The Flying Shoe: How a Supreme Court Decision Queers The Pitch Relating to *in Facie Curiae* Contempt

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Introduction

For long, public law discourse in India has revolved around the continuing conflicts between the executive and the judiciary. With the lines blurred, every attempt by the Courts to regulate State action has been met with stern disapproval by those who advocate judicial restraint. However, events of the last year have led to these critics being aided from a wholly unexpected quarter.

On the 20th of March, 2009, when a petitioner appearing in person before the Supreme Court flung her footwear at the Bench, little did she know that her target was the law of the land. At that time, the victims of her action, Justices Pasayat and Ganguly, were quick to dictate orders condemning the action, albeit diverging when it came to the procedure to be followed.[1] Justice Ganguly adopted a careful positivist line and indicated that the procedure under Section 14 of the Contempt of Courts Act, 1971 would have to be invoked by the Court, while Justice Pasayat declined to stand on such ceremony when the contempt was so apparent, and directed that the accused be sentenced to three months' simple imprisonment.

The difference of opinion between the two Judges eventually led to the matter being referred to the Chief Justice of India, who constituted a bench of Justices Kabir, Singhvi and Dattu to finally resolve the issue. It is the finding of this Bench in *Leila David (2)* v. *State of Maharashtra*[2] that statutory requirements may be ignored where a Court is exercising its power as a court of record that have brought scrutiny to bear on an otherwise unremarkable proceeding.

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My gratitude (as always) to my senior Mr.K.K.Venugopal, Sr.Advocate., who has been unrelenting in pushing his wards to better themselves. If I have in any way fallen short in this endeavour, the fault is entirely that of my wife Haripriya Padmanabhan, who, despite the demands of the court, the chamber, the kitchen, the hearth and the crib, has ensured that she will always be a better lawyer than me.

1. *Leila David (2)* v. *State of Maharashtra*, (2009) 4 SCC 578.
2. (2009) 10 SCC 337.

I. The Constitutional Scheme

In the early case of *Sukhdev Singh Sodhi* v. *Teja Singh*[3], Justice Vivian Bose had traced the history of contempt jurisprudence in India, locating the earliest statutory provision to be Clause 4 of the Charter of 1774 which stated that the Supreme Court of Bengal would have the same jurisdiction as the Court of the King's Bench in England, accompanied by a power to punish for contempt. At common law, the position was clear that a superior court of record had the inherent power to punish for contempt, and this was the consistent position of the Privy Council as well.[4]

This power that was considered intrinsic in these Courts was continued by virtue of Section 106 of the Government of India Act, 1915, until the Government of India Act, 1935 which referred to the High Courts as courts of record in Section 220 and created the Federal Court with similar powers in Section 203. With the coming of the Constitution, Articles 129 and 215 continued the anointment of the superior courts as courts of record with the power to punish for contempt.[5] As one of the early commentaries which dealt with the judicial history on the subject said –

> "We have narrated all the above data to bring home the point that the power to punish summarily for contempt is not a creature of statute but an inherent incident of every Court of Record. This inherent jurisdiction cannot be abrogated and it has been recognized from time to time in the relevant Letters Patent, and the constitutional Acts in India."[6]

II. The Statutory Limitation

While the Constitutional provisions recognized the existence of the superior courts as courts of record, the legislature also recognized this pre-

3. 1954 SCR 454.
4. Justice Bose painstakingly traces the genesis of the principle by relying on the principles of British common law as enunciated in Belchamber's Practice of the Civil Courts (1884) and the Hailsham Edition of Halsbury's Laws of England. Interestingly, Justice Bose refers to Justice Sulaiman's judgment in *In re Abdul Hasan Jauhar*, ILR 48 All 711, which is reported as *Hadi Husain & Ors.,* v. *Nasir Uddin Haider & Ors.,* AIR 1926 All 623, and where, in considering the power of the High Court to punish for contempt of subordinate courts, the Court concluded that such a power was indeed inherent, and that the new Contempt of Courts Act merely amplified that position (See Paras 28 to 40).
5. However, both Articles 19(2) and 142(2) recognized the fact that free speech and the power of the Supreme Court to make orders in relation to investigation or punishment of contempt would be subject to law that was enacted.
6. Ramachandran, V.G & Gopalan, V.R, *The Contempt of Court under The Constitution*, Eastern Book Company, (1962), p.13.

