, Conn; Yale University Press at 185)”. ‘Our great and secret Constitution, serene and inviolable, stretches its beneficent powers over our land.....like the outstretched arm of God himself.... the people of the United States ordained and established one Supreme Court the most rational, considerate discreming, veracious, impersonal power – the most candid, unaffected, conscientious, incorruptible power..... O Marvelous Constitution! Magic Parchment! Transforming world, Monitor, Guardian of Mankind’.

Joseph Story, a great American jurist said:

'The Constitution has been reared for immortality, if the work of a man may justly aspire to such a title. It may, nevertheless, perish in an hour by the folly, or corruption, or negligence of its only keepers, THE PEOPLE....'

Jawaharlal Nehru said: a Constitution to be living must be growing. If the impediments to the growth of the Constitution are not removed, the Constitution will suffer virtual atrophy.'

Oliver Wendell Holmes Jr. in an article "The Common Law and other Writings (Birminghan, Ala; The Legal Classics Library - 1982)' said that the life of the law has not been logic but experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which Judges share with their fellowmen, have had a good deal more to do shall be syllogism in determining

the rule by which man should be governed. Chief Justice Rehnquist in "The Notion of the living Constitution (1976) 54 Taxes Law Review 693, said that a 'living' Constitution was better than a dead one.

The Constitution is a living organism, and is interpreted as such by the Judges around the globe. Chief Justice Marshall in Mc Culloch V. Maryland, (1819) Wheel, 17 US 316, said, we have to remember that it is the Constitution we are expounding; that the Constitution was intended to endure for ages to come, and consequently have to be adapted to the various crises of human affairs.

Even after the judgment in Bush v. Gore, the American citizens including Mr. Gore's perception and belief in the Constitution and the United States of Supreme Court had not been declined at all. In comparison with U.S. Supreme Court, ours is to some extent a baby. We must it rear up, adore, grow,

shape it as the guardian of mankind if we believe in democracy and the rule of law.

J.S. Verma, the former Chief Justice of India in an article on "the Role of the Bar in the preservation of the rule of law" said "administration of justice is a joint venture in which the lawyers and Judges are equally participants ..... Liberty lies in the hearts of men and women. When it dies there, no Constitution, no law, no Court can save it'.

Abraham Lincoln's definition of democracy has been recognized by the civilized world. According to him a democratic government is "of the people, by the people and for the people". The expression "for the people" is very significant. It means a government that works "for the welfare of the people". Democracy cannot survive without an independent judiciary manned by the Judges and assisted by an independent legal profession. The

foundation of a democracy, the source of its perennial vitality, the condition for its growth, and the hope for its welfare-all lie in this Supreme Court of Bangladesh, a great institution, an independence of judiciary. Society in Bangladesh today in the interest of the judiciary, for its unity, existence, and authority has devalued some myths and symbols. Justice is the greatest of them all. Similarly, however, high you, law is above you. This myth operates to create a situation of acceptance of things as they are; of the status-quo. These and most others conjure up the notion of a higher divine, impersonal law.

In infancy as a new independent State comprising citizens majority of which were poorly educated and their lives were relatively insecured and most importantly due to lack of civic education they were unaware of their rights and liberties. Our Founding Fathers were conscious of conflict of

interest in a new born Bangladesh amongst various sections of people. To obviate those obstacles and to establish democratic institutions in the state level organizations, rule of law, a democratic set up which would not convert itself into an anarchic State, gave the guidelines to frame the Constitution with certain concepts highlighting the concept of rule of law. The system of governance in a modern State has been divided in three chief organs; the legislature, the executive and the judiciary. Our Constitution delineates the rule of each of the organs entrusting them well within their respective sphere. The role of judiciary has been artfully assigned in the Constitution. The Founding Fathers were aware of the caution as to the separation of powers by Montesquieu - the idea was of maintaining the 'separation of power' or, in other words, of preventing the government, the legislature and the judiciary from encroaching upon one another's

province. According to some English pundits this expression, separation of powers, is applied by to the relations of the executive and the courts. According to them it means, in the lips of French statesman, something different from what we mean in England by the 'independence of the Judges'.

It is said, as interpreted by French history, by French Legislation, and by the decisions of French tribunals, it means neither more nor less than the maintenance of the principle that while the ordinary Judges ought to be irremovable and thus independent of the executive, the government and its officials ought to be independent of and to a great extent free from the jurisdiction of the ordinary Courts. (See Ancoc, Droit Administrative, Ss.20, 24).

In the words of Montesquieu,

> "When the legislative and executive powers are united in the same person, or in the same body

of magistrates, there can be no liberty ..... Again, there is no liberty if the power of judging is not separated from the legislative and executive. If it were joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would then be the legislator. If it were joined to the executive power, the judge might behave with violence and oppression. There would be an end to everything, if the same man, or the same body, whether of the nobles or of the people, were to exercise those three powers, that of enacting laws, that of executing public affairs, and that of trying crimes or individual causes."

In part III of our Constitution, there are hosts of fundamental rights, such as, laws inconsistent with the fundamental rights to be void; all citizens are equal before law; there should not

be discrimination on grounds of the religion; there should be equal opportunity in public employment; no person shall be deprived of life or personal liberty; safeguards as to arrest and detention; prohibition of forced labour; protection in respect of trial and punishment, freedom of movement; freedom of assembly; freedom of thought and conscience and of speech; freedom of profession or occupation; freedom of religion; right to property; protection of home and correspondence; enforcement of fundamental rights. Some of them are conditional and some of them are mandatory and inalienable.

Our framers of the Constitution chose not to give so much freedom to the press that was given to the American citizens for obvious reason. We would not achieve economic freedom if we fail to develop our democratic institutions where rule of law will prevail in all spheres of the State.

These fundamental rights have been enshrined in articles 26-43. Parliament in exercise of its amending power cannot arrogate or abridge the fundamental rights. It cannot alter or destroy the basic structure of the Constitution. These are basic human freedoms which the people had preserved for themselves while giving to themselves the Constitution. The Parliament’s amending power does not extend to damaging or destroying any of the essential features of the Constitution, Anwar Hossain V. Bangladesh 1989 BLD (spl)1. The fundamental rights are among the essential features of the Constitution. State may promulgate superior law restricting some of those rights, and the Court including the Supreme Court’s power of judicial review may be ousted. Articles 27(3), 28(3), 29(3), 33(3), 33(4), 34(2), 35(1), 35(6), 36 and 37, proviso to article 38, articles 39(2), 40, 42(1), 43, 44(2) are among those. Articles 45, 46 and 47A

are exceptions to the provisions contained in Part III of the Constitution. We are concerned in this matter about article 39, which guarantees freedom of thought and conscience. Those freedoms are circumscribed by the reasonable restrictions imposed 'by law in the interest of the security of the State, friendly relation with foreign states, public order, decency or morality, or in relation to contempt of Court, defamation or instatement of an offence'.

Sub-article (2) says: Subject to any reasonable restrictions imposed by law in the interest of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence (a) the right to every citizen to freedom of speech and expression; (b) freedom of press, are guaranteed. So there is no separate guarantee of freedom of the press. The

freedom of press is not higher than the ordinary citizen. It is subject to the limitations. It is not absolute, unlimited and unfettered at all times and in all circumstances as would lead to disorder and anarchy. Our Constitution makers imagined a State where freedom of press will be achieved through evolution of time, test and experience rather than giving the media an absolute guarantee of freedom of expression which might create imbalance in the society if not exercised with extreme caution and intelligence. The media may play a positive role in the administration of justice and it has played such role. During the past, it was the law that had provided the source of authority for democracy, which today appears to have been replaced by public opinion with the media serving as its arbiter.

The fundamental rights as aforesaid are designed to ensure not only the freedom and liberty of the citizens, in every sphere of life but also

ensure the equality and equal opportunity as a citizen of a democratic civilized country. The directive principles of state policy provided in the preceding chapter of our Constitution have been added so as to give a purposive direction to the State that is expected to work for the common welfare, upliftment of oppressed classes - a State where no one, howsoever high or howsoever low, should be deprived of justice including social justice. Our Founding Fathers were conscious about the economic exploitation by the rulers of Pakistan. They dreamed of the form of a government which would have high standards of character as well as conduct from the members of Parliament, the judiciary and civil service. Those high standards and conduct would be maintained under the Constitution.

They adopted a Constitution which contains the British model of government by a cabinet i.e. of an executive responsible to and removable by the

Parliament. The position of the President corresponds to that of sovereign in the U.K., who is the formal head of government and would act on the advice of the cabinet. The Constitution has conferred on the Parliament the prominent position in legislation which the British House of Commons secured for itself. The legislative procedure in respect of finance, the provision for consolidated fund, the securing and supervision of public accounts by an independent Comptroller and Auditor General, the position of the Judges of the Supreme Court and the appointment of the subordinate judiciary followed the British, not the American model.

Our higher judiciary and lower judiciary in civil matters were completely independent. The Magistracy was manned by the executive officers. At the time of adoption of the Constitution Bangabandhu Sheikh Mujibur Rahman was the Prime Minister. His

towering personality, his immense popularity with the people and his great authority held the administration of the country in check. After his assassination, the balance of equilibrium was eroded. Ultimately by our pronouncements in Masder Hossain, 52 DLR (AD) 82, the Magistracy has been completely separated from the executive.

In order to ensure that the basic structure of the Constitution is not eroded, the fundamental rights should not the abridged, the rule of law prevails, the Constitution remain *Supreme Lex* – the fundamental and paramount law of the land, and the concept of judicial review was planted instrumentally and the Constitution declared to be the touch stone of validity of all acts of each organ of the State to guarantee the rule of law and the promises made by the Constitution would not remain mere a promise in paper, they made provisions for the independence of the judiciary - a very

onerous task was given in the hands of the judiciary and we feel proud to declare that our judiciary has lived up to the expectations of the people and it will remain as such so long the Constitution will remain.

By this time we have shed away the stigma of bottomless basket. We have also shed the stigma of under developed poverty-stricken society. Our country is now ascending to economic prosperity - a country that has created an important place within the world nations with significant role to play. If we achieve the ultimate goal which our Father of the Nation dreamed of - a democratic country free from all sorts of exploitation and a society in which the rule of law, the fundamental rights and freedom, equality and justice, political, economical and social emancipation will be secured for all citizens, and to maintain, defend the Constitution and its supremacy as the embodiment of the will of

the people of Bangladesh, we may prosper in freedom and make our full contribution towards international peace and co-operation in keeping with the progressive aspiration of mankind - the role of judiciary is bound not to erode and to expound it in the days to come.

James Madision, one of the Founding Fathers of the American Constitution said, ”judiciary is truly the only defensive armour of the federal government or rather for the Constitution and law of United States. Strip it of the armour and the door is wide open for nullification, anarchy and convulsion.” Chief Justice Warren Burger of the U.S. Supreme Court gave an interview on television to Bill Moyers where the Chief Justice said:

> ‘Congress can review us and change us when we decide a statutory question, and frequently do. But when we decide a Constitutional issue, right or wrong, that’s it until we change it.

Or, the people change it. Don’t forget that. The people made it and people can change it. The people could abolish Supreme Court entirely.’

But no one in the United States is going to abolish the Supreme Court. Gobinda Das, a Senior Advocate and author of ‘Justice in India and Supreme Court in Quest of Identity’ wrote, ‘we are a Government of Law and not of men,’ is another. ‘Similarly, however you be, law is above you.’ These myths ‘operate to create a situation of acceptance of things as they are’ of the status quo. These and most other ‘conjure up the notion of higher divine, impersonal law.’ The accompanying symbols, like role, elevated Benches, the special language and courtroom help to sustain the myth of impersonal law. Due to these myths, the judiciary is believed to be a source of divine decisions based in some

objective truth encapsulated in the constitution and knowable to a selected few.'

One can safely predict, with equal confidence that no one is going to abolish the Supreme Court of Bangladesh – nor the concept of judicial review. Judiciary will remain an integral part of our constitutional law and practice. It is because the Supreme Court of Bangladesh has definitely said so relying on the opinion of the citizens of the country. There is no doubt that the primary control on governmental activity in democracy as in ours, undoubtedly, as any other, is with the citizens. It should be borne in mind that the power which our Supreme Court exercises rests ultimately upon their tacit approval. Thus, we should guard that no one can muddle with the judiciary. We will not allow anyone to muddle with the judiciary. A section of people for their self-interest or aggrandisement wanted to subjugate the judiciary earlier but failed

in their attempts due to the strength and strictness of the judiciary. It will not hesitate to use its arms to curb anyone's, any sort of sarcasm or insinuation.

The power of judicial review of legislation based upon a combination of Eighteenth Century natural law principles with the constitution which did not come until the second half of the Nineteenth Century in American jurisprudence. Towards the middle of the Nineteenth Century, financial and industrial states began to take an increasing share in transport developments. They embarked upon public financing of many private enterprises supported by popular vote. These often resulted in failure and bankruptcy. Often public money was squandered and it may well have appeared necessary to many people that some check should be imposed upon legislative recklessness. It was under such circumstances that Cooley, in his Constitutional Limitations (1868) and

Principles of Taxation (1879) established the principles of judicial supervision of legislation by a wide extension of the meaning of 'inalienable rights', 'due process' and 'eminent domain' provisions. W. Friedmaun in his book on 'Legal Theory' said, "as developed by Cooley, Dillon and others, these constitutional clauses were the expressions of certain inalienable natural rights and, in practice, has a threefold aspect:

(1) On the lines previously foreshadowed by Marshall, Kent and others, vested property interests were held to be inalienable rights and immune from legislative interference.

(2) The power to impose taxes was restricted to "public purposes" and public purposes were what the judges understood them to be. Under the influence of Cooley's doctrines, taxes for the purpose of purchasing railway

stock or for granting aid to private enterprises or for the development of the natural advantages of a city for manufacturing purposes were held invalid.

(3) Under clauses in most American Constitution the inviolability of private property was mitigated by the power of expropriation for public purposes, by virtue of "eminent domain." Here the Court imposes, in the name of natural justice, a similar limitation. Eminent domain can only be exercised for public purposes, and with adequate compensation."

We enshrined the same principle in Article 7 in our Constitution as under:

"(1) All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of, this Constitution.

> (2) This Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void."

Again in article 59(2) it is stated that "Everybody such as is referred to in clause (1) shall, subject to this Constitution and any other law, perform within the appropriate administrative unit such functions as shall be prescribed by Act of Parliament ....." Article 60 says "For the purpose of giving full effect to the provisions of article 59 Parliament shall, by law, confer powers on the local government bodies referred to in that article, including power to impose taxes for local purposes, to prepare their budgets and to maintain funds." There is no gainsaying from the above expressions that the Supreme Court is the guardian of the

constitution and if any law is inconsistent with the constitution it shall declare such law unconstitutional to the extent of its unconstitutionality and in this regard Supreme Court of Bangladesh has given the power of judicial review.

