**PROCEDURE IN CASES OF CRIMINAL CONTEMPT- Sections 14, 15 and 17**

**Section 14- Procedure where contempt is in the face of the Supreme Court or a High Court.**

 (1) When it is alleged, or appears to the Supreme Court or the High Court upon it own view, that a person has been guilty of contempt committed in its presence or hearing, the court may cause such person to be detained in custody, and, at any time before the rising of the court, on the same day, or as early as possible thereafter, **shall (i.e the court is bound to follow this procedure)**

(a) cause him to be informed in writing of the contempt with which he is charged;

(b) afford him an opportunity to make his defence to the charge; - **audi alterum partem**

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make such order for the punishment or discharged of such person as may be just.

(2) **Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof- (No man shall be a Judge in his own cause principle)**

(3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under sub-section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify: Provided further that the court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid.

**Notes**-

Under Section 14, it is contemplated that the entire proceedings may be completed on the same day. In **LP. Mishra V. State of UP**, the SC set aside the order of the High Court because this procedure wasn’t followed. A contention was raised that while exercising powers under Article 215 in punishing the Appellant therein for Contempt of the High Court the procedure contemplated by Section 14 of the Contempt of Courts Act, 1971 had not been followed. This Court, dealing with this contention, observed as follows: “After hearing learned counsel for the parties and after going through the materials placed on record, we are of the opinion that the Court while passing the impugned order had not followed the procedure prescribed by law. It is true that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law. It is in these circumstances the impugned order cannot be sustained.”

* Section 14(3) says that if the procedure prescribed under clauses 1 and 2 is followed, and the trial happends before a different Judge, then the statement before the Chief Justice will be treated as evidence and it shall not be necessary to examine the Judge in whose presence contempt had taken place.
* The object of this Section is to enable the court to preserve its dignity and honour. This power is necessary as the administration of law and order and its execution would otherwise become impossible.

**Section 15- Cognizance of criminal contempt in other cases**

(1) In the case of a criminal contempt, **other than a contempt referred to in Section 14**, the Supreme Court or the High Court may take action on its own motion or on a motion made by

(a) the Advocate-General, or (b) any other person, with the consent in writing of the Advocate-General, (c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.

 **(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf. (The word sou motu is missing, read this clause harmoniously with Section 10 and not in conflict with it)**

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty. Explanation. - In this section, the expression Advocate-General means- (a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General; (b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established. (c) in relation to the court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

**Notes-**

* Sec 15 is not applicable to civil contempt of courts, it is only applicable to criminal contempt.
* Sec 15 applies where Sec 14 is not applicable, that is where the Court is not aware of the contemnious conduct , as that takes place without its presence. In order to ensure that the contempt prosecutions are not frivolous or vextatious, it is important tovhave these petitions screened by the relevant authorities, which are the Advocate General or the subordinate courts. (**also mentioned in Sanyal Committee report).**
* As per Sec 15, Court can take contempt proceedings in 3 ways :
1. Court on its own motion
2. On a motion made by Advocate General
3. On a motion moved by any other person with the written sanction of Advocate General.
* The subordinate court must give reason of making a reference to the High Court.

In  **Bal Thackray V. Harish Pimpalkhute,** it was held that prior sanction of Advocate General is necessary to start a prosection of criminal contempt against them.

**Section- 17- Procedure after cognizance (Mandatory to follow)**

1. Notice of every proceeding under Section 15 shall be **served personally** on the person charged, unless the court for reasons to be recorded directs otherwise.

**Contents of notice are as follows :**(2) The notice shall be accompanied - (a)in the case of proceedings commenced on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded; and (b) in case of proceedings commenced on a reference by a subordinate court, by a copy of the reference.

(3) The Court may, if it is satisfied that a person charged under Section 15 is likely to abscond or keep out of the way to avoid service of the notice, order the attachment of his property of such value or amount as it may deem reasonable.

(4) Every attachment under sub-section (3) shall be effected in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the attachment of property in execution of a decree for payment of money, and if, after such attachment, the person charged appears and shows to the satisfaction of the court that he did not abscond or keep out of the way to avoid service of the notice, the court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit.

