INDIAN BAR ASSOCIATION

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CASE NO.BEFORE HON'BLE PRESIDENT OF INDIA:- PRSEC/E/2019/14516

To,

1. **Hon'ble President of India**
2. **Hon'ble Chief Justice of India**
3. **Hon'ble Chief Justice of Bombay High Court**

SUBJECT:-

1. **Direction for initiating disciplinary proceedings against Justice Akil Kureshi for bringing disrepute to the institution of Judiciary in conjunction with Adv. Yatin Oza in loathly deriding Hon'ble Supreme Court Collegium members as impotent, in order to pressurize them to seek his elevation as Chief Justice of MP High Court.**
2. **Direction for action under Contempt of Courts Act as per law laid down in Re: C. S. Karnan (2017) 7 SCC 1 against Justice Akil Kureshi & Justice S.J.Kathawalla for their willful disregard and defiance of Hon'ble Supreme Court rulings.**
3. **Action under section 218,219 166, 220 r/w 120(B) & 34 etc. of IPC against Justice Akil Kureshi.**
4. **Direction to Justice Akil Kureshi & Justice Shahrukh Kathawala to resign forthwith in view of law and guidelines of K. Veeraswami Vs. Union of India (UOI) 1991 (3) SCC 655.**
5. **Direction for forming a committee as per provisions of 'In House Procedure' and as per law laid down by Full Bench in Union of**

<u>India Vs. K. K. Dhawan (1993) 2 SCC 56 (Full Bench)</u> to enquire serious charges against Justice Akil Kureshi & Justice S.J.Kathawala for their incompetence, lack of basic knowledge of law, passing casual orders, passing orders against the law laid down by Hon'ble Supreme Court and by their own High Court.

Hon'ble Sir,

1. At the outset it is submitted in all earnest, this complaint is not at the behest of **<u>Bhartiya Janta Party or any Government agency</u>** but an utmost attempt by a right thinking lawyers body, determined to uphold the rule of law and to salvage the majesty and dignity of judiciary – unfortunately which Justice Akil Kureshi either himself or through his front-men and proxies are out to ruin it, in throwing all sorts of tantrums of not being elevated as Chief Justice of Gujarat/Madhya Pradesh and side-to-side through his proxy Adv. Yatin Oza entrusted themselves of bringing disrepute to the Supreme Court Collegium (graver than the conduct Justice C.S. Karnan) and the Government. It is in this backdrop we're constrained to make this complaint, lest the *TUKDE TUKDE* gang bulldozes themselves in securing coveted position in judiciary; as a pre-empt it is urged that a thorough enquiry preferably either by NIA or CBI is the pressing requirement to unravel the design and aim of these anti-nationals and their TUKDE TUKDE Gang cohorts, who are out to destabilize judiciary– issues pertinent to be put on record:

A. Justice Akil Kureshi apart from his manifest prejudice against BJP is gifted with exemplary shallow knowledge of law, and in charging Sh. Amit Shah of frivolous offences with all respect to Justice Kureshi even an entry-level judicial officer would have desisted of exhibiting such extravagant amateurishness, some further-more incidences are narrated herein, which be considered in appropriately dealing with the indiscipline of Justice Akil Kureshi.

B. In securing his elevation as CJ of MP High Court, Justice Akil Kureshi thru his proxy Adv. Yatin Oza wrote a letter to the Hon. Chief Justice of India, published on 22nd April, 2019 in Bar & Bench, (Exh-A); the contents of the letter self-testifies the abhorrent extent of canvassing Justice Akil Kureshi indulged to elevate himself – **an unheard, unprecedented lobbying exercise which he undertook to influence the collegium**. It is our humble submission that anointing to the position of a High Court Judge and morefully that of Chief Justice calls for a certain maturity of outlook and equanimity which Justice Akil Kureshi is magnanimously bereft of.

C. It is in the public domain that in the matter of elevating Justice Akil Kureshi as Chief Justice of a High Court thru all possible nefarious means of nasty proxy-management of Advocate Yatin Oza aspersions were casted on Hon'ble SC collegium members **abusing them of impotency who have knelt themselves before the government**, the said speech by Adv. Yatin Oza, published in YouTube on 1st Nov, 2018, which to a naïve would also convince Justice Akil Kureshi as a frantic mentally unstable person and with Adv Yatin Oza who too has his own hidden agenda have formed an unholy nexus to stoop to any notoriety in degrading judiciary, thus in maintaining the dignity of judiciary **it would be appropriate to instantly discharge Justice Akil Kureshi from performing any judicial functions**, **lest the unfortunate litigants are at the mercy of a psychopath**.

D. The legal fraternity is aghast of the proxy-management of Justice Akil Kureshi of having filed a Writ Petition thru Adv. Yatin Oza to elevate himself as a Chief-Justice of MP High Court. In this context, we came to understand, Ex-Chief Justice of Bombay High Court Sh. Mohit Shah

opined – 'that apart from the aggrieved none else can file a writ petition' and there is also a binding precedent of the Supreme Court – that in service matters a third party is precluded to file writ petition. Some other unpleasant-horrible details concerning Justice Akil Kureshi was also shared however by way of decency the same isn't stated herein – as an organization we do have many differences with Sh. Mohit Shah due to his on-office corrupt conduct some of which was highlighted by Sr. Advocate Sh. Dushyant Dave a matter in public domain, but so far as his view point of this particular issue, we agree ourselves with Sh. Mohit Shah.

E. It is contextual to mention that the legendry Senior Adv. Fali Nariman, highly respected of his dexterous webbing of arguments in defending the mass murderer in Bhopal Gas Tragedy 'Warren Anderson'. Sh. Fali Nariman thru his colossus stature must have earned a fortune and could convince the CASE AS A TRAGEDY topping it up playing the victim card of innocence of unawareness. **Pertinently Sh. Fali Nariman is also an accused against whom prosecution is sought under charges of sedition for instigating people to raise slogans against Indian Army and demoralize them** copy of complaint by Sh. Rashid Khan vide Exh-B.

F. Advocating the cause of Justice Akil Kureshi by Sh. Fali Nariman in elevating him as a Chief Justice is as natural as leaves coming to trees; since venerable Sh. Fali Nariman the cynosure of Lutyens media and the Khan Market brigade is known for his exemplary crusade in defending the anti-nationals and seditionists who is now engaged to represent the writ in elevating Justice Akil Kureshi as Chief Justice of MP High Court. **It intrigues who is funding the entire legal battle on behalf of Justice Akil Kureshi, the hidden agenda of them is**

but to destabilize the edifice of judiciary and show the government of the day in poor light.

G. Justice Akil Kureshi' publicly brags to the Advocates that he has least regard for advocate's oral arguments, and is pre-decided, basis written pleadings. As a lawyers organization of responsibility it's high time to remind Justice Akil Kureshi of the pronouncement by Hon'ble Supreme Court in the case of **Automatic Tyre Manufacturers Association V/s Designated Authority & Ors., (2011) 2 Supreme Court Cases 258** - the Apex Court therein observed that the written arguments are no substitutes for oral hearing. Giving a personal hearing before a final order is passed is essential for ensuring compliance with basic principle of Audi Alteram Partem. Personal hearing enables the authority to observe demeanor of the parties and clear doubts during the course of hearing. It is high time to remind Justice Akil Kureshi that he ought not to arrogate himself in contempt of Hon'ble Supreme Court and other High Courts. The importance of oral arguments by advocates is emphasized time and again even in case where written arguments are filed.

" Hon'ble Supreme Court in the case of in **Re: C.S.Karnan (2017) 7 SCC 1** it is ruled as under ;

> "***A)*** *High Court Judge disobeying Supreme Court direction and abusing process of court sentenced to six months imprisonment.*
>
> ***B)*** *Even if petition is filed by a common man alleging contempt committed by a High Court Judge then Supreme Court is bound to examine these allegation. "*

H. Ignorance of law or disregard to the rule of law by Justice Akil Kureshi is corroborated in his recent cavalier casual one liner judgment in a Contempt Petition wherein

without framing any charges sought presence of the respondent to terrorise him to submission (in the contempt matter of Chandrashekhar Acharya Family Court Appeal No.3 of 2016), sadly in another family court appeal in the matter of Joy Anthony, when Advocate Partho Sarkar aged around 55 years tried to explain the correct procedure of the rule of law in the matter of Contempt Jurisdiction – Justice Akil Kureshi yelled at him to shut himself up, '**arrogating that he (justice Akil Kureshi) knows the law best**' we shudder to think the destruction to the edifice of judiciary Justice Akil Kureshi is potent to unleash, such a counter - productive person who is not even fit to inhabit the position of a Magistrate occupying the position of High Court judge ought to be instantly ridden off, lest a lingering threat to the dignity of judiciary persists.

INSTANCES OF ILLEGALITIES AND CONCOMITANT OFFENCES BY JUSTICE AKIL KURESHI ALONG WITH JUSTICE SHAHRUKH KATHAWALA

2. That, in Contempt Petition No.230 of 2019 filed by one Eureka who is gainfully employed by an American Company, having a libertine night-out life style, alleged non-payment of maintenance by her erstwhile husband Joy Anthony who is laid off of his job for the past one year, due to recession in Dubai. Justices Akil Kureshi and Shahrukh Kathawala contemptuously disregarding the various Supreme Court Judgments in the matter of contempt jurisdiction summoned Joy Anthony an out of job fitter, and against the laid out position of law started threatening him of illegal restraint, and froze his bank account - it is high time to remind Justices Akil Kureshi and Shahrukh Kathawala that exercise of contempt jurisdiction is a criminal proceeding and without framing of appropriate charges and issuance of notice in proper form, a respondent can't be summoned in exercise of contempt jurisdiction, much less on his appearance before the court summarily his bank account can't be frozen – **the**

manifest illegal order by Justice Kureshi is either due to his superficial knowledge of law or his frustration, both are dangerous for dispensing equity - which got unleashed on a hapless victim, who though not per the requirement of the law was to attend the court yet presented himself before the court in maintaining the dignity of the court, the oxymoron of the order by Justices Akil Kureshi and Shahrukh Kathawala is evident, where in an earlier instance – the illegality of summoning a person without following appropriate procedure and in consonance of Bombay High Court Rules, Justice Shahrukh Kathawala being pointed out of his illegality, thru suo-motto speaking to the minutes recalled his own order – it intrigues as to why he repeated the illegality sitting along with Justice Akil Kureshi; **Needless to mention indiscriminate use of contempt jurisdiction – is a sure corroboration of the hollowness of the judge's knowledge or character or both. We humbly remind the Hon'ble Justices, exercise of contempt jurisdiction is not a provision of his ego-massage but a means to render even handed justice**.

3. The mental imbalance and the pompous attitude of Justices Akil Kureshi and Shahrukh Kathawala has gone to an extent of their acting not as judges but as extortionists. The matter relates to a family court appeal of Dr. Santosh Shetty and his estranged spouse Amita Shetty who through loads of falsities secured a whooping maintenance – subject matter of an ongoing adjudication proceedings; strangely though without even a petition on record of Justices Akil Kureshi and Shahrukh Kathawala, Dr. Santosh Shetty was summoned of immediate presence under the threat of arrest, freezing bank accounts, revoking his passport etc. The lawyer of Dr. Santosh Shetty was pleading to Justices Akil Kureshi and Shahrukh Kathawala that Dr. Santosh Shetty is in the midst of an operation and that will be difficult for him to leave; Justices Kureshi and Kathawala repeated their threat of arrest and other coercive measures and thundered that Dr. Shetty has to reach with his cheque book, come whatsoever it may. The moment Dr. Santosh Shetty

leaving aside the operation reached the court, simply he was commanded to fork out a cheque of Rs. THIRTY ONE LACS which couldn't have been made payable to Amita Shetty as per court's own order, but the Hon'ble Justices Kureshi & Kathawala commanded to make the payment to Amita Shetty flouting the conditions imposed, it is unknown as to why Justices Akil Kureshi and Shahrukh Kathawala are oppressed or indebted to Amita Shetty, that out of turn she was bestowed of the grand indulgence; on knowing the incident the legal fraternity are shell-shocked that whether Justices Akil Kureshi and Shahrukh Kathawala have become the **New GANG-LORDS OF MUMBAI**.

4. In the back-drop of injudicious conduct by Justices Akil Kureshi and Shahrukh Kathawala which is against the law laid down by Division Bench of this Hon'ble Court in **Bombay Bar Association Vs. Nilesh Ojha 2017 SCC OnLine Bom 4553,** contempt proceeding commences only when Court passes order taking cognizance of the alleged contempt and notice in **"FORM-I"** in that regard is served upon the Respondent.

Before that the Respondent is not allowed to participate in the proceeding.

It is ruled by Hon'ble Bombay High Court in Bar Association case *(Supra)* as under;

> **"***The first Respondent appearing in person has raised various objections.*
>
> *…..*
>
> *He relied upon the decision of the Apex Court in the case of* ***Indirect Tax Practitioners' Association v. R.K. Jain[4](2010) 8 SCC 281*** *in support of his submission that even the contemnors are required to be heard before issuing a contempt notice. He conceded that though the said proposition of law is not specifically laid down in the said decision, the Apex Court gave hearing to the proposed contemnors before issuing notice and ultimately dismissed the petition.*
>
> ***4.*** *We have considered the said objections.* ***There is***

no law which requires this Court to give an opportunity of being heard to the proposed contemnor before a notice of contempt is issued. No such right is available to the Contemnors. "

5. Hon'ble Bombay High Court in the case of **Tushar Galani Vs. Jagdeesh 2001 ALL MR (Cri.) 46** it is ruled as under ;

Criminal P.C.(1973),Ss.202,204- Issue of process –Magistrate cannot issue notice to proposed accused as to why process be not issued against him for the alleged offences.

The learned Magistrate could not have evolved new procedure which is not contemplated by law. The accused has no locus standi in the matter before issuing process against him and therefore ,he is not entitled to be heard before process is issued against him. The learned Magistrate has to consider the question of issuing process purely from the point of view of the complainant without reference to any defence that the accused may have. At the stage of issuing , the Magistrate cannot enter into a detailed discussion on the merits or demerits of the case.

Hon'ble Bombay High Court in the case of **Shri. Harischandra Lekhraj Melwani Vs. Shri. Bhalchandra Naik 2009 ALL MR (Cri) 2405** It is ruled as under;

"(A) Criminal P.C. (1973), Ss. 204,313-Issuance of process-Right of accused to lead evidence-If cognizable offence is made out, process issued in normal course-Upon such process it is for the accused to appear before Magistrate and stand the trial – Held, *it would be only upon the prosecution evidence being led that the accused would be entitled to lead his own evidence.****(2005)1 SCC 568 and (1996) 9 SCC 766."***

6. In Manharibhai Muljibhai Kakadia and Anr Vs. Shaileshbhai Mohanbhai Patel and Ors. 2013 Cri.L.J. 144 it is ruled as under;

"***(A) Criminal P.C. (2 of 1974) , S.200, S.203***

, S.202, 204- the persons who are alleged in the complaint to have committed crime have, no right to participate in the proceedings nor they are entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. The judgments of the High Courts to the contrary are overruled.

Judge Cannot Consider As To What Would Be The Defence Of The Accused Before Issuing Process Against The Accused.

Accused have no locus before issuance of process. However if order is in favor of accused and it is challenged then Court can hear accused."

7. That, Hon'ble Supreme Court in **Sundarjas Kanyalal Bhathija Vs. The Collector AIR 1990 SC 261** it is ruled as under;

"Constitution of India, Art.141- PRECEDENTS - Judges are bound by precedents and procedure - *They could use their discretion only when there is no declared principle to be found, no rule and no authority - where a single judge or a Division Bench does not agree with the decision of a Bench of co-ordinate jurisdiction, the matter shall be referred to a larger Bench. It is a subversion of judicial process not to follow this procedure - it is the duty of judges of superior courts and tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions within the Courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Sub-ordinate courts would find themselves in an embarrassing position to choose between the conflicting opinions. The general public would be in*

dilemma to obey or not to obey such law and it ultimately falls into disrepute- One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench."

8. That as per **R. S Sherawat Vs. Rajeev Malhotra and Ors. 2018 SCC OnLine SC 1347** the proceedings under Contempt are quasi Criminal in nature. The Respondent have all protections available to the accused.

In the Contempt of Court's Act and in the rules made by this Hon'ble Court to regulate the proceedings under Contempt there is no provision which gives jurisdiction to this Hon'ble Court to ask the Respondent to remain present on the date fixed.

The Respondent can be directed to remain present only after passing order of taking cognizance and the Respondent should be given time to file his reply within at least 14 days from the date of service of the notice upon the Respondent.