Save in some specific situation, this Court in exercise of that power not only reviewed some amendments of the Constitution for ensuring that it did not contravene any provisions of the Constitution or the other laws of the land, but also struck down laws for its inconsistency. Parliament has power to make laws and amend the Constitution but our Constitution being a controlled Constitution with entrenched provisions, a responsibility is reposed upon the Supreme Court of Bangladesh to see the validity of laws (Anwar Hossain V. Bangladesh, 1989 BLD(SPL)1). The superior Courts of the globe including ours with a view to keeping with

harmonious working of the different organizations of the State and the Constitutionality of any law passed by the Parliament follow certain principles such as:

(a) when the Constitutionality of a law is challenged the Court is to begin with the presumption of constitutionality of the law (East Pakistan V. Serajul Haque, 19 DLR(SC)281). The person challenging the validity of the law must show that the law is clearly unconstitutional (Home Tel & Tel co. V. Loss Angels, 211 US 265 and Madhubhai Bhandi V. India, AIR 1961 SC 21). In case of reasonable doubt as to whether the law is unconstitutional, the Court will resolve the doubt in favour of constitutionality of the law (Cooley, Constitutional Limitations, 1927).

(b) the Court gives its opinion in concrete cases and does not answer academic question (Kudrat-e-Elahi V. Bangladesh, 44 DLR(AD) 319, 340). The

Court will not pass on constitutional question and pronounce a statute invalid unless a decision on that very point becomes necessary to the determination of the cause (Ibid).

(c) the Court will not decide a larger constitutional question than is required by the case which means that the Court will decide a constitutional question only when, and to the extent, necessary for the disposal of a case. (U.S. v. Raines, 362 U.S. 17 and M.M. Pathak v. India AIR 1978 S.C. 803).

(d) keeping the principles, the Court will formulate a rule of constitutional border than is required by the precise facts presented on record, (Kazi Mukhulasur Rahman V. Bangladesh, 26 DLR(AD)44).

(e) in deciding constitutional validity of a law, the Court is not concerned with the wisdom and justice of the law and the law, even though harsh,

will be held valid if it is not prohibited by the provisions of the Constitution. (Bihar v. Bihar distillery AIR 1997 S.C. 1511)

Thus this Court has been invested with the power to determine whether or not, laws made by Parliament are consistent with the provisions of the Constitution. The result in effect is that a law enacted by the Parliament is declared illegal or void if it contravenes the Constitution. After a court's verdict has attained finality, has any legislative body ever disobeyed or disrespected an order passed by a Court declaring legislation illegal and void? The answer is no. In any dispute between the government and a citizen, the order may be in favor of or against the government. Such order on the above dispute has been accepted and complied with, despite the seriousness of the consequences emerging from such order. The adjudication of such dispute by this Court has not ever earned scorn,

disdain, disrespect or denigration by the parties concerned. In case of a citizen's fundamental rights are found to have been violated and to restore such rights to the citizen, what is due to the government is to extend benefits to a citizen has honourably obeyed and implemented the Court's order.

There are numerous institutions created to assist the executive government in matter of governance. Some of them are constitutional authorities - some of them are creatures by legislation or by the executive. The object of the executive is to perform its duties, obligations and responsibilities and to extend rights, benefits and advantage to the citizens. While exercising the power of judicial review, this Court is rarely confronted with a situation where an executive department of the government or an institution has denied the compliance.

Under our constitutional scheme, there is no scope to escape from the acceptance or obedience or compliance of a direction given by this Court in a judicial review. It being the final and the highest Court of the country, such direction is binding upon whom the direction is given. In this regard it is aptly to reiterate article 111, which provides that the law declared by the Appellate Division shall be binding on the High Court and the law declared by either Division of the Supreme Court shall be binding on all Courts subordinate to it. Article 112 says "All authorities, executive and judicial, in the Republic shall act in aid of the Supreme Court". In view of our constitutional scheme, non-compliance with the Supreme Court order would not only dislodge the corner stone maintaining the equilibrium and equanimity in the State's governance, there would be a break down of constitutional functioning of the

State. It would be a mayhem in all respect and the substratum of the Constitution would be broken.

In Arundhati Roy, In. Re., (2002) 3SCC 343, a renowned writer, it was observed by the Supreme Court that 'Rule of law' is the basic rule of governance of any civilized policy. The scheme of the Constitution of India is based upon the concept of rule of law. Everyone, whether individually or collectively, is unquestionably under the supremacy of law. Whoever the person may be, however high he or she is, no one is above the law notwithstanding how powerful and how rich he or she may be. For achieving the establishment of the rule of law, the Constitution has assigned the special task to the judiciary in the country. It is only through the courts that the rule of law unfolds its contents and establishes its concept. For the judiciary to perform its duties and functions effectively and be true to the spirit with which it is sacredly

entrusted, the dignity and authority of the courts have to be respected and protected at all costs. The only weapon of protecting itself from the onslaught to the institution is the long hand of contempt of Court left in the armoury of judicial repository which, when needed, can reach any neck howsoever high or far away it may be.

In that case the contemnor raised the plea of freedom of speech and expression as a writer. Under Article 19 (1) (a) of Indian Constitution all citizens shall have the right 'to freedom of speech and expression' but a non-obstacle clause has been incorporated in sub-article (2) similar to one our sub-article (2) of article 39. The Supreme Court rejected the plea observing that the freedom of speech and expression so far as they did not contravene the statutory limits are to prevail without any hindrance. The maintenance of the dignity of courts is one of the pertinent principles

of rules of law in a democratic set-up and any criticism of the judicial institution couched in the language that apparently appears to be mere criticism but ultimately results in undermining the dignity of the court cannot be permitted when found having crossed the limit.

In a democratic rule of law the first principle is to see whether there is equality before the law excluding the totalitarian principle. Rule of law encompasses adherence to law by everyone who is under obligation to perform. Any particular form of constitutional government cannot be regarded as the true embodiment of the rule of law. A Constitution being the supreme law of the land is the most satisfactory embodiment of democratic legal principles. It is practically impossible to lay down absolute principles of justice under the name "rule of law". Modern democracies also differ widely in the organization of the administration of justice.

The democratic rule of law implies, first the principle of equality before the law. It excludes the autocratic and totalitarian principle which, in the name of divine right of inspired leadership of power pure and simple, exempts individuals and groups from the law of the land. The democratic conception of the rule of law balances individual's right with individual legal responsibilities. This accounts for such rules as the responsibility for damage done by official acts to private citizens, or the principle of criminal liability based on individual wronging by a person responsible for his action.

The democratic conception of the rule of law balances individual rights and individual legal responsibility. There will always be differences of opinion on the relative spheres of private freedom of action and public control. The characteristic feature of a developing country is the stark gap

between its economic and social state and the minimum aspirations of a mid-twentieth century state modeled upon the values and objective of the developed countries of the West. All these countries have an overwhelming need for rapid social and economic change. Much of this must express itself in legal change-in constitutions, statutes and administrative regulations. Law in such a state of social evaluation is less and less recorder of established social, commercial, and other customs - it becomes a pioneer, the articulated expression of the new forces that seek to mould the life of the community according to new patterns.

Judiciary is the last and final path and hopes of the citizens for protecting their lives, liberty, property and also establishing their rights or liabilities. Every day a few thousand people come to Courts for vengeance and protection of their rights, when they find no alternative from the executive.

Judges do not have any prejudice. They repeatedly do what rest of the people seeks to avoid- taking decisions. Judges are mere mortals but they are asked to perform a function which is truly different. If any calculated scandalization of the Judges are made the hopes and aspirations of the people must be eroded. As back as in eighteenth century, Lord Mansfield stated and believed that the courts should be engines of social change. He saw morality as the basis of law, and his court the guardian of public morals. He was willing to supplement the reforms enacted by the legislature and, where he deemed it necessary, to make new law in order to achieve justice and protect the week. (Governing diverse societies' in Paul Langsford ed. The Eighteenth Century; 1668-1815 Oxford: Oxford University Press, 2002).

Contempt, according to Oswald, primarily signifies disrespect to that which is entitled to

legal regard. If we look at the historical background, the earliest law on contempt in this subcontinent is found in section 228 of the Penal Code. The High Courts were empowered by their Charters to punish for contempt of court and this jurisdiction was not only conferred on High Courts by the Charter incorporating them but also flowed from "the first principles of the judicial establishments" and therefore, it is an 'inseparable attendant' upon every superior tribunal, or in other words, the power is inherent in the Superior Courts of record *per legem terrae.* The Charters incorporating the High Courts were however subject to law and could be modified by legislation. In 1926, the first piece of legislation known as 'the Contempt of Courts Act', was passed which was subsequently amended in 1937 providing that the High Courts shall have and exercise the same jurisdiction, powers, and authority in accordance

with the same procedure and practice in respect of contempt of courts subordinate to them as they have and exercised in respect of contempt of themselves. Cognizance of contempt to have been committed in respect of a court of subordinate to it, where such contempt was an offence punishable under the Penal Code, was however barred to the High Court. This Act does not define the 'contempt of court' and left it to be determined by the courts with reference to the existing case laws and precedents.

Subsequently the Government of India Act, 1935 retained the power of the superior courts of record to punish contempt. The Constitution of Pakistan, 1956 maintained the said provision. In 1962, Constitution of Pakistan for the first time provided the specific categories of contempt in Article 123 as under:

> "(1) In his Article "Court" means the Supreme Court or a High Court.

(2) A Court shall have power to punish any person who –

(a) abuses, interferes with, or obstructs the process of the Court in any way or disobeys any order of the Court;

(b) scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule, or contempt;

(c) does anything which tends to prejudice the determination of a matter pending before the Court; or

(d) does any other thing which by law constitutes contempt of the Court.

.....”

Our Founding Fathers felt it proper not proper to retain those provisions and authorized the Supreme Court the power subject to law 'to make an order for the investigation of or punishment for any contempt of itself' in Article 108. Therefore, it is only the contempt of court as propounded by Justice Wilmot in Almon's case has been followed in a long chain of decisions by the superior courts of this sub-continent and has generally been accepted in the field of contempt of court.

A Full Bench of the Lahore High Court in State V. Mir Abdul Qayum, PLD 1964 (WP) Lahore, 661 (FB) observed that the extraordinary power of punishment for contempt has been made available to the Court in order to keep a blaze of glory around them and to deter people from attempting to render them contemptible in the eyes of the public. Any individual or institution who or which is conscious of this principle and adheres to it would

necessarily feel that to offend a Court at all in a manner such that it feels it has been lowered in the eyes of people is a matter of regret and no person or institution in a State should feel himself or itself so great as to regard the offer of apology as being beneath his or its dignity.

In Noresh Sreedhar Mirajkar V. State of Moharashtra, AIR 1967 SC 1, it was held that in the case of a superior court of record it is for the Court to consider whether any matter falls within its jurisdiction or not. Unlike a Court of limited jurisdiction, the Superior Court is entitled to determine for itself about its own jurisdiction.

Similar view has been expressed in the Halsbury's Laws of England, Vol-10 4th Edn. at page 321. It is stated, prima-facie, 'no matter is deemed to be beyond the jurisdiction of 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’. On the question of obedience of the order passed by the Apex Court of the country, Supreme Court of India in K.A. Ansari V. Indian Airlines Ltd., (2009) 2 SCC 164, observed that the authority was obliged to obey and implement the direction. If it had any doubt or if the order was not clear, it was always open to them to approach the Court for clarification of the order. Without challenging the order, it could not circumvent the order on any ground. Difficulty in implementation of an order, howsoever, its grave effect may be, is no answer for its non-compliance.

The Appellate Division’s jurisdiction and power to punish for its contempt has been provided in the Constitution (article 108). This power to punish would serve no purpose if the power to enforce compliance with any order or direction is lacking.

While considering the disobedience of the order of the Supreme Court of India in Maninderjit Singh Bitta V. union of India, (2012) 1 SCC 273, the Supreme Court observed that "It is also of some relevance to note that disobedience of Court orders by positive or active contribution or non-obedience by a passive and dormant conduct leads to the same result. Disobedience of order of the Court strikes at the very root of rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are secretly entrusted, the dignity and authority of the Courts have to be respected and protected at all costs... Courts are called upon to exercise jurisdiction with twin objects in mind. Firstly, to punish the persons who have disobeyed or not carried

out orders of the Court i.e. for their past conduct. Secondly, to pass such orders, including imprisonment and use the contempt jurisdiction as a tool for compliance with its orders in future. This principle has been applied in the United States and Australia as well.'

Again in Supreme Court Bar Association V. Union of India, (1988) 4 SCC 409, it was observed that the contempt of court is a special jurisdiction to be exercised sparingly and with caution, whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining "the jury,

the judge and the hangman" and it is so because the Court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual Judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperiled and there should be no unjustifiable interference in the administration of justice. It is a matter between the Court and the contemnor and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice.

In American jurisdiction as well, the interference in the administration of justice is

taken a serious type of contempt. In a CIA trial (http://news.bbc.co.uk/1/hi/world/americas/4654969.stm), BBC News, July 6, 2005), on October, 1, 2004, Federal Judge Thomas F. Hogan found Miller in contempt of court for refusing to appear before a Federal Grand Jury, which was investigating, who had leaked to reporters the fact that Valerie Plame was a CIA operative. Judge Hogan sentenced her to 18 months in jail. Her sentence was stayed while her appeal proceeded. On February, 15, 2005, the United States Court of Appeals for the District of Columbia Circuit unanimously upheld Judge Hogan's ruling. On June 17, 2005, Judge Hogan ordered Miller to serve her sentence at "a suitable jail within the metropolitan area of the District of Columbia". She was taken to Alexandria City Jail on July 7, 2005.

In Moazzem Hossain V. State, 35 DLR (AD) 290 Shahabuddin Ahmed,J. held that "'Contempt of Court' has nowhere been defined in statutes. It has been

conveniently described by referring to its ingredients and citing examples. 'Contempt' may be constituted by any conduct that brings authority of the Court into disrespect or disregard or undermines it dignity and prestige. Scandalizing the Court is the worst kind of contempt. Making imputations touching the impartiality and integrity of a Judge or making sarcastic remarks about his judicial competence is also contempt. Conduct or action causing obstruction or interfering with the course of justice is contempt. To prejudice the general public against a party to an action before it is heard is another form of contempt'.