(5) Any person charged with contempt under Section 15 may file an affidavit in support of his defence, and the court may determine the matter of the charge either on the affidavits filed or after taking such **further evidence** (**oral or documentary evidence**) as may be necessary, and pass such order as the justice of the case requires.

**Section 18- Hearing of cases of criminal contempt to be by Benches.**

 (1) Every case of criminal contempt under Section 15 shall be heard and determined by a Bench of not less than two Judges.

(2) Sub-section (1) shall not apply to the Court of a Judicial Commissioner.

**CASE LAWS**

The Contempt of Courts Act, 1971 was enacted, as per the Preamble, with a view "to define and limit the powers of certain Courts in punishing Contempts of Courts and to regulate their procedure in relation thereto". It provides for action being taken in relation to civil as well as criminal contempt. It is not necessary, for the purpose of this case, to analyse various Sections of the Act in any great detail except to notice that Sections 3 to 7 of the Contempt of Courts Act, 1971 provides for what is not to be regarded as contempt. Section 8 specifies that nothing contained in the Act shall be construed as implying that any other valid defence in any proceedings for Contempt of Court ceases to be available merely by reason of the provisions of the 1971 Act. Section 9 makes it clear that the Act will not to be implied as enlarging the scope of contempt. Section 10 contains the power of the High Court to punish contempts of subordinate Courts, while Section 12 specifies the punishment which can be imposed for Contempt of Court and other related matters. Procedure to be followed where contempt is in the face of the Supreme Court or a High Court is provided in Section 14, while cognizance of criminal contempt in other cases is dealt with by Section. Section 15 has to be read with Section 17 which provides for procedure after cognizance has been taken under Section 15. A decision of the High Court to punish for contempt is made appealable under Section 19 of the Act.

**Bal Thackrey V. Harish Pimpalkhute&Ors (2005) 1 SCC 254E-**  The main **issue** for determination in these appeals is whether contempt proceedings were initiated against the appellant suomotu by the court or by respondents.

In **Anil Kumar Gupta v. K.Suba Rao & Anr** court issued following directions : "The office is to take note that in future if any information is lodged even in the form of a petition inviting this Court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in Section 15 of the said Act, it should not be styled as a petition and should not be placed for admission on the judicial side. Such a petition should be placed before the Chief Justice for orders in Chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the Court whether to take any cognizance of the information.”

 It was contended that the directions in **P.N.Duda V. P ShivShankar & Anr. case** were not followed by the High Court inasmuch as the informative papers styled as contempt petitions were not placed before the Chief Justice of the High Court for suomotu action and, therefore, the exercise was uncalled for and beyond legal sanctity. This aspect assumed significant importance because admittedly the contempt petitions were filed in the High Court without the consent of the Advocate-General and, therefore, not competent except when the court finds that the contempt action was taken by the court on its own motion. The two-judge bench hearing the appeals expressed the view that the aforesaid directions approved by this Court in P.N.Duda's case are of far-reaching consequences. The Bench observed that the power under Section 15 of the Act to punish contemners for contempt rests with the court and in Duda's case, they seem to have been denuded to rest with the Chief Justice on the administrative side. Expressing doubts about the correctness of the observations made in Duda's case, and observing that the same require reconsideration, these appeals were directed to be referred for decision by a larger Bench. Under this background, these matters have been placed before us. For determination of the main issue in these appeals including the aforesaid aspect arising out of Duda's case, it is necessary to briefly note the object of the power of the Court to punish a person for contempt. Every High Court besides powers under the Act has also the power to punish for contempt as provided in Article 215 of the Constitution of India. Repealing the Contempt of Courts Act, 1952, the Act was enacted, inter alia, providing definition of civil and criminal contempt and also providing for filtering of criminal contempt petitions. The Act laws down 'contempt of court' to mean civil contempt or criminal contempt. We are concerned with criminal contempt. 'Criminal contempt' is defined in Section 2(c) of the Act. It, inter alia, means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court. The procedure for initiating a proceeding of contempt when it is committed in the face of the Supreme Court or High Court has been prescribed in Section 14 of the Act. In the case of criminal contempt, other than a contempt referred to in Section 14 the manner of taking cognizance has been provided for in Section 15 of the Act.