eminent position in the three statutes that were enacted to codify the principles of contempt law – The Contempt of Courts Act 1926, The Contempt of Courts Act 1952 and The Contempt of Courts Act 1971. Each legislation repealed its predecessor, making certain cosmetic alterations, and ensuring that the power of the Supreme Court and the High Courts to punish for contempt was retained. However, there are two strands of debate that have emerged from the interplay between the Constitution and the statute:

- First, would the Act of 1971 in any way limit the power of the Supreme Court under Article 129 regarding the *extent of punishment* that may be imposed by it for contempt of itself?
- Second, would the summary procedure adopted by the Supreme Court be in any way limited or regulated by the Act of 1971?

While both questions deal essentially with the limits of the inherent power of the Supreme Court, it is the second that will engage us for the present. As for the first, a Constitution Bench of the Supreme Court in *Supreme Court Bar Association* v. *Union of India.*[7] has explicitly left the question open in the following words:

> "As already noticed, the Parliament by virtue of Entry 77, List I is competent to enact a law relating to the powers of the Supreme Court with regard to contempt of itself and such a law may prescribe the nature of punishment which may be imposed on a contemnor by virtue of the provisions of Article 129 read with Article 142(2). Since no such law has been enacted by the Parliament, the nature of punishment prescribed under the Contempt of Courts Act, 1971, may act as a guide for the Supreme Court but the extent of punishment as prescribed under that Act can apply only to the High Courts, because the 1971 Act ipso facto does not deal with the contempt jurisdiction of the Supreme Court, except that Section 15 of the Act prescribes procedural mode for taking cognizance of criminal contempt by the supreme Court also. Section 15, however, is not a substantive provision conferring contempt jurisdiction. The judgment in Sukhdev Singh's case as regards the extent of 'maximum punishment' which can be imposed upon a contemnor must, therefore, be construed as dealing with the

7. (1998) 4 SCC 409.

> powers of the High Courts only and not of this Court in that behalf. We are, therefore, doubtful of the validity of the argument of the learned Solicitor General that the *extent of punishment* which the Supreme Court can impose in exercise of its inherent powers to punish for contempt of itself and/or of subordinate courts can also be only to the extent prescribed under the Contempt of Courts Act, 1971. We, however, do not express any final opinion on that question since that issue strictly speaking, does not arise for our decision in this case. The question regarding the restriction or limitation on the extent of punishment, which this Court may award while exercising its contempt jurisdiction may be decided in a proper case, when so raised."[8]

As far as the summary procedure adopted in contempt cases are concerned, the Act of 1971 devotes an entire provision to the situation of contempt occurring in the face of the Supreme Court or the High Court. Section 14 of the Act reads as follows:

> "14. Procedure where contempt is in the face of the Supreme Court or a High Court.
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> (1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall-
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> (a) cause him to be informed in writing of the contempt with which he is charged;
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> (b) afford him an opportunity to make his defence to the charge;
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> (c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and
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> (d) make such order for the punishment or discharge of such person as may be just.

8. *Ibid*, at Para 38.

(2) Notwithstanding anything contained in sub- section (1), where a person charged with contempt under that sub- section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

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

(4) Pending the determination of the charge, the Court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify: Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court: Provided further that the Court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid."

Section 15 also makes specific reference to the Supreme Court in the context of the procedure for prosecuting criminal contempt. Section 23 records the fact that as far as the regulation of procedure of contempt

jurisdiction is concerned, the Supreme Court and High Court may make rules *not inconsistent with the provisions of this Act*. All of these provisions would suggest that Parliament has clearly demarcated the power of the superior courts as far as procedures are concerned.