Rule 10 of Bombay High Court Contempt Ruled reads as under;

"Rule 10. *The person charged may file his reply by way of an Affidavit or Affidavits within 14 days from the service of the Notice or within such time as the Court may fix.*

But **Justice Akhi Kureshi & Justice S.J.Kathawala** on 28th June, 2019 passed the order against the provisions of Contempt of Court's Act & rules and directed the Respondent i.e. Joy Anthony to remain present; similar indiscreet and injudicious order was passed in the case of Chandrashekhar Acharya in a Contempt Petition arising out of Family Court Appeal No. 3 of 2016 wherein Chandrashekhar Acharya was summoned for attendance without following the due process of law. The above said orders are not only illegal but have violated the fundamental rights of the Respondents. The Hon'ble Authorities are earnestly prayed that the custodians of fundamental rights have become the biggest gorgers of fundamental rights and thus ought to be divested of all judicial functions, lest Indian judiciary is perceived

as Kangaroo Courts or worse Military Courts of Pakistan who have condemned Kulbhushan Jadhav to death penalty without following the due process of law-**WE PRAY TO THE ALMIGHTY THAT INDIANS ARE SPARED OF THE CAPRICIOUS AND ARBITRARY JUDICIOUS DISPENSATION BY JUSTICES AKIL KURESHI AND SHAHRUKH KATHAWALA AS LIKE THAT OF PAKISTANI OR TALIBANI COURTS.**

9. From the pure stand point of law, the Respondent in a Contempt Proceeding is on a equal footing of that of an accused in a criminal case. He is entitled to all protection available to an accused in a criminal case including right to silence as per Article 20 (3) of the Constitution of India.

[vide: Clough Engg. Ltd. Australia Vs. Oil Natural Gas Corporation Mumbai 2009 Cri. L.J. 2177 ,R. S Sherawat Vs. Rajeev Malhotra and Ors. 2018 SCC OnLine SC 1347.]

In **Shiv Lal, Sub Divisional Magistrate Msahoba/ Administrator, Nagar Panchayat Vs.Ram Babu Dwivedi (2006) 2 AWC1272 All** it is read as under;

> *"**A]** Contempt of order in a proceeding - Main proceeding should be decided first before deciding contempt proceedings**.***
>
> ***B]** When any order is challenged and is subjudice before higher Court then the subordinate Court should wait for result of that case and should be slow to proceed against the party.*
>
> ***C]** Not granting stay by the higher authority by itself is not enough to speed up proceedings against a person because the very order is yet to become final. The course is recognized by a seven-Judge Bench of Hon'ble Supreme Court in L. Chandra Kumar vs. Union of India AIR 1997 SC 1125 and followed in Suresh Chandra Poddar vs. Dhani Ram AIR 2002 SC 439*

D] *Civil Contempt assumes a quasi-criminal nature. The guilt of the respondent has to be strictly established both substantially and procedurally*

Mere violation of the order is not contempt, but it has to be established that such violation has been willful. The casual, unintentional or accidental violation of order is not punishable under Contempt of Courts Act.

E] *Court should be reluctant to exercise jurisdiction under contempt. This power should not be exercised if the offence complained of is of a slight or trifling nature and does not cause any substantial loss or prejudice to the complainant.*

F] *Framing of charge is mandatory – Civil Contempt – The Ld. Single Judge did not framed any charge for disobedience. No such charge was served upon the respondent – Ld. Single Judge has straightaway assumed the facts stated in the affidavit as correct and held the appellant guilty of contempt. This approach of Ld. Single Judge does not satisfy requirement of law and falls short of it and therefore held to be erroneous and contrary to law – Said order set aside.*

G] *Law laid down by earlier larger Bench of Hon'ble Apex Court will prevail over the later smaller Bench decision of the Hon'ble Apex Court, even if later smaller Bench of Hon'ble Apex Court considered the earlier larger Bench decision the same cannot be construed at variance with the larger Bench decision.*

We find great force in the argument of Mr. Salve that so long the stay matter in the writ petition was not finally disposed of, the

<u>further proceeding in the contempt case was itself misconceived and no orders therein should have been passed.</u>

The scope of a contempt proceeding is very different from that of the pending main case yet to be heard and disposed of (in future). Besides, ***<u>the respondents in a pending case are at a disadvantage if they are called upon to meet the merits of the claim in a contempt proceeding at the risk of being punished.</u>***

The High Court should have first taken up the stay matter without any threat to the respondents in the writ case of being, punished for contempt. Only after disposing it of, the other case should have been taken up.

The learned Single Judge has proceeded with the contempt proceeding without awaiting any more and without examining the genuineness and bonafide of the actions of the opposite party in moving the stay vacation application in writ petition and stay application in special appeal against the interim order passed in writ petition in question. Thus in our considered opinion the action of the learned Single Judge in this regard does not satisfy the law laid down by the Hon'ble Apex Court.

Contempt of Court are quasi-criminal acts, and orders punishing them should, generally speaking, he treated as orders in criminal cases, and leave to appeal against them should only he granted on the well-known principles on which leave to appeal in criminal cases is given.

As to whether learned Single Judge was justified in holding the appellant guilty of contempt

without framing any specific charge against him and without asking any reply thereon from the appellant?

In J & K v. Mohd. Yaqoob Khan and Ors. reported in MANU/SC/0530/1992 : (1992) 2 UPLBEC 1166. In para 5 and 6 of the judgment Hon'ble Apex Court observed as under:-

We find great force in the argument of Mr. Salve that so long the stay matter in the writ petition was not finally disposed of, the further proceeding in the contempt case was itself misconceived and no orders therein should have been passed.

The scope of a contempt proceeding is very different from that of the pending main case yet to be heard and disposed of (in future). Besides, the respondents in a pending case are at a disadvantage if they are called upon to meet the merits of the claim in a contempt proceeding at the risk of being punished.

The High Court should have first taken up the stay matter without any threat to the respondents in the writ case of being, punished for contempt. Only after disposing it of, the other case should have been taken up.

We do not want to decide any of these controversies between the parties at this stage except holding that the orders passed in the contempt proceeding were not justified, being pre-mature, and must, therefore, be entirely ignored. The High Court should first take up the stay matter in the writ case and dispose it of by an appropriate order. Only thereafter it shall proceed to consider whether the State and its

authorities could be accused of being guilty of having committed contempt of Court.

The course adopted by the High Court does not commend itself as proper.

Wherever the order whose disobedience is complained, about is appealed against and stay of its operation is pending before the Court, it will be appropriate to take up for consideration the prayer for stay either earlier or at least simultaneously with the complaint for contempt To keep the prayer for stay stand by and to insist upon proceeding with the complaint for contempt might in many conceivable cases, as here, cause serious prejudice. This is the view taken in State of J&K v. Mohd. Yaqoob Khan.

If under the threat of proceedings of contempt, the appellants had to comply with the order of the learned Single Judge notwithstanding the pendency of their appeal and the application for stay. The petitioners are confronted with a position where their stay application is virtually rendered infructuous by the steps they had to lake on threat of contempt.

We, accordingly, direct that all further proceedings in the contempt proceedings be stayed. It will be appropriate for the High Court to take up and dispose of the application for stay without reference to the developments in the interregnum, namely, that the respondent had to obey the order of the learned Single Judge under pain of proceedings of contempt.

Even if the appellant had not implemented the order and if the appellant had brought to the notice of the Tribunal that the order of the

Tribunal is under challenge before the High Court under Article 226 of the Constitution of India (the course which has been judicially recognized by a seven-Judge Bench of this Court in L. Chandra Kumar v. Union of India the Tribunal should have been slow to proceed against the party in a contempt action. Of course it can be said that no stay was granted by the court when the appellant moved the Division Bench of the High Court under Article 226 of Constitution, Not granting the stay by itself is not enough to speed up proceedings against a person in contempt because the very order is yet to become final.

Three Judges Bench of Hon'ble Apex Court in Mohd. Yaqoob Khan's case (supra) has held that so long the stay matter in the writ petition was not finally disposed of the further proceeding in the contempt case was itself misconceived and no orders should have been passed. The Hon'ble Apex Court has further held that in the circumstances of the case, the contempt proceeding is premature and liable to be ignored.

In many conceivable cases, as here, cause serious prejudice.

Thus in view of law laid down by the Hon'ble Apex Court we have no hesitation to hold that law laid down by earlier larger Bench of Hon'ble Apex Court will prevail over the later smaller Bench decision of the Hon'ble Apex Court, even if later smaller Bench of Hon'ble Apex Court considered the earlier larger Bench decision the same cannot be construed at variance with the larger Bench decision

The learned Single Judge has proceeded with the contempt proceeding without awaiting any more

and without examining the genuineness and bonafide of the actions of the opposite party in moving the stay vacation application in writ petition and stay application in special appeal against the interim order passed in writ petition in question. Thus in our considered opinion the action of the learned Single Judge in this regard does not satisfy the law laid down by the Hon'ble Apex Court.

Contempt of Court are quasi-criminal acts, and orders punishing them should, generally speaking, he treated as orders in criminal cases, and leave to appeal against them should only he granted on the well-known principles on which leave to appeal in criminal cases is given.

27. In Sukhdev Singh v. Hon'ble C.J., AIR 1954 SC 186 Hon'ble Apex Court held as under :

The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself.

In Aswini Kumar Rath and Ors. v. P.C. Mukherjee and Ors. MANU/WB/0101/1965 : (1969)ILLJ816Cal , in para 11 of the decision Court held as under :

Contempt of court, the proceeding all through takes the shape of a person charged with an offence of which he has to exculpate himself (1841) 1 Q.B. 616 (ibid), and the guilt of the respondent has to be strictly established both substantively and procedurally vide Oswald on

Contempt, p. 17 : Gorden v. Gordon (1946) 1 A. E.R. 247 (253) C.A.

Respondent must be made aware of the charge against him and given a fair and reasonable opportunity to defend himself, before holding him guilty of committing any contempt. Therefore, it was necessary for learned single Judge to frame specific charge against the appellant and intimate him asking his reply thereon and after affording him opportunity of fair hearing, *if he would have been found guilty of committing contempt for wilful disobedience of the order passed by this Court only in that eventuality any order punishing the appellant could be justified.*

Only notice was issued to the appellant directing him to appear in person before the court on 3.11.2004. On that day also neither any specific charge either of non-compliance of the order was framed nor any charge regarding delayed compliance of the order passed by such courts has been framed and served upon the appellant nor he was asked to reply any such charge rather learned Single Judge has straightway assumed the facts stated in the affidavit filed in support of impleadment application as correct and held the appellant guilty of committing contempt of this court. This approach of learned single Judge in our considered opinion, does not satisfy requirement of law and falls short of it, therefore held to be erroneous and contrary to law. Accordingly the impugned order passed by learned Single Judge is not sustainable in the eye of law and liable to be set aside.

It is well settled that disobedience of the order of court in order to constitute punishable contempt must be wilful and deliberate, whether a particular acts and conduct would be amount to wilful and deliberate defiance of the order passed by the court has been under consideration at various occasion before different High Courts. In Manohar Lal v. Sri Prem Shankar Tandon and Ors. MANU/UP/0051/1960 : AIR1960All231 . In para 16, 17 and 18 of the decision a Division Bench of this Court held as under :-

16. A civil contempt has been very well defined in the case of O'Shea v. O'Shea and Parnell (1890) 15 P.D. 59-

"When a man does not obey an order of the Court made to some civil proceeding, to do or abstain from doing something as where an injunction is granted in an action against a defendant, and he does not perform what he is ordered to perform, and then a motion is made to commit him for contempt that is really only a procedure to get something done in the action, and has nothing of a criminal nature in it.

Even a civil contempt, when proceedings are taken under the (Contempt of Courts Act, assumes a quasi-criminal nature: *but there are certain principles which have to be borne in mind in considering the cases of civil contempt, which is different from a criminal contempt.* ***In a civil contempt disobedience, in order to be punishable as a contempt, must be wilful and not merely casual, accidental and unintentional.***

Contempt proceedings are of an extraordinary nature and they give special power to all the

Courts of record. It is a power which is exercise summarily and the Court should be reluctant to exercise this extraordinary power particularly in a civil contempt, and this power should never he exercise if the offence complained of is of a slight or trifling nature and does not cause any substantial loss or prejudice to he complainant. This power should be exercised with scrupulous care and only when the case is clear and beyond reasonable doubt. See Emperor v. Murli Manohar Prasad MANU/BH/0195/1928i>

In order to punish a person for contempt of court, it must be established not merely that the order of the Court has been violated but also that such violation has been willful

Thus in view of the aforesaid discussions, it is clear that the power of courts of record is extra-ordinary in nature, therefore, ***the courts should be reluctant to exercise this power particularly in a civil contempt and this power should not be exercised if the offence complained of is of a slight or trifling nature and does not cause any substantial loss or prejudice to the complainant.*** *Even a civil contempt, when the proceedings are taken under the contempt of courts Act, assumes a quasi-criminal nature, therefore, this power should be exercised with scrupulous care and only when the case is clear and beyond reasonable doubt. Before punishing a person under* ***the provisions of Contempt of Court Act there must be wilful and deliberate defiance of the order of court, it should not be merely accidental and casual in nature. It is not each and every defiance and disobedience of the order of court can***

<u>be held wilful disobedience of the order of the court. To arrive at a correct conclusion, every aspect of the matter referred herein before inasmuch as bonafide of the contemner is to be examined by the court dealing with contempt proceedings.</u>

The impugned judgment and order passed by learned Single Judge in contempt petition No. 2101 of 2003 is wholly erroneous and not sustainable in the eyes of law and is liable to be set aside. Accordingly the same is set aside by this Court. The contempt notice issued against the appellant is hereby discharged.

Now coming to the first question as to whether As to whether in given facts and circumstances of the case the learned Single Judge was justified in proceeding with the contempt proceedings before the disposal of the stay vacation application moved on behalf of the respondents in the writ petition in as much as stay application moved in the special appeal filed on behalf of the respondents against the interim order dated 4,4.2003 passed in Civil Misc. Writ Petition No. 14661 of 2003? In this connection at the very out set it is necessary to point out that the Contempt of Courts Act 1971 defines contempt of courts and civil contempt as under :

2. Definitions.--In this Act, unless the context otherwise requires.

(a) Contempt of Court" means civil contempt or criminal contempt;

(b) "Civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or

other process of a Court or wilful breach of an undertaking given to a Court."

10. That, similar illegality was earlier committed by Justice S.J. Kathawala in **Contempt Petition (L) No.112 of 2018 in NOM No.1616 of 2018 in Suit No.976 of 2018** by directing the Respondent to remain present in the Court. But Adv. Nilesh Ojha appearing for Respondent pointed out the illegality then Justice S.J. Kathawala recalled the said order by **"Suo-Motu speaking to the order".**

The said order dated **5th September, 2018** reads as under;

*"**SUO MOTO SPEAKING TO THE ORDER DATED 5TH SEPTEMBER, 2018***

CORAM: S.J.KATHAWALA,J,

DATED :- 5th SEPTEMBER,2018

In the above Contempt Petition, the Order dated 5th September, 2018 stating that "The Respondents / Contemnors are directed to remain present before this Court on the returnable date." was inadvertently uploaded. In view thereof, the said Order dated 5th September, 2018, is recalled and substituted by the following order :

***1.** The above Contempt Petition is filed by the Petitioner against the Respondents / Contemnors under Article-215 of the Constitution of India and the Contempt of Courts Act, 1971.*

***2.** Heard the learned Advocate appearing for the Petitioner.*

***3.** I am prima facie satisfied that the Respondents / Contemnors have committed willful breach of the orders dated 19th June, 2018, 25th July, 2018, 1st August, 2018 and 16th August, 2018 read with subsequent correction order dated 20th August, 2018 passed by this Court, by failing to perform the undertakings given therein from time to time by the Respondents / Contemnors. Therefore, issue show cause notice to the Respondents / Contemnors as*

provided under the Contempt of Courts (CAT) Rules, 1992 read with Rule 1036 (1) of the High Court (Original Side) Rules, 1980 to regulate proceedings for contempt under Article-215 of the Constitution of India and the Contempt of Courts Act, 1971, returnable on 9th October, 2018.

4. *Stand over to 9th October, 2018 "*

But again same illegality is committed by Justice Kathawala while sitting with Justice Akil Kureshi on **28th June, 2019**. This shows their callous criminal conduct to misuse the power and act against the law and thereby violate the fundamental rights of the citizens.

11. In **Quantum Securities Pvt.Ltd Vs. New Delhi Television Ltd. AIR 2015 SC 3699** it is ruled a under;

"*The High Court issued notice to the Appellants to show cause as to why action under the provisions of the Contempt of Court Act not be initiated against them for violation of the orders. The court also issued an order restraining the Appellants from issuing defamatory communication in connection with the Respondent. Hence, the present appeal.*

Held, disposing off the appeals.

Once the Notice of Motion is decided on merits in accordance with the law then the parties can work out their rights by taking recourse to legal remedies available to them for pursuing their grievance to higher fora either in appeal or revision, and may also prosecute the contempt proceedings arising out of the main case.

The contempt proceedings out of which these appeals arise are stayed. After the disposal of the Notice of Motion, the contempt proceedings may be decided in accordance with law including its maintainability."

