

Supreme Court Full Bench
Honorable Justice Deepak Kumar Karki
Honorable Justice Meera Khadka
Honorable Justice Hari Krishna Karki
Honorable Justice Vishwambhar Prasad Shrestha
Honorable Justice Ishwar Prasad Khatiwada
Honorable Justice Dr. Ananda Mohan Bhattarai
Honorable Justice Prakash Man Singh Raut

Judgement

Date of Decision: 2076.10.23 (corresponding to 06/02/2020)

Subject: Contempt of Court

074-MS-0013

Petitioner: Netra Bandhu Poudyal, Section Officer, Supreme Court

Vs

Respondent: Dr. Govinda K.C., currently working at Tribhuvan University Teaching Hospital, Maharajgunj

074-CF-0009

Petitioner: Advocate Toyenath Dhungana, resident of Khotang District, Rupakot Majhuwagadhi Municipality Ward No.15, currently residing at Kathmandu Metropolitan City, Ward No. 11

Vs

Respondent: Kantipur Publication Pvt. Ltd., Central Vision Park, Thapathali, Kathmandu et.al.

- The court is a public institution. People may have interest and opinion on cases sub-judice before the courts and these opinions may be expressed in various forms. Judges from time to time may have to encounter unpleasant reactions and comments and it is neither possible nor appropriate to pursue and keep track of them. Where such reactions or comments have not adversely affected the dispensation of justice nor have they directly challenged the authority of the court, it is preferable that they be disregarded. Then it is better for the judges to ignore these issues. At present, the need is to maintain a proper balance and harmony between freedom of expression and the power to initiate proceedings for contempt of court, while strengthening the values of a tolerant democracy. A court that conducts open hearings must accept open communication. The indiscriminate use of the weapon of contempt should not be applied to distort justice.

(Para No. 24)

- The present Constitution entrusts the judiciary with the responsibility (a) to exercise judicial power in accordance with the principles of the Constitution, law and recognized principles of justice, (b) the duty as a court of record, to preserve and protect its own judicial authority as well as that of the courts subordinate to it and (c) the authority to initiate contempt proceedings in accordance with the law provided any person obstructs in the dispensation of justice or disobeys the orders or judgments of the court. These powers and responsibilities must be construed and exercised in a manner that maintains harmony with the fundamental values of the Constitution, its democratic character, the principles of a fair hearing, and the primary obligation to administer justice through open court proceedings.
- The court bears the duty to exercise its powers in a balanced manner, with due respect to freedom of thought and expression, the right to information and communication, and other fundamental rights. However, where any publication or expression obstructs the course of justice; seeks to create confusion in judicial proceedings by making unwarranted or malicious allegations; or is undertaken with the intent to divert the court and the judges or staff involved therein, the parties to the case, or legal practitioners from the path of justice; or is carried out with a tainted motive so as to undermine the dignity and reputation of the judiciary in the eyes of the public, such conduct cannot be tolerated. Such acts undoubtedly constitute contempt of court, and the court retains the authority to restrain such conduct and to punish the offender in accordance with law.

(Para No. 25)

On behalf of the petitioner: Learned Advocates Dr. Shiva Kumar Yadav, Mr. Arun Kumar Gyawali and petitioner Mr. Toynath Dhungana

On behalf of the respondent: Learned Senior Advocate Mr. Shambhu Thapa, Learned Advocate Mr. Om Prakash Aryal, Mr. Tikaram Bhattarai and Mr. Krishna Thapa

Precedents Cited:

- Nepal Law Magazine 2070, Decision No. 9105, Page 56
- Nepal Law Magazine 2068, Decision No. 8757, Page 77
- Nepal Law Magazine 2068, Decision No. 8660, Page 1243
- Nepal Law Magazine 2068, Decision No. 8539, Page 89
- Nepal Law Magazine 2067, Decision No. 8342, Page 556
- Nepal Law Magazine 2066, Decision No. 8076, Page 252
- Nepal Law Magazine 2064, Decision No. 7839
- Nepal Law Magazine 2063, Decision No. 7801
- Nepal Law Magazine 2057, Decision No. 6916, Page 521
- Nepal Law Magazine 2057, Decision No. 6870, Page 197
- Nepal Law Magazine 2056, Decision No. 6808, Page 791
- Nepal Law Magazine 2055, Decision No. 6608, Page 593
- Nepal Law Magazine 2055, Decision No. 6551, Page 302
- Nepal Law Magazine 2054, Decision No. 6412, Page 404

- Nepal Law Magazine2052, Decision No. 5042, Page 83
- Nepal Law Magazine2049, Decision No. 4604, Page 4049
- Nepal Law Magazine2047, Decision No. 4104, Page 266
- Nepal Law Magazine2047, Decision No. 4050, Page 49
- Nepal Law Magazine2045, Decision No. 3524, Page 703
- Nepal Law Magazine2042, Decision No. 2404, Page 586
- Nepal Law Magazine2036, Decision No. 1269, Page 149
- Nepal Law Magazine2035, Decision No. 1197, Page 168
- Nepal Law Magazine2033, Decision No. 981, Page 19
- Nepal Law Magazine2028, Decision No. 602, Page 133
- Nepal Law Magazine2025, Decision No. 415, Page 134
- Nepal Law Magazine2023, Decision No. 327, Page 82

Relevant Laws:

- Constitution of Nepal
- National Criminal Code, 2074
- National Civil Procedure Code, 2074
- Privacy Act, 2075
- Crime Victim Protection Act, 2075
- Children's Act, 2075

Decision

Justice Dr. Anand Mohan Bhattarai: The brief facts and decision of the case submitted before this court pursuant to Sub-article (4) of Article 128 of the Constitution of Nepal and Sub-section (4) of Section 17 of the Administration of Justice Act, 2016, are as follows:

Facts relating to Case No. 074-MS-0013:

The petitioner, Prof. Dr. Shashi Sharma, had filed a writ petition of certiorari bearing No. 070-WO-0571 against the Prime Minister who is the Vice-Chancellor of Tribhuvan University. With reference to the order issued by this Court on 2074/9/23 (corresponding to 07/01/2018), news items published on 2074/9/24 (corresponding to 08/01/2018) at 14:48 hours on onlinekhabar.com and other media outlets stated as follows: “Demanding the resignation of Chief Justice Gopal Parajuli, Prof. Dr. Govinda K.C. of Tribhuvan University Teaching Hospital has commenced an indefinite hunger strike. Dr. Govinda K.C. began the hunger strike immediately after a Division Bench including Chief Justice Gopal Parajuli issued an order for the reinstatement of Shashi Sharma. Prior to that, at a press conference, Dr. Govinda K.C. accused Chief Justice Gopal Parajuli of corruption and of being aligned with mafias. He stated that the judiciary does not dispense justice but trades in justice; that it colludes with corrupt and criminal elements to protect them; and that it punishes the honest, claiming that the judiciary is under the control of such a group. Alleging that the judiciary has been turned into a means for personal gain and a shield to conceal judicial wrongdoing, he further stated that, in order to safeguard the dignity of the judiciary, there was no alternative left but to fight against the “corrupt and mafia” Chief Justice Gopal Parajuli. Dr. Govinda K.C., while putting forward five demands, commenced a hunger strike with the resignation of Chief Justice Gopal Parajuli as his first demand. He also stated that the Chief Justice

should be investigated and proceeded against. In that context, opposing the order directing the reinstatement of Dr. Shashi Sharma as Dean of the Institute of Medicine, Maharajgunj, Dr. Govinda K.C. convened a press conference and announced the hunger strike, demanding the resignation of Chief Justice Gopal Parajuli. As news of the nature stating that “there is no alternative but to fight against Gopal Parajuli, as he has failed to comply with law and the rule of law and has turned the law into a means for fulfilling base personal interests and into a shield to conceal his judicial crimes” was published in Setopati Online and Online Khabar, wherein a report was submitted to this court on 2074/9/24 (corresponding to 8 January, 2018) by Section Officer Netra Bandhu Paudyal, seeking the imposition of the maximum punishment upon Dr. Govinda K.C. for contempt of court pursuant to Article 128(4) of the Constitution of Nepal and Section 17 of the Judicial Administration Act, 2073.