In State V. S.W. Lakitullah, 10 DLR (1958) 309, a Division Bench of the High Court held that scandalization of the High Court with regard to holding of chamber examinations being related to administration of justice amounts to contempt of court. Another Division Bench following some

decisions of Indian jurisdiction in State V. Abdul Rashid, 10 DLR 568, observed that where the words "Printed or published or uttered amount to a scandalization of the Court with reference to a decision of a case'. In that case while dealing with the question of scandalizing the Court in a calculated manner, the Division Bench quoted with approval the observation of Munir, J. in Re Subrahmanyan, Editor Tribune as under:

> "The jurisdiction of the Court exists not only to prevent the mischief in the particular case but also to prevent similar mischief arising in other cases. Consequently, even when the proceedings before it have been disposed of the Court can institute proceedings to see whether an article published in connection with the proceedings before it was on the date of its publication calculated to interfere

with the due course of justice and to prevent repetition of the same if it amounted to contempt."

A.R. Cornelius,C.J. in Sir Edward Snelson V. State, 16 DLR(SC) 535, observed that in an ordinary case of libel it is complete defence that the defamatory imputation is true, but it is otherwise in a case of scandalizing a Judge or a Court. Any attempt to justify the libel upon a Judge or a Court is in itself a fresh contempt.

We noticed, there is confusion among a good number of lawyers, news reporters, editors, intellectuals as to what amounts to contempt. Now let us consider the elements of contempt or in the alternative, the constituents of contempt of court. The classification or categories of contempt of court are as under:

publication or other act-

(1) scandalizing or lowering the authority of Court or interfering with judicial proceeding or administration of justice –

(a) scandalizing the Court or lowering the authority of the Court.

(2) prejudice to or interference with, the due course of any judicial proceeding.

(a) interference or obstruction with the administration of justice in any other manner –

(b) interference with the Court’s Officers

(c) interference with the parties

(d) interference with witnesses

(e) abuse of process of Court.

(3) disobedience of an order of the Court.

The first category is scandalizing the Court or a Judge. The second category is the interference with the administration of justice. The third category is disobedience of an order of the Court.

Another category is writings which are calculated to obstruct or interfere with the due course of justice which is also contempt. Any insinuation to a Judge which undermines the authority of the Court is another type of contempt. Another type of contempt is scurrilous abuse of a Judge or Court or attacks on the personal character of a Judge.

According to Halsbury's Law of England, 4th Edn, scandalising the Court means, any act done or writing published which is calculated to bring a Court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the Court, is a contempt of court. In Almon's case (R. V. Almon), the defendant had published a pamphlet accusing Lord Mansfield, the lord Chief Justice of having acted 'officiously, arbitrarily and illegally'. Wilmot,J observed thus:

> "excites in the minds of the people a general dissatisfaction with all judicial determinations, and indisposes their minds to obey them; and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice, and, in my opinion calls for a more rapid and immediate redress than any other obstruction whatsoever, not for the sake of the judges, as private individuals, but because they are the channels by which king's justice is conveyed to the people. To be impartial, and to be universally thought so, are both absolutely, necessary."

Wilmot's opinion was expressed in 1765. Can it be said to be the law of contempt of court in England today? Hardly. Even though there is no written Constitution in England and hence no

fundamental right like article 39(2)(a)(b), the old view of contempt of court is totally changed today and now the view is that of Lord Salmon who in AG V. BBB (1980)3 All ER 161(170) observed:

> "The description 'contempt of court' no doubt has a historical basis, but it is nonetheless misleading. Its object is not to protect the dignity of the courts but to protect the administration of justice."

This is precisely the basis which is sought to be propounded. The concept of power in a democracy is only to enable the court to function, and not to vindicate and maintain its authority and dignity.

Thus scurrilous abuse of a Judge or Court, or attacks on the personal character of a Judge, are punishable contempts. The punishment is inflicted, not for the purpose of protecting either the Court as a whole or the individual Judges of the Court from a repetition of the attack, but of protecting

the public, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the Court, from the mischief they will incur if the authority of the tribunal is undermined or impaired.

Scandalizing the Court to be taken to mean any act done or writing published calculated to bring a Court or a Judge of the court into contempt. According to Goodhart, Newspapers on Contempt of Court (1935) 48 Harv LR 885, scandalizing the Court means any hostile criticism of the Judge as Judge; any personal attack upon him unconnected with the office he holds, is dealt with under the ordinary rules of slander and libel. Scandalizing the Court by means of publication may be taken to mean bringing the authority of the Court into disrepute by such publication. The meaning of 'authority of the Court' given by Wilmot, C.J., in Rex V. Almon, 97 ER 94, has been approved by Goodhart.

As to the meaning of the concept, the word 'authority' is frequently used to express the right of declaring the law which is properly called jurisdiction and of enforcing obedience to it, in which sense it is equivalent to the word 'power'. Scandalizing might manifest itself in various ways but in substance it is an attack on individual Judge or the Court as a whole with or without reference to the particular case casting unwarranted and defamatory aspersions upon the character or ability of the Judges.

In Dr. D.C. Saxena V. Chief Justice of India, (1996) 5 SCC 216, the above view has been reiterated. It was observed that scandalizing the Judges or Courts, tends to bring the authority and administration of law into disrespect and disregard is tantamount to contempt. Besides, hostile criticism of Judges or judiciary falls within the category of scandalizing the Court. Any personal

attack upon a Judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning any Judge as a Judge brings the Court or Judges into contempt, a serious impediment to justice and inroad in the majesty of justice. So also, any caricature of a Judge calculated to lower the dignity of the Court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. A 'tendency to scandalize the Court or tendency to lower the authority of the Court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt'. (emphasis supplied). D.C Saxena case has been decided following the cases of P.N.Duda v. P.Shiv Shankor, (1988) 3 SCC 167, Em Sankaran Namboodripad v. T. Narayanan Nambiar, (1970) 2 SCC 325, Sammbhu Nath

Jha v. Kedor Proshad Sinha, (1972) 1 SCC 573, Ambord v. Attorney General for Trinidad and Tobago, 1936 AC 322, Baradakanta Mishra v. Registrar of Orissa High Court, (1974) 1 SCC 374, L.D.Jaikwal v. State of U.P. (1984) 3 SCC 405.

Halsbury's Laws of England, Fourth Edition, Vol-9, Para 27 at page 21 on the topic "scandalizing the Court" it is stated that 'scurrilous abuse of a judge or Court, or attacks on personnel character of a judge, are punishable contempt. The punishment is inflicted, not for the purpose of protecting either the Court as a whole or the individual judges of the Court from a repetition of the attack but of protecting the public, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the Court, from the mischief they will incur if the authority of the tribunal is undermined or impaired.'

From the above discussions, it is found that scandalizing the Court is taken as a serious offence around the globe. Besides Indian jurisdiction, in England though it is held in a case in the State (DPP) V. Walsh, (1981) IR 412, scandalizing the Court is an "archaic description". In State (DPP) V. Walsh, (1981) IR 412, O'Higgins, CJ. stated:

> "Where what is said or done is of such a nature as to be calculated to endanger public confidence in the Court which is attacked and, thereby, to obstruct and interfere with the administration of justice. It is not committed by mere criticism of judges as judges, or by the expression of disagreement–even emphatic disagreement–with what has been decided by a Court. 'Such contempt occurs where wild and baseless allegations of corruption or malpractice are made against a Court so as to hold (sic) the Judges' - to the odium of the

people as actors playing a sinister part in a caricature of justice.' (A G v Connolly (1947) 1R 213)

In Re. Kennedy and McCann, (1976) IR 382, O'Higgins,CJ. said; "The right of free speech and the full expression of opinion are valued rights. Their preservation, however, depends on the observance of the acceptable limit that they must not be used to undermine public order or morality or the authority of the State. Contempt of court of this nature carries the exercise of these rights beyond this acceptable limit because it tends to bring the administration of justice into disrepute and to undermine the confidence which the people should have in judges appointed under the Constitution to administer justice in our Courts."

Similar views have been expressed by Lord Russell of Killowen,CJ. in R v. Gray, (1900) 2QB 36; '....Any act done or writing published calculated to

bring a Court or a judge of the Court into contempt, or to lower his authority, is contempt of Court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court. The former class belongs to the category which Lord Hardwicke LC characterised as 'scandalizing a Court or a judge'.

In Haridas Das V. Usha Rani Banik, AIR 2007 SC 2688, approving the observations made in Chokolingo V. Attorney General of Trinidad and Tobago, (1981) 1 ALL ER 244, it has been observed "scandalizing the Court is a convenient way of describing a publication which, although it does not relate to any specific case either part of pending or any specific Judge, is a scurrilous attack on the judiciary as a whole which is calculated to undermine the authority of the courts and public

confidence in the administration of justice. In that case no leniency has been shown to the contemnor and after rejecting his apology, the contemnor was sentenced to undergo imprisonment for a period of two months and he was sent to Tihar Jail, Delhi from the Court to serve out the sentence.

Krishna Iyer,J. in Re. S. Mulgaokar, 1978(3) SCC 339 while giving broad guidelines in taking punitive action in case of scurrilous abuse of court or Judge observing that "...If the Court considers the attack on the Judge or Judges scurrilous offensive in timidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling it source and stream".

Thus we find that the superior courts relying upon some decisions of both home and abroad have held that in view of the constitutional protection

of freedom of speech and expression, it cannot be held that no one can be proceeded against for the contempt of court on the allegation of scandalizing or intending to scandalize the authority of the Court. A contempt proceeding is disposed of in accordance with the common law as well as the procedures being followed by the Courts. The Apex Court of the country being a court of record has inherent power in respect of contempt of court as has been propounded by the English, Indian and our Courts. Prior to the Contempt of Courts Act, 1926 was promulgated, the contempt proceedings were regulated by the principles of common law of England. The High Courts in the absence of statutory provisions exercised powers of contempt to protect the Subordinate Courts on the premise of inherent powers to commit for contempt. The Appellate Division being the highest Court of the country is a court of record under Article 108 of the

Constitution with wide power of judicial supervision over all the courts in the country.

The inherent powers of the apex court of record remained unaffected even when the constitution came into force, rather that power had been recognized by incorporating Article 108. The expression used in Article 108 is extensive in nature. The framers of the Constitution intended that the Supreme Court should have power to punish for contempt of itself only by inserting the expression 'to make an order for the investigation of or punishment for any contempt of itself' (emphasis supplied). This provision confers upon the Apex Court the power to punish for contempt of itself and in addition, it confers some additional power relating to contempt as it appears from the expression 'including'. This expression has been used in a wider scope of power, that is to say, this Court has the power to punish the contempt of itself and also something else,

which could fall within the inherent jurisdiction of the court of record.

We held in Mahmudur Rahman's case that the Contempt of Courts Act, 1926 is not applicable to the Appellate Division since the said Act was promulgated empowering the High Courts to exercise the same jurisdiction, power and authority in accordance with the same procedure and practice in respect of contempt of courts subordinate to them as they have been exercised in respect of contempt themselves. The Appellate Division has been given the power and authority by Article 108 of the Constitution to investigate with and punish for any contempt. This power is constitutional. No subordinate legislation has invested with this power to this Court.

Second limb for our consideration is the criticism of the judgment of the highest court. In R.C. Cooper (1970) 1 SCC 248, one Shri P. Shiv

Shanker, a Minister of Law, Justice and Company Affairs, delivered a speech before a meeting of the Bar Council at Hyderabad in which he made derogatory statements against the Supreme Court and its dignity attributing partiality towards economically affluent sections of the people by using language which was extremely intemperate, undignified and unbecoming for a person of his stature and position. He stated "the Maharajas and the Rajas were anachronistic in independent India. They had to be removed and yet the conservative element in the ruling party gave them privy purses. When the privy purses were abolished, the Supreme Court, contrary to the whole national upsurge, held in favour of the Maharajas in Keshavanda Bharati V. State of Kerala, (1973) 4SCC 225'. The Supreme Court was of the view that this was also criticism of the judgment. It was observed that right or wrong is another matter, but criticism of judgments is permissible in a free society. There

is, however, if anti-social elements and criminals are benefited by decisions of the Supreme Court, the fault rests with the laws and the loopholes in the legislation. The Courts are not deterred by such criticisms.

Similar views have been expressed in EMS Namboodiripad v. T.N. Nambiar, AIR 1970 S.C. 2015. It has been observed by Hidayetullah C.J. 'The Chief forms of contempt are insult to Judges, attacks upon them, comment on pending proceedings with a tendency to prejudice fair trial, obstruction to officers of courts, witnesses or the parties, obstructing the process of the court, breach of duty by officers connected with the court and scandalizing the Judges or the courts. The last form occurs, generally speaking, when the conduct of a person tends to bring the authority and administration of the law into disrespect or disregard. In this conduct are included all acts which bring the court into

disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority.'

There is another type which is taken as serious type of contempt. This type is, interference with the administration of justice, which may have the tendency to pervert the course of justice. The principle is that the stream of justice should be unsullied. If an impression is created in the minds of the public that the Judges in the highest Court act on extraneous considerations, the confidence of the whole community in the administration of justice is bound to be undermined and no greater mischief than that can be imagined. In this connection Mahajan, J. in Aswimi Kumar Ghose v. Arabinda Bose, AIR 1953 S.C. 75 observed, 'it is not the practice of the court to issue such rules except very grave and serious cases and it is never oversensitive to public criticism; but when there is danger of grave mischief being done in the matter of administration

of justice, the animadversion cannot be ignored and viewed with placid equanimity.'

The litigants should get a fair trial and not subjected to any adverse influence from any corner before the matter is finally decided. If for motive or any other reasons any comment by any reporter or anything touching to any matter pending before a Court is published before the verdict of the Court is given, there might be apprehension in the minds of the parties that such report may influence the Judges in the ultimate decision of the Court. The said report is tantamount to interfere with the administration of justice. Any publication which is or is likely to have the tendency to prevent the course of justice by attempting to excite through the media news paper prejudices the party or their litigation while they are pending constitutes serious type of contempt of court.

The intention of the persons responsible for the public zone is wholly relevant in such case, for what the court is concerned with ascertaining is as to what affect the publication read fairly and as a whole, is likely to produce any adverse impression in the minds of reasonable readers. Whenever it appears to a Court that the offending publication will substantially interfere with a fair hearing or fair judgment, it becomes its duty to protect the litigants resorting to courts from being prejudiced in the hearing of their cases by anything which savors of a trial by such publications instead of by the tribunal. If the publication is one sided, it may well have the undesirable effect of prejudging the party. References in this connection are Saadat Khaily V. State, 15 DLR(SC)81 and Subrahmanyan Editor Tribun, AIR 1943 Lahore 329 (FB), Editor Pakistan Observer V. State, 10 DLR(SC) 176, Haridas Das V. Usha Rani Banik, AIR 2007 SC 2688 (Supra),

Morris v. Crown, 1970 (1) All E R 1079 and Offutt v. U.S, 1954 (348) US II.

Lord Denning in Morris observed, “The course of Justice must not be deflected or interfered with.” Frank Furter, J. in Offutt (supra) observed, “It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage’. Similar views have been made in Jennison v. Baker, 1972 All E.R. 997. It was held ‘The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope”.