12. In **Gurudas Alvani Vs. Mahajani of Temple 2016 SCC OnLine Bom 3980** it is ruled as under ;

> ***"4.*** *The learned Counsel for the petitioner places reliance on the decision of the Hon'ble Apex Court in the case of Quantum Securities Pvt. Ltd. v. New Delhi Television Ltd., reported in (2015) 10 SCC 602, in order to submit that in such a case, it is not appropriate that the main application is kept pending and application for contempt/breach of injunction, is taken up in precedence.*
>
> ***5.*** *The learned Counsel for the respondent, in all fairness, does not dispute this position."*

13. That, Hon'ble Supreme Court in **Kanwar Singh Saini Vs. High Court of Delhi 2012 4 SCC 307** had ruled that, the Contempt jurisdiction cannot be exercised for recovery of the amount the execution proceedings should be adopted. It is read as under;

> ***" A. Civil Suit ---------Enforcement of interim or final orders/ decree of court including undertakings given to court------- Role ofexecution vis- a vis contempt proceedings --------Proper and advisable first mode for enforcement of orders, held, is to file an application under Or. 39 R. 2- A CPC for enforcement of interim orders/ undertaking to court when suit is pending, or to file application for execution in case suit has been decreed based on undertaking or otherwise ------ When matter relates to infringement of a decree or decretal order embodying rights as between parties, contempt jurisdiction cannot be invoked merely because other remedies may take***

time or as more circumlocutory in nature ----Violation of permanent injunction or willful was disposed of, can be set right in execution proceedings by attachment of defaulter's property or by detention in civil prison, and not by contempt proceedings ----Contempt jurisdiction is attracted when disobedience of court is willful and contumacious -----Civil Procedure Code, 1908-----Or. 39 R. 2-A and Or. 21 R. 32 and Or. 21 ----Contempt of Courts Act, 1971 ----S. 2 (b) -----Specific Relief Act, 1963, Ss. 36 to 42

I. Contemnor of Courts Act, 1971 ------ Ss. 2(b) and (c) ---- Civil or criminal contempt ---- Determination of ----- Violation / breach of undertaking given to court on basis of which decree was passed ---- Held, constitutes civil contempt since it is for sole benefit of other party to the suit and court must satisfy itself that such violation was willful and intentional---- In such situation administration of justice could be undermined if order of competent court is permitted to be disregarded with impunity, but it does not involve sufficient public interest for it to be treated as criminal contempt ---- Where contemnor satisfies court that disobedience was under compelling circumstances, no punishment can be awarded---For violation of a judgment or decree provisions of criminal contempt arenot attracted.

J. Civil Procedure Code, 1908 ---- S. 47, Or. 21 and Or.21 R.32 ---- Execution ---- Nature

of disobedience/non-compliance by judgment-debtor ---- Relevance of ---- Held, in execution proceedings , court may not be bothered with whether disobedience is willful or not and court is bound to execute decree irrespective of consequences ----- Civil Suit ----Execution

K. Contempt of Court ---- Criminal Contempt ----Initiation of criminal contempt proceedings up to punishment therefor ----- If properly conducted/contempt power properly exercised ----- False affidavit (taking inconsistent pleas in reply filed to application under Or. 39 R. 2-A CPC) High Court convicting appellant for criminal contempt and sending him to jail but not granting any relief so far as enforcement of decree was concerned-----Propriety --- Held, purposes of initiation of contempt proceedings are twofold: to ensure compliance with order passed by court; and to punish contemnor as he has the audacity to challenge majesty of law --- High Court erred in not taking any steps for enforcing decree and sending appellant to jail, which was a glaring example of non-application of mind and non-observance of procedure prescribed by law--- Contempt of Courts Act, 1971, Ss. 10, 11, 12 and 2(c)

L. Contempt of Court---- Contempt proceedings --- Nature of --- Standard of proof ---- Benefit of doubt --- Held, contempt proceedings being quasi-criminal in nature, standard of proof required is the

same as in other criminal cases --- Alleged contemnor is entitled to protection of all safeguard/rights provided in criminal jurisprudence, including benefit of doubt --- - There must be clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of contempt--- Case should not rest only on surmises and conjectures.

Also relied on In **Mangal Das Vs. Akhand Pratap Singh MANU/UP/2139/2016** it is ruled as under ;

"***Code of Civil Procedure, 1908 (CPC) - Order XXI Rule 32; Constitution Of India – Article 215, , 361(2) – Contempt Of Courts Act, 1971- Ordinarily, contempt is not a mode of execution of a decree, when other modes have been provided. The Apex Court in Kanwar Singh Saini v. High Court of Delhi, MANU/SC/1111/2011 : (2012) 4 SCC 307, had an occasion to examine the enforcement of interim/final orders/decree of the court including undertakings given to the court vis-à-vis. contempt.***

Paragraph 21 of the said judgment is quoted hereunder:

"The provision of order XXI, Rule 32, C.P.C., applies to prohibitory as well as mandatory injunctions. In other words, it applies to cases where the party is directed to do some act and also to the cases where he is abstained from doing an act. Still to put it differently, a person disobeys an order of injunction not only when he fails to perform an act which he is directed to do but also when he does an act which he is prohibited from doing. Execution of an injunction decree is to be made in pursuance of Order XXI, Rule

*32, C.P.C., as the C.P.C., provides a particular manner and mode of execution and, therefore, no other mode is permissible**."***

12. Thus, from the language of Order XXI, Rule 32, C.P.C., it does not transpire that proceedings under Order XXI, Rule 32, C.P.C., cannot be invoked, once a decree of permanent injunction is satisfied. On the contrary, language is explicit, as it provides that as and when there is a willful disobedience of a decree, it may be enforced by detention/attachment or by both as against the party in default. ***The rationale is that in the event a decree-holder complains of willful disobedience on the part of a judgment-debtor, then the proceedings under Order XXI, Rule 32, would involve investigation of facts and leading of evidence, as to whether there is any willful disobedience or not and only thereafter, a finding can be arrived at as to the willful disobedience.*** *If so, then penal consequences of civil detention/attachment of property or both would follow.*

13. Thus, this Court has no hesitation in holding that ***the remedy if any, for the applicant is to invoke the forum under Order XXI, Rule 32, C.P.C., the instant contempt is not maintainable and is liable to be dismissed. The contempt is dismissed in limine.***

14. In **Jiwani Kumari Parekh Vs. Satyabrata Chakravorty AIR 1991 SC 326** it is ruled as under;

"Contempt of Courts Act (70 of 1971), S.2, S.14- Contempt of Court – Failure to handover the possession of disputed premises inspite of Supreme Court direction- Held, Deliberate disobedience of order of Court is necessary - *Supreme Court issued direction to respondent to hand*

over possession of disputed premises to petitioner within a specified date, but the respondent could not comply with the direction, due to various court proceedings, it cannot be held that the respondent had committed by wilful or deliberate or reckless disobedience of the order of the Supreme Court. The contempt petition against respondent is liable to be dismissed."

Hence the Ld. Judges don't know the basic principles of law that the Contempt proceedings cannot be use/initiated when the main order is under challenge and when the other remedy of execution is available.

Similar extortion techniques were adopted and illegalities are committed by **"Justice Akil Kureshi & Justice S.J.Kathawala"** in the case of Dr.Santosh Shetty.

15. <u>ILLEGAL SUMMONING A PERSON IS AN OFFENCE IN SECTION 341, 342 OF INDIAN PENAL CODE :-</u>

Hon'ble Supreme Court (Full Bench) in **<u>Raja Ram Vs. State (1971) 3 SCC 945</u>** had ruled as under;

"India Penal code sec. 341, 342 – Conviction of Police Officer for illegally Summoning a accused/witnesses – Held –The Police Officer cannot Summon a woman or a male under fifteen years of age – Such persons must be asked to attend interrogation at the place where they reside – This is mandatory provision of section 160 of Cr. P.C. – The Police Officer by calling the witnesses at police station kept them under wrongful restraint - The Police Officer is guilty under section 341 of I.P.C. – His conviction is proper."

Similar illegalities are committed by Justice Akil Kureshi & Justice S.J.Kathawala and therefore they are also liable for action under section 341 & 342 of IPC.

Section 219 of Indian Penal Code reads as under;

219. Public servant in judicial proceeding corruptly making report, etc., contrary to law.—*Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage*

of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

16. In **Sailajanand Pande Vs. Suresh Chandra Gupta 1968 SCC OnLine Pat 49** it is ruled as under ;

"ACTION AGAINST JUDICIAL OFFICER CAUSING ILLEGAL ARREST

– Magistrate acting illegally and without jurisdiction in the matter of arrest is not protected – Magistrate has no absolute protection regard to his act of illegal arrest.

First class Magistrate issued letter to appear and directed to show cause against prosecution on the petition filed by another person – When petitioner appeared he was detained to custody – The bail bond furnished by the petitioner were rejected by the Magistrate deliberately – Petitioner claimed that due to such illegal, unauthorized and malafide conduct of the Magistrate in arresting him, he has lowered in the estimation of the public and claimed for the damage – The action of the Magistrate by putting the petitioner under arrest for realinsing the certificate dues by adopting questionable and unlawful method is highly deplorable – It was unbecoming of a Magistrate – It is relevant to investigate to find out the motive, the propriety and the legality of the action of the Magistrate in arresting the petitioner – It is not a judicial act although exercised during the Judicial proceedings – The Magistrate exercised its power with the ulterior object of coercing the petitioner.

At page 178 of the 14th Edition of Salmond on Torts it is said -

"The wrong of false imprisonment consists in the act of arresting or imprisoning any person without lawful justification, or otherwise preventing him without lawful justification from exercising his right of leaving the place in which he is."

In my opinion, defendant No. 1 has committed the wrong of false imprisonment in this case.

But - ***"Wherever protection of the exercise of judicial powers applies, it is so absolute that no allegation that the acts or words complained of were done or spoken mala fide, maliciously, corruptly, or without reasonable or probable cause suffices to found an action." Further it has been pointed out under the title "Liability of Magistrates" at page 160 of Volume 25 of Halsbury's Laws of England, 3rd Edition, that -***

"Protection is afforded by common law and by statute to justices in respect of acts done in the execution of their duty as such; but this protection does not extend to cases where they have acted either maliciously and without reasonable and probable cause, or without or in excess of their jurisdiction, and in such cases they are liable to an action for damages at the suit of the party "aggrieved,"

A similar passage occurs at page 768 of Volume 38 of the Halsbury's Laws of England, 3rd Edition -

A Magistrate or other person acting In a judicial capacity is not liable for acts done within his jurisdiction, but he is liable to an action for false

imprisonment If he unlawfully commits a person to prison in a matter in which he has no jurisdiction, provided that he has knowledge, or the means of knowledge of the facts which show that he has no jurisdiction."

#CHARGE # INTENTIONAL CONTEMPT OF SUPREME COURT JUDGMENT IN TAMILNAD MERCANTILE BANK SHAREHOLDER VS S.C.SEKAR & ORS. (2009) 2 SCC 784BY PASSING AN INJUNCTION ORDER WITHOUT CONTEMPT PROCEEDING:-

Hon'ble Supreme Court in the case of **Tamilnad Mercantile Bank Shareholder Vs S.C.Sekar & Ors. (2009) 2 SCC 784** it is ruled as under;

"35. *Apart from the fact that the appellant did not approach the Court with clean hands and was thus not entitled to any equitable relief, we are surprised to see the manner in which the interim order was passed by the learned Single Judge in the contempt proceedings, which reads :.*

1. *That G. Narayanamurthy, the respondent herein, be and is hereby restrained by an ad interim injunction till 21.07.2008 not to implement the resolution of item of business relating to the election of Directors of the respondent bank at the 83rd , 84th and 85th Annual General Meeting held on 05.06.2008 till disposal of the contempt application.*

2. *That the notice of this Sub Application No. 163 of 2008 returnable by 21.07.2008 be served on the respondents herein; and*

3. *That the Sub Application No. 163 of 2008 be posed on 21.07.2008.*

The suit related to 83rd Annual General Meeting. The contempt application related to election of Directors of the Bank at the 83rd, 84th and 85th Annual General

Meetings. Although the sub-application was directed to be posted for 23rd July, 2008 the order of injunction was not limited to that date. It was directed to continue till disposal of the contempt application; though it was stated earlier that the ad interim injunction was till 21.7.2008.

It does not contain any reason. There is no finding as regards existence of a prima facie case. There is no finding that G. Narayanmoorthy had prima facie committed the contempt.

The order is not a speaking one. Ordinarily a direction cannot be issued in contempt proceedings without arriving at a finding as to how the Managing Director of the Bank can be said to have flouted the order.

36. *In Municipal Corporation Jabalpur v. Om Prakash Dubey MANU/SC/5573/2006 : (2007)ILLJ1026SC , this Court held:*

We are in this case not called upon to consider the implication of the awards, which might have been passed in favour of the workmen. The Division Bench, by reason of the impugned judgment had issued directions in exercise of its jurisdiction under Section 12 of the Contempt of Courts Act, 1971, without arriving at a finding as to how the Corporation has violated its order. It issued directions which are contrary to or inconsistent with the directions issued by a learned Single Judge by an order dated 27-2-2003.

The judgment of the Division Bench is, thus, subject to correction by this Court both under Article 136 of the Constitution of India as also under Section 19 of the Contempt of Courts Act.

The said decision applies in all force to the fact of the present case."

But Justice Akil Kureshi & Justice Shahrukh Kathawala acted in utter definance & disregard of law laid down by Hon'ble Supreme Court & Hon'ble Supreme Court in **Re: M.P.Dwivedi AIR 1996 SC 2299**

> *"Judge cannot take the defence that he don't know the Judgement of the Supreme Court , he should be punished under contempt for acting against Judgement of the Supreme Court "*

17. In **R.R. Parekh Vs. High Court of Gujrat (2016) 14 SCC 1,** case Hon'ble Supreme Court had upheld the order of dismissal of a Judge.

It is ruled as under;

> ***"A Judge passing an order against provisions of law in order to help a party is said to have been actuated by an oblique motive or corrupt practice - breach of the governing principles of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice - No direct evidence is necessary - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - The Appellant had absolutely no convincing explanation for this course of conduct - Punishment of compulsory retirement directed.***
>
> *A wanton breach of the governing principles of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice. In the absence of a cogent explanation to the contrary, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that the judicial officer was actuated by extraneous considerations can be drawn - It is not the correctness of the verdict but the*

conduct of the officer which is in question- . There is on the one hand a genuine public interest in protecting fearless and honest officers of the district judiciary from motivated criticism and attack. Equally there is a genuine public interest in holding a person who is guilty of wrong doing responsible for his or his actions. Neither aspect of public interest can be ignored. Both are vital to the preservation of the integrity of the administration of justice - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - No reasons appear from the record of the judgment, for We have duly perused the judgments rendered by the Appellant and find merit in the finding of the High Court that the Appellant paid no heed whatsoever to the provisions of Section 135."

18. Full Bench of Hon'ble Supreme in the case of **Union of India Vs. K. K. Dhawan (1993) 2 SCC 56 (Full Bench)** had ruled that, if any Judge passes any order to favor or disfavor anyone then he is not acting as a Judge and he should be prosecuted and removed from the post of a Judge by ordering proper enquiry, it is ruled as under;

"If any Judge acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. And he can be proceeded for passing unlawful order apart from the fact that the order is appealable. Action for violation of Conduct Rules is must for proper administration.

*"**28.** Certainly, therefore, the officer who exercises judicial or quasi - judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the*

respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii)if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii)if he has acted in a manner which is unbecoming of a government servant;

(iv)if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party-,

(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

"17. In this context reference may be made to the following observations of Lopes, L.J. in Pearce v. Foster.

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

(emphasis supplied)" `

19. In **Nagar Mahapalika of the City of Kanpur v. Mohan Singh 1966 SCC OnLine SC 1** it is read as under;

> *"An allegation of contempt of court is a serious one and is considered by courts with a certain amount of strictness* ***A person against whom such an allegation is made is entitled to be told the precise nature of it. Vague charge of contempt is not a fair or permissible way of charging a person with contempt of court. The contempt alleged cannot be left to be spelt out from the allegations made nor can the person charged be left to guess what contempt is alleged against him.*** *these defects are serious."*
>
> *"We will deal first with the case of the Municipality. It will have been noticed that it was not the respondent's case that the Municipality had issued any new licence after the order of July 14, 1961. In fact, it was conceded that it did not do so. What was said was that the Municipality adopted a practice of realising rickshaw taxes from the owners and printing the fact of the receipt of the tax on the rickshaws and permitting them to ply without licences.* ***The way the case seems to have been put before the High Court was that this was a subterfuge adopted by the Municipality to get round the order of the High Court, the object of which was to stop new rickshaws plying for hire, by permitting rickshaws to ply without a licence on payment of the tax. This contention was accepted by the High Court. It seems to us somewhat unfortunate that the matter proceeded in this way. An allegation of contempt of court is a serious one and is considered by courts with a certain amount of strictness. A person against***

whom such an allegation is made is entitled to be told the precise nature of it. In this case the respondent did not state that any subterfuge had been adopted by the Municipality or that the Municipality had sought to defeat the orders of the courts; that was only insinuated. This is not a fair or permissible way of charging a person with contempt of court. The contempt alleged cannot be left to be spelt out from the allegations made nor can the person charged be left to guess what contempt is alleged against him.