Upon perusal of the press statement and various news articles published in different online medias in the name of Dr. Govind K.C. it can be deemed that the contents are contrary to the Constitution and law and it is an attempt to create distrust among the general public with regards to the decisions rendered by this court and its subordinate courts and the statements made are contemptuous with regards to the judicial system, judiciary and the justices and therefore an order has been set aside by this court on 2074/09/24 (corresponding to 8 January, 2018) in the name of Nepal government, Ministry of Home and Police Headquarters to arrest Dr. Govind K.C. and to present him before this on court on 2074/09/25 (corresponding to 9 January, 2018) at 9:00 a.m.

A letter submitted by the Metropolitan Police Range on 2074/09/25 (corresponding to 9 January, 2018) states that an arrest warrant had been issued to Govind K.C. and upon his arrest has been presented before this court.

The deposition made by Govind K.C. before this court is as follows: I cannot say anything with regard to the news published in Online Khabar, Setopati, and other media outlets. I did issue the press release dated 2074/9/24. I did not publish it in an indecent or disrespectful manner so as to amount to contempt of court. I have respect for the court. I issued the press release because I believe that certain decisions made by the Rt. Honorable Chief Justice Gopal Parajuli resulted in injustice. In support of that assertion, I have submitted the statement dated 2074/9/25 and copies of two citizenship certificates of the Chief Justice obtained online. I am aware that expressions which create hatred against the orders and judgments of the court constitute contempt of court. I respect judges who dispense proper justice. Speaking about judges who deliver erroneous decisions or act improperly does not amount to contempt; rather, it is an act of respect. I have not spoken out of emotion. My intention in doing so was to produce a positive impact on the court and the public. I have never claimed to be a leader of civil society; I am merely an ordinary, conscious citizen.

Justice must be accessible to all. I have not claimed that a decision should be made only in my favor. I spoke out to seek correction where I perceived distortions in justice. Had the decisions been proper, there would have been no need for criticism. Healthy criticism of a judgment does not constitute contempt of court. My present effort is aimed at ensuring the establishment of democracy and the rule of law in the country. My expression is not baseless. Since the decisions in question infringed upon the natural, constitutionally guaranteed right of 30 million Nepali citizens to life, I sought to alert and sensitize the public. I spoke to establish democracy and the rule of law, and not against the judiciary. I have been striving for reform in medical colleges for

over a decade and a half, and my movement for medical college reform continues. I was on a hunger strike even at the time when the police arrested me and brought me here. The order issued by this court, if implemented, would allow the mafias of private medical colleges to flourish, resulting in the production of substandard healthcare personnel, causing distortions in the health sector, and adversely affecting the health of 30 million Nepali citizens. In such circumstances, it is my duty to oppose the judge who issues such an order. My movement is directed against judges who deliver erroneous decisions; it is not directed against the judiciary. The Chief Justice, who ought to be an ideal and exemplary figure leading the administration of justice and judicial governance impartially, has, by reason of age, educational qualifications, revenue fraud, activities involving the Oil Corporation, Ncell, land mafias, and nepotism, caused contempt of the court. I have not committed contempt of court. Rather, bringing Chief Justice Gopal Parajuli within the scope of judicial investigation and proceeding against him would restore public confidence in the judiciary.

Although Dr. Govinda K.C. included various statements in the press release, during his statement before the court, he stated that “I respect judges who dispense justice; I have not expressed hatred toward the court. I have engaged in fair criticism to stimulate both the court and society.” Considering also the health condition of the respondent, and since the matter can be addressed at a later stage as deemed appropriate, the court orders that, for the time being, the respondent Dr. Govinda K.C. be released pursuant to No. 47 of the Court Proceeding (*Adalati Bandobasta*) of the *Muluki Ain* (Country Code), in the care of Senior Advocate Surendra Bhanari appearing on his behalf and that the proceedings be continued.

An order had been set aside by this court on 2074/09/26 (corresponding to 10 January, 2018) whereby the court directed for submission of the copies of both citizenship certificates of Chief Justice Gopal Parajuli obtained from the District Administration Office, Kathmandu, copy of the decision made by the Judicial Council regarding his age, copies of academic qualification, and a copy of the order issued on 2074/09/23 (corresponding to 7 January, 2018) against the Writ Petition No. 070-WO-0571 filed by the petitioner Prof. Dr. Shashi Sharma against the Vice Chancellor of Tribhuvan University and the Right Honorable Prime Minister et.al.

An order was issued on 2074/11/23 (corresponding to 7 March 2018) directing that the contempt of court case No. 074-CF-0009, filed by petitioner Toyannath Dhungana against Kantipur Publication Pvt. Ltd., Central Park, Thapathali, Kathmandu, et al., be presented before a larger Full Bench on 2074/11/27 (corresponding to 11 March 2018). On the same date, the hearing of the case relating to Netra Bandhu Paudel vs. Dr. Govinda K.C. was also scheduled before the Bench. Considering that the subject matter and the nature of the publications involved in both cases were similar, and taking cognizance of the gravity of the legal questions raised therein, the Chief Justice, pursuant to Rule 22 (2) (f), has the authority to refer a case for hearing before a larger Full Bench. It was deemed appropriate to submit the case of Toyannath Dhungana vs. Kantipur Publication Pvt. Ltd. (074-CF-0009) together with the present case. Accordingly, both cases were presented before the Chief Justice for appropriate orders, and the Chief Justice, on 2074/11/23 (corresponding to 7 March 2018), issued an order directing that case No. 074-CF-0009 be heard jointly with this case.

Facts of Case No. 074-CF-0009

The petition submitted by Toyanath Dhungana before this court reads as follows: It is universally recognized that the protection of fundamental rights guaranteed by the Constitution of Nepal such as civil liberties, fundamental rights, human rights, the rule of law, freedom of the press, and adult suffrage can be ensured only through a capable, independent, and impartial judiciary. If the judiciary is obstructed from dispensing justice independently, the fundamental rights of the people are frustrated. When a person, with the intent to deprive the court of its ability to administer justice independently and impartially, engages in baseless publicity or dissemination of information against a judge, there arises a strong likelihood that such conduct may undermine the morale of the judge and influence the outcome of orders or judgments. In such circumstances, the public may be deprived of impartial justice. Recognizing that such baseless publicity undermines public confidence in the judiciary, the Legislature has provided for proceedings under sub-section (4) of Section 17 of the Judicial Administration Act, 2073. It is noted that respondents No. 2 to 5 have repeatedly published misleading accounts regarding the present Chief Justice Gopal Parajuli in the Kantipur Daily, thereby creating confusion among the public. On 2074/10/27 (corresponding to 11 January, 2018), an article titled “Four Different Birth Dates of the Chief Justice” was published on the front-page of the same publication.

Similarly, on 2074/10/28 (corresponding to 11 February, 2018), by referring to a press conference held by Dr. Govinda K.C., an attempt was made to misrepresent the date of birth of the Chief Justice as being altered. Furthermore, on 2074/10/29 (corresponding to 12 February, 2018), a news report was published claiming that the Chief Justice’s citizenship contained three different dates of birth, thereby creating confusion among the public. In fact, the originally issued citizenship contained only the year of birth, and subsequent corrections or updates made by the District Administration Office which were misrepresented and disseminated with incorrect implications to the general public. Such publication and misrepresentation constitute contempt of court. Repeated publications have been made with the intent to disturb the mental state of the judge delivering the judgment and to obstruct the judicial process. News published without any basis can adversely affect cases sub-judice before the court. Moreover, such publications have the potential to influence the Chief Justice’s functions in judicial administration, including the scheduling of weekly hearings, the formation of Benches, the constitution of judge panels for particular types of cases, and the Chairmanship of the Judicial Council. Therefore, in order to preserve the credibility of the judiciary, the respondents, by publishing false and misleading news and thereby obstructing the Supreme Court and the Honorable Chief Justice from dispensing justice, should pursuant to Sub-section (4) of Section 17 of the Judicial Administration Act, 2073, be punished to the maximum.