The contempt jurisdiction enables the Court to ensure proper administration of justice and maintenance of the rule of law. It is meant to ensure that the courts are able to discharge their functions properly, unhampered and unsullied by wanton attacks on the system of administration of justice or on officials who administer it, and to prevent willful defiance of orders of the court or undertakings given to the court [Commissioner, Agra v. Rohtas Singh (1998) 1 SCC 349]. In Supreme Court Bar Association v. Union of India &Anr. [(1998) 4 SCC 409] it was held that "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."

In **P.N.Duda's case** (supra), it was held that :- "**54**. A conjoint perusal of the Act and rules makes it clear that, so far as this Court is concerned, action for contempt may be taken by the court on its own motion or on the motion of the Attorney General (or Solicitor General) or of any other person with his consent in writing. There is no difficulty where the Court or the Attorney General chooses to move in the matter. But when this is not done and a private person desires that such action should be taken, one of three courses is open to him. He may place the information in his possession before the court and request the court to take action (vide C. K. Daphtary v. O. P. 235 Gupta and Sarkar v. Misra); he may place the information before the Attorney General and request him to take action; or he may place the information before the Attorney General and request him to permit him to move to the court." The direction issued and procedure laid down in Duda's case is applicable only to cases that are initiated suomotu by the Court when some information is placed before it for suomotu action for contempt of court. A useful reference can also be made to some observations made in J.R.Parashar, Advocate, and Others v. Prasant Bhushan, Advocate and Others [(2001) 6 SCC 735]. In that case noticing the Rule 3 of the Rules to regulate proceedings for contempt of the Supreme Court, 1975 which like Section 15 of the Act provides that the Court may take action in cases of criminal contempt either (a) suomotu; or (b) on a petition made by Attorney-General or Solicitor-General, or (c) on a petition made by any person and in the case of a criminal contempt with consent in writing of the AttorneyGeneral or the Solicitor-General as also Rule 5 which provides that only petitions under Rules 3(b) and (c) shall be posted before the Court for preliminary hearing and for orders as to issue of notice, it was observed that the matter could have been listed before the Court by the Registry as a petition for admission only if the Attorney-General or Solicitor-General had granted the consent. In that case, it was noticed that the Attorney-General had specifically declined to deal with the matter and no request had been made to the Solicitor-General to give his consent. The inference, therefore, is that the Registry should not have posted the said petition before the Court for preliminary hearing. Dealing with taking of suomotu cognizance in para 28 it was observed as under:- "Of course, this Court could have taken suomotu cognizance had the petitioners prayed for it. They had not. Even if they had, it is doubtful whether the Court would have acted on the statements of the petitioners had the petitioners been candid enough to have disclosed that the police had refused to take cognizance of their complaint. In any event the power to act suomotu in matters which otherwise require the Attorney-General to initiate proceedings or at least give his consent must be exercised rarely. Courts normally reserve this exercise to cases where it either derives information from its own sources, such as from a perusal of the records, or on reading a report in a newspaper or hearing a public speech or a document which would speak for itself. Otherwise subsection (1) of Section 15 might be rendered otiose" The whole object of prescribing procedural mode of taking cognizance in Section 15 is to safeguard the valuable time of the court from being wasted by frivolous contempt petition.