When a proceeding is awaiting verdict in a Court, if the media publishes revealing the conduct of the offender or the evidence adduced against him and thereby holding him guilty, the same amounts to contempt. In such eventuality one cannot expect unbiased hearing or a fair treatment.

In Salauddin Qader Chowdhury's appeal, his appeal against the conviction and sentence of death was awaiting verdict. The impugned reporting shows scant regard for the authority of the Court. The reporter has assumed the role of a Superior Judge. Such reporting was published for public consumption amounts to over reaching the Court. In such case, the public is going to believe what the report says. This Court being the custodian of the constitution and the Judges being the constituents of the Court, the Judges have to administer justice according to the Constitution and the law. The path is thorny, uneven, and the Judges have to walk on the edge of the sword of the public. If the watchful eyes of a critic point out to any departure from the cherished goal of an independent judiciary, it will not be contempt of court provided that the critic does not attack the Judge personally or scandalizes him or

lower his authority or ridicule him. The defence of fair criticism is open everywhere in the world.

In Hari Shankar Jain v. Shri M.H. Beg 1983A Cr. R 79, the latter made certain remarks about judgment of a Judge. The Supreme Court observed that unfair criticism of judgment undermining confidence of judiciary amounts to contempt. – It should be well to remember that the Judges by reason of their office are precluded from entering into any controversy in the columns of the public press, nor can enter the arena and do battle upon equal terms in newspapers, as can be done by ordinary citizens.

> "After a case has been decided, if a judgment severely and even unfairly criticized, and assuming that this has an adverse effect on the administration of justice, it must be balanced against the harm which would ensure if such criticism is stopped. This sort of attack in a country like ours has the inevitable

effect of undermining the confidence of the public in the judiciary. If confidence in the judiciary goes, the due administration of justice definitely suffers."

In the case of Dattajirao Balwantrao Mane v. Mr. Nani Palkhiwala, 1988 Cr.L.R. 116 it was observed that a criticism which attributes 'improper motives' to a Judge in the conduct of his judicial work not only transgresses the limits of fair and bonafide criticism but has a clear tendency to affect the dignity and prestige of the Court and consequently amounts to gross contempt of Court.

> "A statement would not constitute contempt unless there is an imputation of some improper motives as would amount to scandalizing the Court itself and unless there is a tendency to create distrust in the popular mind and impair the confidence of the people in the Courts. There cannot

be any doubt that a fair comment on the judgment of the Court could not constitute contempt" the court observed.

These are reiteration of the established principles and the norms being followed by lawyers, the litigants, the writers, and the Judges. The substance of the above authorities is that the judiciary being the ultimate saviour of the citizens, it guarantees their right, liability and protects them from the onslaught of the executive. When a wrong is done to a member of the executive his remedy lies to judiciary. Even if a Member of Parliament or a Minister feels aggrieved by any action of the concerned authority, it is only the judiciary which he redresses his grievance. Except the President of the Republic no one is immune from prosecution for violation of law.

Any remark lowering down the prestige and dignity of a Judge or Chief Justice in performing

his administrative capacity constitutes contempt. In Mir Abdul Qayum (supra), in the process of selecting candidates for civil Judges, members of the District Judge Bar Association, Lyallpur protested against arbitrary selection of candidates by the West Pakistan High Court and requested that all the applicants should be called for interview before the Public Service Commission. Several telegrams were sent to bring it to the notice of the Chief Justice and the Chairman of the Public Service Commission that the selection of candidates was being criticized in certain quarters as it was not known to what were the principles or rules under which the selection was being made. On behalf of the contemnors it was contended that the telegrams were sent to secure the best available persons to the judicial service and therefore, it was not contempt.

The Full Court repelled the contention holding, ”the respondent was a senior advocate. He must have

knowledge how to word his telegram to find out the principle under which the selection was being made. The fact that the contents of the telegram were not published in any news paper does not do any credit to the respondent. It does credit to the news paper for not publishing in the contents of the telegram." It was held that "the imputation made to the High Court of arbitrariness in selecting the candidates for appointment to the post of Civil Judges would amount to contempt of court within the meaning of para (b) of Article 123 of the Constitution. It is a disparaging remark which is bound to lower the prestige and the dignity of the Court. If the Court were to act arbitrarily even while functioning in its administrative capacity, it is bound to react upon its prestige. The remark of arbitrariness against the High Court would imply as if the High Court was acting with ulterior motive in selecting the candidates.'

Keeping the principles propounded above, let us consider the merits of the proceedings. In an issue of the Daily Janakantha dated 16th July, 2015, Swadesh Ray, executive editor wrote an article under the caption 'সাকার পরিবারের তৎপরতা।। পালাবার পথ কমে গেছে'| The caption says the movement of Saqa's (Salauddin Qader Chowdhury) family – the path of fleeing is narrow. There is no wrong in it but the offending part of the impugned news item is reproduced below:

"যেমন তিনি পার্লামেন্টে দাঁড়িয়ে স্পষ্ট বলেছেন, পেট্রোল বোমায় মানুষ হত্যার হুকুমের আসামি খালেদা। হত্যার সুপ্রীম রেসপনসিবিটি খালেদার। অতএব, বিশেষ ট্রাইবুনালে তার বিচার হবে। কিন্তু এই বিচার করার কাজে ক' জনকে আন্তরিকভাবে, আদর্শগতভাবে পাশে পান শেখ হাসিনা তা দেখার বিষয়। বড় দুর্ভাগা নয় কি এ দেশ কারন- প্রধান বিচারপতি তাঁর আদালতে ফখরুলের মামলার শুনানির সময় বললেন, যাদের নির্দেশে কর্মসূচী ডাকার ফলে পেট্রোল বোমায় মানুষ পুড়িয়ে হত্যা করা হয়, তারা এই হত্যার দায় এড়াতে পারে না। অথচ দেখা গেল সুপ্রীম কোর্ট থেকে মির্জা ফখরুল জামিন পেয়ে গেল। প্রধান বিচারপতি বলেছেন, আদালতের গঠনমূলক সমালোচনা করা যাবে। তাই তার কাছে বিনীত প্রশ্ন- ১৪৩ জনকে পুড়িয়ে মারার অন্যতম হুকুমের আসামি কিভাবে চিকিৎসার জন্যে জামিন পায়! জমির আল নিয়ে লাঠি দিয়ে মাথা ফাটিয়ে হাজার হাজার দরিদ্র আসামি যেখানে বছরের পর বছর জেলে আটকা। কারণ তারা খুনের আসামি। সেখানে রাজনীতির নামে প্রকাশ্যে এই ১৪৩ জনকে খুন করার পরেও সে

জামিন পাবে! এই কি বিচারকের ন্যায়দন্ড! বিচারকরা নিশ্চয়ই জানেন, কেন তারা পেট্রোল দিয়ে পুড়িয়ে এভাবে নৃশংস হত্যাকান্ড চালাচ্ছে। বাস্তবে এটা আইএসের পদ্ধতি। আইএস সবখানে এভাবে ভয়াবহ নৃশংসতা সৃষ্টি করে দেশের মানুষকে পাজেলড করে দিতে চায়, যাতে কেউ প্রতিরোধে এগিয়ে না আসে। ফখরুলের জামিনের ভেতর দিয়ে বিচারকরা কি বাংলাদেশকে আইএসের পথে অগ্রসর হওয়ার সুবিধা করে দিলেন না? এসব ঘটে কি ফখরুলের টাকা আছে বলে আর যারা জমির আল নিয়ে মাথা ফাটায় ওদের টাকা নেই বলে?

....

.'৭১ এর অন্যতম নৃশংস খুনী সালাউদ্দিন কাদের চৌধুরী। নিস্পাপ বাঙালীর রক্তে যে গাদ্দারগুলো সব থেকে বেশি হোলি খেলেছিল এই সাকা তাদের একজন। এই যুদ্ধাপরাধীর আপীল বিভাগের রায় ২৯ জুলাই। পিতা মুজিব! তোমার কন্যাকে এখানেও ক্রশে পিঠ ঠেকিয়ে দাঁড়িয়ে থাকতে হচ্ছে। তাই যদি না হয়, তাহলে কিভাবে যারা বিচার করছেন সেই বিচারকদের একজনের সংঙ্গে গিয়ে দেখা করে সালাউদ্দিন কাদের চৌধুরীর পরিবারের লোকেরা? তারা কোন পথে- বিচারকের কাছে ঢোকে, আইএসআই ও উলফার পথে না অন্য পথে? ভিকটিমদের পরিবারের লোকদেরকে কি কখনও কোন বিচারপতি সাক্ষাত দেয়। বিচারকের এথিকসে পড়ে! কেন শেখ হাসিনার সরকারকে কোন কোন বিচারপতির এ মুহুর্তের বিদেশ সফর ঠেকাতে ব্যস্ত হতে হয়। যে সফরের উদ্যোক্তা জামায়াত- বিএনপির অর্গানাইজেশান। কেন বিতর্কিত ব্যবসায়ী আগে গিয়ে সেখানে অবস্হান নেয়। কী ঘটতে যাচ্ছে সেখানে। ক্যামেরনই পরোক্ষভাবে বলছেন সকল সন্ত্রাসীর একটি অভয়ারণ্য হয়েছে লন্ডন। .....

তারেক রহমানকে খালাস দেয়া বিচারক পারেনি বেনজীর আহমেদ হতে। পারেনি বেনজীর আহমেদের মতো টাকাকে পায়ে ঠেলতে। তাই সালাউদ্দিন কাদের চৌধুরীর টাকার ভয় না পেয়ে উপায় কি? আইএসআই-এর অঢেল টাকার কথা তো সবাই

জানে। আর এই টাকার সাহস না হলে কোন সাহেসে তার পরিবারের লোকেরা বলে, অমুক বিচারপতিকে বেঞ্চে রাখবেন না।"

The question is whether the words, language, contents, remarks, innuendoes constitute contempt of court. Or in the alternative, whether it has been published in a calculated manner with a view to scandalizing the Court or Judges, or interferes with the administration of justice, in any manner, or lowers the authority of the Court.

Contemnor Swadesh Roy posed a question to the Chief Justice that the latter told earlier that constructive criticism of Court could be made, then question is how Mirza Fakrul Islam Alamgir at whose order 143 persons were burnt to death could have been granted bail on medical ground? Since those cases are still under investigation, we do not want to express any opinion on merit. As regards the order of bail, it being an interim order for a limited period, we refrain from making any remark.

What we want to say is that Mirza Fakrul Islam Alamgir has been enlarged on bail by the High Court Division and this Division on being satisfied maintained his bail for a limited period on medical ground.

The next sentence is very serious. He has questioned the authority of this Court and also the mode of administration of criminal justice in Bangladesh by the highest Court of the country. He stated, "in petty matters like breaking heads of poor accused over the dispute of demarcation line of agricultural plots, thousands of poor accused persons are detained in jail because of poverty but in cases where, 143 persons were killed in broad day light, he (Mirza Fakhrul Islam) got bail. Is it justice for Judges? Judges certainly are known why they (the miscreants) committed heinous killing by arson and pouring petrol. In reality, it is a part of IS manner of killing. IS aims to puzzle the

citizens of the country by creating horrific incidents so that none would come forward to prevent these incidents. Is it not true that through Fakrul's bail the Judges opened the path of IS's activities in Bangladesh? Did it happen because Fakrul has money and the poor prisoners are not getting bail for their poverty?".

The contemnors on entering appearance on the date fixed filed applications on 2nd August, 2015 seeking three months time to produce evidence stating that "(s)he has written the article on getting positive information and evidences (sic) only against Mr. Justice Surendra Kumar Sinha, Hon'ble Chief Justice of Bangladesh and not against any other Justices of both the Division(s) of the Supreme Court of Bangladesh .... that this contemnor shall contest the rule and as such for preparation of the affidavit after examining the entire

information and evidence(s) (sic) and as such he needs three months time to prepare affidavit'.

The fundamental principle of contempt proceedings is that whenever the Court on being informed or otherwise prima-facie satisfied that some one scandalizes the Court or the Judges or there was interference with the administration of justice the Court must dispose of the matter as early as possible with a view to maintaining the majesty of justice. Because the violation would continue so long the Court delays in adjudication of the matter and to bring the offender to justice. It is for the interest of justice to avert any further damage to the judiciary and also to prevent the abuse of the administration of justice, the matter should be heard as early as possible. Reference in this connection is In Re. Vinay Chandra Misra, (1195) 2SCC 584.

From the statements the Court had reason to believe that the contemnors were adopting dilatory tactics with a view to frustrating the hearing of the contempt proceedings. The Court rejected the prayer mainly because the Court was of the view if the publication was based on sufficient evidence, there was no reason for the contemnors to file affidavit furnishing particulars within one week. The author claimed that he wrote the article after taking all materials and the Court also believed that he had sufficient materials in support of the contents. If so, what prevented him to disclose them? He showed sufficient courage to contest the proceedings. His courage is commendable but if he had any ill motive to malign the Court or Chief Justice or other Judges, certainly he would face consequence of such adventurous approach.

Till that date of appearance the contemnors did not harbour any doubt about the impartiality or

biasness of the Chief Justice. The moment the contemnors sought long adjournment of the hearing, the Court smelt a rat in the writings. The Court perceived something ill motive behind the news item and accordingly rejected the prayer and adjourned the matter for a week to enable the contemnors to furnish materials and to contest the proceedings. On 6th August, the matter again appeared in the list. On that day, besides filing written objections expressing their intention to contest the contempt proceedings, they filed two applications for adjournment for a further period of two months to collect evidence. This time they stated that the audio record was in possession of the contemnors and the contemnors 'would like to develop a method of the recording to be heard only to the Honourable Judges, and if this honourable Court directed to play it in open court we need to develop any method. But for development of method only to make it

available to the hourable judges the contemnor is to develop a method and as such time is needed.'

These statements indicated that the contemnors thought that any conversation between the Chief Justice and another would absolve them of the charge of contempt without comprehending the impact of the writings. Naturally, these applications were also rejected for the reasons stated above. They also filed two applications for reconstitution of the Bench on the ground that the Chief Justice was interested in the proceedings and that the contemnors had reason to believe that they would not get unbiased hearing if the Chief Justice presides over the Bench. The Court by a short order rejected the prayers. In support of their claims they have relied upon the case of Moazzem Hossain (Supra).

Since an objection was taken at a belated stage about the biasness of the Chief Justice, it is pertinent to deal with the matter first. As noticed

above, the only ground for filing this application for biasness was that the Chief Justice was interested in the proceedings. Now question is whether the Chief Justice was interested or biased in the proceedings. The contemnors made two repeated applications for adjournment, initially for three months and then for two months. Thereafter they filed this application for reconstitution of the Bench.