Further, paragraph 8 of the petition for committal for contempt stated that there was a direct contravention of the order which of course, there was not as no licences had been issued. ***Neither were any particulars given as to how the alleged practice that was adopted was intended to get round the order, nor of how the Municipality permitted rickshaws to ply without licences. We think the learned Attorney-General was perfectly justified in drawing our attention to these defects in the petition and characterizing them as serious****."*

20. In **J.R. Parashar Vs. Prashant Bhushan AIR 2001 SC 3395** it is ruled as under;

"A…..36. It is true that ***the notice did not specify the contumacious acts with which the respondent was charged. Only a copy of the petition had been served on the respondents along with the notice. It would not be unreasonable for the respondent No. 2 to assume that every statement contained in the petition formed part of the charge.***

B…36.The actual proceedings for contempt are quasi-criminal and summary in nature. Two

consequences follow from this. First, ***the acts for which proceedings are intended to be launched must be intimated to the person against whom action is proposed to be taken with sufficient particularity so that the persons charged with having committed the offence can effectively defend themselves. It is for this reason Section 15 requires that every motion or reference made under this section must specify the contempt of which the person charged is alleged to be guilty.***

The second consequence which follows from the quasi-criminal nature of the proceeding is that if there is reasonable doubt on the existence of a state of facts that doubt must be resolved in favour of the person or persons proceeded against."

21. In **Mintu Mallick Vs. The Hon'ble High Court 2019 SCC OnLine Cal 999** where it is ruled that;

"25. *It is fundamental that in departmental proceedings which are initiated by the issuance of a show-cause notice or a charge-sheet, the ultimate order or the order of punishment has to be in consonance with the show-cause notice or charge-sheet.* ***In other words, the scope of the entire proceedings is defined by the show-cause notice or the charge-sheet. The same is true for decisions of any State or other authority within the meaning Article 12 of the Constitution arising out of a show-cause notice. When a process is triggered off by a show-cause notice or a charge-sheet, the reasonableness of what follows, including the quality of the opportunity afforded to the person proceeded against and***

the propriety of the ultimate decision, are pegged to and rooted in the show-cause notice. The proceedings can, ordinarily, not be expanded beyond what is conceived of and outlined by the show-cause notice and any transgression, almost invariably, would not pass the scrutiny under judicial review."

22. In **Sahdeo Alias Sahdeo Singh Versus State of Uttar Pradesh and Others (2010) 3 SCC 705** in paragraph 27 as follows:

> ***"23.*** *The notices had been served upon the appellants and other alleged contemnor.* ***There was no case filed by the State of U.P. before the High Court in respect of abduction of Tej Veer Singh nor any application for initiating contempt proceedings was ever filed by any person. Admittedly, the proceedings were initiated by the High Court suo motu. The notice itself remains incomplete, inaccurate and mis-leading. The Registry of the High Court issued the "dotted lines notice" without any sense of responsibility. The notice did not mention as what was the allegation/accusation against either of them. It did not contain any charge(s) against either of them.*** *In D.K. Basu (supra) this Court has issued as many as eleven directions to the police authorities inter-alia, furnishing the information of the person arrested to his relatives; the person should be arrested only by the police officials with clear identification marks; a memo of arrest is to be prepared at the time of arrest, which should be attested at least by some person from the locality; the time, place of arrest and venue of custody must be disclosed etc. etc. This Court*

further observed that non-observance of any of the directions issued therein would make the Police personnel liable for departmental action and render them liable to be punished for Contempt of Court and proceedings for Contempt of Court would be initiated in the High Court having territorial jurisdiction over the matter."

23. Hon'ble supreme Court in **M.N. Ojha & Ors. v. Alok Kumar Srivastav & (2009) 9 SCC 682,** held that;

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. ***He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused.*** *The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. The case on hand is a classic illustration of non-application of mind by the learned Magistrate. The learned Magistrate did not scrutinize even the contents of the complaint, leave aside the material documents available on record. The learned Magistrate truly was a silent spectator at the time of recording of preliminary evidence before summoning the appellants.*

The High Court committed a manifest error in disposing of the petition filed by the appellants for

quashing the said illegal order without even adverting to the basic facts which were placed before it for its consideration. The High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair-minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. ***In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the Complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint. It is well settled and needs no restatement that the saving of inherent power of the High Court in criminal matters is intended to achieve a salutary public purpose "which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If such power is not conceded, it may even lead to injustice".*** *[See: State of Karnataka Vs. L. Muniswamy (1977) 2 SCC 699).”*

24. In **Birla Corporation Ltd. Vs. Aventz 2019 SCC OnLine SC 682** it is ruled as under;

34. *The order of the Magistrate summoning the Accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The application of mind has to be indicated by disclosure of mind on the satisfaction. Considering the duties on the part of the Magistrate for issuance of summons to Accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in taking cognizance of*

the complaint, in Mehmood Ul Rehman, this Court held as under:-

22. *The Code of Criminal Procedure requires speaking order to be passed Under Section 203 Code of Criminal Procedure when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation Under Section 202 Code of Criminal Procedure, if any, the Accused is answerable before the criminal court, there is ground for proceeding against the Accused Under Section 204 Code of Criminal Procedure, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds Under Sections 190/204 Code of Criminal Procedure, the High Court Under Section 482 Code of Criminal Procedure is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an Accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.*

35. In <u>Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate (1998) 5 SCC 749</u>*, the Supreme Court has held that summoning of an Accused in a criminal case is a serious matter and that the order of the Magistrate summoning the Accused*

must reflect that he has applied his mind to the facts of the case and law governing the issue. In para (28), it was held as under:-

28. *Summoning of an Accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the Complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the Accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the Complainant to succeed in bringing charge home to the Accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the Accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the Complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the Accused.*

The principle that summoning an Accused in a criminal case is a serious matter and that as a matter of course, the criminal case against a person cannot be set into motion was reiterated in GHCL Employees Stock Option Trust v. India Infoline Limited MANU/SC/0271/2013 : (2013) 4 SCC 505.

36*. To be summoned/to appear before the Criminal Court as an Accused is a serious matter affecting one's dignity and reputation in the society. In taking recourse to such a serious matter in summoning the*

Accused in a case filed on a complaint otherwise than on a police report, there has to be application of mind as to whether the allegations in the complaint constitute essential ingredients of the offence and whether there are sufficient grounds for proceeding against the Accused. In Punjab National Bank and Ors. v. Surendra Prasad Sinha MANU/SC/0345/1992 : 1993 Supp (1) SCC 499, it was held that the issuance of process should not be mechanical nor should be made an instrument of oppression or needless harassment.

37. *At the stage of issuance of process to the Accused, the Magistrate is not required to record detailed orders. But based on the allegations made in the complaint or the evidence led in support of the same, the Magistrate is to be prima facie satisfied that there are sufficient grounds for proceeding against the Accused. In Jagdish Ram v. State of Rajasthan and Anr. MANU/SC/0196/2004 : (2004) 4 SCC 432, it was held as under:-*

10. *The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the Accused, the Magistrate is not required to record reasons.*

38. *Extensive reference to the case law would clearly show that the allegations in the complaint and Complainant's statement and other materials must show that there are sufficient grounds for proceeding against the Accused. In the light of the above*

principles, let us consider the present case whether the allegations in the complaint and the statement of the Complainant and other materials before the Magistrate were sufficient enough to constitute prima-facie case to justify the Magistrate's satisfaction that there were sufficient grounds for proceeding against the Respondents-Accused and whether there was application of mind by the learned Magistrate in taking cognizance of the offences and issuing process to the Respondents.

39. *Respondents No. 1 to 5 are minority shareholders in the Appellant-Company. Respondent No. 6 is a lawyer and a trustee of Birla Education Trust. Respondent No. 6 had been empowered to file petition before the CLB. Respondents No. 7, 8 and 9 are the Directors of Respondents No. 1, 3 and 2 respectively. On 10.03.2010, Company Petition CP No. 1/2010 was filed before the Company Law Board Under Sections 235, 237, 247, 250, 397, 398, 402 and 403 of the Companies Act, 1956 by Respondents No. 1 to 5 who are the shareholders of the Appellant Company alleging oppression and mismanagement. M/s. Birla Education Trust (represented by Respondent No. 6) is also one of the Petitioners in the Company Petition. Along with the Company Petition, the copy of the documents in question i.e. documents No. 1 to 54 including document No. 1-Internal Audit Report were filed and advance copy of the Company Petition and copy of the documents were given to the Appellant."*

But the one line order directing **'Issue Notice'** in a Contempt petition is a contempt petition is highly illegal.

 # CHARGE # <u>THE POOR LEVEL OF UNDERSTANDING</u>

Hon'ble Supreme Court in **<u>Superintendent of Central Excise and others Vs. Somabhai Ranchhodhbhai Patel AIR 2001 SC 1975</u>** , ruled as under;

"(A) Contempt of Courts Act (70 of 1971), S.2 –

Misinterpritation of judgment of Hon'ble Supreme Court. The level of judicial officer's understanding can have serious impact on other litigants-

Misinterpretation of order of Supreme Court - Civil Judge of Senior Division erred in reading and understanding the Order of Supreme Court - Contempt proceedings initiated against the Judge - Judge tendered unconditional apology saying that with his limited understanding, he could not read the order correctly. While passing the Order, he inadvertently erred in reading and understanding the Order of Supreme Court - Supreme Court issued severe reprimand – Held, The officer is holding a responsible position of a Civil Judge of Senior Division. Even a new entrant to judicial service would not commit such mistake assuming it was a mistake - It cannot be ignored that the level of judicial officer's understanding can have serious impact on other litigants. There is no manner of doubt that the officer has acted in most negligent manner without any caution or care whatsoever- Without any further comment, we would leave this aspect to the disciplinary authority for appropriate action, if any, taking into consideration all relevant facts. We do not know whether present is an isolated case of such an understanding? We do not know what has been his past record? In this view, we direct that a copy of the order shall be sent forthwith to the Registrar General of the High Court.".

25. On the point of predictability of the outcome of a case and transparency in the judiciary, the reputed and well-known learned authors and legal experts of Bangladesh in ***"The Desired Qualities of a Good Judge"***,have expressed thus:

"In all acts of judgment, the Judges should be

transparent so that not only the lawyers but also the litigants can easily predict the outcome of a case. Transparency and predictability are essential for the judiciary as an institution of public credibility."

In ***"A.M. Mathur vs. Pramod Kumar Gupta; (1990) 2 SCC 533"***, it was held that –**the quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary.**

Other qualities of a good judge have been described by the said authors as under:

(i) A judge is a pillar of our entire justice system and the public expects highest and irreproachable conduct from anyone performing a judicial function.

(ii) Judgesmust be knowledgeable about the law, willing to undertake in-depth legal research, and able to write decisions that are clear, logical and cogent. Their judgment should be sound and they should be able to make informed decisions that will stand up to close scrutiny.

(iii) *Centuries ago Justinian said that precepts of law are three in number i.e. to live honestly, to give every man his due and to injure none.*

(iv) Judiciary as an organ of the state has to administer fair justice according to the direction of the Constitution and the mandate of law.

(v) *Every judge is a role model to the society to which he belongs. The same are embodied in all the religious scriptures.* ***Socrates once stated that a judge must listen courteously, answer wisely, considers soberly and decides impartially.***

(vi) *The qualities of a good judge include*

patience, wisdom, courage, firmness, alertness, incorruptibility and the gifts of sympathy and insight. In a democracy, a judge is accorded great respect by the state as well as its citizens. He is not only permitted to assert his freedom and impartiality but also expected to use all his forensic skill to protect the rights of the individual against arbitrariness.

(vii) Simon Rifkind laid down "The courtroom, sooner or later, becomes the image of the judge. It will rise or fall to the level of the judge who presides over it… No one can doubt that to sit in the presence of a truly great judge is one of the great and moving experiences of a lifetime."

(viii) *There is no alternative of qualified and qualitative judges who religiously follow the rule of law and administer good governance.*

(ix) The social service, which the Judge renders to the community, is the removal of a sense of injustice.

(x) Judiciary handled by legal person is the custodian of life and property of the people at large, *and so the pivotal and central role as played by the judicial officers should endowed higher degree of qualities in consonance with the principles of "standard of care", "duty of care" and "reasonable person" as necessary with judicial functionaries.*

(xi) The American Bar Association once published an article called Good Trial Judges in which it discussed the difference in the qualities of a good judge and a bad judge and noted that practicing before a "good judge is a real pleasure," and "practicing before a bad judge is misery.

(xii) The Judges exercise the judicial

power on trust. Normally when one sits in the seat of justice,he is expected to be honest, trustworthy, truthful and a highly responsible person. The public perception of a Judge is very important. Marshal, Chief Justice of the United States Supreme Court said, "we must never forget that the only real source of power we as judges can tap is the respect of the people. It is undeniable that the Courts are acting for the people who have reposed confidence in them." That is why Lord Denning said, "Justice is rooted in confidence, and confidence is destroyed when the right-minded go away thinking that the Judge is biased".

(xiii) *A Judge ought to be wise enough to know that he is fallible and therefore, ever ready to learn; great and honest enough to discard all mere pride of opinion, and follow truth wherever it may lead, and courageous enough to acknowledge his errors.*

(xiv) *Judge 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. Moreover, patience and gravity of hearing is also an essential part of justice, and an over speaking Judge is known as well tuned cymbal.*

(xv) It is the duty of the Judges to follow the law,as they cannot do anything whatever they like. *In the language of Benjamin N. Cardozo – "The Judge even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles".*

(xvi) Judges should be knowledgeable about the law, willing to undertake in-depth legal research, and able to write decisions that are clear and cogent.

(xvii) If a Judge leaves the law and makes his own decisions, even if in substance they are just, he loses the protection of the law and sacrifices the appearance of impartiality which is given by adherence to the law.

(xviii) *A Judge has to be not only impartial but seen to be impartial too.*

(xix) *Every judge is a role model to the society to which he belongs. The judges are certainly, accountable but they are accountable to their conscience and people's confidence. As observed by Lord Atkin – "Justice is not a cloistered virtue and she must be allowed to suffer the criticism and respectful, though outspoken, comments of ordinary men".*

(xx) With regard to the accountability of the Judges of the subordinate Courts and Tribunals it may be mentioned that the Constitution authorizes the High Court Division to use full power of superintendence and control over subordinate Courts and Tribunals. Under the Constitution, a guideline in the nature of Code of Conduct can be formulated for the Judges of the subordinate courts for the effective control and supervision of the High Courts Division. In this method, the judicial accountability of the Judges of the subordinate courts could be ensured."

26. **<u>In State of Rajasthan vs. Prakash Chand & Ors.; (1998) 1 SCC 1",</u>** it has been held as under;

"It must be remembered that it is the duty of every member of the legal fraternity to ensure that the image of the judiciary is not tarnished and its respectability eroded. … Judicial authoritarianism is what the proceedings in the instant case smack of. It cannot be permitted under any guise. … It needs no emphasis to say that all actions of a Judge must be judicious in character. Erosion of credibility of the judiciary, in the public mind, for whatever reasons, is greatest threat to the independence of the judiciary. Eternal vigilance by the Judges to guard against any such latent internal danger is, therefore, necessary, lest we "suffer from self-inflicted mortal wounds". We must remember that the constitution does not give unlimited powers to any one including the Judge of all levels. The societal perception of Judges as being detached and impartial referees is the greatest strength of the judiciary and every member of the judiciary must ensure that this perception does not receive a setback consciously or unconsciously. Authenticity of the judicial process rests on public confidence and public confidence rests on legitimacy of judicial process. Sources of legitimacy are in the impersonal application by the Judge of recognised objective principles which owe their existence to a system as distinguished from subjective moods, predilections, emotions and prejudices."

27. In **"Madhav Hayawadanrao Hoskot vs. State of Maharashtra; (1978) 3 SCC 544",** Justice **Shri V.R. Krishna**

Iyer reproduced the well-known words of Mr. Justice William J. Brennan, Jr. and held as under;

> **"16. Nothing rankles** *(cause annoyance)* ***more in the human heart than a brooding sense*** *(fear / anxiety)* ***of injustice.***
>
> ***...Democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness.***
>
> ***The social service which the Judges render to the community is the removal of a sense / fear of injustice from the hearts of people, which unfortunately is not being done, and the people (victims & dejected litigants) have been left abandoned to suffer and bear their existing painful conditions, and absolutely on the mercy of GOD."***

28. Justice Krishna Iyer in **Raghbir Singh vs State Of Haryana 1980 SCR (3) 277** said :

> ***"****4. We conclude with the disconcerting note sounded by Abraham Lincoln* :
> "*If you once forfeit the confidence of your fellow citizens you can never regain their respect and esteem.* ***It is true that you can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the time."***

29. In **Umesh Chandra Vs State of Uttar Pradesh & Ors. 2006 (5) AWC 4519 ALL** it is ruled as under;

> ***"If Judge is passing illegal order either due to negligence or extraneous consideration giving undue advantage to the party then that Judge is liable for action in spite of the fact that an order***

can be corrected in appellate/revisional jurisdiction - The acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the Judicial Officer, in such cases imposition of penalty of dismissal from service is well justified

The order was passed giving undue advantage to the main accused - grave negligence is also a misconduct and warrant initiation of disciplinary proceedings - in spite of the fact that an order can be corrected in appellate/revisional jurisdiction but if the order smacks of any corrupt motive or reflects on the integrity of the judicial officer, enquiry can be held .