The directions in Duda's case when seen and appreciated in the light of what we have noticed hereinbefore in respect of contempt action and the powers of the Chief Justice, it would be clear that the same prescribe the procedure to be followed by High Courts to ensure smooth working and streamlining of such contempt actions which are intended to be taken up by the court suomotu on its own motion. These directions have no effect of curtailing or denuding the power of the High Court. It is also to be borne in mind that the frequent use of suomotu power on the basis of information furnished in a contempt petition otherwise incompetent under Section 15 of the Act may render the procedural safeguards of Advocate-General's consent nugatory. We are of the view that the directions given in Duda's case are legal and valid. Now, the question is whether in these matters the High Court initiated contempt action on its own motion or on motions made by the respondents. It is not in dispute that the two contempt petitions (Contempt Petition No.12 and Contempt Petition No.13 of 1996) were filed in the High Court against the appellant under Section 15 of the Act for having committed contempt of court as postulated under Section 2(c) of the Act for having made a public speech. According to the petitions, the appellant scandalised the court or at least the offending speech had the tendency to scandalise or lower the authority of the Court. The contempt petitions were filed without obtaining the consent of the Advocate-General. In one of the petitions consent had not even been sought for and besides the prayer for holding the appellant guilty of contempt, further prayers were also made for suitable inquiry being made in the allegations made by the appellant in the speech and for issue of directions to him to appear before Court and reveal the truth and for prosecuting him. The applicant before the High Court, it seems clear from the averments made in the contempt petition was in an opposite political camp.

**Decision** - A perusal of record including the notices issued to the appellant shows that the Court had not taken suomotu action against the appellant. In contempt petitions, there was no prayer for taking suomotu action for contempt against the appellant. From the material on record, it is not possible to accept the contention of the respondents that the Court had taken suomotu action. Of course, the Court had the power and jurisdiction to initiate contempt proceedings suomotu and for that purpose consent of the Advocate-General was not necessary. At the same time, it is also to be borne in mind that the Courts normally take suomotu action in rare cases. In the present case, it is evident that the proceedings before the High Court were initiated by the respondents by filing contempt petitions under Section 15. The petitions were vigorously pursued and strenuously argued as private petitions. The same were never treated as suomotu petitions. In absence of compliance of mandatory requirement of Section 15, the petitions were not maintainable. As a result of aforesaid view, it is unnecessary to examine in the present case, the effect of non-compliance of the directions issued in Duda's case by placing the informative papers before the Chief Justice of the High Court. For the foregoing reasons we set aside the impugned judgment and allow the appeals. Fine, if deposited by the appellant shall be refunded to him.

**NOTE- R.K ANAND V. REGISTRAR, DELHI HIGH COURT (2009 8 SCC 106) discussed earlier, while discussing the, meaning of contempt of court.**

**In Re: Vinay Chandra Mishra (The ... vs Unknown on 10 March, 1995)**

M/s. Bansal Forgings Ltd. took loan from U.P. Financial Corporation and it made default in payment of installment of the same. Corporation proceeded against the Company Under Section 29 of the U.P. Financial Corporation Act. The company filed a Civil Suit against the Corporation and it has also field an application for grant of temporary injunction. Counsel for the Corporation suo-moto put appearance in the matter before Trial Court and prayed for time for filing of reply. The learned trial court passed an order on the said date that the Corporation will not seize the factory of the Company. The company shall pay the amount of instalment and it will furnish also security for the disputed amount. The court directed to furnish security on 31.1.94 and case was fixed on 15.3.94.

Against said order of the trial court this appeal has been filed and arguments have been advanced that Court has no jurisdiction to pass the order for payment of installment of loan and further no security could have been ordered. Against said order of the trial court this appeal has been filed and arguments have been advanced that Court has no jurisdiction to pass the order for payment of instalment of loan and further no security could have been ordered.

After this, J. Keshote put a question to Shri Misra under which provision this order has been passed. On putting of question he started to shout and said that no question could have been put to him. He will get me transferred or see that impeachment motion is brought against me in Parliament. He further said that he has turned up many Judges. He created a good scene in the court. What he wanted to convey to me was that admission is as a course and no arguments are heard, at this stage. The Acting Chief justice Shri V.K. Khanna forwarded the said letter to the then Chief Justice of India by his letter of 5th April, 1994. The learned Chief Justice of India constituted this Bench to hear the matter on 15th April, 1994.

On 15th April, 1994, this Court took the view that there was a prima fade case of criminal contempt of court committed by Shri Vinay Chandra Mishra [hereinafter referred to as the "contemner"] and issued a notice against him to show cause why contempt proceedings be not initiated against him. He was found guilty of criminal contempt and sentenced to undergo a simple imprisonment of 6 weeks and was also suspended from practicing for 3 years.