Article 94 ordains the establishment of Supreme Court which says, “There shall be Supreme Court of Bangladesh comprising the Appellate Division and the High Court Division.” Sub-article (2) is very significant which states, “The Supreme Court shall consist of the Chief Justice, to be known as the Chief Justice of Bangladesh and such number of other Judges as the President may deem it necessary to appoint to each Division”. Sub-article (3) says, “The Chief Justice and other Judges appointed to the

Appellate Division have to sit only in that Division." If this Article is read with Sub-article (3) of Article 107, there will be no gain saying to assume that Chief Justice is taken as the symbol as well as the guardian of the judiciary who heads the judiciary. He represents not only both the Divisions but also lower judiciary as well.

The Supreme Court is considered a citadel for the nation and its people. The Chief Justice performs mainly twofold responsibility sitting in the centre chair of that citadel. In the first place his most pious duty is (like a most loyal and trustworthy warrior) to safeguard the glory, respect and dignity that is attached with this sagacious Institution, and secondly, he also has to relentlessly look after the internal functioning and performance of this Institution making sure that each and every helpless and unsecured soul that approaches this citadel for shelter treated with

impeccable level of justice. And in performing this dual duty he is required to take very strong call on matter and issues touching many affairs of the Supreme Court. For the very nature of the task he is invested with to regulate, sometimes he is required to be extremely hard on something only to be exceedingly kind to those who are helpless among all the odds in the society and left with only option that this court will stand beside them. Thus the Chief Justice is in the forefront of the battlefield and the burden associated with his keen sense of value, pride and sanctity about this Institution keep him always awake and restless and if any attack is unleashed from any quarter of the evil forces, it touches him first.

If the Chief Justice has any doubt that he should not preside over the Bench, it is the Chief Justice himself who will decide whether or not he should hear any matter. He does not act on the

asking of any litigant lest the administration of justice will be put to jeopardy and confidence of the people in the judiciary will be eroded. Though the Supreme Court includes the Judges of both the Divisions, the Chief Justice performs as the highest ladder. If the entire scheme of Part VI of the Constitution is read conjointly, there will be no doubt that the Chief Justice is treated as the guardian of the judiciary.

The Founding Fathers of our Constitution were aware that a superior court of record can indict a person for the contempt of itself recognizing the existing inherent powers of a court of record in its full plentitude to punish for contempt which forms the very backbone of administration of justice for protection and preservation of the confidence of the people. The Chief Justice should preside over the Bench to ensure unsullied flow of justice.

The Constitution has assigned the role to the highest Court to ensure the rule of law in the country. The Court, therefore, cannot be a helpless spectator and in the absence of rules to investigate into the proceedings for contempt, it looks at the old precedents and to lay down law with changed perception keeping in view the provisions of the Constitution. One of the basic pillars of the Constitution is the independence of judiciary. Under the constitutional scheme, the special role in the administration of justice and the powers conferred on this Court are under articles 7, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113 and 116 of the constitution.

The Apex Court is duty bound to take effective steps within the constitutional provisions to ensure a free and fair administration of justice. With that end in view, this Court must wield the requisite power to take action for contempt of court. The

facts revealed in the impugned report relate to something which strikes the foundation of the Court and the same reveals in the face of this Court. And, therefore, the Bench or the Judges before whom the contempt was committed is/are the appropriate authority to deal with the matter.

On the question of biasness, besides mere allegations, the contemnors failed to point out any sort of conversation or animosity with the Chief Justice of Bangladesh before the initiation of the contempt proceedings. They did not even claim anything in that regard. What they claim is that since a portion of the article was published against the Chief Justice he was biased. It is the reporter and publisher who tried to ridicule the office of the Chief Justice. What's more, the contemnors did not claim that the Chief Justice was acquainted with them or that he had any talk with them over any matter in issue or that the Chief Justice had

animosity with them over any matter. The proceedings were initiated by the Bench which passed the judgment over the matters reported in the article.

The contemnors have not only scandalised the office of the Chief Justice but also undermined the authority of the entire Court. It is the writer who made wild allegations against the Chief Justice basing upon talks between the Chief Justice and a junior most Judge. As observed above, contempt proceedings are drawn and disposed of by the Judge or the Bench against whom the contemnor makes statement undermining its authority, prestige and dignity. If the Judge against whom aspersions are brought are made party to the contempt proceedings, no Court would be able to administer justice. In that case whenever a litigant finds that the particular Judge has taken a view which will go against him, the litigant will make wild allegations against the Judge with a view to get rid of him.

So this is not a legal ground. In all publications, when the Court finds that the publication undermines the authority of the Court or scandalizes the Court or any Judge or the presiding officer of the Court, it initiates contempt proceedings. This is the practice which is being followed in all cases. If their claim is acceded to, then all contempt proceedings will fail and the contemnors will be emboldened to write freely assassinating the integrity and character of the Judges. In this regard, we have discussed earlier. Whatever conversations according to them have been made between the Chief Justice and another Judge was prior to the initiation of the proceedings. They admitted that the conversation was made face to face which is being done by the Chief Justice in all cases.

Similar prayer was made by an eminent senior advocate R.K. Anond of the Supreme Court of India

seeking the recusal of Manmohal Sarin,J. from hearing his personal case. Manmohal Sarin,J. declining the request observed:

> "The path of recusal is very often a convenient and a short option. This is especially so seems a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Article 219 of the Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fair or favour, affection or ill will while upholding the Constitution and the laws. In a case, where unfounded and motivated allegations of bias are sought to be made with a view to forum hunting/Bench preference or browbeating the Court, then, succumbing to such a pressure would

tantamount to not fulfilling the oath of office".

Against this order R.K. Anond moved the Supreme Court of India. The Supreme Court in R.K. Anond V. Delhi High Court, (2009) 8 SCC 106 held "the above passage in our view correctly sums up what should be the Court's response in the face of the request for recusal made with the intent to intimidate the Court or to get better of an 'inconvenient' Judge or to obfuscate the issues or to cause obstruction and delay the proceedings or in any other way frustrate or obstruct the course of justice'. The Supreme Court expressed its displeasure of the conducts of a section of lawyers and litigants at the hearing of matters which according to it on the rise and observed that 'we are constrained to pause here a moment and to express grave concern over the fact that lately such tendencies and practices are on the increase. We have come across instances where one

would simply throw a stone on a Judge (who is quite defenceless in such matters) and later on cite on gratuitous attack as a ground to ask the Judge to rescue himself from hearing a case in which he would be appearing. Such conduct is bound to cause deep hurt to the Judge concerned but what is of far greater importance is that it defies the very fundamentals of administration of justice.'

Similar question arose in Vinay Chandra Mishra (1995)2 SCC 584. It was observed "The consensus of opinion among the judiciary and the jurists alike is that despite the objection that the Judge deals with the contempt himself and the contemner has little opportunity to defend himself, there is a residue of cases where not only it is justifiable to punish on the spot but it is the only realistic way of dealing with certain offenders. ... The threat of immediate punishment is the most effective deterrent against misconduct. The Judge has to remain in full control

of the hearing of the case and he must be able to take steps to restore order as early and quickly as possible."

We cannot add more than what Aftab Alam, J. has expressed in R.K. Anand and we fully endorse the above views and decline to swallow the tactics adopted by the contemnors. What we want to express here is that a motivated petition for recusal needs to be dealt with sternly and should be viewed ordinarily as interference with the course of justice leading to penal consequence. We would not henceforth entertain this type of petition with the end in view that in order to maintain the majesty of justice no such endeavour shall be countenanced. It was a motivated prayer somehow to obfuscate the contempt proceedings or to frustrate the course of justice. Affront, jibes carefully, consciously planned snubs and insinuation could not deter us from discharging our onerous responsibility. We are

oath bound to maintain the rule of law. The Supreme Court is an institution and a Judge is chosen to do his arduous and onerous journey to the highest Court of the country based on the faith and confidence reposed on him to do justice and maintain rule of law. This country, its citizens and this institution need to be protected. A Judge has duties, obligations, and responsibilities to rescue each of them. A Judge's harmonious glory emerges from what is commonly known as "the rule of law". The judiciary is similarly an institution that has an extremely sacrosanct duties/obligation and responsibility.

The time factor is crucial. Dragging out of the contempt proceedings means a lengthy interruption, which paralyses the Court for a time and indirectly impedes the speed and efficiency with which justice is administered. Instant justice can never be completely satisfactory yet it does provide the

simplest, most effective and least unsatisfactory method of dealing with disruptive conduct in Court.

The case of Moazzem Hossain is quite distinguishable and not applicable in support of the contemnors' plea of malice. In that case, a picnic party was organized headed by Abdur Rahman Chowdhury,J. in Sundarbans and the minimum subscription of 500/- for each lawyer was fixed. Moazzem Hossain, then Deputy Attorney General refused to participate but ultimately he succumbed to the insistence and pressure of Abdur Rahaman Chowdhury,J. for joining the party. On the way back from Sundarbans, when the launch halted at Mongla Port a quarrel suddenly took place over a bottle of honey between Moazzem Hossain and another lawyer in which Abdur Rahman Chowdhury,J. ultimately joined and abused Moazzem Hossain in filthy language and held up the threat that "I shall finish you. I made you DAG. I will have you dismissed very soon". After

the incident of 15th January, 1982, a contempt proceedings was initiated by Abdur Rahman Chowdhury,J. against Moazzem Hossain mainly on the allegation that Moazzem Hossain deliberately absented himself from Court proceedings of a death reference on several occasions and thereby, he undermined the authority and dignity of the Court.

The High Court Division convicted him for contempt despite it was observed that the Bench which heard the contempt matter has no jurisdiction, who heard the same observing "it is the Constitutional power of the Chief Justice of Bangladesh to dispatch the business and functions amongst the Judges. He alone has been mandated by the Constitution by law". It appears that as per order of the Chief Justice, on 30th March, 1983, the learned Judge was sitting in Single Bench. This contempt matter could not be heard by this Bench on 12th April, 1983 and 13th April, 1983, inasmuch as,

this Bench had no jurisdiction to take up such matter. Badrul Haider Chowdhury, J. noticed the previous incident between Abdur Rahman Chowdhury,J. and Moazzem Hossain, and observed "it will not be necessary to dilate on these aspects but it can only be said that the learned Judges themselves have taken the matter to a point which is not a happy augury for the administration of justice.' There is evidence from the last three lines of the passage quoted above which are to say the least, words of desperation. Moazzem Hosssain submitted that in the frame of mind, it appears from the quoted passage, the learned Judges should not hear the matter at all because they were giving vent to exasperation when they said if appropriate action was taken in those two matters situation would not have come to such a pass. I fail to understand why the learned Counsel has referred to this decision.

We were astonished and bewildered on reading the remarks and comments made in the impugned article. We cannot believe that a sensible writer can make such comments. When the learned Counsel was referring to this article, he wanted to skip over the first portion of the writing and drew our attention to the latter part. He submitted that he would make submission on this count later on but till the hearing of the matter was over, he did not make any submission nor did the contemnors give any explanation why the writer made those wild remarks making aspersion to the Judges of the highest Court and also questioning their authority and power to admit bail to an accused person. These statements are so aggravated and scandalous, the writer ought to have been sent directly to the Dhaka Central Jail in the manner the Supreme Court of India had done by sending the contemnor Haridas to the Tiher Jail, Delhi.

After the hearing was over, the contemnors filed affidavits on 11th August, 2015 stating that Swadesh Roy did not mean in any manner about the integrity of the Judges of the Appellate Division on the issue of granting bail to Mirza Fakhrul Islam Alamgir. He made the statements in good faith that the poor people are not in a position to engage good lawyers due to financial scarcity. We have reproduced the statements in verbatim and the statements are self explanatory. Is it an explanation? He has questioned the propriety and the impartiality of this Court in not rendering justice to the poor presuming that they cannot engage reputed lawyers and that the Judges also administer justice taking consideration of the status, influence and solvency of the accused persons. He has castigated the Judges of the highest Court of the country and undermined their impartiality in the administration of criminal justice. He snubbed the

Judges for their alleged biasness towards the powerful and moneyed person of the society.

At the moment we cannot express better than what Lord Denning in Bramblevale Ltd., Re, (1969) 3 All ER 1062 has expressed that a contempt is an offence of a criminal character and for such an offence, the offender may be sent to prison for it must be satisfactorily proved. 'Once some evidence is given, his (contemnor) lies can be thrown into the scale against him. If any writer or anybody else whatever might be his position tries to scorn the Judges of the highest Court or malign the rule of law or interferes with the administration of justice he will be bound to face consequence it being a criminal offence. 'Whenever a man publishes he publishes at his peril, for there is no entering into the secret thoughts of a man's heart'. (Rex v. Woodfall, Lofft. 776, 98 Eng. Rep. 914 (1774)).

The allegations are serious type of offence of a criminal character. He has exceeded all norms by challenging the authority of this Court in the manner of administration of criminal justice. He has forgotten the power reposed upon the highest Court of the country by the Constitution. He has nakedly undermined the authority of this Court as if he were given superior power to oversee the administration of criminal justice. He failed to notice that on many occasions this Court rescued the citizens of the country and the judiciary by delivering landmark judgments in Masder Hussain; in the presidential reference in respect of the forum for the trial of the defunct BDR mutinees; declaring the Constitution's 5th, 7th, 8th and 13th amendments void as soon as it found that those amendments were contrary to the Constitution; directed the authority in power to pull down all unauthorized constructions made by big business houses on the bank of

Sitalakha, Buriganga and Turag rivers and directed RAJUK to pull down multistoreyed buildings constructed by two big business houses; it compelled the government to dismantle the housing projects undertaken in the vicinity of the Dhaka City etc.