JUDICIAL OFFICERS - *has to be examined in the light of a different standard that of other administrative officers. There is much requirement of credibility of the conduct and integrity of judicial officers - the acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, in such cases imposition of penalty of dismissal from service is well justified - Judges perform a "function that is utterly divine" and officers of the subordinate judiciary have the responsibility of building up of the case appropriately to answer the cause of justice. "The personality, knowledge, judicial restrain, capacity to maintain dignity" are the additional aspects which go into making the Courts functioning successfully - the judiciary is the repository of public faith. It is the trustee of the*

people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the failure of public confidence in the system. We must remember woodpeckers inside pose larger threat than the storm outside

The Inquiry Judge has held that even if the petitioner was competent to grant bail, he passed the order giving undue advantage of discharge to the main accused and did not keep in mind the gravity of the charge. This finding requires to be considered in view of the settled proposition of law that grave negligence is also a misconduct and warrant initiation of disciplinary proceedings .

The petitioner, an officer of the Judicial Services of this State, has challenged the order of the High Court on the administrative side dated 11.02.2005 (Annex.11) whereby the petitioner has been deprived of three increments by withholding the same with cumulative effect.

The petitioner, while working as Additional Chief Metropolitan Magistrate, Kanpur, granted bail on 29.06.1993 to an accused named Atul Mehrotra in Crime Case No. 3240 of 1992 under Section 420, 467, 468, I.P.C. Not only this, an application was moved by the said accused under Section 239, Cr.P.C. for discharge which was also allowed within 10 days vide order dated 06.08.1993. The said order of discharge

was however reversed in a revision filed by the State According to the prosecution case, the accused was liable to be punished for imprisonment with life on such charges being proved, and as such, the officer concerned committed a gross error of jurisdiction by extending the benefit of bail to the accused on the same day when he surrendered before the Court. Further, this was not a case where the accused ought to have been discharged and the order passed by the officer was, therefore, an act of undue haste.

The then Chief Manager, Punjab National Bank, Birhana Road Branch, Kanpur Nagar made a complaint on the administrative side on 11.11.1995 to the then Hon'ble Chief Justice of this Court. The matter was entrusted to the Vigilance Department to enquire and report. After almost four and half years, the vigilance inquiry report was submitted on 14.03.2002 and on the basis of the same the petitioner was suspended on 30th April, 2002 and it was resolved to initiate disciplinary proceedings against the petitioner. A charge sheet was issued to the petitioner on 6th September, 2002 to which he submitted a reply on 22.10.2002. The enquiry was entrusted to Hon'ble Justice Pradeep Kant, who conducted the enquiry and submitted a detailed report dated 06.02.2002 (Annex-8). A show cause notice was issued to the petitioner along with a copy of the enquiry report to which the petitioner submitted his reply on 19.05.2004 (Annex.10). The enquiry report was accepted by the Administrative Committee and the Full Court ultimately resolved to reinstate the petitioner but imposed the punishment of withholding of three annual grade increments with cumulative effect which order is under challenge in the present writ petition.

B) JUDICIAL OFFICERS - has to be examined in the light of a different standard that of other

administrative officers. There is much requirement of credibility of the conduct and integrity of judicial officers - the acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, in such cases imposition of penalty of dismissal from service is well justified - Judges perform a "function that is utterly divine" and officers of the subordinate judiciary have the responsibility of building up of the case appropriately to answer the cause of justice. "The personality, knowledge, judicial restrain, capacity to maintain dignity" are the additional aspects which go into making the Courts functioning successfully - the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the failure of public confidence in the system. We must remember woodpeckers inside pose larger threat than the storm outside

In Government of Tamil Nadu Vs. K.N. Ramamurthy, AIR 1997 SC 3571, the Hon'ble Supreme Court held

that exercise of judicial or quasi judicial power negligently having adverse affect on the party or the State certainly amounts to misconduct.

In M.H. Devendrappa Vs. The Karnataka State Small Industries Development Corporation, AIR 1998 SC 1064, the Hon'ble Supreme Court ruled that any action of an employee which is detrimental to the prestige of the institution or employment, would amount to misconduct.

In High Court of Judicature at Bombay Vs. Udaysingh & Ors., A.I.R. 1997 SC 2286 the Hon'ble Apex Court while dealing with a case of judicial officer held as under:-

"Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that imposition of penalty of dismissal from service is well justified."

This Court in Ram Chandra Shukla Vs. State of U.P. & Ors., (2002) 1 ALR 138 held that the case of judicial officers has to be examined in the light of a different standard that of other administrative officers. There is much requirement of credibility of the conduct and integrity of judicial officers.

In High Court of Judicature at Bombay V. Shirish Kumar Rangrao Patil & Anr., AIR 1997 SC 2631, the Supreme Court observed as under:-

"The lymph nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of the judiciary and the need to stem it out by judicial surgery lies on the judiciary itself by its self-imposed

or corrective measures or disciplinary action under the doctrine of control enshrined in Articles 235, 124 (6) of the Constitution. It would, therefore, be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection.

When such a constitutional function was exercised by the administrative side of the High Court any judicial review thereon should have been made not only with great care and circumspection, but confining strictly to the parameters set by this Court in the aforesaid decisions.--------"

In Government of Andhra Pradesh Vs. P. Posetty, (2000) 2 SCC 220, the Hon'ble Supreme Court held that sense of propriety and acting in derogation to the prestige of the institution and placing his official position under any kind of embarrassment may amount to misconduct as the same may ultimately lead that the delinquent had behaved in a manner which is unbecoming of an employee/Government servant.

In All India Judges' Association Vs. Union of India & Ors., AIR 1992 SC 165, the Hon'ble Supreme Court observed that Judges perform a "function that is utterly divine" and officers of the subordinate judiciary have the responsibility of building up of the case appropriately to answer the cause of justice. "The personality, knowledge, judicial restrain, capacity to maintain dignity" are the additional aspects which go into making the Courts functioning successfully.

In Tarak Singh & Anr. Vs. Jyoti Basu & Ors., (2005) 1 SCC 201, the Hon'ble Supreme Court observed as under:-

"Today, the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only

temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the failure of public confidence in the system. We must remember woodpeckers inside pose larger threat than the storm outside."

30. In the case of **Raman Lal Vs. State 2001 Cri.L.J. 800.** it is ruled as under;

> ***" A] Cri. P.C. Sec. 197 – Sanction for prosecution of High Court Judge – Accused are Additional High Court Judge, Suprintendant of Police Sanjeev Bhatt and others – The accused hatched conspiracy to falsely implicate a shop owner in a case under N.D.P.S. Act and when shop owner submitted to their demands he was discharged – Complaint u.s. 120-B, 195, 196, 342, 347, 357, 368, 388, 458, 482, I.P.c. and Sec. 17, 58 (1), (2) of NDPS Act – Held – there is no connection between official duty and offence – No sanction is required for prosecution – Registration of F.I.R. and investigation legal and proper.***
>
> ***B] Cri. P.C. Sec. 156 – Investigation against accused Addl. High Court Judge – Whether prior consultation with Chief Justice is necessary prior filling of F.I.R. against a High Court Judge as has been laid down by Supreme Court in K.***

Veerswami's case (1991) (3) SCC 655) – Held – In K. Veerswami's case Supreme Court observed that the Judges are liable to be dealt with just the same as any other person in respect of criminal offence and only in offence regarding corruption the sanction for criminal prosecution is required – the directions issued by Hon'ble Supreme Court are not applicable in instant case.

C] The applicant – Ram Lal Addl. High Court Judge hatched criminal conspiracy – The Bar Association submitted a representation to Hon'ble Chief Justice of India on 11-09-1997 requesting to not to confirm Raman Lal as Judge of the High Court – Later on he was transferred to Principal Judge of city Civil and Sessions Court at Ahmedabad – S.P. (C.I.D.) Jaipur sent a questionnaire through the registrar, Gujrat High Court to accused Addl. High Court Judge – Chief Justice granted permission to I.O. to interrogate – Later on I.O. sent letter to applicant to remain present before Chief Judicial Magistrate at the time of filing the charge-sheet – Applicant filed petition before High Court challenging it – Petition of applicant was rejected by High Court and Supreme Court in limine – No relief is required to be granted to petitioner in view of the facts of the case.

D] Conspiracy – I.P.C. Sec. 120 (B) – Apex court made it clear that an inference of conspiracy has to be drawn on the basis of circumstantial evidence only because it becomes difficult to get direct evidence on such issue – The offence can only be proved largely from the inference drawn from acts or illegal

ommission committed by them in furtherance of a common design – Once such a conspiracy is proved, act of one conspirator becomes the act of the others – A Co-conspirator who joins subsequently and commits overt acts in furtherance of the conspiracy must also be held liable – Proceeding against accused cannot be quashed.

E] Jurisdiction – Continuing offence – Held – Where complainants allegations are of stinking magnitude and the authority which ought to have redressed it have closed its eyes and not even trid to find out the real offender and the clues for illegal arrest and harassment are not enquired then he can not be let at the mercy of such law enforcing agencies who adopted an entirely indifferent attitude – Legal maxim Necessiatas sub lege Non continetureQuia Qua Quad Alias Non EstLictumNecessitasfacitLictum, Means necessity is not restrained by laws – Since what otherwise is not lawful necessity makes it lawful – Proceeding proper cannot be quashed."

31. In **Smt. Justice Nirmal Yadav Vs. C.B.I. 2011 (4) RCR (Criminal) 809** it is ruled as under;

"Hon'ble Supreme Court observed:

Be you ever so high, the law is above you." Merely because the petitioner has enjoyed one of the highest constitutional offices(Judge of a High Court), she cannot claim any special right or privilege as an accused than prescribed under law. Rule of law has to prevail and must prevail equally and uniformly, irrespective of the status of an individual.

The petitioner Justice Mrs. Nirmal Yadav, the then Judge of Punjab and Haryana High Court found to have taken bribe to decide a case pending before her- CBI charge sheeted - It is also part of investigation by CBI that this amount of Rs.15.00 lacs was received by Ms. Yadav as a consideration for deciding RSA No.550 of 2007 pertaining to plot no.601, Sector 16, Panchkula for which Sanjiv Bansal had acquired interest. It is stated that during investigation, it is also revealed that Sanjiv Bansal paid the fare of air tickets of Mrs. Yadav and Mrs. Yadav used matrix mobile phone card provided to her by Shri Ravinder Singh on her foreign visit. To establish the close proximity between Mrs. Yadav, Ravinder Singh, Sanjiv Bansal and Rajiv Gupta, CBI has given details of phone calls amongst these accused persons during the period when money changed hands and the incidence of delivery of money at the residence of Ms. Nirmaljit Kaur and even during the period of initial investigation - the CBI concluded that the offence punishable under Section 12 of the PC Act is established against Ravinder Singh, Sanjiv Bansal and Rajiv Gupta whereas offence under Section 11 of the PC Act is established against Mrs.Justice Nirmal Yadav whereas offence punishable under Section 120-B of the IPC read with Sections 193, 192, 196, 199 and 200 IPC is also established against Shri Sanjiv Bansal, Rajiv Gupta and Mrs. Justice Nirmal yadav

It has been observed by Hon'ble Supreme Court ***"Be you ever so high, the law is above you." Merely because the petitioner has enjoyed one of the highest constitutional offices(Judge of a High Court), she cannot claim***

any special right or privilege as an accused than prescribed under law. Rule of law has to prevail and must prevail equally and uniformly, irrespective of the status of an individual. *Taking a panoptic view of all the factual and legal issues, I find no valid ground for judicial intervention in exercise of inherent jurisdiction vested with this Court. Consequently, this petition is dismissed.*

B) In-House procedure 1999 , for enquiry against High Court and Supreme Court Judges - Since the matter pertains to allegations against a sitting High Court Judge, the then Hon'ble Chief Justice of India, constituted a three members committee comprising of Hon'ble Mr.Justice H.L. Gokhale, the then Chief Justice of Allahabad High Court, presently Judge of Hon'ble Supreme Court, Justice K.S. Radhakrishnan, the then Chief Justice of Gujarat High Court, presently, Judge of Hon'ble Supreme Court and Justice Madan B.Lokur, the then Judge of Delhi High Court, presently Chief Justice Gauhati High Court in terms of In-House procedure adopted by Hon'ble Supreme Court on 7.5.1997. The order dated 25.8.2008 constituting the Committee also contains the terms of reference of the Committee. The Committee was asked to enquire into the allegations against Justice Mrs. Nirmal Yadav, Judge of Punjab and Haryana High Court revealed, during the course of investigation in the case registered vide FIR No.250 of 2008 dated 16.8.2008 at Police Station, Sector 11, Chandigarh and later transferred to CBI.

The Committee during the course of its enquiry examined the witnesses and recorded the statements of as many as 19 witnesses, including Mrs.Justice Nirmal Yadav (petitioner), Ms. Justice Nirmaljit Kaur, Sanjiv Bansal, the other accused named in the FIR and various other witnesses. The Committee also examined various documents, including data of phone calls exchanged between Mrs. Justice Nirmal yadav and Mr.Ravinder Singh and his wife Mohinder Kaur, Mr.Sanjiv Bansal and Mr.Ravinder Singh, Mr.Rajiv Gupta and Mr. Sanjiv Bansal. On the basis of evidence and material before it, the Committee of Hon'ble Judges has drawn an inference that the money delivered at the residence of Hon'ble Ms.Justice Nirmaljit Kasectionur was in fact meant for Ms.Justice Nirmal Yadav."

32. Hon'ble 5 Judge Bench of **Privy Council in Appeal No.21 of 1977** in the matter between **Ramesh Maharaj Vs. The Attorney General (1978) 2 WLR 902** had ruled that;

*"According their Lordships in agreement with Phillips J.A. would answer question (2): "**Yes; the failure of Maharaj J. to inform the appellant of the specific nature of the contempt of Court with which he was charged did contravene a constitutional right of the appellant** in respect of which he was entitled to protection under s.1(a)."*

The order of Maharaj J. committing the appellant to prison was made by him in the exercise of the judicial powers of the State; the arrest and detention of the appellant pursuant to the judge's order was effected by the executive arm of the State. So if his detention amounted to a contravention of his rights under S.1(a), it was a

contravention by the State against which he was entitled to protection*.*

*…**This is not vicarious liability; it is a liability of the State itself. It is not a liability in tort at all; it is a liability in the public law of the State, not of the judge himself, which has been newly created by S.6(1) and (2) of the Constitution.***

*.. It is only **in the case of imprisonment or corporal punishment already undergone before an appeal can be heard that the consequences of the judgment or order cannot be put right on appeal to an appellate court. It is true that instead of, or even as well as, pursuing the ordinary course of appealing directly to an appellate court, a party to legal proceeding who alleges that a fundamental rule of natural justice has been infringed in the course of the determination of his case, could in theory seek collateral relief in an application to the High Court under.***

*For these reasons the appeal must be allowed and **the case remitted to the high court with a direction to assess the amount of monetary compensation to which the appellant is entitled .The respondent must pay the costs of this appeal and of the proceeding in both Courts below."***

33. In **Walmik s/o Deorao Bobde Vs. State 2001 ALLMR (Cri.)1731,** it is ruled that

*In our opinion a reckless arrest of a citizen and detention **even under a warrant of arrest by a competent Court without first satisfying itself of such necessity and fullfilment of the requirement of law is actionable as it violates not only his fundamental rights but such action deserves to be condemned being taken in utter disregard to human rights of an individual***

citizen.

Compensation granted

"11. We have ascertained the status of the petitioner so as to work out his entitlement for compensation. We are informed that the petitioner works as Production Manager in a reputed firm M/s. Haldiram Bhujiwala, and draws salary of more than Rs.7000/- p.m. He has, wife, two marriageable daughters and a son in his family. After giving our anxious thought to the matter we award a sum of Rs.10,000/- to the petitioner as compensation. The State is directed to pay the amount of Rs.10,000/- to the petitioner within a period of four weeks, or deposit the same in this Court. We are also granting cost to the petitioner quantified to Rs.5000/-. It will be open for the State to recover the amount so awarded from the monetary benefits/pension, the delinquent clerk/his family is entitled to receive or will be receiving on his death. Rule made absolute in the aforesaid terms. Certified copy expedited.

12. Additional Registrar, to circulate the copy of this order to all the District & Sessions Judges, for being circulated to Judicial Officers working within their jurisdiction."

34. In **Dr. Mahmood Nayyer Azam Vs. State (2012) 8 SCC 1**, it is ruled as under ;

Article 21 of the Constitution - RIGHT TO LIFE *includes the right to live with human dignity and all that goes along with it – If reputation is injured by unjustified acts of Public servants then Writ Court can grant compensation- Rs.5.00 lacs (Rupees five lacs only) should be granted towards compensation to the appellant - law cannot become a silent*

spectator - The law should not be seen to sit by limply, while those who defy if go free, and those who seek its protection lose hope - When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector- The action of the State, must be "right, just and fair". Using any form of torture would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21 - Any psychological torture inflicts immense mental pain. A mental suffering at any age in life can carry the brunt and may have nightmarish effect on the victim. The hurt develops a sense of insecurity, helplessness and his self-respect gets gradually atrophied- the authorities possibly have some kind of sadistic pleasure or to "please someone" meted out the appellant with this kind of treatment. It is not to be forgotten that when dignity is lost, the breath of life gets into oblivion. In a society governed by rule of law where humanity has to be a laser beam, as our compassionate constitution has so emphasized, the police authorities cannot show the power or prowess to vivisect and dismember the same. When they pave such path, law cannot become a silent spectator - The law should not be seen to sit by limply, while those who defy if go free, and those who seek its protection lose hope.