Upon perusal of the various news articles, comments, and editorials published in the Kantipur Daily, it is prima-facie evident that they generate distrust toward the court, create undue confusion regarding the judges serving therein, and weaken the judiciary as a whole. Such publications obstruct the right of ordinary citizens to obtain fair and impartial justice from an independent and capable judiciary, undermine the morale of judges, and ultimately interfere with the judicial process. These conclusions are corroborated by the choice of language, style, and the repeated presentation of fabricated facts in the published materials. Although Article 17 (2) (a) of the Constitution of Nepal guarantees the freedom of thought and expression, and Article 19 (1) guarantees the right to communication, however, these rights are not absolute. The Constitution clearly prescribes that the exercise of these rights must respect public decorum and morality and must not constitute contempt of court. Furthermore, Sections 14 (c1) and (e) of the Press and

Publication Act, 2048, prohibit the publication of material that would defame or dishonor any person or that would offend public morality, ethics, or social norms. Prima facie, the respondents, by publishing baseless news, not grounded in truth or fact, have violated the Constitution and the law and have defamed the court, its judges, and the Chief Justice. Accordingly, the present petition is registered, and the respondents are summoned to explain why proceedings and punishment under Section 17 of the Judicial Administration Act, 2073, and Rule 59 of the Supreme Court Rules, 2074, for contempt of court, should not be initiated against them. They are hereby directed to appear in person before this court within three days from the date of execution of the summons to state any grounds or reasons thereof as to why they should not be held liable for contempt of court.

Furthermore, Section 7 (b) of the Press Council Act, 2048, empowers the Press Council to develop and implement a code of conduct for newspapers to promote responsible journalism, to investigate socially objectionable or offensive material, and Section 12 empowers it to recommend that a journalist who repeatedly violates the professional code of conduct be denied, in whole or in part, the privileges or facilities provided by the Government of Nepal. In this context, the Press Council is required to perform its duties in accordance with the law. Accordingly, in view of the news materials published on various dates in the Kantipur Daily, an interim order had been issued on 2074/11/10 (corresponding to 22 February, 2018) against the Press Council directing them to immediately investigate whether the professional code of conduct for journalists was violated, and to prevent the republication of news that creates confusion among the public, utilizing the powers conferred under the Press Council Act.

The rejoinder and deposition submitted by Swastima Sirohiya reads as follows: The Kantipur Publication, of which I am the Director, did not publish news in a manner constituting contempt of court. Although the petition refers to news published in the Kantipur Daily on 2074/10/27, 2074/10/28, and 2074/10/29 (corresponding to 10, 11 and 12 February, 2018) as grounds for alleged contempt, I have full faith and confidence in the independent judiciary. The petitioner has not specified in the petition which of my acts or conduct allegedly constitute contempt of court. Furthermore, the order dated 2074/11/10 does not indicate any specific order or judgment of the court that I failed to comply with. Therefore, I request that the present case be dismissed.

The joint rejoinder and deposition made by Kailash Sirohiya, Sudhir Sharma and Krishna Gyawali reads as follows: We have always respected the dignity, prestige, and honor of this honorable court. We are confident that our faith, trust, and respect for the court will continue in the future. During the twenty-five years of our newspaper's publication, we have operated under the principles of the rule of law, an independent judiciary, press freedom, human rights, and other democratic values and fundamental principles, providing impartial, independent, and fact-based news to keep the general public informed. Our publishing house has long maintained that the field of journalism can thrive only when the judiciary is capable, independent, and free from controversy. To date, this publishing house has not published any news that would undermine the dignity, honor, or public trust in the court, or obstruct the administration of justice. No one associated with our publication has ever been penalized for contempt of court on account of any news we have published. It is not our intention to impair the court's dignity. Our objective has always been, and continues to be, to strengthen faith and confidence in the judiciary. We hereby affirm our commitment to this purpose in the future. Although a three-day summons has been issued by this honorable court against us, however, the summons does not specify any grounds or reasons as to

why the period for compliance should not be extended. From this, it appears that the person issuing the order has acted with prejudice against our publishing house, adopting a stance that is detached from standard judicial procedure and unduly harsh. The interim order issued in the name of the Press Council by this honorable court is contrary to the fundamental rights guaranteed under Article 19 (1) of the Constitution of Nepal. Regarding the disputed date of birth, it appears that Honorable Justice Gopal Parajuli, in his capacity as Chairperson, during a meeting of the Judicial Council Secretariat held on 2074/2/30 (corresponding to 13 June, 2017) has himself annulled the decision dated 2073/9/1 (corresponding to 16 December, 2016).

The first date of birth mentioned in the news published on 2074/10/27, namely 2009/4/21, is supported by the Judicial Council Bulletin, 2071, at page 37. The second date of birth, 2010/1/13, is corroborated by the Judicial Council Bulletin, 2058, at page 14, the Employee Provident Fund identity card, and the “To Whom It May Concern” letter issued by the Government of Nepal, Ministry of Education, Examination Department. The third date of birth, 2010/1/16, is indicated in the citizenship certificate. Based on these facts, the interview in which Gopal Parajuli stated his date of birth as 2010/1/16 appears to be contradictory. The news published in the Kantipur Daily pertains to the date of birth of Gopal Parajuli and is not related to the administration of justice. The subject of the news and the subject of judicial proceedings are distinct. The matter of Gopal Parajuli’s age had already been addressed in the media following directions issued by former Chief Justices Ram Kumar Prasad Sah and Sushila Karki, and therefore, the news we published cannot be considered targeted or sponsored against Gopal Parajuli. We did not create Gopal Parajuli’s citizenship or educational certificates; the information was published as reflected in official records. Publishing facts obtained from government records does not constitute contempt of court. Judges, like all public officials, are accountable to the nation and the people. A judge responsible for the adjudication of a dispute should not personally become a party to the controversy. Mere publications or writings that are allegedly targeted, sponsored, or motivated by bias, malice, or ill-will do not, by themselves, constitute contempt of court. For contempt to be established, there must be an obstruction of the judicial process or disobedience to an order or judgment. Since we have not disobeyed any order or judgment, we request that the present case be dismissed.

This Bench has observed the need for a comprehensive interpretation regarding the legal doctrine of contempt of court, its recognized principles, and its application in practice. Furthermore, considering the seriousness of the questions raised in the present file, it is deemed appropriate that the matter be deliberated in-depth before a Full Bench. Accordingly, taking into account the gravity of the matter, the present case is to be heard by a Full Bench in accordance with Rules 22 (f) and 23 (f) of the Supreme Court Regulation, 2074, and is to be presented before the Rt. Honorable Chief Justice. Pursuant to the order of the Division Bench dated 2074/11/22, the Rt. Honorable Chief Justice through an order dated 2074/11/23 directed the matter to be presented before a larger Full Bench.

Decision of this Court

Pursuant to the rules, the present matter was listed in the cause-list and submitted before the Bench. Learned advocates Dr. Mr. Shiva Kumar Yadav and Mr. Toyenath Dhungana appearing on behalf of this court, submitted that the respondent, Dr. Govind K.C., following the order dated 2074/9/23 issued by a Division Bench including the Rt. Honorable Chief Justice Gopal Parajuli, reinstating Prof. Dr. Shashi Sharma, commenced a fast-unto-death on 2074/9/24 demanding the resignation

of Chief Justice Gopal Parajuli, as noted in the report. This fact is corroborated by the respondent's own statement. Although the respondent, Dr. Govind K.C., has stated that he did not express any contemptuous remarks or engage in such conduct, he did begin a fast demanding the Chief Justice's resignation in connection with the order issued in the writ petition 070-WO-0571 filed by Dr. Shashi Sharma. Similarly, it appears from the respondent Dr. Govind K.C.'s own statement that his fast-unto-death was directed against Chief Justice Gopal Parajuli. In circumstances where the respondent himself has stated that the fast was directed against the Chief Justice, he cannot claim that he did not commit contempt of court. If there was any alleged error in the order issued in Shashi Sharma's writ petition, the proper course would have been to seek correction through judicial means. Instead, by demanding the resignation of the Chief Justice and commencing a fast, the respondent engaged in conduct constituting contempt of court. One cannot intervene or comment in a manner that undermines public faith in the judiciary outside the proper judicial process. The conduct of the respondent, Dr. Govind K.C., through his fast and press statements has created distrust and loss of confidence in this court. In *Niranjana Kumar Thapa vs. Indrajit Singh* (Nepal Law Magazine 2036, Magh, Decision No. 1305) the court has ruled that where distrust and loss of confidence arise in judicial administration, contempt of court is considered to have occurred. Similarly, in *Ganesh Bahadur Sunar vs. Government of Nepal* (Nepal Law Magazine 2042, Ashoj, Decision No. 2404), it was held that public statements or writings that interfere with a judge's work, duties, or conduct constitute defamation and undermine the judiciary. Furthermore, in *Nareshwar Bhandari vs. Narendra Kumar K.C.* (Nepal Law Magazine 2054, Falgun, Decision No. 6808) it was held that even improper insult, harassment, or obstruction directed at judges or members of the legal profession amounts to contempt. In light of these established principles, the actions of the respondent, Dr. Govind K.C., which obstructed judicial administration and interfered with the adjudicatory function of the Chief Justice, cannot be said to be free from contempt of court. Therefore, for all the reasons and grounds mentioned above, it was argued that the respondent, Dr. Govind K.C., is liable to be punished for contempt of court.