We may first deal with the preliminary objection raised by the Contemner and the State Bar Council, viz., that the Court cannot take cognisance of the contempt of the High Courts. The contention is based on two grounds. The first is that Article 129 vests this Court with the power to punish only for the contempt of itself and not of the High Courts. Secondly, the High Court is also another court of record vested with identical and independent power of punishing for contempt of itself.

**Issue- Whether the Supreme Court under Art 129 can punish a person for contempt of the High Court?**

**Observations and Decision-**

1. The contention ignores that the Supreme Court is not only the highest Court of record, but under various provision of the Constitution, is also charged with the duties and responsibilities of correcting the lower courts and tribunals and of protecting them from those whose misconduct tends to prevent the due performance of their duties. The latter functions and powers of this Court are independent of [Article 129](https://indiankanoon.org/doc/927019/) of the Constitution. When, therefore, [Article 129](https://indiankanoon.org/doc/927019/) vest this Court with the powers of the court of record including the power to punish for contempt of itself, it vests such powers in this Court in its capacity as the highest court of record and also as a court charged with the appellate and superintending powers over the lower courts and tribunals as detailed in the Constitution. To discharge its obligations as the custodian of the administrations of justice in the country and as the highest court imbued with supervisory and appellate jurisdiction over all the lower courts and tribunals, it is inherently deemed to have been entrusted with the power to see that the stream of justice in the country remains pure, that its course is not hindered or obstructed in any manner, that justice is delivered without fear or favour and for that purpose all the courts and tribunals are protected while discharging their legitimate duties. To discharge this obligation, this Court has to take cognisance of the deviation from the path of justice in the tribunals of the land, and also of attempts to cause such deviations and obstruct the course of justice. To hold otherwise would mean that although this Court is charged with the duties and responsibilities enumerated in the Constitution, it is not equipped with the power to discharge them.
2. In All India Judicial Service Association, **Tis Hazari Court, Delhi v. State of Gujarat and Ors.-** In addition to the appellate power, the Court has special residuary power to entertain appeal against any order of any court in the country. The plenary jurisdiction of this Court to grant leave and hear appeals against any order of a court or tribunal, confers power of judicial superintendence over all the courts and tribunals in the territory of India including subordinate courts of Magistrate and District Judge. This Court has, therefore, supervisory jurisdiction over all courts in India.
3. [Article 129](https://indiankanoon.org/doc/927019/) declares the Supreme Court a court of record and it further provides that the Supreme Court shall have all the powers of such a court including the power to punish for contempt of itself. The expression used in [Article 129](https://indiankanoon.org/doc/927019/) is not restrictive instead it is extensive in nature. If the Framers of the Constitution intended that the Supreme Court shall have power to punish for contempt of itself only, there was no necessity of inserting the expression "including the power to punish for contempt of itself". The Article confers power on the Supreme Court to punish for contempt of itself and in addition, it confers some additional power relating to contempt as would appear from the expression "including". The expression "including" has been interpreted by courts, to extend and widen the scope of power. The plain language of [Article 129](https://indiankanoon.org/doc/927019/) clearly indicates that this Court as a court of record has power to punish for contempt of itself and also something else also which could fall within the inherent jurisdiction of a court of record. In interpreting the constitution, it is not permissible to adopt a construction which would render any expression superfluous or redundant. The courts ought not to accept any such construction.
4. Since this Court has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country, it has a corresponding duty to protect and safeguard the interest of inferior courts to ensure the flow of the stream of justice in the courts without any interference or attack from any quarter. The subordinate and inferior courts do not have adequate power under the law to protect themselves, therefore, it is necessary that this Court should protect them. Under the constitutional scheme this Court has a special role, in the administration of justice and the powers conferred on it under Articles 32, 136, 141 and 142 form part of basic structure of the Constitution. The amplitude of the power of this Court under these articles of the Constitution cannot be curtailed by law made by Central or State legislature. If the contention raised on behalf of the contemners is accepted, the courts all over India will have no protection from this Court. No doubt High Courts have power to persist for the contempt of subordinate courts but that does not affect or abridge the inherent power of this Court under Article 129. The Supreme Court and the High Court both exercise concurrent jurisdiction under the constitutional scheme in matters relating to fundamental rights under Articles 32 and 226 of the Constitution, therefore this Court's jurisdiction and power to take action for contempt of subordinate courts would not be inconsistent to any constitutional scheme. There may be occasions when attack on Judges and Magistrates of subordinate courts may have wide repercussions throughout the country, in that situation it may not be possible for a High Court to contain the same, as a result of which the administration of justice in the country may be paralysed, in that situation the Apex Court must intervene to ensure smooth functioning of courts. The Apex Court is duty bound to take effective steps within the constitutional provisions to ensure a free and fair administration of justice throughout the country, for that purpose it must wield the requisite power to take action for contempt of subordinate courts. Ordinarily, the High Court would protect the subordinate court from any onslaught on their independence, but in exceptional cases, extraordinary situation may prevail affecting the administration of public justice or where the entire judiciary is affected, this Court may directly take cognisance of contempt of subordinate courts. We would like to strike a note of caution that this Court will sparingly exercise its inherent power in taking cognisance of the contempt of subordinate courts, as ordinarily matters relating to contempt of subordinate courts must be dealt with by the High Courts. The instant case is of exceptional nature, as the incident created a situation where functioning of the subordinate courts all over the country was adversely affected, and the administration of justice was paralysed, therefore, this Court took cognisance of the matter.