B] The High Court, despite no factual dispute, has required him to submit a representation to the State Government for adequate relief pertaining to grant of compensation after expiry of 19 years with a further stipulation that if he is aggrieved by it, he can take recourse to requisite

proceedings available to him under law. We are pained to say that this is not only asking a man to prefer an appeal from Caesar to Caesar's wife but it also compels him like a cursed Sisyphus to carry the stone to the top of the mountain wherefrom the stone rolls down and he is obliged to repeatedly perform that futile exercise.

35. Full Bench of Hon'ble Supreme Court in the case of **S. Nambi Narayanan Vs. Siby Mathews and Others (2018) 10 SCC 804**had granted compensation of Rupees 50 Lacs. It is ruled as under para 40 & 44

"40. *If the obtaining factual matrix is adjudged on the aforesaid principles and parameters, there can be no scintilla of doubt that the Appellant, a successful scientist having national reputation, has been compelled to undergo immense humiliation.* ***The lackadaisical attitude of the State police to arrest anyone and put him in police custody has made the Appellant to suffer the ignominy. The dignity of a person gets shocked when psycho-pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy. We are absolutely conscious that a civil suit has been filed for grant of compensation. That will not debar the constitutional court to grant compensation taking recourse to public law. The Court cannot lose sight of the wrongful imprisonment, malicious prosecution, the humiliation and the defamation faced by the Appellant.*** *In Sube Singh v. State of Haryana and Ors. MANU/SC/0821/2006 : (2006)*

3 SCC 178, the three-Judge Bench, after referring to the earlier decisions, has opined:

38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right Under Article 21, by a public servant. *The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation Under Section 357 of the Code of Criminal Procedure.*

44. *Mr. Giri, learned senior Counsel for the Appellant and the Appellant who also appeared in person on certain occasions have submitted that the grant of compensation is not the solution in a case of the present nature. It is urged by them that* ***the authorities who have been responsible to cause such kind of harrowing effect on the mind of the Appellant should face the legal consequences. It is suggested that a Committee should be constituted to take appropriate steps against the erring officials. Though the suggestion has been strenuously opposed, yet we really remain unimpressed by the said oppugnation. We think that the obtaining factual scenario calls for constitution of a Committee to find out ways and means to take appropriate steps against the erring officials. For the said purpose, we constitute a Committee***

which shall be headed by Justice D.K. Jain, a former Judge of this Court. The Central Government and the State Government are directed to nominate one officer each so that apposite action can be taken. *The Committee shall meet at Delhi and function from Delhi. However, it has option to hold meetings at appropriate place in the State of Kerala. Justice D.K. Jain shall be the Chairman of the Committee and the Central Government is directed to bear the costs and provide perquisites as provided to a retired Judge when he heads a committee. The Committee shall be provided with all logistical facilities for the conduct of its business including the secretarial staff by the Central Government."*

36. Hon'ble Supreme Court in the case of **Noida Entrepreneurs Associationand Ors. Vs.NOIDA and Ors. (2011) 6 SCC 508** had ruled as under;

Undue haste –In absence of any urgency – *Inference of malafide can be drawn against the said public servant. Thereafter it is a matter of investigation to find out whether there was any ulterior motive – Fraud, Forgery, Malafides.*

37. Hon'ble Bombay High Court in **Garware Polyster Ltd. Vs. The State of Maharashtra and Ors. 2010 SCC OnLine Bom 2223** had ruled as under ;

Contempt of Courts Act – All the officers /authorities are bound to follow the procedure laid down by Higher Court in its judgment – The legal proceeding is initiated by the officer is against the judgment of High Court amounts to contempt of High Court – show cause notice is issued to Mr. MoreshwarNathuji Dubey, Dy. Commissioner, LTU, Aurangabad, returnable

after four weeks to show cause, as to why action under the provisions of the Contempt of Courts Act should not be initiated against him.

38. In **Rabindra Nath Singh Vs. Rajesh Ranjan @ Pappu Yadav and Anr. (2010) 6 SCC 417** it is ruled as under ;

Contempt of Supreme Court by High Court – *High Court passed order in breach of Supreme Court direction – It is Contempt of Order of Supreme Court by the High Court.*

39. Hon'ble Justice Dr. B.S.Chauhan in the case of **Prof. Ramesh Chandra Vs State MANU/UP/0708/2007** ruled as under ;

Anything done in undue haste can also be termed as arbitrary and cannot be condoned in law for the reasons that in such a fact situation mala fide can be presumed*. Vide Dr. S.P. Kapoor v. State of Himachal Pradesh (AIR 1981 SC 281) ; Madhya Pradesh Hasta ShilpaVikas Nigam Ltd. v. Devendra Kumar Jain and Ors. [(1995) 1 SCC 638] and BahadursinhLakhubhaiGohil v. Jagdishbhai M. Kamalia and Ors (AIR 2004 SC 1159).*

Abuse of Power - the expression 'abuse' to mean misuse, i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means.

Abuse of Power has to be considered in the context and setting in which it has been used and cannot mean the use of a power which may appear to be simply unreasonable or inappropriate. It implies a

wilful abuse for an intentional wrong.

An honest though erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable but it would not be an abuse of power. Abuse of power must be in respect of such an incident which would render the office holder unworthy of holding the said post and it must entail adverse civil consequences, therefore, the word requires to be construed narrowly. It becomes duty of the authority holding an enquiry on such charge to apply its mind and also to consider the explanation furnished by the person proceeded against in this respect.

In M. Narayanan vs. State of Kerala [(1963) IILLJ 660 SC], the Constitution ''Bench of the Hon'ble Supreme Court interpreted the expression 'abuse' to mean as misuse, i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means.

In Erusian Equipment & Chemicals Ltd. v. State of West Bengal and Anr. ([1975] 2 SCR 674), the Supreme Court observed that where Government activity involves public element, the "citizen has a right to gain equal treatment", and when "the State acts to the prejudice of a person, it has to be supported by legality." Functioning of "democratic form of Government demands equality and absence of arbitrariness and discrimination."

Every action of the executive Government must be informed by reasons and should be free from arbitrariness. That is the very essence of rule of law and its bare minimum requirement.

The decision taken in an arbitrary manner contradicts the principle of legitimate expectation and the plea of legitimate expectation relates to procedural fairness in decision making and forms a part of the rule of non-arbitrariness as denial of administrative fairness is Constitutional anathema.

The rule of law inhibits arbitrary action and such action is liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an Impression of bias, favoritism and nepotism.

Procedural fairness is an implied mandatory requirement to protect arbitrary action where Statute confers wide power coupled with wide discretion on the authority. If procedure adopted by an authority offends the fundamental fairness or established ethos or shocks the conscience, the order stands vitiated. The decision making process remains bad.

Official arbitrariness is more subversive of doctrine of equality than the statutory discrimination. In spite of statutory discrimination, one knows where he stands but; the wand of official arbitrariness can be waved in all directions indiscriminately.

Similarly, in S.G. Jaisinghani v. Union of India and Ors.([1967] 65 ITR 34 (SC)), the Constitution Bench of the Apex Court observed as under:

"In the context it is important to emphasize that absence of arbitrary power is the first essence of the rule of law, upon which our whole Constitutional System is based. In a system

governed by rule of law, discretion, when conferred upon Executive Authorities, must be confined within the clearly defined limits. Rule of law, from this point of view, means that the decision should be made by the application of known principle and rules and h general such, decision should be predictable and the citizen should know where he is, if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is" antithesis to the decision taken in accordance with the rule of law."

Even in a situation where an authority is vested with a discretionary power, such power can be exercised by adopting that mode which best serves the interest and even if the Statute is silent as to how the discretion should be exercised, then too the authority cannot act whimsically or arbitrarily and its action should be guided by reasonableness and fairness because the legislature never intend that its authorities could abuse the laws or use it unfairly. Any action which results in unfairness and arbitrariness results in violation of Article 14 of the Constitution. It has also been emphasized that an authority cannot assume to itself an absolute power to adopt any procedure and the discretion must always be exercised according to law. It was, therefore, obligatory for the Chancellor to have held a proper enquiry in accordance with the principles of natural justice and mere giving of show cause notice requiring the petitioner to submit an explanation does not serve the purpose. The factual position that emerges in the present case is that the report of the Commissioner, Jhansi formed the sole basis for taking action against the Vice-Chancellor.

A Constitution Bench of the Hon'ble Supreme Court in Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors. ([1978] 2 SCR 272), while considering the issue held that observing the principles of natural justice is necessary as it may adversely affect the civil rights of a person. While deciding the said case, reliance was placed by the Hon'ble Supreme Court on its earlier judgments in State of Orissa v. Dr. (Miss) Binapani Dei and Ors. (1967 IILLJ 266 SC) wherein the Court held that the procedural rights require to be statutorily regulated for the reason that sometimes procedural protections are too precious to be negotiated or whittled down.

In Dr.Binapani Dei (supra), the Hon'ble Apex Court held as under:

"It is one of the fundamental rules of our constitutional set up that every citizen is protected against the exercise of arbitrary authority by the State or its officers If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity."

Discretion - It signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste - Discretion cannot be arbitrary - But must be result of judicial thinking - Word in itself implies vigilant circumspection and care.

The contention that the impugned order was

liable to be set aside inasmuch as the Chancellor had proceeded in hot haste after receiving the report from the State Government on 2nd June, 2005 as he issued the notice to the Vice-Chancellor on 24th June, 2005 and passed the impugned order on 16th July, 2005 when his term was going to end on 31st July, 2005 if, also worth acceptance.

Constitution of India - Article 14 - Principles of natural justice - If complaint made is regarding mandatory facet of principles of natural justice - Proof of prejudice not required.

In a case where a result of a decision taken by the Government the other party is likely to be adversely affected, the Government has to exercise its powers bona fide and not arbitrarily. The discretion of the Government cannot be absolute and in justiciable vide Amarnath Ashram Trust Society v. Governor of U.P. (AIR 1998 SC 477).

Each action of such authorities must pass the test of reasonableness and whenever action taken is found to be lacking bona fide and made in colorable exercise of the power, the Court should not hesitate to strike down such unfair and unjust proceedings. *Vide Hansraj H. Jain v. State of Maharashtra and Ors[(1993) 3 SCC 634].*

In fact, the order of the State or State instrumentality would stand vitiated if it lacks bona fides as it would only be a case of colourable exercise of power. In State of Punjab and Anr.v. Gurdial Singh and Ors. [(1980) 1 SCR 1071] the Hon'ble Apex Court has dealt

with the issue of legal malice which is, just different from the concept of personal bias. The Court observed as under:

> *"When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the Court calls it a colourable exercise and is undeceived by illusion.... If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the...official act."*

In Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Ors. [(1991) I LLJ 395 SC] and DwarkaDass and Ors. v. State of Haryana (2003 CriLJ 414) the Supreme Court observed that "discretion when conferred upon the executive authorities, must be confined within definite limits. The rule of law from this point of view means that decision should be made by the application by known-principles and rules and in general, such decision should be predictable and the citizen should know where he is.

The scope of discretionary power of an authority has been dealt with by the Supreme Court in Bangalore Medical Trust v. B.S. Muddappa and Ors [(1991) 3 SCR 102]and it has been observed:

> *"Discretion is an effective tool in administration. But wrong notions about it results in ill-conceived consequences. In law it provides an option to the authority concerned to adopt one or the other alternative. But* ***a better, proper and legal exercise of discretion is one***

where the authority examines the fact, is aware of law and then decides objectively and rationally what serves the interest better. When a statute either provides guidance or rules or regulations are framed for exercise of discretion then the action should be in accordance with it. Even where statutes are silent and only power is conferred to act in one or the other manner, the Authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never intends its authorities to abuse the law or use it unfairly.”

In Suman Gupta and Ors.v. State of J. & K. and Ors. ([1983] 3 SCR 985), the Supreme Court also considered the scope of discretionary powers and observed:

> *“We think it beyond dispute that the exercise of all administrative power vested in public authority must be structured within a system of controls informed by both relevance and reason - relevance in relation to the object which it seeks to serve, and reason in regard to the manner in which it attempts to do so. Wherever the exercise of such power affects individual rights, there can be no greater assurance protecting its valid exercise than its governance by these twin tests. A stream of case law radiating from the now well known decision in this Court in Maneka Gandhi v. Union of India has laid down in clear terms that Article 14 of the*

Constitution is violated by powers and procedures which in themselves result in unfairness and arbitrariness. It must be remembered that our entire constitutional system is founded in the rule of law, and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the bounds of reason.'

In Union of India v. Kuldeep Singh (AIR 2004 SC 827), the Supreme Court again observed:

"When anything is left to any person, judge or Magistrate to be done according to his discretion, the law intends it must be done with sound discretion, and according to law. *(See Tomlin's Law Dictionary.) In its ordinary meaning, the word "discretion" signifies unrestrained exercise of choice or will; freedom to act according to one's own judgment; unrestrained exercise of will; the liberty or power of acting without control other than one's own judgment. But, when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others.* ***Discretion is to discern between right and wrong; and therefore, whoever hath power to act at discretion, is bound by the rule of reason and law."***

Discretion, in general, is the

discernment of what is right and proper. It denotes knowledge and prudence, the discernment which enables a person to judge critically of what is correct and proper united with caution; nice soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons. When It is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself *(per Lord Halsbury, L.C., in Sharp v. Wakefield). Also see S.G. Jaisinghani v. Union of India { [1967] 65 ITR 34 (SC) }.*

The word "discretion" standing single and unsupported by circumstances signifies exercise own judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore, where the legislature concedes discretion it

also imposes a heavy responsibility.

MandalVikas Nigam Ltd. v. Girja Shankar Pant and Ors (AIR 2001 SC 24).while examining the legality of an order of dismissal that had been passed against the General Manager (Tourism) by the Managing, Director. In this context, while considering the doctrine of principles or natural justice, the Supreme Court observed:

"It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend though, however, we may hasten to add that the, same is dependent upon the facts and circumstances of each individual case.... It is on this context, the observations of this Court in the case of SayeedurRehman v. The State of Bihar ([1973] 2 SCR 1043) seems to be rather apposite."

The omission of express requirement of fair hearing in the rules or other source of power is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties.

G) Incidentally, Hidyatullah, C.J., in Channa basappa Basappa Happali v. State of

Mysore ([1971] 2 SCR 645), recorded the need of compliance of certain requirements in a departmental enquiry as at an enquiry, facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence. On this state of law simple question arises in the contextual facts, has this been complied with? The answer however on the factual score is an emphatic "no".

Was the Inquiry Officer justified in coming to such a conclusion on the basis of the charge-sheet only? The answer cannot possibly be in the affirmative. If the records have been considered, the immediate necessity would be to consider as to who is the person who has produced the same and the next issue could be as regards the nature of the records- unfortunately there is not a whisper in the rather longish report in that regard. Where is the Presenting Officer? Where is the notice fixing the date of hearing? Where is the list of witnesses? What has happened to the defence witnesses? All these questions arise but unfortunately no answer is to be found in the rather longish Report. ***But if one does not have it-Can it be termed to be in consonance with the concept of justice or the same tantamounts to a total miscarriage of justice. The High Court answers it as miscarriage of justice and we do lend***

out concurrence therewith.

H) If a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible *A decision of the King's Bench Division in the case of Denby (William) and Sons Limited v. Minister of Health [(1936) 1 KB 337] may be considered Swift, J. while dealing with the administrative duties of the Minister has the following to state:*

" 'Discretion' means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion : Rooke's case (1598) 5 Co Rep 99b 100a; according to law, and not humor. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.

When the Statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. It has been hither to uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all, Other methods or mode of performance are impliedly and necessarily forbidden."

The aforesaid settled legal proposition is

based on a legal maxim "Expressiouniusestexclusioalterius", meaning thereby that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible his maxim has consistently been followed, as is evident from the cases referred to above. A similar view has been reiterated in HareshDayaram Thakur v. State of Maharashtra and Ors (AIR 2000 SC 266).

The Commissioner did not examine any witness in the presence of the Vice-Chancellor; nor was the Vice-Chancellor given any opportunity to cross-examine them. Even date, time or place was not fixed for the enquiry and neither any Presenting Officer had been appointed.

Removal of the Vice-Chancellor from such an office is a very serious matter and it not only curtails the statutory term of the holder of the office but also casts a stigma on the holder as allegations rendering him untrustworthy of the office are found to be proved. It, therefore, becomes all the more necessary that great care should be taken in holding the enquiry for removal of the Vice-Chancellor of the University and the principles of natural justice should be strictly complied with.