Before we deal with the second offending part of the writing, we would like to dispose of another preliminary objection raised on behalf of the contemnors. They filed two applications, one on 6th August, 2015 and the other on 9th August 2015. In the first application they stated that 'the Article was written and published absolutely on the positive information and materials' and reproduced the conversation between the Chief Justice and another without disclosing the name, as under:

- অপর প্রান্তঃ না, সেটা বলতেছি না। আপনি বলছিলেন, সাকার ফ্যামিলি আপনাকে বলছে আমাকে না রাখার জন্য এ জন্য রাখতে পারেন নাই।
- প্রধান বিচারপতিঃ হ্যা, হ্যা ।

- অপর প্রান্তঃ আমারতো---- মানে এই ছুটিতেই শেষ। নইলে আর পাবনা কিন্তু। আমাকে দেন। অন্তত সাকার ফ্যামিলি থেকে আপনাকে বলছে আপনি দিতে পারেন নাই, সাকার ফ্যামিলি মেম্বাররা বলছে। কিন্তু এইটাতো----
- প্রধান বিচারপতিঃ সাকার ফ্যামিলি মেম্বার মানে, সাকার পক্ষ থেকে।
- অন্য বিচারপতিঃ যাই হোক, সাকার পক্ষ থেকে বলছে আমারে না দেয়ার জন্য।
- প্রধান বিচারপতিঃ হ্যা না দিতে বলছিলেন।
- বিপরীত প্রান্তঃ আচ্ছা কালকে তো ১১ নাম্বারে মওদুদের। মওদুদেরটা ১১ নাম্বারে। মওদুদেরটায় কিন্তু আমার নাম ছিলো লিষ্টে।------ আজকে কিন্তু আমার নাম নেই।-- আমি ছিলাম কিন্তু। আপনি কালকে বললেন না কালকে, মওদুদ আসছিলো। আপনার হাতে পায়ে ধরছে।
- প্রধান বিচারপতিঃ হ্যা।
- বিপরীত প্রান্তঃ কি বলছে?
- প্রধান বিচারপতিঃ আপনি দয়া করে যাকে দেন চৌধুরী সাহেবকে দিবেন না। হাতে পায়ে ধরসে।
- বিপরীত প্রান্তঃ ধরসেতো কি হইছে?
- প্রধান বিচারপতিঃ অস্পষ্ট
- বিপরীত প্রান্তঃ কি বলছে, যে মানিক সাহেবকে দিবেন না?
- প্রধান বিচারপতিঃ হ্যা, জি, জি।
- বিপরীত প্রান্তঃ হ্যা, কি বলছে।
- প্রধান বিচারপতিঃ চৌধুরী সাহেবকে বাদ দিয়ে যাকে দেন। তাকে দিয়েন না।

After the above revelation they stated that a journalist cannot publish any news item or write any

thing without ascertaining the truth of the news. They prayed for displaying the audio tape portion recorded during the course of conversation. Though they did not disclose the source wherefrom they got it, the person with whom the Chief Justice had conversation was none but A.H.M. Shamsuddin Chowdhury, J. because the cases revealed in the talks were then pending in this Division and that the particular Judge was eager to be included in the hearing of those matters. However, they disclosed his name in the latter application. The Chief Justice noticed that the disclosed portion as quoted therein were exactly on the same subject matter over which A.H.M. Shamsuddin Chowdhury,J. discussed with him. The subject matter of the conversation between the Chief Justice and the Judge was relating to the re-constitution of the bench so that he may be added in the hearing of the matters. Now the question is

whether the reporter/writer can publish the same even if the conversation was true.

The writer cannot publish the same because this is completely internal matter of the administration of justice that a puisne Judge had discussed with the Chief Justice over two pending cases expressing the desire to be included in the bench. The Chief Justice has exclusive power to constitute any bench for hearing any matter before it and the High Court Division, and the Chief Justice being the guardian of the judiciary cautiously constitutes the benches. It is one of the crucial job for a Chief Justice. Every Chief Justice wants to administer justice with his puisne Judges according to his policy and plan and he wants to implement his object with their co-operation. He being the senior most Judge of the country has an overall idea regarding the conduct, performance and the line thinking of the puisne Judges. He wants to implement his policy through them and sometimes he discusses with the senior

judges and sometimes he keeps it in secret. He being the leader administers justice taking into consideration as to which Judge will be suitable for hearing in matters pending in the Court. This will be evident from the benches constituted in both the Divisions. The Chief Justice always tries to give jurisdiction to the Judges who according to him suitable for hearing a subject matter and disposing it expeditiously. It is the perception of the Chief Justice and there is no heard and fast rule. It takes days together to constitute the benches keeping in mind whether there will be delay in the administration of justice, whether any party will be prejudiced if particular Judge is included or excluded and other factors. These facts particularly internal administration of justice should not be disclosed to the press and to the public for obvious reason. The lawyers particularly the Bar keeps on pressurising the Chief Justice to constitute Benches with liberal Judges in respect of criminal motions

and writ motions, so that they will secure interim reliefs easily. Some Judges are eager to get the constitution of those matters but the Chief Justice never yield to their pressure and constitutes Benches on consideration of other factors. However, some judges do not want to preside those matters with a view to avoid controversy.

No Chief Justice can satisfy the lawyers and Judges. The Chief Justice always sits on a heated chair and does not swallow the pressure. He is the most unpopular among the Judges, the lawyers, the court litigants who want to get easy relief and the litigants who try to constitute a Bench according to their choice. Sometimes they influence the bench readers/officers in exchange of money. Therefore, the Chief Justice keeps his covetous eyes open and collect information from different sources and then secretly constitutes the benches and direct listing of the cases.

If the secrecy of these facts are revealed to the public, the administration of justice will be bound to hamper. The Chief Justice always wants to combat corruption and reduce the docket and due to his sincere effort any sort of irregular listing of matters in either Divisions of the Supreme Court has altogether eliminated and the poor-helpless litigants are getting justice easily. We have been able to restore normalcy and litigants' confidence towards the judiciary restored. These facts have been reported in newspapers also and the introduction of new system regarding the listing of cases has been welcomed by the members of the Supreme Court Bar Association. It was always in the conscious effort of the Chief Justice that this sort of irregularity should be stopped forever and he has given directives to the bench officers/bench readers and the concerned section officials for fixing cases serially. Recently it has been revealed that this type of irregularity has been rectified but it

cannot be said that it has totally been eliminated. In the Appellate Division the Chief Justice has stopped any mentioning of any matter in the open court and the cases which are being fixed by the learned Judge-in-chamber will appear automatically in the daily cause list. Now that the listing of the cases by unfair means has totally eliminated. The lawyers and litigants are happy with the atmosphere.

The reporter cannot publish this sort of news even it is true for public consumption. There are some internal confidential matters which if leaks may affect the administration of justice and peoples perception towards judiciary may be eroded. He stated that the nation 'has a right to know the whole truth and this contemnor sincerely believe(s) that he as a journalist has a right to write whole truth.' I am rather surprised to read this statement. Only it may be observed that he has lost all ethics and norms as a reporter. Every authority or organisation maintains secrecy in certain

matters. Suppose the Prime Minister's discussion with his cabinet colleagues relating to confidential and internal policy matters cannot be leaked. If someone recorded the conversation by using secret devices, hands over the same to a reporter or if someone by influencing a staff of the Prime Minister's office got the conversation recorded and publishes in newspaper would such reporter be spared on the plea of true facts? Similarly any head of an institution may discuss secretly with his subordinates in respect of some internal matter but a reporter cannot install any device or engage any staff or officer to record the conversation for publication. If any reporter does so, it being a criminal offence he will be dealt with severely. A president of a powerful country was compelled to resign due to commission of such offence.

If the reporter does not have the minimum knowledge in this regard, he should not be allowed to work as reporter and if the publisher does not

have the control over the reporters he should not run a newspaper. This is the morality and perception of particular reporter or publisher. If after commission of such offence he swaggers, it may be taken as good as an ordinary criminal. The news which has been published cannot augment the administration of justice rather this might tend to undermine the authority of the Chief Justice and a learned Judge of the highest Court. Any news which undermines the authority of any Judge is also contempt. More so, the conversation between the Chief Justice and a Judge is secret one and even if the reporter can collect such conversation by deceitful means this should not be made public - this recording of the confidential conversation itself is an offence.

In the second application the contemnors stated that "After hearing audio record, we are of the view, the voice of the other person is that of Mr. Justice A.H.M. Shamsuddin Choudhury and we wish to

request him to appear before this hon'ble court or to file a shown statement as to the audio Cd'. They further stated that "Mr. Justice A.H.M. Shamsuddin Choudhury, Country Manager of Emirates Air Lines, contemnor Nos.1 and 2 are the important witnesses and as such notice may be issued upon them ....." for the purpose of ascertaining the truthfulness of the contents in the report. They filed sworn affidavit and therefore, the Chief Justice was convinced that they have taken consent from A.H.M.Shamsuddin Chowdhury,J. otherwise they would not have made such firm statement.

Since the contemnors are adamant to examine Mr. Justice A.H.M. Shamsuddin Choudhury, a sitting Judge of the highest Court, the Chief Justice was then realised that if any notice is issued, the puisne Judge may or may not appear. In that case there will be stalemate situation. Therefore, the endeavours of the contemnors should not be allowed for obvious reason. Because a sitting Judge of the highest court

should not be allowed to depose in open court in support of the contemnors. The public perception towards Judges may be diminished and huge number of judgment delivered by him earlier may be put into question. This has not happened earlier in our judicial history. What is more, if he deposes, certainly he will be subjected to cross-examination by the learned Attorney General and many unpleasant replies might be disclosed from the lips of the learned Judge. In that event, the prestige and dignity of the Judges of the highest Court may be hampered and the public perception towards the judiciary may be eroded. Considering this aspect of the matter, the Chief Justice in open Court admitted saying that 'yes' he had conversions with A.H.M. Shamsuddin Choudhury,J. over the facts as disclosed hereinbefore and that those leaked statements are verbatim reproduction of conversation.

The contemnor also prayed for cross-examination of Chief Justice in support of their defence. At

that stage the Chief Justice reconstituted a larger Bench excluding A.H.M. Shamsuddin Chowdhury, J. as he was cited a witness on their behalf and that they had disclosed in their affidavits that A.H.M. Shamsuddin Chowdhury, J. was the Judge with whom the Chief Justice had talk over his inclusion in the Bench on two matters, who (A.H.M. Shamusuddin Chowdhury,J.) had consented to become witness and depose in Court in their support.

The Chief Justice did not keep him in the Bench in two cases, when the learned Judge showed interest to hear those particular matters. The interest of any learned Judge to remain in the Bench for hearing a particular matter is contrary to the code of conduct and ethics of Judges.

Normally a Judge should not show any interest towards any party to the litigation or case pending in the Court. Whenever any complaint is made against any Judge or from any source or any request is made

that any Judge is interested in any matter, the Chief Justice in exercise of his discretionary power withdraws him from the hearing of the case. A Judge cannot show interest in a particular case and request the Chief Justice to give him jurisdiction of a matter in which he is interested. It has never happened in the administration of justice that a Judge is interested to hear any matter and the Chief Justice has assigned the case to him. If this demand is acceded to, there will not be any sanctity in the administration of justice. Being the hierarchy of the judiciary, if the Chief Justice swallow such pressure the people's confidence in the administration of justice will be eroded.

In the Code of conduct of the Judges, under the heading 'General Disqualifications to hear a matter, it is said:

(a) The Judge shall disqualify himself or herself in a proceeding in which the

Judge's impartiality might reasonably be questioned.

(d) The Judge or the Judge's spouse, or a person related either to the Judge or the spouse:

(i) is a party to the proceeding, or an officer, director or trustee of a party.

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the Judge to have an interest that could be substantially affected by the outcome of the proceeding; or

(i) is to the Judge's knowledge likely to be a material witness in the proceeding.

.....

5. A Judge should practice a degree of aloofness consistent with the dignity of his office.

7. A Judge is expected to let his judgments speak for themselves. He will not give interviews to the media.

11. Every judge must at all time be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of his office.

12. In the event of any embarrassment to hear a case by a judge, he shall inform the Chief Justice of such embarrassment so that Chief Justice can take appropriate steps.

13. A judge should not engage in any political activities, whatsoever in the country and abroad.

Observance of Canons of Judicial Ethics enables the judiciary to struggle with confidence; to

chasten oneself and be wise and to learn by themselves the true values of judicial life. The discharge of judicial function is an act of divinity. Perfection in performance of judicial functions is not achieved solely by logic or reason. There is a mystic power which drives the Earth and the Sun, every breeze on a flower and every smile on a child and every breath which we take. It is this endurance and consciousness which enables the participation of the infinite forces which command us in our thought and action, which, expressed in simple terms and concisely put, is called the 'Canons of Judicial Ethics'.

Conduct for Judges is being followed/ regulated systematically based on tradition for more than hundreds of years since 1861. One of the strongest features of this convention is that no Judge shall express his own opinion regarding case under trial other than in the judgment. It is now more than a

well accepted and well rooted principle that constitutional convention is as good as constitutional law and therefore, equally binding upon all. Thus, a convention which is being followed and uninterruptedly adhered to is also a law and any violation of the law is evidently an offence. He takes oath to preserve, protect and defend the Constitution and the laws-if he violates the law-he violates the Constitution as well.

Law means Act, Ordinance, rule, regulation, by-law, notification or other legal instruments, and any other legal instrument, and any custom or usage having force of law. Usage means the fact of being used habitual or customary practice. Under the Code of Conduct a Judge will not give interviews to the media, that is to say, he should avoid the media. If he speaks with the media people or discloses to the media regarding the internal matters of the judiciary he violates the Constitution and the law.

Articles 7 (2) and 59 conjointly embraced the Supreme Court to be the custodian of the Constitution. Our Constitution was built on the basic structure doctrine and the spirit of this doctrine also has been embedded in the text of the Constitution. In a catena of cases our judiciary has relied upon the basic structure doctrine which jealously protects the judicial power as well as safeguards and guarantee the independence of Judiciary. During making of the Constitution, our Constituent Assembly was driven by the same spirit and our Founding Fathers had promulgated the Constitution keeping in mind the supreme sacrifice of the three million martyrs in the struggle for independence. It was the intention of the Constitution makers to evolve a democratic system based on checks and balances, and to achieve this they also made an arrangement coherent with the civilized legal norms and tradition which provides that in a democratic polity based on constitutional

supremacy the final say belong to the Judges of the Supreme Court to interpret the Constitution thereby to say what the law is *(Marbury v Madison, 5 U.S. 137 (1803))*.

The authority or power that the Supreme Court exercises, so far as it relates to the interpreting the Constitution was not enjoined or accrued subsequently rather it emanates from the very commencement of the Constitution.

Under the constitutional scheme this Court has a special role in the administration of justice and the power conferred on it under articles 44, 102, 103, 104, 108, 111, 112 of the Constitution.

JUDICIAL ETHICS -

Judicial ethics is an expression which defies definition. In the literature, wherever there is a reference to judicial ethics, mostly it is not defined but attempted to be conceptualized. According to Mr. Justice Thomas of the Supreme Court

of Queensland, there are two key issues that must be addressed: (i) The identification of standard to which members of the judiciary must be held; and (ii) a mechanism, formal or informal, to ensure that these standards are adhered to. A reference to various dictionaries would enable framing of a definition, if it must be framed. Simply put, it can be said that judicial ethics are the basic principles of right action of the Judges. It consists of or relates to moral action, conduct, motive or character of Judges; what is right or befitting for them. It can also be said that judicial ethics consist of such values as belong to the realm of judiciary without regard to the time or place and are referable to justice dispensation.