In its interpretation, the Supreme Court has repeatedly ensured that it acknowledges the 1971 Act. For example, when faced with the prospect of a departure from the strict norms laid down in Section 15 of the Act,[9] the Court adopted the directions of the Delhi High Court in *Anil Kumar Gupta's* case[10] and said that as a practice direction to be followed, if an informant were not one of the persons mentioned in Section 15, the petition would be placed before the Chief Justice on the administrative side to take cognizance if required.[11] When the proposition was doubted and referred to a larger Bench,[12] a veritable plethora of cases were considered by the Court to support the proposition that even in exercise of the inherent jurisdiction of the Courts, the provisions of the Act were to be accommodated[13] . Specifically following the precedent set by *J.R.Parashar*[14] and *M.S.Mani,*[15] the Court approved the observations in *Duda*[16] and concluded by exhorting the superior courts to frame the required practice directions.[17]

At the time of writing this piece, the same view has been reiterated by the Supreme Court in allowing the appeal of the communist leader *Biman Basu*[18] on the ground that the procedure under Section 15 had not been complied with by the High Court of West Bengal. In so holding, the Court has relied on its earlier observations in *S.K.Sarkar's* case,[19] and proceeded to hold as follows:

> "It is settled law that the High Courts even while exercising their powers under Article 215 of the Constitution to punish for contempt, the procedure prescribed by law is required to be

9. As per Section 15, if cognizance is to be taken of criminal contempt by the superior courts, it can only be by or with the express consent of the respective law officers, or on the *suo motu* motion of the Court concerned.
10. *Anil Kumar Gupta* v. *K.Suba Rao*, ILR (1974) 1 Del 1 at p.7.
11. This was first enunciated in *P.N.Duda* v. *P.Shiv Shanker*, (1988) 3 SCC 167 at Para 54.
12. *Bal Thackrey* v. *Harish Pimpalkhute*, (2005) 1 SCC 254.
13. *Pritam Pal* v. *High Court of M.P.*, 1993 Supp (1) SCC 529; *L.P.Misra* v. *State of U.P*, (1998) 7 SCC 379; *Pallav Sheth* v. *Custodian*, (2001) 7 SCC 549.
14. *J.R.Parashar* v. *Prashant Bhushan*, (2001) 6 SCC 735.
15. *State of Kerala* v. *M.S.Mani*, (2001) 8 SCC 82.
16. *Supra*, n.11.
17. *Supra*, n.12 at Para 26.
18. Judgment in C.A.No.607/2005 dated 25th August 2010, delivered by Justices Reddy and Nijjar.
19. *S.K.Sarkar* v. *V.C.Misra*, (1981) 1 SCC 436.

> followed (See *L.P.Misra (Dr.)* v. *State of U.P., Pallav Sheth* v. *Custodian*). The High Court in the present case relied on the decision of this Court in *C.K. Daphtary* v. *O.P. Gupta* wherein this Court overruled the objection raised on behalf of the alleged contemnor that the contempt petition filed in the Supreme Court without the consent of the Attorney General was not maintainable. The decision was rendered prior to the Act coming into force. There was no provision of law at the relevant time which prevented the Courts from entertaining a petition filed by interested persons even without the prior consent in writing of the Attorney General or the Advocate General, as the case may be."[20]

Even on the administrative side, this institution has sought to pay heed to the moderation offered by Section 23, as is evident from the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975. While these Rules lay down the modalities for hearing and disposal of contempt matters in the Apex Court, care has been taken in Parts I and II to ensure compliance with the mandate of Sections 14 and 15 of the 1971 Act.

It could therefore safely have been assumed that as far as the procedure to prosecute contempt of itself, where Parliament has expressly made mention of the Supreme Court and the High Courts, the legislative intent would trammel the judicial one.[21] However, when faced with Section 14 of the Act, the judgment in *Leila David*[22] seems to make a sudden departure from the strict track endorsed in dealing with Section 15. This anomaly may be clarified by examining the very nature of contempt in the face of the Court and the altered approach of the Courts in trying the same.