The contention advanced by Sri NeerajTripathi that the Chancellor was justified in restricting the scope of enquiry in his discretionary powers to the issuance

of the notice alone cannot be accepted. The Supreme Court has repeatedly observed that even in a situation where an authority is vested with a discretionary power, such power can be exercised by adopting that mode which best serves the interest and even if the Statute is silent as to how the discretion should be exercised, then too the authority cannot act whimsically or arbitrarily and its action should be guided by reasonableness and fairness because the legislature never intend that its authorities could abuse the laws or use it unfairly. Any action which results in unfairness and arbitrariness results in violation of Article 14 of the Constitution. It has also been emphasized that an authority cannot assume to itself an absolute power to adopt any procedure and the discretion must always be exercised according to law. It was, therefore, obligatory for the Chancellor to have held a proper enquiry in accordance with the principles of natural justice and mere giving of show cause notice requiring the petitioner to submit an explanation does not serve the purpose. The order of removal of the Vice-Chancellor is, therefore, liable to be set aside only on this ground.

The contention of Sri NeerajTripathi, learned Counsel for the Chancellor that even in such situation, the order should not be set aside as the petitioner has not been able to substantiate that prejudice had been caused to him for not observing the principles of natural justice cannot also be

accepted. In the first instance, as seen above, prejudice had been caused to the petitioner in the absence of a regular enquiry but even otherwise, the Supreme Court in State Bank of Patiala and Ors. v. S.K. Sharma [(1996) IILLJ 296 SC] had observed that if the complaint made is regarding the mandatory facet of the principles of natural justice, then proof of prejudice is not required.

In Dr. Bool Chand v. The Chancellor Kurukshetra University ((1968) II LLJ 135 SC), the Hon'ble Supreme Court examined a similar case wherein there was no procedure prescribed for removal of the Vice Chancellor under the Act applicable therein. After examining the statutory provisions applicable therein, the Court lime to the following conclusion:

"The power to appoint a Vice Chancellor has its source in the University Act; investment of that power carries with it the power to determine the employment; but the power is coupled with duty. The power may not be exercised arbitrarily, it can, be only exercised for good cause, i.e. in the interest of the University and only when it is found after due enquiry held in manner consistent with the rules of natural justice that the holder of the office is unfit to continue as Vice Chancellor."

I) For directing a fresh enquiry on the same allegations/charges, authority is required to record reasons otherwise it may become a tool for harassment of the delinquent in the

hands of authority and in that case it may tantamount to a mala fide or colorable exercise of power.

The expression 'willful' excludes casual, accidental, bonafide or unintentional acts or genuine inability. It is to be noted that a willful act does not encompass accidental, involuntary or negligent. It must be intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing there from The expression 'willful' means an act done with a bad purpose, with an evil motive.

'Wilful' means an act or omission which is cone voluntarily and intentionally and with a specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose.

Hon'ble Supreme Court held that word 'otherwise' should be construed as ejusdem generis and must be interpreted to mean some kind of legal obligation or some transaction enforceable at law.

J) Earlier an enquiry had been conducted, and allegation was found to be baseless. It could not have been reopened. Criminal prosecution in this respect had also been launched but it failed.

Observation by the Chancellor that the petitioner did not lead any evidence in support of denial of the charge of giving employment to his close relatives is self-contradictory and supports the case of the petitioner, as he had not been given a chance to lead evidence on the issue. It could be possible for him only if a regular inquiry was conducted. Petitioner's preliminary objections that provisions of Section 8(1) to 8(7) were not complied with while conducting the inquiry, had been brushed aside by the Chancellor being merely "technical". Such a course was not permissible.

Judges cannot be law unto themselves expecting others to obey the law**. [Vide :Nandini Sathpathy Vs. P.L.Dani & Others (1978) 2 SCC 424]**

40. Full Bench of Hon'ble Supreme Court in **Nidhi Keim & Ors. Vs. State of Madhya Pradesh and Ors. (2017) 4 SCC 1** had ruled that Supreme Court cannot pass any order in disregard to statutory provisions and against the law laid down by Higher Benches of the Supreme Court

This was the answer of Chief Justice J.S. Khehar to Adv. Fali Nariman who asked the Court to pass an order against the provisions of law. It is ruled as under;

*"**Article 142, 141 of the Constitution - Supreme Court cannot disregard statutory provisions, and/or a declared pronouncement of law Under Article 141 of the Constitution, even in exceptional circumstances.***

We are bound, by the declaration of the Constitution Bench , in Supreme Court Bar Association v. Union of India (1998) 4 SCC

409. It is, not possible for us to ignore the decision of a Constitution Bench of this Court- In terms of the above judgment, with which we express our unequivocal concurrence, it is not possible to accept, that the words "complete justice" used in Article 142 of the Constitution, would include the power, to disregard even statutory provisions, and/or a declared pronouncement of law Under Article 141 of the Constitution, even in exceptional circumstances. - In our considered view, the hypothesis-that the Supreme Court can do justice as it perceives, even when contrary to statute (and, declared pronouncement of law), should never as a rule, be entertained by any Court/Judge, however high or noble. Can it be overlooked, that legislation is enacted, only with the object of societal good, and only in support of societal causes? Legislation, always flows from reason and logic. Debates and deliberations in Parliament, leading to a valid legislation, represent the will of the majority. That will and determination, must be equally "trusted", as much as the "trust" which is reposed in a Court. Any legislation, which does not satisfy the above parameters, would per se be arbitrary, and would be open to being declared as constitutionally invalid. In such a situation, the legislation itself would be struck down.

<u>The argument advanced by Mr. Nariman, that this Court can pass order against statute is indeed heartening and</u>

reassuring. But if such preposition is accepted then, Mr. Nariman, and a number of other outstanding legal practitioners like him, undeniably have the brilliance to mould the best of minds. And thereby, to persuade a Court, to accept their sense of reasoning, so as to override statutory law and/or a declared pronouncement of law.It is this, which every Court, should consciously keep out of its reach. At the cost of repetition, we would reiterate, that such a situation, as is contemplated by Mr. Nariman, does not seem to be possible."

41. Hon'ble Supreme Court in the case of **Pandurang and others vs State (1986) 4 SCC 436** had ruled that if any matter is heard by a court which had no competence to hear the matter then the judgment passed becomes nullity, being a matter of total lack of jurisdiction. The right of any party cannot be taken away except by amending the rules of High Court. So long as the rules are in operation it would be arbitrary and discriminatory to deny him his right regardless of whether it is done by a reason of negligence or otherwise. Deliberately it cannot be done. Even if the decision is right on merit, it is by a forum which is lacking in competence. Even a right decision by a wrong forum is no decision. It is non existent in the eyes of law. And hence a nullity.

It is further observed by the Hon'ble Supreme Court that,

"We wish to add that the registry of the High Court was expected to have realized the position and ***ought not to have created such a situation which resulted in waste of Court time, once for hearing the appeal and next time, to consider the effect of the rules. No court can afford this luxury with***

the mountain of arrears every court carrying these days”

 # CHARGE # MALICE IN LAW

42. In the case of **West Bengal State Electricity Board Vs. Dilip Kumar Ray (AIR 2007 SC 976),** it is ruled as under;

> *"**Malice in law**"**"A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with the innocent mind: he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of mind is concerned, he acts ignorantly, and in that sense innocently". Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause.** See S. R. Venkataraman v. Union of India, (1979) 2 SCC 491.*

43. Hon’ble Supreme Court in **Kalabharati Advertising Vs. Hemant Vimalnath Narichania And Ors.(2010) 9 SCC 437**had ruled as under;

> ***A. Legal Malice: The State is under obligation to act fairly without ill will or malice in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others.** Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. It is an act which is*

taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." ***It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. Passing an order for an unauthorized purpose constitutes malice in law.***

 # CHARGE # BREACH OF OATH TAKEN AS A HON'BLE HIGH COURT JUDGE BY ACTING PARTIALLY, WITH ILL-WILL AND NOT UPHOLDING THE CONSTITUTION AND LAW.

44. In **Indirect Tax Association Vs. R.K.Jain** *(Supra),it is ruled by Hon'ble Supreme Court that;*

> ***"Judge have their accountability to the society and their accountability must be judged by their conscience and oath of their office, that is to defend and uphold the Constitution and the laws without fear and favor with malice towards none, with charity for all, we strive to do the right."***

45. EVERY JUDGE WHEN APPOINTED HAS TO TAKE OATH AS UNDER;

The constitution of India **Schedule III Articles 75 (4), 99, 124 (6) 148 (2) 164 (3), 188 and 219** provides that forms of oaths or Affirmation No. VIII is as follows.

> ***" Form of oath or a affirmation to be made by the Judges of a Supreme Court."***
>
> *I, A.B., having been appointed Chief Justice (or a Judge) of the Supreme Court at (or of) ---------- ------- do that I will bear true faith and allegiance to the Constitution of India as by law established, [that I will uphold the sovereignty and integrity of India] that,* ***I will duly and***

faithfully and to the best of my ability, Knowledge and judgement <u>perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.</u>

Here Justice Akil Kureshi & Justice Shahrukh Kathawala acted against Constitution of India and breached the oath taken as a High Court Judge and therefore forfeited their right to continue as a High Court Judge.

 # CHARGE # <u>JUSTICE AKIL KURESHI & JUSTICE SHAHRUKH KATHAWALLA ARE BOUND TO RESIGN FROM THE POST OF SUPREME COURT JUDGE AS PER CONSTITUTION BENCH JUDGMENT IN K.VEERASWAMI VS.UNION OF INDIA (1991) 3 SCC 655</u>

It is ruled as under;

*`(53) …… **The judiciary has no power of the purse or the sword. It survives only by public confidence and it is important to the stability of the society that the confidence of the public is not shaken. The Judge whose character is clouded and whose standards of morality and rectitude are in doubt may not have the judicial independence and may not command confidence of the public. He must voluntarily withdraw from the judicial work and administration.***

(54) …….. The emphasis on this point should not appear superfluous. Prof. Jackson says "Misbehavior by a Judge, whether it takes place on the bench or off the bench, undermines public confidence in the administration of justice, and also damages public respect for the law of the land; if nothing is seen to be done about it, the damage goes unrepaired. This a must be so when the judge commits a serious criminal offence and remains in office". (Jackson's

Machinery of Justice by J.R. Spencer, 8th Edn. pp. 369-

(55) The proved "misbehaviour" which is the basis for removal of a Judge under clause (4) of Article 124 of the Constitution may also in certain cases involve an offence of criminal misconduct under Section 5(1) of the Act. But that is no ground for withholding criminal prosecution till the Judge is removed by Parliament as suggested by counsel for the appellant. One is the power of Parliament and the other is the jurisdiction of a criminal court. Both are mutually exclusive. Even a government servant who is answerable for his misconduct which may also constitute an offence under the Indian Penal Code or under S. 5 of the Act is liable to be prosecuted in addition to a departmental enquiry. If prosecuted in a criminal court he may be punished by way of imprisonment or fine or with both but in departmental enquiry, the highest penalty that could be imposed on him is dismissal. The competent authority may either allow the prosecution to go on in a court of law or subject him to a departmental enquiry or subject him to both concurrently or consecutively. It is not objectionable to initiate criminal proceedings against public servant before exhausting the disciplinary proceedings, and a fortiori, the prosecution of a Judge for criminal misconduct before his removal by Parliament for proved misbehaviour is unobjectionable.

"…….But we know of no law providing protection for Judges from criminal prosecution. Article 361(2) confers immunity from criminal prosecution only to the President and Governors

of States and to no others. Even that immunity has been limited during their term of office. ***The Judges are liable to be dealt with just the same way as any other person in respect of criminal offence. It is only in taking of bribes or with regard to the offence of corruption the sanction for criminal prosecution is required.***

(61) For the reasons which we have endeavored to outline and subject to the directions issued, we hold that for the purpose of clause (c) of S. 6(1 of the Act the President of India is the authority competent to give previous sanction for the prosecution of a Judge of the Supreme court and of the High court.

(79) Before parting with the case, we may say a word more. This case has given us much concern. We gave our fullest consideration to the questions raised. We have examined and re-examined the questions before reaching the conclusion. We consider that the society's demand for honesty in a judge is exacting and absolute. ***The standards of judicial behaviour, both, on and off the bench, are normally extremely high. For a Judge to deviate from such standards of honesty and impartiality is to betray the trust reposed in him. No excuse or no legal relativity can condone such betrayal.*** *From the standpoint of justice the size of the bribe or scope of corruption cannot be the scale for measuring a Judge's dishonour.* ***A single dishonest Judge not only dishonours himself and disgraces his office but jeopardizes the integrity of the entire judicial system.***

(80) A judicial scandal has always been regarded as far more deplorable than a scandal involving

either the executive or a member of the legislature. The slightest hint of irregularity or impropriety in the court is a cause for great anxiety and alarm. "A legislator or an administrator may be found guilty of corruption without apparently endangering the foundation of the State. But a Judge must keep himself absolutely above suspicion" to preserve the impartiality and independence of the judiciary and to have the public confidence thereof.

Let us take a case where there is a positive finding recorded in such a proceeding that the Judge was habitually accepting bribe, and on that ground he is removed from his office. On the argument of Mr Sibal, the matter will have to be closed with his removal and he will escape the criminal liability and even the ill-gotten money would not be confiscated. Let us consider another situation where an abettor is found guilty under S. 165-A of the Indian Penal Code and is convicted. The main culprit, the Judge, shall escape on the argument of the appellant. In a civilized society the law cannot be assumed to be leading to such disturbing results.

46. While delivering 2nd lecture on M.C. Setalvad Memorial Lecture Series sometime in the year 2006, the Hon'ble Mr. Justice Y.K.Sabharwal (the then CJI) expressed that –

"A Judge would always be polite & considerate and imbued with a sense of humility. He would not disturb the submissions of the lawyers midway only to project a "know-all" image for himself. This also means that he would be sitting with an open mind, eager to be advised by the counsel or the parties."

47. On the point of predictability of the outcome of a case and transparency in the judiciary, the reputed and well-known learned authors and legal experts of Bangladesh in **"The Desired Qualities of a Good Judge",** have expressed thus:

> ***"In all acts of judgment, the Judges should be transparent so that not only the lawyers but also the litigants can easily predict the outcome of a case. Transparency and predictability are essential for the judiciary as an institution of public credibility."***
>
> In *"A.M. Mathur vs. Pramod Kumar Gupta; (1990) 2 SCC 533"*, it was held that –**the quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary.**
>
> Other qualities of a good judge have been described by the said authors as under:
>
> *(i)* ***A judge is a pillar of our entire justice system and the public expects highest and irreproachable conduct from anyone performing a judicial function.***
>
> *(ii)* ***Judgesmust be knowledgeable about the law, willing to undertake in-depth legal research, and able to write decisions that are clear, logical and cogent. Their judgment should be sound and they should be able to make informed decisions that will stand up to close scrutiny.***
>
> *(iii) Centuries ago Justinian said that precepts of law are three in number i.e. to live honestly, to give every man his due and to injure none.*
>
> *(iv)* ***Judiciary as an organ of the state has to administer fair justice according to the direction of the Constitution and the mandate of law.***
>
> *(v) Every judge is a role model to the society*

to which he belongs. The same are embodied in all the religious scriptures. ***Socrates once stated that a judge must listen courteously, answer wisely, considers soberly and decides impartially.***

(vi) The qualities of a good judge include patience, wisdom, courage, firmness, alertness, incorruptibility and the gifts of sympathy and insight. In a democracy, a judge is accorded great respect by the state as well as its citizens. He is not only permitted to assert his freedom and impartiality but also expected to use all his forensic skill to protect the rights of the individual against arbitrariness.

(vii) ***Simon Rifkind laid down "The courtroom, sooner or later, becomes the image of the judge. It will rise or fall to the level of the judge who presides over it… No one can doubt that to sit in the presence of a truly great judge is one of the great and moving experiences of a lifetime."***

(viii) There is no alternative of qualified and qualitative judges who religiously follow the rule of law and administer good governance.

(ix) ***The social service, which the Judge renders to the community, is the removal of a sense of injustice.***

(x) ***Judiciary handled by legal person is the custodian of life and property of the people at large,*** *and so the pivotal and central role as played by the judicial officers should endowed higher degree of qualities in consonance with the principles of "standard of care", "duty of care" and "reasonable person" as necessary with judicial functionaries.*

(xi) ***The American Bar Association once published an article called Good Trial***

Judges in which it discussed the difference in the qualities of a good judge and a bad judge and noted that practicing before a "good judge is a real pleasure," and "practicing before a bad judge is misery.

(xii) ***The Judges exercise the judicial power on trust. Normally when one sits in the seat of justice,he is expected to be honest, trustworthy, truthful and a highly responsible person. The public perception of a Judge is very important. Marshal, Chief Justice of the United States Supreme Court said, "we must never forget that the only real source of power we as judges can tap is the respect of the people. It is undeniable that the Courts are acting for the people who have reposed confidence in them." That is why Lord Denning said, "Justice is rooted in confidence, and confidence is destroyed when the right-minded go away thinking that the Judge is biased".***

(xiii) A Judge ought to be wise enough to know that he is fallible and therefore, ever ready to learn; great and honest enough to discard all mere pride of opinion, and follow truth wherever it may lead, and courageous enough to acknowledge his errors.

(xiv) Judge 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. Moreover, patience and gravity of hearing is also an essential part of justice, and an over speaking Judge is known as well tuned cymbal.