Learned advocate Mr. Om Prakash Aryal, appearing on behalf of the respondent, Dr. Govind K.C., submitted that the Honorable Chief Justice Gopal Parajuli, by directing the production of a report in an unusual manner and ordering the arrest of Dr. Govind K.C., who was undertaking a fast, clearly demonstrates prejudice against the respondent. Contempt proceedings cannot be initiated out of personal vindictiveness. Furthermore, with respect to the report filed against Dr. Govind K.C., examples of online news citing statements attributed to him have been presented; however, the relevant publishers of such news were not summoned for examination, and the authenticity of the publications was not tested. The matters stated in the deposition of Dr. Govind K.C. have been publicly known since the time of his appointment as a judge. Although the report states that Dr. Govind K.C. undertook a fast in connection with the order in Shashi Sharma's writ petition, Dr. Govind K.C. has explained that his fast was in response to the multiple and inconsistent birth dates recorded in Chief Justice Gopal Parajuli's citizenship documents. Dr. Govind K.C. has repeatedly undertaken fasts for the purpose of reforming the medical sector. Moreover, the press release dated 2074/09/24 (8 January, 2018) did not solely reference the proceedings of Shashi Sharma's writ petition; it also included references to orders relating to various medical colleges. It is on record that Dr. Govind K.C. has repeatedly undertaken fasts against medical colleges that were illegally established or irregularly operated, and such actions have already been reported in the media. Therefore, a person undertaking a fast for the purpose of reforming the medical sector cannot be said to have committed contempt of court merely for fasting in relation to the multiple birth dates recorded in Chief Justice Gopal Parajuli's citizenship documents. The arguments advanced and

the various legal principles cited by the learned advocates appearing on behalf of the opponent are not relevant to the present controversy. Accordingly, it is submitted that the present case should be dismissed. The arguments and the notes of arguments presented by the respondent has been duly considered by the Bench.

Learned advocate Mr. Arun Kumar Gyawali appearing on behalf of the petitioner and the petitioner Mr. Toyanath Dhungana, argued that the present case was filed against the respondents in connection with *Kantipur Daily* for publishing baseless and factually incorrect news. Specifically, the publications in question are: reporting and publication of four different birth dates of the Chief Justice on 2074/10/27 (10 February, 2018); reporting an alteration in the Chief Justice's date on 2074/10/28 (11 February, 2018) and reporting that the Chief Justice's citizenship contained three different birth dates on 2074/10/9 (12 February, 2018). It appears from the statement that the respondents published the news reporting that Chief Justice Gopal Parajuli had multiple birth dates in his citizenship documents, after the Judicial Council had decided on 2073/09/01 (corresponding to 16 December, 2016) to fix his birth date as 2009/04/21 (corresponding to 5 August, 1952). Chief Justice Parajuli had initially obtained a citizenship document dated 2030/04/21 (5 August, 1973) with only the year mentioned, indicating he had reached 21 years of age, without specifying the month and day. Later, upon obtaining a copy of the citizenship document specifying the year, month, and day, the birth date was recorded as 2010/01/16 (28 April 1953). Accordingly, this copy of the citizenship was submitted to the Judicial Council, which, on 2074/02/30 (13 June 2017), confirmed the birth date as 2010/01/16. Since the Judicial Council had already confirmed Chief Justice Gopal Parajuli's date of birth as 2010/01/16 (28 April 1953), publishing news claiming that he had different birth dates in his citizenship documents cannot be justified, and no one is allowed to dispute or create confusion regarding the date of birth of any judge or the Chief Justice. Failure to take action against a person who seeks to cast doubt on a judge's or Chief Justice's date of birth or academic qualifications could undermine the functioning of the courts in the future. To maintain the dignity of the judiciary and public confidence, the respondents must be punished, pursuant to the principles established in the case of *Yadab Raj Pokhrel vs. Ram Krishna Dangol* (Nepal Law Magazine 2066, *Jestha*, Decision No. 8076). Regarding the claim that Judicial Council Secretary Nrip Dhvaj Niraula communicated that the Chief Justice's retirement date was 2074/04/21, it is clarified that the Judicial Council's decision of 2073/09/01 was amended on 2074/02/30 to establish Gopal Parajuli's birth date as 2010/01/16. This decision remains valid to date. Chief Justice Parajuli resigned on 2074/12/01, and from that date the Civil Service records confirm his retirement with the issuance of the retirement benefit letter. In view of the fact that the resignation submitted by the Chief Justice on 2074/12/01 (corresponding to 15 March, 2018) has acquired legal validity, it is evident that the news published by *Kantipur Daily* on 2074/10/27, 2074/10/28, and 2074/10/29 was false and misleading. Accordingly, the Editor-in-Chief and other concerned parties of *Kantipur Daily* are liable to be punished for contempt of court in accordance with the law.

On behalf of the respondent Kailash Sirohiya, learned Senior Advocate Mr. Shambhu Thapa, along with Advocates Mr. Tikaram Bhattarai and Mr. Krishna Thapa, submitted that although the petitioner Toyanath Dhungana argued that the news published in *Kantipur Daily* on 2074/10/27, 2074/10/28, and 2074/10/29 amounted to contempt of court and sought punishment, however, it does not appear that the published news has, factually and substantively, been shown to constitute contempt of court. In the present matter, the party has published the news based on the decision of the Judicial Council dated 2073/09/01. It is evident from the evidence attached with the case file

that Chief Justice Gopal Parajuli held citizenship certificates reflecting different dates. Similarly, since his date of birth was established as 2009/04/21, the correspondence from the Secretary of the Judicial Council dated 2074/11/30 confirming that he had retired on 2074/04/21 has not been deemed otherwise. Merely remaining in dispute and submitting a resignation on 2074/12/01 and receiving retirement benefits on that basis does not constitute a modification of Chief Justice Parajuli's date of birth. In order to impose punishment for contempt of court, it must be shown that the individual obstructed judicial proceedings or disobeyed a court order or judgment. It does not appear from the petition that the respondents disobeyed any court judgment or order. Sitting on a hunger strike for a good cause does not constitute contempt of court. Regarding the publication in Kantipur Daily, reporting the differing dates shown in Chief Justice Gopal Parajuli's citizenship and educational certificates does not constitute obstruction of judicial proceedings. Treating news published based on true facts as contempt of court would undermine the freedom of expression and press freedom guaranteed to citizens by the Constitution. Therefore, the present case should be dismissed.

Upon reviewing the case file, it appears that the issues in the present matter essentially involve two issues: **First**, the petition submitted by Advocate Toyanath Dhungana alleging contempt of court against Kantipur Daily in relation to the news articles published on 27th, 28th, and 29th of Magh, 2074 BS (corresponding to 10–12 February, 2018), concerning the controversy over the age of then Chief Justice Gopal Parajuli. **Second**, the issue arising from the press release issued by Dr. Govind K.C., along with his statements published on onlinekhabar.com and other online media, in connection with the decision dated 2074/9/23 (corresponding to 7 January, 2017) by the Bench including then Chief Justice Gopal Parajuli on the writ petition (070-WO-0571) filed by Dr. Shashi Sharma. This matter of alleged contempt has been raised based on the report submitted by Mr. Netra Bandhu Paudel, Section Officer of the Supreme Court. Initially, these matters were heard by separate Benches. However, when the issue concerning Kantipur Daily, with petitioner Toyanath Dhungana, was presented before the Division Bench, the Bench recognized the need for a **broader interpretation of the legal principles** regarding contempt of court, as well as their accepted doctrines and practical application. Given the gravity of the questions raised in the case file and the complexity of the issues involved, it was deemed appropriate that the matter be heard by a Full Bench or a Larger Full Bench. Consequently, pursuant to Rules 22 (2) (f) and 23 (2) (f) of the Supreme Court Regulation, 2074, an order was issued on 2074/11/22 (corresponding to 5 March, 2018) directing that the matter be presented before the Honorable Chief Justice. Thereafter, on 2074/11/23 (corresponding to 6 March, 2018), the case was duly presented before the Honorable Chief Justice, who directed that it be heard by a Larger Full Bench. Subsequently, in the petition filed by Netra Bandhu Paudel, considering the gravity of the subject matter, the Court Administration raised a memo that it would be appropriate to link the hearing with case no. 074-CF-0009 and place it on the daily cause list. When this memo was presented before the Honorable Chief Justice, an order was issued on 2074/11/23 (corresponding to 6 March, 2018) directing that the matters be tagged together for hearing. Thus, it can be observed that while the first petition raised the issue concerning the age of the then Chief Justice, and the second petition primarily involved expressions of opinion regarding a decision rendered by the Division Bench including the then Chief Justice, both matters involved information disseminated to the general public through the media. Accordingly, it was deemed appropriate to consider and hear both matters together.