III. *Ex Facie Curiae* and Summary Procedures

Of all the various types of contempt, it is in the context of contempt which occurs directly in the face of the court, that exercise of its summary

20. *Supra*, n.16, at Para 17, as accessed on 26.08.2010 from http://judis.nic.in/supremecourt/ imgs.aspx. The Contempt of Courts Acts of 1926 and 1952 were very brief enactments, with no procedural provisions akin to Section 15 of the 1971 Act.
21. This is a view reflected by Dr.Durga Das Basu in his Silver Jubilee edition of the Commentary to the Constitution, where he says – "It follows from the foregoing discussion that though the substantive and inherent power of these superior Courts to punish for contempt has been affected by this Act, in matters of procedure and limitation, the latter shall prevail." Basu, Durga Das, *Commentary on the Constitution of India*, Volume H, S.C.Sarkar & Sons, 6th edn., (1983), at p.227. He however, later proceeds to state that if Section 15(2) is treated as a limitation on the courts of record, such a position deserves further consideration, *sans* an amendment to the Constitution (at p.228). As we have seen at footnote 7 (*Supra*), this question has been left open by the Supreme Court.
22. *Supra,* n.2.

jurisdiction is most justified.[23] Instances of where such jurisdiction has been invoked include where missiles, eggs or stones have been thrown at the judge, briefs have been snatched, witnesses or counsel have been threatened or insulted, where the presiding officer has been abused, and where clandestine tape recording of court proceedings have been carried out.[24]

For over 250 years, and as ubiquitously recorded, it is the words of Wilmot J in *Almon's* case[25] that have linked the summary procedure to the prosecution of such contemptuous conduct. As he said:

> "The power which the courts in Westminster Hall have of vindicating their own authority is coeval with their first foundation and institution; it is a necessary incident to every court of justice, whether of record or not, to fine and imprison for contempt of court, acted in the face of it."[26]

However, it is the celebrated and oft-repeated passage of Lord Denning that has re-emphasized the relevance of such jurisdiction. In *Morris*[27], he observed:

> "The phrase 'contempt in the face of the court' has a quaint old-fashioned ring about it; but the importance of it is this: of all the places where law and order must be maintained, it is here in these courts. The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our society. To maintain law and order, the judges have, and must have, power at once to deal with those who offend against it. It is a great power – a power instantly to imprison a person without trial – but it is a necessary power."[28]

The eminent Judge could not have been more right when he refers to this as a "great power". For, in his own country three centuries earlier, the

23. Eady & Smith, *Aldridge, Eady & Smith on Contempt*, Sweet & Maxwell, 2nd edn., (1999) at p.571.
24. For these and other examples, *See Generally*, Eady & Smith, *Supra*, n.23 at pp.574-579, Ramachandran & Gopalan, *Supra*, n.6 at pp.91-93 and Lowe & Sufrin, *The Law of Contempt*, Butterworths, (1996) at pp.15-31.
25. *R* v. *Almon*, (1765) Wilm 243.
26. *Ibid*, at 254; In Lowe & Sufrin, *Supra*, n.24 at pp.470-471, the discussion shows that Justice Wilmot's opinion was never delivered due to certain intervening factors, and was actually published by his son only as late as 1802. In footnote 3 at p.471, the authors draw attention to the work of Sir John Fox who showed, through a series of works in the early part of the nineteenth century, the very tenuous and weak foundations of Justice Wilmot's opinion, being without historical basis, contrary to his the claims in his Opinion. This has however never stopped these words becoming an indelible part of the jurisprudence on contempt law.
27. *Morris* v. *Crown Office*, [1970] 2 QB 114.
28. *Ibid*, at p.122.

punishment for attacking a judge would make imprisonment seem a mild option. In 1681, when an accused at the Salisbury Summer Assizes threw a brickbat at Chief Justice Richardson, the offender was hanged in the court, preceded quite unnecessarily by the offending hand being cut off and fixed to a scaffold.[29] The amputation of the right hand was the common form of punishment at the time, with the same being visited on one James Williamson as well for throwing a stone at the Bench in Chester Castle.[30]

Thankfully, this barbaric means of justice is far gone, and with principles of natural justice taking firm root in the modern era, adequate safeguards have been provided in the law. Both in England and India, it has been considered reasonable to adopt a summary procedure only in exceptional cases, most often restricted to cases of contempt in the face of the court. While in England the summary process involves exclusion of the jury, in India as sanctified by Section 14 of the Act of 1971, the court is required to grant a minimal opportunity of hearing and defense to the accused. This may or may not require further proceedings (*brevi manu*). Most essentially, such a course necessarily involves the three steps reflected in Section 14(1)(a) to (c) to be followed. Even when committed in its face, the Court is required to furnish the accused with the details of the charge, grant him/her an opportunity to respond, and then, take necessary evidence into consideration.