On the question of cross-examining the Chief Justice similar prayer was made in Venoy Chandra (Supra). The Supreme Court outright rejected the prayer observing that the criminal contempt of court

undoubtedly amounts to an offence but it is an offence *sui generis* and hence for such offence, the procedure adopted both under the common law and the statute law, if any, has always been summary. The Court explained the summary procedure that the matter shall be disposed of by affording an opportunity to the contemnor. The Court observed "In such procedure, there is no scope for examining the Judge or Judges of the Court before whom the contempt is committed. To give such a right to the contemnor is to destroy not only the *raison d'ētre* for taking action for contempt committed in the face of the Court but also to destroy the very jurisdiction of the Court to adopt proceedings for such conduct."

No further explanation is necessary in this regard. This is the accepted principle being followed in this sub-continent over a century and even if the contemnors have no knowledge, the

learned Counsel having expertise of appearing before the highest Court of the country must have minimum knowledge in this regard. We are shocked in the manner of the learned Counsel has defended the contemnors and drafted the petitions and the affidavits. Normally in contempt proceedings the lawyers are cautious in the selection of words and language, and for their mistake the litigants suffer. These types of proceedings are sensitive matters and the Judges always caution the lawyers in admitting or defending the contemnors. In this case the lawyer has shown callousness. So this Court has committed no infirmity in rejecting the prayers made by the contemnors.

The second offending part of the publication is that the writer questioned how the members of Salauddin Qader Chowdhury's family can meet one of the Judges who is in seisin of the matter? The writer did not disclose the name of the Judge but in

his defence, he disclosed the name of the Judge and he was none but the Chief Justice of Bangladesh himself. This statement is also false, inasmuch as, the contemnors admitted in their affidavits that no member of the Salauddin Qader Chowdhury's family met the Chief Justice. According to them, some one on their behalf met the Chief Justice and requested him not to keep A.H.M. Shamsuddin Chowdhury, J. in the Bench. Now the question is, how did he come to know that the family members of Salauddin Qader Chowdhury met with Chief Justice? Assuming that someone met the Chief Justice, now the question is did he commit any remotest type of misconduct only by meeting someone? The Chief Justice is the only authority to constitute benches of both the Divisions. If the litigants have any grievance against any Judge then who will decide such apprehension? If the Chief Justice did not have such power the administration of justice will collapse. Therefore, the Chief

Justice is gateway to the litigants, lawyers and other interested persons. The Counsel had no semblance of idea about the functions of the Chief Justice of Bangladesh.

Besides administration of justice, being the guardian of the judiciary, the Chief Justice does administrative works relating to the entire judiciary in Bangladesh and in course of his administrative works, he sometimes takes notice of grievances of the litigants through their representatives, and in person who are unable to engage a lawyer. This is the normal business of the Chief Justice. The Constitution empowers the Chief Justice to constitute benches of both the Divisions. Sometimes the Chief Justice excludes a particular Judge from any bench and sometimes he gives power to another Judge and sometimes directs the Courts to refrain from hearing any particular matter and gives direction in which manner the particular type of

case or cases should be disposed of. The contemnor questioned in which path the relatives of Salauddin Qader Chowdhury met the Chief Justice. The simple answer is, in the same path A.H.M. Shamsuddin Choudhury,J. met the Chief Justice. He questioned whether the victim's family members met any Judge but in the affidavit he himself has admitted that someone requested the Chief Justice on his behalf. He then questioned whether it was within the ethics of a Judge? This writer has exceeded all norms. He questioned the ethics of the Chief Justice.

He then said, the Prime Minister postponed the tour program of one Justice abroad. The writer was pointing fingers at the Chief Justice. The Chief Justice in open Court declared that he postponed the program but did not explain anything. He then directed the Attorney General in open Court to make an official statement as to whether the office of the Prime Minister or the Prime Minister had

prevented the Chief Justice to go abroad. The Attorney General being the chief Law Officer of the country intimated in open Court that neither the Prime Minister nor anyone from the office of the Prime Minister ever made any request to the Chief Justice preventing him from going abroad. Learned Counsel for the contemnors objected to this statement and prayed that the Attorney General should make a statement by sworn affidavit. We are astounded in the way the learned Counsel was nakedly making submissions which were beyond the norms and practice of this Court. The Court outright rejected his prayer and accepted the statement. So the writer in a calculated manner wanted to demean and undermine the power and the authority of the Chief Justice of Bangladesh and the Attorney General. He also made wild allegations against the Chief Justice of Bangladesh. He made libelous statements. These

statements are not only contemptuous but they are also criminal offence.

The next statement he made is that, the tour of the Chief Justice was sponsored by the BNP-Jamat organizations. Here again how he was dared to make such statement is beyond comprehension. He then posed the question, “why a disputed businessman went abroad ahead of the tour. What was happening there?”. Of course possibly, he regained his senses and thereby could not disclose the name of the businessman, although he had the courage to disclose the name of the Chief Justice in the conversation with A.H.M. Shamsuddin Choudhury,J. wherefrom he got the information that the tour was sponsored by BNP-Jamat organizations. The writer used such derogatory language which stunned the Judges present in the Bench.

The contemnors did not disclose or type all the complete sentences of the conversation and

intentionally delete some words. Though the contemnors produced the audio cassette, the members of the Bench did not feel any interest to listen to the conversation once they came to know that this conversation was made between the Chief Justice and A.H.M. Shamsuddin Choudhury,J. The learned Counsel submitted that Swadesh Roy did not collect the audio cassette from A.H.M. Shamsuddin Choudhury,J. He admitted that the conversation was made with none but A.H.M. Shamsuddin Chowdhury,J. He failed to notice that the Chief Justice maintains secrecy and confidentiality whenever a Judge meets him. Even if it is assumed that A.H.M. Shamsuddin Chowdhury,J. did not record the conversation, then the reporter secretly got it recorded or collected from other source but he failed to comprehend that he cannot do so far, it itself is an offence pure and simple. The subject of the discussion being related to the administration of justice and secret, it should not

be made public and such publication is detrimental to public interest.

It is not a communication between two Judges. It is a conversation between a puisne Judge and the Chief Judge in confidence which imports a special degree of secrecy. It is a paramount necessity that the Judges of the highest Court should always act within the scope of their duties for the public interest and the administration of justice. And it is very greatly in the public interest that the Judges who are holding constitutional posts and concerned in every aspect of maintaining the rule of law, should act as a single unit, bound to each other by a certain loyalty to the rule of law, always of course within the scope of public interest. Where such a feeling, which may rightly be described as e*sprit de corps* does not exist, it is clear that the process of rule of law must be gravely prejudiced. The law is conscious of this

requirement and enforces it by means of laws and constitution. In this connection section 124 of the Evidence Act is relevant, which reads:

> "No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that public interest would suffer by disclosure."

The purpose of this section is clearly wider the mere overcoming of such objection. Here the writer stands on the same footing and he has committed criminal offence.

The concerned Judge was very much eager to clarify some words from the lips of the Chief Justice and repeatedly kept on putting questions. So it was apparent that he was deliberately putting the questions and met the Chief Justice on previous occasions requesting him to include him in the Bench

and the last one was a deliberate attempt with a view to maligning the Chief Justice.

The writer claims that he is a law abiding citizen and his statements are based on truth and bonafide. We failed to understand which statement is true. None of the statements as discussed above are true except the conversation of the Chief Justice with A.H.M. Shamsuddin Choudhury,J. The topic of the conversation was the request of Chowdhury, J. to keep him in the Bench for hearing. The Chief Judge turned down his first request and then he wanted to be included in the hearing of the appeal in respect of the property of Mr. Moudud Ahmed. So A.H.M. Shamsuddin Chowdhury, J. met the Chief Justice before hearing of Salauddin Qader's appeal or at least in the midst of the hearing. He knows that in the midst of hearing, a Judge cannot be included in a matter.

We fail to understand why the impugned reporting was made after the conclusion of the hearing of the appeal of Salauddin Qader Chowdhury on 16th July, 2015. Why the writer chose to publish this report after the conclusion of hearing and before the delivery of the judgment? If he had the bonafide intention as claimed, what prevented him from publishing the same before hearing of the matter? Why he published such a report just before the delivery of the judgment? Who would be benefited thereby if the Chief Justice had withdrawn himself from the Bench? Certainly it was Salauddin Qader Chowdhury. The writer might have ill motive to frustrate the delivery of judgment of Salahuddin Qader Chowdhury, otherwise he could have published the same before the hearing or at least before the conclusion of hearing.

Learned Counsel appearing for the contemnors submitted that as the writer had collected materials

relating to a news about movement of Salauddin Qader Chowdhury's family members who met the Chief Justice, there was some days delay in publishing but it was published with the motive that the Judges should be cautious at the time of delivery of judgment. This itself is a serious type of contempt. This is a lame excuse for, even if it is assumed that the writer or the editor has no knowledge about the law that during the pendency of a matter, any publication is made which interferes with the administration of justice amounts to criminal contempt. Their Counsel should know about it. This publication not only interferes with the administration of justice but also scandalizes the Court and the Judges, and therefore, the writer and the editor have certainly committed criminal contempt.

A.H.M. Shamsuddin Chowdhury,J. is the junior most Judge of the Appellate Division. By a sworn

affidavit the contemnors stated that Chowdhury, J has consented to become a witness on behalf of the contemnors. We thought the statement as a ridiculous one but when the learned Counsel was serious to the statement we were beyond bewilderment.

New York Times speaking of Frankfurter as a Judge called him great not because of the results he reached but because of his attitude towards the process of decision. His guiding lights were detachment, rigorous integrity in dealing with the facts of case, refusal to resort to unworthy means, no matter how noble the end, and dedication to the court as an institution. (E.C. Gerhart P.289) Bacon wrote long back in 1852 in one of his essays, 'Judges ought to be more Learned than witty, more reverend than plausible, and more advised than confident. Above all things, integrity is their portion and proper virtue.'

In the Book 'Lives of the Chief Justice of England' reproduced the qualities of a Judge written in his own handwriting by Lord Hale which he had laid down for his own conduct as Judge. He wrote:

Things necessary to be continually had in remembrance.

1. That in the administration of justice I am trusted for God, the king, and country; and therefore,
2. That it be done, (1) uprightly, (2) deliberately; (3) resolutely.
3. That I rest not upon my own understanding or strength, but implore and rest upon the direction and strength of God.
4. That in the execution of justice I carefully lay aside my own passions, and not give way to them, however provoked.

5. That I be wholly intent upon the business I am about, remitting all other cares and thoughts as unseasonable and interruptions. “And, while on the Bench, not writing letters or reading newspapers.”

6. That I suffer not myself to be prepossessed with any judgment at all, till the whole business and both parties be heard.

7. That I never engage myself in the beginning of any cause, but reserve myself unprejudiced till the whole be heard.

8. That in business capital, though my nature prompt me to pity, yet to consider there is a pity also due to the country.

9. That I be not too rigid in matters purely conscientious, where all the harm is diversity of judgment.

10. .....

11. That popular or court applause or distaste have no influence in anything I do, in point of distribution of justice.

12. Not to be solicitous what men will say or think, so long as I keep myself exactly according to the rule of justice.

13. .....

14. .....

15. .....

16. To abhor all private solicitations, of what kind soever, and by whomsoever, in matter depending.

17. .....

18. To be short and sparing at meals, that I may be fitter for business.

(E.C.Gerhart, p297-298)

Performing the functions of a judicial office by a Judge, an occupant at times rises towards the heights and at times all will seem to reverse itself. Living by canons of judicial ethics enables the occupant of judicial office to draw a line of life with an upward trend traveling through the middle of peaks and valleys. In legal circles, people are often inclined to remember the past as glorious and describing the present as full of setbacks and reverses. There are dark periods of trial and fusion. History bears testimony to the fact that there has never been an age that did not applaud the past and lament the present. The thought process shall ever continue. Henry George said – “Generations, succeeding to the gain of their predecessors, gradually elevate the status of

mankind as coral polyps, building one generation upon the work of the other, gradually elevate themselves from the bottom of the sea" Progress is the law of nature. Setbacks and reverses are countered by courage, endurance and resolve. World always corrects itself and the mankind moves ahead again. "Life must be measured by thought and action, not by time" – (Sir John Lubbock).

In all democratic constitutions, or even those societies which are not necessarily democratic or not governed by any Constitution, the need for competent, independent and impartial judiciary as an institution has been recognized and accepted. It will not be an exaggeration to say that in modern times the availability of such judiciary is synonymous with the existence of civilization in society. There are constitutional rights, statutory rights, human rights and natural which need to be protected and implemented. Such protection and

implementation depends on the proper administration of justice which in its turn depends on the existence and availability of an independent judiciary.

Courts of law are essential to act and assume their role as guardians of the rule of law and a means of assuring good governance. Though it can be said that source of judicial power originates from two sources. Externally, the source is the public acceptance of the authority of the judiciary. Internally and more importantly, the source is the integrity of the judiciary. The very existence of justice delivery system depends on the Judges who, for the time being, constitute the system. The Judges have to honour the judicial office which they hold as a public trust. Their every action and their every word-spoken or written – must show and reflect correctly that they hold the office as a public trust and they are determined to strive continuously

to enhance and maintain the people's confidence in the judicial system. (R.C.Lahoti, CJ.)

Alexander Hamilton once said – "The judiciary .....has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will but judgment..." (E.C.Gerhart.) The greatest strength of the judiciary is the faith of the people in it. Faith, confidence and acceptability cannot be commanded; they have to be earned. And that can be done only by developing the inner strength of morality and ethics.

Over the time, the framers of different constitutions have realized that independence of the judiciary and the protection of its constitutional position is the result of a continuous struggle – an ongoing and dynamic process. The constitutional

safeguards provide for external protection for independence and strength of the judiciary. At the same time, the judiciary itself and socio-legal forces should believe in the independence of the judiciary. It is of paramount importance that the judiciary to remain protected must be strong and independent from within, which can be achieved only by inculcating and imbibing canons of judicial ethic inseparably into the personality of the Judges. Ethics and morality cannot be founded on authority trust upon from outside. They are the matters of conscience which sprout from within.

The Supreme Court of India in its Full Court adopted a Charter called the 'Restatement of values and judicial life' to serve as a guide to be observed by the Judges, essential for independent, strong and respected judiciary, indispensable in the impartial administration of justice.

It reads as under:

(1) Justice must not merely be done but it must also be seen to be done. The behavior and conduct of members of the higher judiciary must reaffirm the people's faith in the impartiality of the judiciary. Accordingly, any act of a judge of the Supreme Court or a High Court, whether in official or personal capacity, which erodes the credibility of this perception has to be avoided.

(2) A Judge should not contest the election to any office of a club, society or other association; further he shall not hold such elective office except in a society or association connected with the law.

(3) Close association with individual members of the Bar, particularly those

who practice in the same court, shall be eschewed.

(4) A Judge should not permit any member of his immediate family, such spouse, son, daughter, son-in-law or daughter-in-law or any other close relative, or a member of the Bar, to appear before him or even be associated in any manner with a cause to be dealt with by him.