While the Division Bench, in its order, noted that the matter involved the doctrinal principles of contempt of court and their recognized application and practice, however, it did not clearly specify what specific questions or issues were to be determined. In this context, considering the subject matter presented before the Bench, it becomes necessary to examine and deliberate on the constitutional guarantees and rights implicated, including: Article 17 (2) (a) the freedom of expression and thought; Article 19 the right communication; Article 20 rights relating to justice; Article 27 right to information; and Article 128 (2) and (4) as the court of records, its authority to give the final interpretation of the Constitution and law, and its power to impose punishment for contempt. In this context, in order to frame the issues in controversy and construct a coherent doctrinal or jurisprudential approach, it is therefore necessary to discuss these constitutional provisions, their interrelationships, and the impact of human rights law.

Since the year 2007 B.S., when the foundation of an independent judiciary was laid, the Supreme Court has exercised jurisdiction to punish contempt of court¹. At present, the power to impose punishment for contempt is provided to this Court under Article 128 (4) of the Constitution of Nepal and Section 17 of the Judicial Administration Act, 2073. Furthermore, the procedures relating to contempt of court in the Supreme Court are governed by Rule 59 of the Supreme Court Regulation, 2074. However, to date, no separate statute has been enacted exclusively on the subject of contempt of court. In this context, on one hand, it is essential to safeguard the central role of the court in protecting the people's rights to justice, along with fundamental rights, the rule of law, human rights, constitutionalism, and democracy. On the other hand, it is equally necessary to ensure that such functions are carried out in accordance with fundamental standards of justice and principles of fair hearing, so that the environment for the uninterrupted enjoyment of the people's fundamental rights is maintained. Furthermore, the exercise of the power to punish for contempt should not extend beyond the objectives prescribed under the Constitution and the law. Criticism or scrutiny arising from perceived injustice or errors in a case, which does not disrupt the administration of justice, or matters for which a judge may have to respond personally or through individual remedies, should not be suppressed through the instrument of contempt. The court must remain equally vigilant to ensure this. Therefore, taking into account the matter being referred from a Division Bench to a Full Bench, it is deemed appropriate that the following issues be resolved:

1. What is the jurisprudential concept of contempt of court?
2. What are the established principles and practices regarding the power to punish contempt in Nepal, and how is it applied in practice?
3. What is the role of the media in the context of the fundamental rights and freedoms guaranteed under the current Constitution, and what limits should be delineated to safeguard the judicial authority in the dispensation of justice?
4. Considering the nature of the present cases and the issues raised, has contempt of court occurred, and should the respondents be punished for contempt or not?

¹ Reference: Article 6 (2) of the Constitution of the Kingdom of Nepal, 2019, Article 102 (3) of the Interim Constitution of Nepal; Article 128 (4) of the Constitution of Nepal; Section 5 of the Nepal Supreme Court Act, 2008, Section 9 of the Supreme Court Act, 2013 and Section 6 of the Supreme Court Act, 2019

2. **Regarding the first question: What is the legal doctrine of contempt of court?** The power of a court to take action and impose punishment for contempt is intrinsically linked to the court's duty to preserve the integrity and effective operation of justice. The timeless maxim, "*justice must be done though the heavens fall,*"² underscores the principle that the administration of justice must remain paramount. Since courts and judicial bodies are the primary organs entrusted with the dispensation of justice, any act that interferes with the proper flow of justice, such as unauthorized intrusion, attack, disparagement of the court or judicial officers, disrespectful speech, or non-compliance with judicial orders and decrees constitutes a challenge to this authority. The court's inherent power to reject or restrain such acts is recognized as its authority to punish contempt. The practice of imposing punishment for contempt of court in common law jurisdictions can be traced back to the twelfth century and continues to exist in various forms in countries that follow the common law tradition³. In Nepal, the authority of the courts to impose punishment for contempt has been recognized since 2007 B.S. Under the current Constitution, the scope of contempt is defined to include (a) acts that obstruct the dispensation of justice, and (b) acts that disregards any order or judgment handed by the court.
3. Historically, it is also observed that before the concept of an independent judiciary developed, judges exercised the judicial powers of the king, so any act against them was considered an act against the king himself. Consequently, anyone who obstructed the work of a judge or disobeyed their orders was subjected to extremely severe punishment⁴. However, after the emergence of democratic governance, when the judiciary began functioning as an independent body, the notion emerged that judicial authority should be established on the intrinsic value of justice itself, rather than merely as an extension of state or royal power. As a result, the approach toward contempt had to change, creating a need to follow principles of fair hearing in such proceedings and to ensure that punishments were guided by a humane perspective.
4. Looking at the evolution of the doctrine of contempt of court, in the initial phase, acts such as attacks on judges, court staff, lawyers, jurors, or witnesses, resistance to their work, and speaking recklessly were considered contempt, and the physical presence of the concerned person in court was essential. However, with the rise of the press and the beginning of publication activities, the physical presence of the person in court was no longer necessary to constitute interference with judicial work. In other words, acts committed outside the court that posed an immediate threat to the administration of justice, or that maliciously undermined the reputation of the court among the public, directly or indirectly, came to be included within the scope of contempt of court⁵. Chronologically, acts such as disobeying court orders, violating summons, speaking arbitrarily or recklessly against the court and its proceedings, spreading misinformation about judges and court staff among the public, and directly or indirectly

² Let justice be done though heavens fall.

³ According to C.J. Miller, *Contempt of Court* (3rd Ed., Oxford 2000) at pp. 1–2, in common law jurisdictions, coercive measures to enforce compliance with court orders—such as injunctions, orders for specific performance, and compensatory fines—are widely used. However, courts may also issue other types of orders to compel obedience. For example: In France, courts may issue *astreintes* orders; In Germany, the corresponding measure is known as *Geldstrafen*; In Italy, under the civil procedure code since 2009, courts may issue enforceable orders to ensure compliance. See also: Carlo Vittorio Giabardo, *Disobeying Courts' Orders: A Comparative Analysis of the Civil Contempt of Court Doctrine and of the Image of the Common Law Judge*, 10(1) *Journal of Civil Law Studies* 39–40 (2017).

⁴ There are also instances in England where the hands of attackers were amputated for assaulting a judge. Reference: J.D. KAPOOR, *LAW OF CONTEMPT OF COURT* (Universal Law Publishing 2004) at p. 2.

⁵ *Ibid* at p 3

interfering with the dispensation of justice in ongoing cases began to fall within the jurisdiction of contempt. In the course of the doctrinal development of contempt of court, contempt has been categorized based on the nature of the act against the court into criminal contempt and civil contempt⁶, and further classified as direct, indirect, or potential contempt.