(xv) ***It is the duty of the Judges to follow the law,as they cannot do anything whatever they like.*** *In the language of*

Benjamin N. Cardozo – "The Judge even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles".

(xvi) ***Judges should be knowledgeable about the law, willing to undertake in-depth legal research, and able to write decisions that are clear and cogent.***

(xvii) ***If a Judge leaves the law and makes his own decisions, even if in substance they are just, he loses the protection of the law and sacrifices the appearance of impartiality which is given by adherence to the law.***

(xviii) A Judge has to be not only impartial but seen to be impartial too.

(xix) Every judge is a role model to the society to which he belongs. The judges are certainly, accountable but they are accountable to their conscience and people's confidence. As observed by Lord Atkin – "Justice is not a cloistered virtue and she must be allowed to suffer the criticism and respectful, though outspoken, comments of ordinary men".

(xx) ***With regard to the accountability of the Judges of the subordinate Courts and Tribunals it may be mentioned that the Constitution authorizes the High Court Division to use full power of superintendence and control over subordinate Courts and Tribunals. Under the Constitution, a guideline in the nature of Code of Conduct can be formulated for the Judges of the subordinate courts for the effective control and supervision of the***

High Courts Division. In this method, the judicial accountability of the Judges of the subordinate courts could be ensured.

48. In **Baradakanta Mishra Ex-Commissioner of Endowments Vs. Bhimsen Dixit, (1973) 1 SCC 446**, a member of Judicial Service of State of Orissa refused to follow the decision of the High Court. The High Court issued a notice of contempt to the appellant and thereafter held him guilty of contempt which was challenged before the Supreme Court. The Supreme Court held as under:-

"15. ***The conduct of the appellant in not following previous decisions of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court"s disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court.Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the***

High Court, generally, but is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law".

49. In **Amrit Pal Singh Vs. State (2012) 6 SCC 491,** it is ruled that;

"20. *Every judge has to remind himself about the aforesaid principles and religiously adhere to them. In this regard it would not be out of place to sit in the time machine and dwell upon the sagacious saying of an eminent author who has said that* ***there is a distinction between a man who has command over 'Shastras' and the other who knows it and puts into practice. He who practises them can alone be called a 'vidvan'.*** *Though it was told in a different context yet the said principle can be taken recourse to, for one may know or be aware of that use of intemperate language should be avoided in judgments but while penning the same the control over the language is forgotten and acquired knowledge is not applied to the arena of practice. Or to put it differently the knowledge stands still and not verbalised into action. Therefore, a committed comprehensive endeavour has to be made to put the concept to practice so that it is concretised and fructified and the litigations of the present nature are avoided."*

50. In **Iswari Prasad Mishra Vs Modh. Isa AIR 1963 SC 1728**, where it is ruled as under;

"The Supreme Court observed that such criticism was wholly unjustified, and added: "We have noticed that the judgment of the High Court shows a tendency to regard every witness whose evidence the High Court did not feel inclined to

accept as a perjuror and a conspirator. ***This approach again may tend to show, with respect, either lack of experience or absence of judicial poise and balance."***

Same law is followed in catena of decisions. In **Om Prakash Chautala v. Kanwar Bhan MANU/SC/0075/2014 : (2014) 5 SCC 417***wherein it has been stated:*

> ***"A Judge is expected to abandon his personal notion or impression gathered from subjective experience. The process of adjudication lays emphasis on the wise scrutiny of materials sans emotions. A studied analysis of facts and evidence is a categorical imperative. Deviation from them is likely to increase the individual gravitational pull which has the potentiality to take justice to her coffin.***
>
> *19. It needs no special emphasis to state that a Judge is not to be guided by any kind of notion. The decision making process expects a Judge or an adjudicator to apply restraint, ostracise perceptual subjectivity, make one's emotions subservient to one's reasoning and think dispassionately. He is expected to be guided by the established norms of judicial process and decorum.*
>
> *And again:*
>
> ***20. A Judge should abandon his passion. He must constantly remind himself that he has a singular master "duty to truth" and such truth is to be arrived at within the legal parameters. No heroism, no rhetorics.***
>
> *14. In****Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and Anr. MANU/SC/0639/1997 : (1997) 6 SCC 450****, the threeJudge Bench observed:*
>
> *32. When a position in law is well settled as a*

result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.

15. The aforestated thoughts are not only meaningfully pregnant but also expressively penetrating. They clearly expound the role of a Judge, especially the effort of understanding and attitude of judging."

51. Hon'ble Supreme Court in the case of **State Vs. Mamta Mohandas (2011) 3 SCC 436**, it is ruled as under;

"*A. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (vide: Upen Chandra Gogoi v. State of Assam and Ors.*

MANU/SC/0225/1998 : AIR 1998 SC 1289; Mangal Prasad Tamoli (Dead) by L.Rs. v. Narvadeshwar Mishra (Dead) by L.Rs. and Ors. MANU/SC/0153/2005 : AIR 2005 SC 1964; and Ritesh Tiwari and Anr. v. State of U.P.

B. This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. While dealing with a similar issue

C. The rule of law inhibits arbitrary action and also makes it liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even give an impression of bias, favouritism and nepotism. Procedural fairness is an implied mandatory requirement to protect against arbitrary action where Statute confers wide power coupled with wide discretion on an authority. If the procedure adopted by an authority offends the fundamental fairness or established ethos or shocks the conscience, the order stands vitiated. The decision making process remains bad. (Vide Haji T.M. Hassan Rawther v. Kerala Financial Corporation MANU/SC/0516/1987 : AIR 1988 SC 157; Dr. Rash Lal Yadav v. State of Bihar and Ors. MANU/SC/0792/1994 : (1994) 5 SCC 267; and Tata Cellular v. Union of India MANU/SC/0002/1996 : (1994) 6 SCC 651

D. Similarly, in S.G. Jaisinghani v. Union of India and Ors. MANU/SC/0361/1967 : AIR 1967 SC 1427, a Constitution Bench of this Court observed as under:

14...absence of arbitrary power is the first essence of the rule of law, upon which our whole Constitutional system is based.... Rule of law, from this point of view, means that the decision should be made by the application of known principle and rules and in general such decision should be predictable and the citizen should know where he is, if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

41.. It is a matter of common experience that a large number of orders/letters/circulars, issued by the State/statutory authorities, are filed in court for placing reliance and acting upon it. However, some of them are definitely found to be not in conformity with law. There may be certain such orders/circulars which are violative of the mandatory provisions of the Constitution of India. While dealing with such a situation, this Court in Ram Ganesh Tripathi and Ors. v. State of U.P. and Ors. MANU/SC/0341/1997 : AIR 1997 SC 1446 came across with an illegal order passed by the statutory authority violating the provisions of Articles 14 and 16 of the Constitution. This Court simply brushed aside the same without placing any reliance on it observing as under: d

The said order was not challenged in the writ petition as it had not come to the notice of the appellants. It has been filed in this Court along with the counter affidavit.... This order is also deserved to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents...

43. The whole exercise done by the State authorities suffers from the vice of arbitrariness and thus is violative of Article 14 of the Constitution. Therefore, it cannot be given effect to."

52. Full Bench Hon'ble Supreme Court in the case of **National Human Rights Commission Vs State MANU/2009/SC/0713** ruled as under**;**

"*In Zahira Habibullah Sheikh (5) and Anr.v. State of Gujarat and Ors. MANU/SC/1344/2006: 2006CriLJ1694 it was observed as under:*

If the court acts contrary to the role it is expected to play, it will be destruction of the fundamental edifice on which the justice delivery system stands. People for whose benefit the courts exist shall start doubting the efficacy of the system. "Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: `The Judge was biased.

The perception may be wrong about the Judge's bias, but the Judge concerned must be careful to see that no such impression gains ground. Judges like Caesar's wife should be above suspicion.

A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact in issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. ***Since the***

object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.

Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an over hasty stage- managed, tailored and partisan trial.

The fair trial for a criminal offence consists not only in technical observance of the frame, and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.

It was significantly said that law, to be just and fair has to be seen devoid of flaw. It has to keep the promise to justice and it cannot stay petrified and sit nonchalantly. 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 (see Jennison v. Baker). Increasingly, people are

believing as observed by Salmon quoted by Diogenes Laertius in Lives of the Philosophers, "Laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away." Jonathan Swift, in his "Essay on the Faculties of the Mind" said in similar lines: "Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through.

Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial: the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences.

"Too great a price ... for truth".

Restraints on the processes for determining the truth are multifaceted. They have emerged in numerous different ways, at different times and affect different areas of the conduct of legal proceedings. By the traditional common law method of induction there has emerged in our jurisprudence the principle of a fair trial. Oliver Wendell Holmes described the process:

It is the merit of the common law that it decides the case first and determines the principles afterwards.... It is only after a series of

determination on the same subject-matter, that it becomes necessary to `reconcile the cases', as it is called, that is, by a true induction to state the principle which has until then been obscurely felt. And this statement is often modified more than once by new decisions before the abstracted general rule takes its final shape. A well-settled legal doctrine embodies the work of many minds, and has been tested in form as well as substance by trained critics whose practical interest is to resist it at every step.

The principle of fair trial now informs and energises many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adapted to new changing circumstances, and exigencies of the situation--peculiar at times and related to the nature of crime, persons involved--directly or operating behind, social impact and societal needs and even so many powerful balancing factors which may come in the way of administration of criminal justice system.

This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affects the whole community as a community and is harmful to society in general. ***The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. The courts have***

***always been considered to have an overriding duty to maintain public confidence in the administration of justice-- often referred to as the duty to vindicate and uphold the "majesty of the law". Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators*.**

The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive

*definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted.***"**

53. <u>JUDICIAL BIAS IS A GROUND TO DISMISS THE JUDGE</u> :- <u>With this context the operative portion of the Federal Court's Report to the Governor-General is being given below:</u>

"Charge No. 1, however, has been established in respect of the Judge's decision and conduct in connection with what have been referred to as the Padrauna case and Murarilal case. ***<u>In our opinion, in those two cases he was actuated by extrajudicial considerations in arriving at his conclusions. We consider that his conduct in the two cases, viewed in the light of proved facts, cannot be explained as an honest error of judgment. We are, therefore, constrained to report that, though only two instances of judicial misbehaviour during a career of four years of the respondent as a Judge have been proved, they are of such a nature that his continuance in office will be prejudicial to the administration of justice and to the public interest. We, therefore, think that he should be removed from his office as Judge. "</u>***

The above case is also illustrative of the scope of judicial bias and judicial misbehaviour.

<u>[Dharamdas Motumal Rajpal Vs. Resident Dy., Collector, Amrawati (1997) 2 Mh.L.J.803]</u>

54. Hon'ble Supreme Court in **Medical Council of India Vs G.C.R.G. Memorial Trust & Others (2018) 12 SCC 564** has ruled as under:

> ***"The judicial propriety requires judicial discipline. Judge cannot think in terms of "what pleases the Prince has the force of law". Frankly speaking, the law does not allow so, for law has to be observed by requisite respect for law.***
>
> ***A Judge should abandon his passion. He must constantly remind himself that he has a singular master "duty to truth" and such truth is to be arrived at within the legal parameters. No heroism, no rhetorics.***
>
> ***A Judge even when he is free, is still not wholly free; he is not to innovate at pleasure; he is not a knighterrant roaming at will in pursuit of his own ideal of beauty or of goodness; he is to draw inspiration from consecrated principles***
>
> *10. In this context, we may note the eloquent statement of Benjamin Cardozo who said:*
>
> *The judge is not a knight errant, roaming at will in pursuit of his own ideal of beauty and goodness.*
>
> *11. In this regard, the profound statement of Felix Frankfurter1 is apposite to reproduce:*
>
> *For the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians-those impersonal convictions that make a society a civilized community, and not the victims of personal rule.*
>
> *The learned Judge has further stated:*
>
> *What becomes decisive to a Justice's functioning on the Court in the large area within which his individuality moves is his general attitude toward*

law, the habits of the mind that he has formed or is capable of unforming, his capacity for detachment, his temperament or training for putting his passion behind his judgment instead of in front of it. The attitudes and qualities which I am groping to characterize are ingredients of what compendiously might be called dominating humility.

13. In this context, we may refer with profit the authority in Om ***Prakash Chautala v. Kanwar Bhan MANU/SC/0075/2014 : (2014) 5 SCC 417*** *wherein it has been stated:*

19. It needs no special emphasis to state that a Judge is not to be guided by any kind of notion. The decision making process expects a Judge or an adjudicator to apply restraint, ostracise perceptual subjectivity, make one's emotions subservient to one's reasoning and think dispassionately. He is expected to be guided by the established norms of judicial process and decorum.

And again:

20. A Judge should abandon his passion. He must constantly remind himself that he has a singular master "duty to truth" and such truth is to be arrived at within the legal parameters. No heroism, no rhetorics.

14. In ***Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and Anr. MANU/SC/0639/1997 : (1997) 6 SCC 450****, the threeJudge Bench observed:*

32. When a position in law is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly

contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.

15. The aforestated thoughts are not only meaningfully pregnant but also expressively penetrating. They clearly expound the role of a Judge, especially the effort of understanding and attitude of judging. ***A Judge is expected to abandon his personal notion or impression gathered from subjective experience. The process of adjudication lays emphasis on the wise scrutiny of materials sans emotions. A studied analysis of facts and evidence is a categorical imperative. Deviation from them is likely to increase the individual gravitational pull which has the potentiality to take justice to her coffin.***

55. In **Baradakanta Mishra Ex-Commissioner of Endowments Vs. Bhimsen Dixit, (1973) 1 SCC 446**, a member of Judicial Service of State of Orissa refused to follow the decision of the High Court. The High Court issued a notice of Contempt to the appellant and thereafter held him guilty of contempt which was challenged before the Supreme Court. The Supreme Court held as under:-

"15. ***The conduct of the appellant in not following previous decisions of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the***

principles underlying the law of Contempt. The analogy of the inferior court"s disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court.Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law".

56. Hon'ble Supreme Court in the case of **Arvinder Singh Bagga Vs. State of Uttar Pradesh (1994)6 SCC 565** where it is ruled as under;

> ***"A] Police Torture – Torture is not merely physical, there may be mental torture and psychological torture calculated to create fright and submission to the demands or commands - When the threat proceeds from a police officer the mental torture caused by it is even more grave.***
>
> ***B] Physical and mental torture by Police – Supreme Court observedthat –*** *We are really pained to note that such things should happen in a country which is still governed by the rule of law – State directed to launch*

criminal prosecution against all the Police officers involved in this sordid affairs – The state shall pay a compensation of Rs. 10.000/- to Nidhi, Rs. 10,000/- to Charanjit Singh and Rs, 5,000/- to each of the other persons who were illegally detained and humiliated by police – It will be open for state to recover the amount from guilty Police Officer."

57. In **Authorized Officer, State Bank of Travancore and Ors. Vs. Mathew K.C. 2018 (3) SCC 85** it is ruled as under

"JUDICIAL ADVENTURISM BY HIGH COURT – PASSING ORDER BY IGNORING LAW SETTLED BY COURT.

It is duty of the court to apply the correct law even if not raised by the party. If any order against settled law is to be passed then it can be done only by a reasoned order. Containing a discussion after noticing he relevant law settled.

16. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex-parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order.

18. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and Anr. MANU/SC/0639/1997 : 1997 (6) SCC 450, observing:

32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

58. In view of the outright injudicious conduct of Justices Akil Kuershi and Shahrukh Kathawala the legal fraternity as well as the commoners are anxious to know on whose instructions the Hon'ble Justices are conducting themselves which is bound to shake the faith in judiciary as being power drunk extortionists – such anti nationals ought to be exposed, thus an appropriate inquiry by the NIA or CBI is imperative to unravel the unholy nexus.

59. It is humbly request that ;

1. **Direction for initiating disciplinary proceedings against Justice Akil Kureshi for bringing disrepute to the institution of Judiciary in conjunction with Adv. Yatin Oza in loathly deriding Hon'ble Supreme Court Collegium members as impotent, in order to pressurize them to seek his elevation as Chief Justice of MP High Court.**
2. **Direction for action under Contempt of Courts Act as per law laid down in Re: C. S. Karnan (2017) 7 SCC 1 against Justice Akil Kureshi & Justice S.J.Kathawalla for their willful disregard and defiance of Hon'ble Supreme Court rulings.**
3. **Action under section 218,219 166, 220 r/w 120(B) & 34 etc. of IPC against Justice Akil Kureshi.**
4. **Direction to Justice Akil Kureshi & Justice Shahrukh Kathawala to resign forthwith in view of law and guidelines of K. Veeraswami Vs. Union of India (UOI) 1991 (3) SCC 655.**
5. **Direction for forming a committee as per provisions of 'In House Procedure' and as per law laid down by Full Bench in Union of India Vs. K. K. Dhawan (1993) 2 SCC 56 (Full Bench) to enquire serious charges against Justice Akil Kureshi & Justice S.J.Kathawala for their incompetence, lack of basic knowledge of law, passing casual orders, passing orders**

against the law laid down by Hon'ble Supreme Court and by their own High Court.

Date:29.06.2019

Place : Mumbai

Adv.Vijay S.Kurle

State President

Maharashtra & Goa

Indian Bar Association (IBA)