IV. The Leila David View

It is on this very point that Justices Pasayat and Ganguly had differed in *Leila David*. The former adopted a stern approach, stating that "*This conduct is contemptuous. There is no need for issuing any notice as the contemnors stated in open Court that they stand by what they have said and did in Court*".[31] As a result, he convicted the accused and sentenced them to 3 months simple imprisonment. Justice Ganguly disagreed saying – "*Mere unilateral recording in the order that the contemnors stand by what they said in Court is not a substitute for compliance with the aforesaid mandatory statutory requirement"*.[32]

On reference, the Attorney General, the Solicitor General and the President of the Supreme Court Bar Association (all of whom were present when the unfortunate incident occurred) made their submissions to the Court that as the footwear was cast in full view of the court, there would be "*little*

29. 2 Dyer 188 b (notes), *cf.* Oswald, James Francis, *Contempt of Court, Committal and Attachment and Arrest upon Civil Process*, Bibliolife LLC, (2009) at pp.24-25.
30. *Ibid*, at p.25.
31. *Supra*, n.1 at Para 1.
32. *Ibid*, at Para 11.

justification in going through the procedure prescribed in Section 14"[33] and that following such procedure "*would be redundant*".[34] Strangely, in support of his stand in departing from the provisions of the 1971 Act, the Attorney General placed particular reliance on *Vinay Chandra Mishra's* case[35], where the lawyer in question was punished by suspending his license to practice by adverting to Article 142.

The unanimous Court of 3 judges endorsed the course adopted by Justice Pasayat in departing from the mandate of Section 14 in the following words:

> "While, as pointed out by Mr. Justice Ganguly, it is a statutory requirement and a salutary principle that a person should not be condemned unheard, particularly in a case relating to contempt of Court involving a summary procedure, and should be given an opportunity of showing cause against the action proposed to be taken against him/her, there are exceptional circumstances in which such a procedure may be discarded as being redundant."[36]

As a result, a mandatory statutory requirement was "*discarded*", the conviction and sentence imposed by Justice Pasayat remained, and all 4 accused were to undergo the period of imprisonment imposed.

The primary error in this judgment manifests itself in the following observation of the Bench:

> "As far as the suo motu proceedings for contempt are concerned, we are of the view that Dr. Justice Arijit Pasayat *was well within his jurisdiction in passing a summary order*, having regard to the provisions of Articles 129 and 142 of the Constitution of India. Although, Section 14 of the Contempt of Courts Act, 1971, lays down the procedure to be followed in cases of criminal contempt in the face of the court, it does not preclude the court *from taking recourse to summary proceedings* when a deliberate and wilful contumacious incident takes place in front of their eyes and the public at large, including Senior Law Officers, such as the Attorney General for India who was then the Solicitor General of India."[37] (emphasis supplied)

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33. *Supra*, n.2 at Para 15.
34. *Ibid*, at Para 20.
35. *Vinay Chandra Mishra, Re.,* (1995) 2 SCC 584.
36. *Supra*, n.2 at Para 29.
37. *Ibid*, at Para 28.

Justice Pasayat did not in fact pass a "summary order" nor did he take recourse to "summary proceedings". The only summary proceedings in prosecuting criminal contempt known to law both in India and in the rest of the commonwealth clearly involves a measure of natural justice, i.e. a show cause notice in writing with a response to be furnished. The approach adopted by the learned judge achieved a subversion of all the minimal safeguards[38] carefully hewn into a process where the presiding officer acts both as prosecutor and judge.

(a) The heat of the moment: It is eminently possible in a climate where tempers are frayed and emotions high that both the judge and the offender would require some reflection before a final view is taken on the offence. As some authors suggest – "*An attacked judge cannot forget the attack and his vision of whether the attack was contempt or not and what is the measure of punishment to be meted out, may sometimes be blurred*."[39] It is possible that hindsight would offer an avenue to purge the contempt that might not have been earlier available.[40] In addition, Section 14(4) permits the detention of an offender pending the determination of the charge against him/her. In view of such protection, it would be impossible to contend that the contempt was so serious that it could not wait for a framed charge and a reasoned response from the alleged contemnor.