5. The dispensation of justice is a fundamental function of the State. Modern civilized societies and states are founded on justice. Every democratic country's constitution envisions a just society. Such a society is possible only when justice is delivered in a peaceful and orderly manner, through the examination of disputes and the imposition of punishment on wrongdoers. If the State fails to provide justice, individuals may take the law into their own hands, and in such a situation, disorder and anarchy begin to take root in society.
6. In fact, the dispensation of justice is not only a fundamental function but also a mandatory process. In judicial proceedings and processes prescribed by law, there is limited room for individual discretion and a high degree of compulsion. Simply put, where the law does not grant individuals autonomy to exercise choice, the legal and judicial procedures are inherently binding. Because these proceedings are compulsory in nature, courts do not tolerate any interference in the dispensation of justice, and such interference or obstruction is treated as an intrusion into the judicial process i.e., as contempt of court. Lord Diplock has observed the following:

“...contempt may take variety of forms, they all share a common characteristic: they involve an interference with the due administration of justice, either in a particular case or more generally as a continuing process. It is justice itself that is flouted by contempt of court, not the individual court or judge who is attempting to administer it.”⁷

7. Looking at developments in comparative jurisprudence, contempt of court manifests mainly in two forms: (a) interference or obstruction in the dispensation of justice, and (b) disobedience to court orders or judgments. Of these, the first interference in justice is often difficult to define or delineate. It can appear amorphous in nature, without fixed boundaries, and may be expressed in direct or indirect ways, present or potential forms, and through words, gestures, images, cartoons, or any symbolic form. Whether an act amounts to “interference in the dispensation of justice” depends on several contextual factors: the nature and sensitivity of the case, the conduct of parties or third persons involved, and its impact on fair hearings and the ultimate outcome of the matter. However, whether there has been “disobedience of a court order or judgment” is a matter that can be clearly determined and objectively tested. In other words, it is possible to examine or re-evaluate whether an order or judgment was actually made, and whether it was disobeyed. Since the language, substance, and spirit of the order or judgment can be analyzed, understood, and reviewed, this form of contempt is relatively clear and ascertainable compared to the more amorphous interference in the dispensation of justice.

⁶ Sec.2 Contempt of Court Act, 1971 (India) defines civil contempt as “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” and criminal contempt as “publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner

⁷ *AG v Leveiler Magistrate Ltd.* [1979] AC 440, cited in C.J. MILLER, *supra* note 3 at p 2.

8. Generally, interfering with the dispensation of justice constitutes contempt of court. However, certain acts that interfere with justice may also be separately defined under a country's criminal law as "offenses against public justice", with their own penalties. In such cases, instead of treating the act as contempt, it is addressed under the criminal law provisions. For example, under Nepal's Nepal Penal Code, 2074, certain acts such as fabricating false evidence, harboring an accused, failing to appear in violation of bail conditions, obstructing an arrest, or aiding in evasion of arrest⁸ undoubtedly interfere with the dispensation of justice. In principle, persons involved in such acts may be proceeded against for contempt of court. However, where the matter has already been specifically addressed by criminal law, it is generally considered more appropriate to proceed under the relevant criminal provisions rather than to invoke contempt jurisdiction. In such circumstances, it is not necessary to characterize those acts as criminal contempt. A similar situation may arise in the context of civil contempt. For instance, under the National Civil Procedure Code, 2074, the court is empowered to impose a direct fine⁹, instead of initiating contempt proceedings, against a person who obstructs the execution of a judgment, or against a person who is required to remain present as a witness during court proceedings or while preparing a document but fails to do so. Similarly, under the Civil Procedure Code, if an officer or employee who is obligated to perform a particular duty under a court order fails to execute that duty within the prescribed time, such conduct constitutes disobedience of the court order. However, in such cases, the court may opt not to initiate contempt proceedings and instead may direct departmental or administrative action¹⁰. In short, the provisions in the Penal Code and Civil Procedure Code mentioned above provide alternative remedies for conduct that could otherwise fall under contempt of court. Where such alternatives exist, comparative jurisprudence increasingly recognizes the principle that opting for a remedy other than contempt proceedings is appropriate. In this sense, in certain cases, the jurisdiction of contempt of court can also be regarded as a supplementary jurisdiction aimed at removing obstacles to the dispensation of justice¹¹.
9. In summary, the power to punish for contempt of court is an inherent authority of the judiciary. It is exercised when there is obstruction in the dispensation of justice or disobedience of a court's order or judgment, with the primary objective of keeping the flow of justice unimpeded and continuous. Comparative jurisprudence shows that, with the rise and consolidation of democracy, humanitarian considerations have been incorporated into the exercise of this jurisdiction. Justice is a right, and the provision of justice is a duty. As the court is a public and accountable institution constantly under the scrutiny of the people, in modern practice, the contempt power is employed to preserve judicial independence, ensure the integrity of proceedings, prevent actions that may mislead the public about the judiciary, and strengthen public confidence in the justice system. Currently, since matters of contempt are increasingly being examined not only under constitutional law but also through the lens of human rights law, there is a recognized need to further refine and develop the jurisprudence of contempt accordingly.

⁸ Offences prescribed in Chapter 4 of the National Penal Code, 2074

⁹ Section 252 (2) and Section 277 of the National Civil Procedure Code, 2074

¹⁰ Ibid, Section 283

¹¹ For example, in the United Kingdom, if a person fails to comply with a court order to pay a sum of money, the court may not initiate contempt proceedings but instead may seize and sell the person's property to satisfy the payment. See: C.J. MILLER, *supra* note 3, at p. 5.

10. **Second question to be addressed: What are the established principles and practices regarding the power to punish contempt in Nepal, and how is it applied in practice?** In Nepal, the term “contempt of court” has not yet been explicitly defined by legislation. However, from various judgments delivered by the Supreme Court, a detailed framework has been outlined indicating what conduct may constitute contempt, based on the nature, circumstances, and gravity of the act. From the study of established principles, acts that are generally considered as contempt of court include, but are not limited to: disobedience or disregard of the orders, directions, or judgments of the court; undertaking any act that creates or may create distrust or lack of confidence in the public regarding the court or the administration of justice; committing any act that affects the dignity, authority, or reputation of the court; doing or saying anything that casts doubt on the impartiality, good conscience, or competence of a judge; expressing or performing any act that may undermine the respect, dignity, or prestige of a judge; making statements or taking actions that could unduly influence a pending case; insulting, humiliating, obstructing, or intimidating court personnel, lawyers involved in cases, parties to a case, or witnesses, or otherwise creating improper hindrance or fear related to court proceedings¹². In essence, these acts whether verbal, written, physical, or through other means are broadly regarded as constituting contempt of court under Nepalese judicial practice. Similarly, any act of expressing, decision or performing any action that may influence a matter pending before the court is also considered to fall within the scope of contempt¹³.
11. A study of the principles articulated by the Supreme Court regarding contempt shows that the court has not consistently adopted a single uniform approach in all respects. However, certain trends are clearly observable and persistent. For example, the power to initiate proceedings for contempt is regarded as an inherent power of the court¹⁴; proceedings may be initiated either upon a party’s petition or, in the absence of such a petition, on the report of court officials, with the petitioner or informant recognized only as a source of information rather than a party with decision-making authority¹⁵. Second, in proceedings relating to contempt, the court among other measures, determines the appropriate procedure for action, which, depending on the circumstances, may include summoning the contemnor to appear before the Bench, taking them into custody for deposition, issuing notices within a specified timeframe, or requiring submission of rejoinders. Broadly, these procedures are conducted in a summary manner¹⁶. Third, in contempt proceedings, the focus is primarily on the act of the alleged contemnor, and

¹² Nareshwore Bhandari vs. Narendra Kumar K.C. Nepal Law Magazine, Decision No. 6808, pg. 791; Advocate Santosh Bhattarai vs. Kanakmani Dixit, Nepal Law Magazine 2064, Decision No. 7831, Criminal Law: Part Two 2066, Part – 7, pg. 90; Manmohan Lal Singh vs. Mid-Western Regional Court, Nepal Law Magazine 2033, Decision No. 981, pg. 19

¹³ Rabi Raj Bhandari vs. Chief Editor Raghu Pant, Nepal Law Magazine 2055, Decision No. 6551, pg. 302; Matrika Niraula vs. Attorney General Sarbagya Ratna Tuladhar and others, Nepal Law Magazine 2057, Decision No. 6870, pg. 197; Supreme Court vs. Ministry of Home and others, Nepal Law Magazine 2068, Decision No. 8757, pg. 77 (regarding exemption of imprisonment while the case was sub-judice at the appellate level), Krishna Prasad Bhandari and others vs. Surya Bahadur Thapa and others, Nepal Law Magazine 2055, Decision No. 6608, pg. 593 (appointment of Achyut Krishna Kharel as Chief of Police while the case was sub-judice)

¹⁴ Supreme Court vs. Kusum Shrestha, Nepal Law Magazine 2023, Decision No. 327, pg. 82; Sarbagya Ratna Tuladhar vs. Chairman Rastriya Panchayat and others, Nepal Law Magazine 2035, Decision No. 1197, pg. 168; Thir Prasad Pokharel vs. Harihar Birahi, Nepal Law Magazine 2049, Decision No. 4604, pg. 4049 (It has been interpreted that the court’s authority to impose punishment for contempt in both of these cases is not made subordinate to any other provisions of the Constitution).