5. In the present case, although the contempt is in the face of the court, the procedure adopted is not only not summary but has adequately safeguarded the contemner's interest. The contemner was issued a notice intimating him the specific allegation against him. He was given an opportunity to counter the allegations by filing his counter affidavit and additional counter/supplementary affidavit as per his request, and he has filed the same. He was also given an opportunity to file an affidavit of any other person that he chose or to produce any other material in his defence, which he has not done. However, in the affidavit which he has filed, he has requested for an examination of the learned Judge. We have at length dealt with the nature of in facie curiae contempt and the justification for adopting summary procedure and punishing the offender on the spot. 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 contemner is to destroy not only the raison d'etre 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. It is for these reasons that neither the common law nor the statute law countenances the claim of the offender for examination of the Judge or Judges before whom the contempt is committed.
6. Section 14 of our Act, i.e., the Contempt of Courts Act, 1971 deals with the procedure when the action is taken for the contempt in the face of the Supreme Court and the High Court. Sub-section [3] of the said Section deals with a situation where in facie curiae contempt is tried by a Judge other than the Judge or judges in whose presence or hearing the offence is alleged to have been committed. The provision in specific terms and for obvious reasons, states that in such cases it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, to appear as a witness and the statement placed before the Chief Justice shall be treated as the evidence in the case.
7. Normally, no Judge takes action for in facie curiae contempt against the lawyer unless he is impelled to do so. It is not the heat generated in the arguments but the language used, the tone and the manner in which it is expressed and the intention behind using it which determine whether it was calculated to insult, show disrespect, to overbear and overawe the court and to threaten and obstruct the course of justice. After going through the report of the learned Judge and the affidavits and the additional affidavits filed by the contemner and after hearing the learned Counsel appearing for the contemner, we have come to the conclusion that there is every reason to believe that notwithstanding his denials, and disclaimers, the contemner had undoubtedly tried to browbeat, threaten, insult and show disrespect personally to the learned Judge. This is evident from the manner in which even in the affidavits filed in this Court, the contemner has tried to justify his conduct. He has started narration of his version of the incident by taking exception the learned Judge's taking charge of the court proceedings. We are unable to understand what exactly he means thereby. Every member of the Bench is on par with the other member or members of the Bench and has a right to ask whatever questions he want to, to appreciate the merits or demerits of the case. It is obvious that the contemner was incensed by the fact that the learned Judge was asking the questions to him. This is clear from his contention that the learned Judge being a junior member of the Bench, was not supposed to ask him any question and if any questions were to be asked, he had to ask them through the senior member of the Bench because that was the convention of the Court. We are not aware of any such convention in any court at least in this country. Assuming that there is such a convention, it is for the learned Judges forming the Bench to observe it inter se. No lawyer or a third party can have any right or say in the matter and can make either an issue of it or refuse to answer the questions on that ground. The lawyer or the litigant concerned has to answer the questions put to him by any member of the Bench.
8. The stance taken by the contemner is that he was performing his duty as an outspoken and fearless member of the Bar. He seems to be labouring under a grave misunderstanding. Brazenness is not outspokenness and arrogance is not fearlessness. Use of intemperate language is not assertion of right nor is a threat an argument. Humility is not servility and courtesy and politeness are not lack of dignity. Self-restraint and respectful attitude towards the Court, presentation of correct facts and law with a balanced mind and without overstatement, suppression, distortion or embellishment are requisites of good advocacy. A lawyer has to be a gentlemen first. His most valuable asset is the respect and goodwill he enjoys among his colleagues and in the Court.
9. The rule of law is the foundation of the democratic society. The judiciary is the guardian of the rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State. In a democracy like ours, where there is a written Constitution which is above all individuals and institutions and where the power of judicial review is vested in the superior courts, the judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society.
10. In this connection, it may be pertinent to point out that the wide powers which are given to this Court for doing complete justice between the parties, can be used by this Court for instance, in adding parties to the proceedings pending before it, or in admitting additional evidence, or in remanding the case, or in allowing an new point to be taken for the first time. It is plain that in exercising these and similar other powers, this Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary to do complete justice between the parties.