(b) The precision of the charge: Full information of the charge being made against the contemnor is an essential ingredient of the procedure to be followed under Section 14(1)(a), and is a staple of all criminal procedures around the world. Without the exactitude of the charge being clarified, it would be possible for an individual's liberties to be breached because of an insufficient defense.

(c) The option to defend: Although the specific facts of *Leila David* would suggest the complete lack of contrition on the part of the accused, it is likely that another accused in a similar circumstance would well apologize, or at the very least engage legal representation if given the opportunity.[41] It would also be possible to contend insanity or another equally tenable excuse for such conduct. Absent such an option, the exercise by the Court of its power of punishment would not be summary, but cursory, and occasion a grave miscarriage of justice.

38. These safeguards are dealt with in considerable detail in Eady & Smith, *Supra*, n.23 at pp.583-596.
39. *Supra*, n.6 at p.14.
40. The same caution is voiced by the Phillimore Committee in its Report of 1974 at Paragraph 33.
41. *R* v. *Montgomery*, (1995) 2 All ER 28.

In addition to all the above, even in exercising the summary power, there is much caution that is advised. In *Parashuram Detaram Shamdasani* v. *The King Emperor*[42], Lord Goddard said –

> "Their Lordships would once again emphasise what has often been said before that this summary power of punishing for contempt should be used sparingly and only in serious cases. It is a power which a court must of necessity possess; its usefulness depends on the wisdom and restraint with which it is exercised."[43]

It would merit mention that in delivering its judgment in *Leila David*, the Supreme Court relied on the cases of *Nand Lal Balwani*[44] (where a shoe was thrown) and *Charan Lal Sahu*[45] (where unsavoury language was used in a petition), to support the conviction of the accused. However, the Court has omitted to notice that in both these cases, due notice was given, charges framed and opportunities afforded to file affidavits, which is clearly in consonance with the mandate of the 1971 Act.

The other factor which probably erroneously weighed with the Court is the Attorney General's reliance on *Mishra's* case[46] with its wide exercise of powers, which was however wholly and comprehensively overruled by the Constitution Bench in *Supreme Court Bar Association.*[47]

Also, it must not be forgotten that Justice Pasayat's terse judgment did not deal only with the individual who threw the slipper, but also three others who allegedly used intemperate and offensive language with the Court. Surely, all four of the accused could not have been dealt with in such a casual manner that the one who attempted to assault the judge was treated on par with those who were abusive to pass the identical sentence on all of them. Yet, that was what the Court did, and which did not merit interference on reference.

V. The Sequitur

The factual matrix of *Leila David* notwithstanding, a matter of principle is now at stake. A decisive judgment of three judges of the Supreme Court

42. [1945] AC 264; *See also* the Court of Appeal's view in *Balogh* v. *St Albans Crown Court*, [1974] 3 W.L.R. 314.
43. *Ibid*, at p.270.
44. *Nand Lal Balwani, Re,* (1999) 2 SCC 743.
45. *Charan Lal Sahu* v. *Union of India*, (1988) 3 SCC 255.
46. *Supra*, n.35.
47. *Supra*, n.7 at Paras 56, 77 and 78.

has on reference concluded that Section 14 may be departed from in certain circumstances, the exact parameters of which remains undefined. As a result, when contempt is now committed in the face of a superior court, it would be permissible for the Court to give the mandate of the provision a go-by (albeit the well-advised use of the word "shall"), and to convict forthwith. Section 14, which is express in terms as far as the Supreme Court and High Courts are concerned, is now rendered timorous in the face of the inherent powers of the courts of record. The contrasting approach of the Court to Section 15 is glaring, and it is clear that a reconsideration of *Leila David* beckons.

Till such time, however, one must garner comfort from the wise words of Justice Felix Frankfurter:

> "The power to punish for contempt of court is a safeguard not for judges as persons but for the function which they exercise."[48]

48. *Pennekamp* v. *Florida*, 328 US 331, 336 (1946).