¹⁵ Jugutlal Yadav vs. Soman Thakur Badahi, Nepal Law Magazine 2063, Decision No. 7801; Prakashmani Sharma and other vs. Girija Prasad Koirala, Public Interest Part 2 (2066) pg. 369

¹⁶ Yadav Raj Pokharel and others vs. Ram Krishna Dongol and others Nepal Law Magazine 2066, Decision No. 8073, pg. 252

unlike in criminal cases, the element of intent may not carry as much significance¹⁷. Fourth, if the alleged contemnor offers self-reflection, expresses unconditional remorse, or makes an apology satisfactory to the court, the court may abstain from imposing punishment, suspend it, or impose only a symbolic sanction¹⁸. Fifth, acts such as disobedience of court orders or judgments¹⁹, failure to appear in response to notices²⁰, use of abusive or derogatory language towards judges in court²¹, humiliating, harassing, or speaking discourteously, making defamatory statements, or attacking court personnel, have been treated by the court with comparatively greater strictness²². The court has clearly taken the view that whatever the nature of a court order may be, it must either be challenged through judicial process or be complied with²³. Sixth, while exercising contempt jurisdiction, the court must adopt a restrained and cautious approach²⁴. It is necessary to distinguish²⁵ whether the expression or criticism concerns a judicial act performed by a judge, or relates to administrative or personal conduct, and to confine contempt strictly to acts that interfere with judicial functions or the administration of justice, attack the dignity and authority of the court, or create confusion and mistrust regarding the judiciary. Another aspect that can be observed as an emerging trend is an increased capacity to tolerate criticism. It is increasingly recognized that criticism or commentary on a court's orders or judgments should not, by itself, give rise to contempt proceedings or punishment. Rather, a more restrained and measured approach in the exercise of contempt jurisdiction is being developed and emphasized in recent times.

12. Since the subject matter of the present dispute also involves news published in *Kantipur Daily* and expressions given by Dr. Govinda K.C., which were carried by various online media outlets, the delineation between freedom of opinion and expression, on the one hand, and the court's power to take action for contempt, on the other, naturally becomes a matter requiring examination. Accordingly, how the court has viewed and addressed this issue also emerges as

¹⁷ Ishwor Chandra Agarwal vs. District Panchayat Secretariat Makwanpur, Nepal Law Magazine 2045, Decision No. 3524, pg. 703, (However, it has also been observed that the element of intent is relevant when it comes to imposing punishment). Sanu Bahadur Shrestha vs. Vice President Parmananda Jha, Nepal Law Magazine 2068, Decision No. 8660, pg. 1243; Advocate Hem Raj Adhikari vs. Sambodhan Weekly 2062 AP-0127 of the Year 2062 Date of Decision 2067/5/17 (Publication of factually unfounded, baseless, and implausible news); Tek Bahadur Rawal vs. Dristi Weekly and others, Criminal Miscellaneous No. 0008 of the Year 2064; Date of Decision 2067/10/27 (granted acquittal in the absence of intent)

¹⁸ Supreme Court vs. Lok Bahadur Bista, Nepal Law Magazine 2028, Decision No. 602, pg. 133; Yadav Raj Pokharel and others vs. Ram Krishna Dangol and others, Nepal Law Magazine 2066, Decision No. 8076, pg. 252; Bodh Bahadur Rawat vs. NBA President Shambhu Thapa and others, Nepal Law Magazine 2067, Decision No. 8342, pg. 556

¹⁹ Devi Bahadur Rawal vs. Purushottam Ojha, Chairman of Executive Committee of Nepal Food Corporation, Criminal Law: Second Part – 2066, Part 7, pg. 209; Mina Kumar Chettri vs. Butal Nagar Panchayat, Nepal Law Magazine 2047, Decision No. 4050, pg. 49; Shankar Lal Chaudhary vs. Madan Kumar Chaudhary, Nepal Law Magazine 2054, Decision No. 6412, pg. 404; Yagya Dev Bhatta vs. Dr. Sudha Sharma, Nepal Law Magazine 2070, Decision No. 9105, pg. 56; Supreme Court vs. Ministry of Home and others, Nepal Law Magazine 2068, Decision No. 8757, pg. 77; Yadav Raj Pokharel and others vs. Ram Krishna Dangol and others, Nepal Law Magazine, 2066, Decision No. 8076, pg. 252; Sushil Chaudhary vs. Office Chief District Administration Office, Kathmandu Criminal Law: Second Part – 2066, Part 7, pg. 184.

²⁰ Arun Bhattarai vs. Prakash Lal Shrestha, Nepal Law Magazine 2052, Decision No. 5042, pg. 83 (repeatedly disobeying the summon issued by the court)

²¹ Supreme Court Full Bench vs. Advocate Krishna Prasad Bhandari, Nepal Law Magazine 2025, Decision No. 415, pg. 134 (Regarding the matter of not adjourning the case, it is stated that if an expert judge were presiding today, considering my physical condition, the case would have been adjourned.); Supreme Court vs. Kusum Shrestha, Nepal Law Magazine 2023, Decision No. 327, pg. 82, Krishna Prasad Silwal vs. Kishor Shrestha Criminal Miscellaneous No. 178 of the Year 2053, Date of Decision 2055/8/14 (Publishing news characterizing the Supreme Court as being by a 'gang,' thereby leveling allegations against the judges.); Suresh Kumar Dhungana vs. Rishikesh Shah (criminal miscellaneous no. 130 of the Year 2052, Date of Decision 2055/11/18) and Gunanidhi Neupane vs. Manmohan Adhikari and others, Nepal Law Magazine 2057, Decision No. 6916, pg. 521 (Comment/reaction against a decision made on 2052/5/12)

²² Ganesh Bahadur Sunar vs. His Majesty's Government, Nepal Law Magazine 2042, Decision No. 2404, pg. 585 (pamphleting against judge); Kailash Kumar Hamal vs. Far-Western Regional Court, Nepal Law Magazine 2047, Decision No. 4104, pg. 266 (calling a judge corrupt and writing offensive words in the detention slip); Advocate Hem Raj Adhikari vs. Sambodhan Weekly AP-0127 of the Year 2062, Date of Decision 2067/5/17 (publication of baseless and irrelevant news)

²³ Supreme Court vs. Ram Lakhan Chaudhary, Nepal Law Magazine 2036, Decision No. 1269, pg. 149

²⁴ Advocate Hemang Kumar Sharma vs. Suruchi Weekly, Constitutional Law First Part (2015-2067) Part 10 (c) pg. 328

²⁵ Advocate Santosh Bhattarai vs. Kanakmani Dixit, Nepal Law Magazine 2064, Decision No. 7839, Criminal Law: Part 2066, Part – 7, pg. 90

a subject of study. In this regard, there exist precedents in which the press and persons associated therewith have been punished for contempt for publishing court-related matters, as well as instances in which no such punishment has been imposed. However, the approach that has evolved in recent times with respect to freedom of opinion and expression appears to be relatively tolerant. If earlier cases are to be revisited today from the perspective of this newly developed tolerant and restrained approach, different outcomes may well be discernible in certain instances. Viewed through the liberal lens recently adopted by the courts, there arises a possibility that the positions taken by this court in some cases at the relevant time may no longer be capable of being sustained. By way of illustration, initiating contempt proceedings in relation to an investigative article or a cartoon published concerning the court is, in the present context, increasingly becoming irrelevant. Indeed, it is hardly conceivable today that even the initiation of contempt proceedings would be contemplated in such matters. Therefore, it appears desirable to bear in mind that the contemporary understanding developed in Nepal regarding the power to punish for contempt is liberal, tolerant, and restrained in nature, and is also informed by the principles developed in the field of human rights and comparative jurisprudence.