In **Union Carbide Corporation v. Union of India [1991] SCC 584**, it was held that It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court (sic) [Article 142(1)](https://indiankanoon.org/doc/500307/) of the Constitution, These issues are matter of serious public importance. The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the apex Court under [Article 142(1)](https://indiankanoon.org/doc/500307/) is unsound and erroneous. In both Garg as well as Antulay cases the point was one of violation of constitutional provisions and constitutional rights. The observations as to the effect of inconsistency with statutory provisions were really un-necessary in those cases as the decisions in the ultimate analysis turned on the breach of constitutional rights. We agree with Shri Nariman that the power of the Court under [Article 142](https://indiankanoon.org/doc/500307/) insofar" as quashing of criminal proceedings are concerned is not exhausted by [Section 320](https://indiankanoon.org/doc/1396751/) or 321 or 482 [Cr.P.C](https://indiankanoon.org/doc/445276/). or all of them put together. The power under [Article 142](https://indiankanoon.org/doc/500307/) is at an entirely different level and of a different quality. Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under [Article 142.](https://indiankanoon.org/doc/500307/) Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into a Count the nature and status of the authority or the court on which conferment of powers - limited in some appropriate way - is contemplates. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. Shri Sorabjee, learned Attorney General, referring to Garg Case, said that limitation on the powers under [Article 142](https://indiankanoon.org/doc/500307/) arising form "inconsistency with express statutory provisions of substantive law" must really mean and be understood as some express prohibition contained in any substantive statutory law. He suggested that if the expression 'prohibition' is read in place of 'provision' that would perhaps convey the appropriate idea. But we think that such prohibition should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under Article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of "complete justice" of a cause or matter, the apex Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not 'complete justice' of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise.

**DECISION**

The facts and circumstances of the present case justify our invoking the power under [Article 129](https://indiankanoon.org/doc/927019/) read with [Article 142](https://indiankanoon.org/doc/500307/) of the Constitution to award to the contemner a suspended sentence of imprisonment together with suspension of his practice as an advocate in the manner directed herein. We accordingly sentence the contemner for his conviction for the offence of criminal contempt as under. we find the contemner, Shri Vinay Chandra Mishra, guilty of the offence of the criminal contempt of the Court for having interfered with and obstructed the course of justice by trying to threaten, overawe and overbear the court by using insulting, disrespectful and threatening language, and convict him of the said offence.

* The contemner is sentenced to undergo simple imprisonment for a period of six weeks. However, in the circumstances of the case, the sentence will remain suspended for a period of four years and may be activated in case the contemner is convicted for any other offence of contempt of court within the said period.
* The contemner shall stand suspended from practising as an advocate for a period of three years from today with the consequence that all elective and nominated offices/posts at presents held by him in his capacity as an advocate, shall stand vacated by him forthwith.