(5) No member of his family, who is a member of the Bar shall be permitted to use the residence in which the Judge actually resides or other facilities for professional work.

(6) A Judge should practice a degree of aloofness consisted with the dignity of his office.

(7) A Judge shall not hear and decide a matter in which a member of his family,

a close relation or a friend is concerned.

(8) A Judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.

(9) A Judge is expected to let his judgments speak for themselves. He shall not give interviews to the media. (Italics)

(10) A Judge shall not accept gifts or hospitality except from his family, close relations and friends.

(11) A Judge shall not hear and decide a matter in which a company in which he holds shares is concerned unless he disclosed his interest and no objection

to his hearing and deciding the matter is raised.

(12) A Judge shall not speculate in shares, stocks or the like.

(13) A Judge should not engage directly or indirectly in trade or business, either by himself or in association with any other person. (Publication of a legal treatise or any activity in the nature of a hobby shall not be construed as trade or business).

(14) A Judge should not ask for, accept contributions or otherwise actively associate himself with the raising of any fund for any purpose.

(15) A Judge should not seek any financial benefit in the form of a pre-requisite or privilege attached to his office unless it is clearly available. Any

doubt in this behalf must be got resolved and clarified through the Chief Justice.

(16) Every Judge must at all times be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of the high office he occupies and the public esteem in which that office is held.

The above "restatement" was ratified and adapted by Indian judiciary in the Chief Justices Conference 1999.

The values of judicial ethic which the Bangalore principles crystallises and we were signatories, are as under:

(1) Judicial **independence** is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial.

A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

(2) **Impartiality** is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

3. Integrity is essential to the proper discharge of the judicial office.

3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observed.

3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

4. Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

4.1 A judge shall avoid in propriety and the appearance of impropriety in all of the judge's activities.

4.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

4.3 A judge shall, in his or her personal relations with individual members of the legal profession who

practice regularly in the judge's court, avid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

5. Ensuring **equality** of treatment to all before the courts is essential to the due performance of the judicial office.

5.1 A judge shall not, in performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

6. Competence and diligence are prerequisites to the due performance of judicial office.

7. Implementation – By reason of the nature of judicial office, effective

> measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

The other offending part of the report is that the Judge who acquitted Tareq Rahman could not become Benzir Ahmed. He could not avoid the temptation of money like Benzir Ahmed and that is why, the Judge meaning thereby, the Chief Justice had no alternative other than to swallow Salauddin's money. The report continues, "IS have huge money which is known to everybody and if it is not because of such money, how can the members of Salauddin Qader Chowdhury's family dare to ask not to include a certain Judge in the Bench?" The writer wanted to say that the Chief Justice received huge amount from Salauddin Qader Chowdhury's family and accordingly,

he did not keep A.H.M. Shamsuddin Choudhury,J. in the Bench. He wanted to say, A.H.M. Shamsuddin Choudhury,J. is the only Judge who could administer proper justice in the appeal filed by Salauddin Qader Chowdhury.

This writer though claims that he is a renowned columnist, he has least knowledge regarding the functions of the highest Court of the country. He is completely ignorant about the fact that the Chief Justice does not constitute any Bench on the asking of any Judge. He also does not have any idea that even if the Chief Justice is bribed by the accused, no judgment can be managed in his favour at least from the Appellate Division. By making this statement, he undermined all the Judges of the highest Court of the country, inasmuch as, how he had such impression that if the Chief Justice was bribed by a particular accused, the judgment could be procured in his favour. If he had no knowledge in

this regard, since he has some sort of connection with A.H.M. Shamsuddin Choudhury,J., he could have known the reality before writing something in this regard.

This writer has written the article which is not only intentional but also ill-motivated, perverse and deliberate. He has not only undermined the Chief Justice, but the authority of the Court and also scandalized all the Judges. He has also scandalized the Chief Justice of Bangladesh by making wild allegations that he took money from Salauddin Qader Chowdhury and thereby, he has not only committed criminal contempt but also criminal offence punishable under the law of the land.

As regards criminal contempt, Lord Denning in Balogh V. Crown Court, observed:

> "At common law a judge of the superior Court had jurisdiction to punish summarily, of his own motion, for contempt of Court

> whenever there had been a gross interference with the course of justice in a case that was being tried, was about to be tried or (per Lord Denning MR) was just over, whether the judge had seen the contempt with his own eyes or it had been reported to him; the jurisdiction was not limited to contempt committed in the face of the Court."

Now turning to the case of the other contemnor, the editor and publisher, he has also defended the charge of contempt. Being an editor of a widely circulated newspaper, he should have minimum knowledge on law of the land, the powers and functions of the Chief Justice and the other Judges of the country, the law of contempt prevailing in this country and also the manner of administration of justice by the apex Court of the country. Unless he has such knowledge, he should not have permitted

any writer or columnist to publish such news items touching to the integrity of the Chief Justice and puisne Judges. He committed similar offence as the author did by allowing other writers to publish news on the same matter when the hearing of contempt matter was awaiting decision. He not only interfered with the administration of justice but also allowed the writer to scandalize the Court and the Judges in a calculated manner which amount to criminal contempt. His act is also to malign the Judges and the authority of the Court. We caution the other medias to follow the guidelines given by this court herein otherwise it will not hesitate to take stern action against them in the interest of justice.

Considering the above facts, we have no hesitation to hold that both the contemnors scandalized the Court, the Judges of the highest Court, the Chief Justice and also interfered with the administration of justice. In fact, they

undermined the Supreme Court in a calculated manner to the estimation of the public in general. They also tried to shake the public's confidence in the criminal justice delivery system. They deserve exemplary punishment for their acts in the similar manner the Supreme Court of India did in the case of Haridas (supra) and the Court of Appeal in USA. Even then, this Court takes a lenient view in awarding the sentence although they have committed serious type of criminal contempt.

This may be viewed as judicial restraint in the matter of awarding sentence so that the media people shall restraint themselves from transgressing the law in future. The exercise of lesser power is logical, and ultimately judicial restraint based on the Courts on view of its area of competence and effectiveness becomes the only check on the exercise of judicial power. If any one takes it as weakness of the judiciary, he will be mistaken. Armed, as it

were, with the ultimate power, the Court has over the past two decades made its presence felt by its frequent interventions in judicial reviews and public interest litigations.

Our Founding Fathers did not accept the theory of absoluteness of any fundamental rights, including freedom of speech and expression. They firmly believed that no freedom could be absolute and it had to be subject to reasonable regulations. There was however considerable controversy as regards the extent and area of restrictions that might be imposed upon the exercise of fundamental rights. It can be restricted provided three distinct and independent prerequisites are satisfied.

(1) The restriction imposed must have the authority of law to support it. Freedom of the press cannot be curtailed by executive orders or

administrative instructions which lack the sanction of law.

(2) The law must fall squarely within one or more heads of restrictions specified in article 39 namely, (a) security of the State, (b) friendly relations with foreign states (c) Public order (d) decency or morality, (d) contempt of court (e) defamation or incitement to an offence. Restriction on freedom of expression cannot be imposed on omnibus grounds as "in the interest of the general public."

(3) The restriction must be reasonable. In other words, it must not be excessive or disproportionate. The procedure and the manner of imposition of the

restriction also must be just, fair, and reasonable.

The validity of the restriction is justiciable. Courts in Bangladesh exercising the power of judicial review can invalidate laws and measures which do not satisfy the above requirements, and have done so. The judiciary has provided generous protection to freedom of the press in several cases. One should have thought that the judiciary and the press are natural allies. Both the press and the judiciary perform in their own way the function of checking and controlling abuse of governmental authority. This function is performed by the press by exposing deception and secrecy in the working of the government, be it Watergate or Bofors, or corruption, or the Housing or Environment or other scam. The courts perform their role by enforcing accountability of the holders of power.

There is no privilege attaching to the reporters, columnist, printers and publishers as distinguished from the citizens. It cannot be ignored that the press can play a vital role in the administration of justice, the reduction of degradation of the environment, the pollution control and on other fields such as terrorism, corruption and Fatwa related offences. This Court took cognizance of those reports and gave necessary direction upon the authority. The citizens are benefited thereby. However, if a citizen cannot transgress the law so must not the press. The right of expression is subject to the reasonable restriction of the law of contempt. The reporters or columnists should keep in mind that the Judges by reason of their office are precluded from entering into any controversy with the press nor can they enter the arena and battle with newspapers, as can be done by a citizen.

Before parting with, we would like to make some observations regarding the conduct of the learned Counsel appearing for the contemnors. A Counsel owes respect and courtesy to the Court. Learned Counsel being an officer of the Court has a duty to maintain the dignity and majesty of justice. He submitted that the Chief Justice was biased although he failed to point out anything regarding the biasness of the Chief Justice. In course of hearing he again and again submitted that, the Chief Justice had admitted his guilt and therefore, the contemnors were justified in defending the charge of the contempt.

At this juncture it is relevant to quote some statements he drawn in the petitions. In the petition dated 06.08.2015 he made 'on getting information and evidence(s) only against Mr. Justice Surendra Kumar Sinha'. In another petition it is stated 'Mr. Justice Surendra Kumar Sinha, Honourable Chief Justice of Bangladesh constitutes a Bench as

per will of a party of a pending appeal and as such judicial conscience demands that Mr. Justice Surendra Kumar Sinha cannot sit in a Bench to adjudicate a matter in which directly he is a party to that subject.... a party must get a fair trial and a trial cannot be said to be fair in face of apparent bias because from the audio record, it appears that the Hon'ble Chief Justice Mr. Surendra Kumar Sinha told Mr. Swadesh Ray shall be dealt with'. And in another petition it has been stated that 'to cross-examine Mr. Justice Surendra Kumar Sinha, the Honourable Chief Justice of Bangladesh to unearth the whole truth because as per Constitution of Bangladesh no one above the Constitution and 'be ever you so high, the law is above you.' No further comment is called for. It seems to us, he was making submission as if he was an illiterate person with no knowledge of law and the decorum and norms of a courtroom. He wanted to cross-examine the Chief

Justice for what he could not clarify. His clientele scandalized the Chief Justice and the Judges, and again he wanted to scandalize them. He failed to comprehend the impact of the claim. He prayed on behalf of the contemnors to issue summons upon A.H.M. Shamsuddin Chowdhury,J. to examine him as defence witness who consented to depose.

The learned Counsel made indecent remarks against the Chief Justice in course of his submissions. Due to his arrogant behavior and purposively malicious remarks which had not even remotest relevance with the merit of the case, the Judges and learned lawyers present in courtroom were surprised like never before since such mischievousness is unheard of in the history of our judicial culture. The learned lawyers became very annoyed for the awfully pathetic behaviors showed by the Counsel and they forcefully demanded that he should not be allowed to continue his submission

further. The Chief Justice requested the lawyers in the courtroom to calm down and after five minutes or so he directed not to interrupt the proceedings of the Court hearing at that stage. After that, the Counsel was allowed again to make his submission. However the Chief Justice warned him that he should maintain the decorum of the Court.

The learned Counsel then submitted that he was feeling insecured and prayed the proceedings of the case be adjourned. The Court having guessed the motive of the Counsel that he was desperately trying to frustrate the hearing of the matter and thus he is intentionally scandalizing the Chief Justice. Realizing the attitude of the Counsel, the Chief Justice directed the Attorney General to give police protection to the Counsel till the matter is disposed of and also on his way to the residence. When the Court expressed that they are determined to dispose of the matter, the Counsel did not bargain

for police protection or security anymore rather started his submission again.

Not only the contemners but also learned Counsel showed contemptuous behaviors. And the level of disparagement and despicable behavior he portrayed standing against the highest Court of the land, the Court showed its befitting patience that only matches with the power and glory attached with this greatest temple of justice for the nation. The Court did not take any step resulting in suspension of his enrollment. We believe, the Counsel has minimum knowledge as to what Chief Justice had admitted. He was totally involved with his clients without caring as to whether the Chief Justice is maligned with derogatory words or the adverse affect of the remarks.

The contemnors filed applications to constitute the Bench excluding the Chief Justice only because the Chief Justice issued the contempt notice. However, if A.H.M.

Shamsuddin Chowdhury, J. was included in the Bench, the contemnors had no objection towards the Chief Justice's inclusion in the Bench. This claim nakedly focuses the object and purpose of this application. This fact reveals one fact and it is the contemnors and their lawyers were not satisfied with the scandalization - they wanted to do more harm to the judiciary. They had a planned objective to injure the reputation of the judiciary.

According to C.L. Anand, General Principles of Legal Ethics, the moral responsibilities of a Counsel are as under:

(a) In theory it is the King or Sovereign who presides in the Court of justice and the Judge is merely the mouthpiece and representative of the Sovereign. Respect shown to the Court is, therefore, respect shown to the Sovereign whose representative the Judge is.

(b) An advocate is like the Judge, himself, an officer of the Court and an integral part of

the judicial machine. The legal profession consists of the Bar as well as the Bench and both have common aims and ideals.

(c) Not only litigants and witnesses but the general public will get their inspirations from the example of advocates. It is necessary for the administration of justice that Judges should have esteem of the people. If judges are not respected it tends to impair public confidence in the administration of justice.

(d) It is the good manners and advocates before anything else are “gentlemen of the Bar.”

(e) Even from a purely practical standpoint, there is nothing to be gained but there is much to lose by antagonizing the Court. Conflict with the Judge renders the trial disagreeable to all and has generally an injurious effect upon the interests of the client.

(f) The usual practice in modern times is to appoint Judges from among the members of the

Bar and even where this rule is not strictly observed the Bench is fairly representative of the Bar.

(g) It is necessary for dignified and honourable administration of justice that the Court should be regarded with respect by the suitors and people.

Before parting with, we would like to reproduce some observations of the Supreme Court of India in Vinay Chandra Mishra (supra) about the role of a Counsel as under:

"No one expects a lawyer to be subservient to the Court while presenting his case and not to put forward his arguments merely because the Court is against him. In fact, that is the moment when he is expected to put forth his best effort to persuade the Court. However, if, in spite of it, the lawyer finds that the Court is against him, he is not expected to be discourteous to the Court or to fling hot words or epithets or use

disrespectful, derogatory or threatening language or exhibit temper which has the effect of overbearing the Court. Cases are won and lost in the Court daily. One or the other side is bound to lose. The remedy of the losing lawyer or the litigant is to prefer an appeal against the decision and not to indulge in a running battle of words with the Court. That is the least that is expected of a lawyer. Silence on some occasion is also an argument. The lawyer is not entitled to indulge in unbecoming conduct either by showing his temper or using unbecoming language."

CJ.

J.

J.

J.

J.

J.

The 13th August, 2015
Md. Mahbub Hossain
Approved for reporting