13. In discussing the principles established by this court concerning the interrelationship between the court's power to initiate contempt proceedings and impose punishment therefor, and the freedom of opinion and expression, the case of *Harihar Birahi* appears to be comparatively significant²⁶. The *Birahi* case was decided in the context of the fundamental rights guaranteed by the Constitution of the Kingdom of Nepal. With regard to the interrelationship between contempt and freedom of opinion and expression, this court in that case observed as follows:

“While our Constitution-makers have, under Article 12 (1), provided that personal liberty may be restricted by law, the Constitution likewise recognizes, under Article 12 (2) (a), that reasonable restrictions may be imposed on the freedom of opinion and expression so guaranteed. It appears that, under the proviso clause contained in Article 12 (2) (1), the Legislature has been vested with the authority to impose reasonable restrictions in matters that may undermine the sovereignty and integrity of the Kingdom of Nepal, disturb harmonious relations among different castes, communities or denominations, or amount to treason, defamation, or contempt of court, or incite the commission of an offence, or be contrary to public decency or morality. While our Constitution-makers have, under Article 12(1), provided that personal liberty may be restricted by law, the Constitution likewise recognizes, under Article 12(2)(a), that reasonable restrictions may be imposed on the freedom of opinion and expression so guaranteed. It appears that, under the restrictive clause contained in Article 12(2), the Legislature has been vested with the authority to impose reasonable restrictions in matters that may undermine the sovereignty and territorial integrity of the Kingdom of Nepal, disturb harmonious relations between various castes, tribes, religions or communities, defamation, or amount to treason or contempt of court or incite commission of an offence, or any act which may be contrary to public decency or morality. Whether a restriction is reasonable or not, and whether the law imposing such restriction has been enacted within constitutional limits, are matters that may be subjected to judicial scrutiny. Viewed thus, our Constitution has placed both freedom and the restrictions imposed thereon within the ambit of judicial review and control. ... For the

²⁶ Thir Prasad Pokharel vs. Harihar Birahi Nepal Law Magazine 2049, Decision No. 4604, pg. 4049

very reasons and on the same grounds upon which the Constitution has circumscribed the freedom of opinion and expression, it has likewise circumscribed the right under Article 13 (1), namely, the right relating to the press and publication. The press has been freed from prior restraint only to the extent that the Constitution has granted freedom of opinion and expression to citizens. Whether the exercise of both these rights has remained within their respective limits is a matter that this court may examine and scrutinize, and there is no impediment in doing so. ... Freedom of opinion and expression cannot be construed as conferring a license to commit contempt of court²⁷.”

14. In that case, through the propositions that “*the press has been freed from prior restraint only to the extent that the Constitution has granted freedom of opinion and expression to citizens*” and that “*freedom of opinion and expression cannot be construed as conferring a license to commit contempt of court,*” this court appears to have advanced the view that the maximum limitation of press freedom extends only up to the boundary of individual freedom of expression. Once that boundary is transgressed, such expression may become a matter of contempt; and, in order to prevent obstruction in the administration of justice, the power to punish for contempt may be exercised. In the court’s view, there is no impediment to the exercise of such power. The court has also, through the articulation of this principle, succinctly reiterated the enduring proposition that rights cannot subsist in a society devoid of justice; when justice perishes, all else perishes with it. Accordingly, in the exercise of freedom of expression, one cannot act recklessly by disregarding the paramount importance of justice, an eternal principle that this court has sought to recall through the doctrine so enunciated.
15. In addition to the constitutional perspective noted above, the judgment rendered in *Harihar Birahi* is significant from several other viewpoints as well. In that case, the court observed that, in determining whether a particular article, expression, or act is contemptuous or not, the conclusion that may be drawn by a man of general prudence constitutes the basis for testing an act alleged to amount to contempt. By so holding, the court appears to have approached the subject matter of contempt from a jurisprudential standpoint. Likewise, the judgment brings to light the court’s recognition of the role played by the media in shaping an informed public opinion through the continuous flow of ideas in a democratic open society. It further links this role with Nepal’s commitments expressed in universal human rights declarations and covenants, while also underscoring the necessity of drawing lessons from the country’s own past experience²⁸. Similarly, in the course of discussing comparative jurisprudence in that case, the court took note of the “clear and present danger” principle developed in the United States in the context of restricting freedom of speech and press. According to this principle, restrictions may be imposed if a publication or expression poses a clear and imminent threat to the public interest²⁹. The judgment also attempted to consider the perspectives of the United Kingdom and India on the issue of contempt. However, the judgment does not appear to have

²⁷ Thir Prasad Pokharel vs. Harihari Birahi Nepal Law Magazine 2049, Decision No. 4604, pg. 4049

²⁸ In that judgment, the court observed that “in a democratic open society, the role played by the media in shaping an informed public opinion through the continuous flow of ideas is no less significant. On the one hand, Nepal has already expressed its commitment to universal human rights declarations and covenants; on the other hand, our own past experience—wherein newspapers and printing presses were subjected to control, including the closure of printing presses themselves and the cancellation of newspaper registrations cannot be forgotten as a contributing factor behind the constitutional guarantee embodied in Article 13.”

²⁹ In that judgment, the Court, by citing decisions such as *Rosenbloom v. Metromedia*, 409 U.S. 29 (1971) (public and general interest test), and *Dennis v. United States*, 341 U.S. 494 (1951), also acknowledged that the freedom of the press may be subject to regulation in the interest of the collective good. The judgment further refers to the celebrated observation of Justice Holmes in *Schenck v. United States*, 249 U.S. 47 (1919), thereby situating the Court’s reasoning within the broader framework of comparative constitutional jurisprudence.

undertaken a detailed evaluation or analysis of the right to information, including the role played by the press or the media as a facilitator of expression³⁰, and the consequent implications for contempt from the standpoint of the public's right to know. Under the present Constitution, in addition to the freedom of opinion and expression, Article 20 guarantees rights related to justice, Article 21 provides the rights of victims, Article 22 ensures the right against torture, and a comprehensive framework of civil, political, economic, social, and cultural rights is presented. In light of this, it becomes prudent that the power of courts to punish for contempt be exercised in a balanced manner, and the subject matter must therefore also be examined in the broader context of constitutionally guaranteed rights.

16. Third Question for Consideration: **What is the role of the media in the context of the fundamental rights and freedoms guaranteed under the current Constitution, and what limits should be delineated to safeguard the judicial authority in the dispensation of justice?** At the outset, while framing the dispute, it has already been noted that a discussion is necessary regarding: the freedom of opinion and expression guaranteed under Article 17 (2) (a); the right to communication guaranteed under Article 19; the right relating to justice guaranteed under Article 20; the right to information enshrined in Article 27; and the court's powers under Article 128 (1) to interpret the Constitution and laws, and under Article 128 (4) to punish for contempt if anyone obstructs the administration of justice or disobeys its orders or judgments. It is further necessary to examine the interrelationship between these constitutional provisions, as well as the influence of human rights law on them, in order to formulate a coherent approach or perspective regarding the appropriate limits of both press freedom and judicial power. Under Article 126 (1) of the Constitution of Nepal, it is provided that **"powers relating to justice in Nepal shall be exercised by courts and other judicial bodies in accordance with the Constitution, other laws, and recognized principles of justice."** The courts and judicial bodies that exercise judicial authority are institutions that "administer justice" and ensure the delivery of justice in society. As institutions that provide judicial services, the judiciary does not exercise rights for its own benefit. It has no purpose, objective, or intent to exercise rights for itself. Accordingly, the term "rights" used in Article 126 (1) may also be understood in the sense of authority and obligation. The Constitution directs that the exercise of this authority must be carried out in accordance with the Constitution, other laws, and recognized principles of justice. Since the fundamental duty of the State to dispense justice is discharged through the courts and judicial bodies, this authority may also be understood as a duty. When this authority and duty exercised through the "dispensation of justice" are obstructed by any person, such conduct constitutes a matter of contempt.
17. The term "rights" used in Article 126 (1) of the Constitution of Nepal may, from another perspective, be understood not as individual rights per se, but as the authority and duty to dispense justice. For example, Article 20 of the Constitution guarantees individuals the right to justice; similarly, Article 21 guarantees the rights of victims of crime, and Article 22 guarantees the right against torture. Fundamental rights enshrined in the Constitution do not operate automatically; an institution is required to give them effect. The Constitution explicitly recognizes that such an institution is none other than an "independent, impartial, and competent

³⁰ Right to Information has been prescribed in Article 16 of the Constitution of the Kingdom of Nepal, 2047

judiciary.” In other words, the right of every person³¹, enshrined in Article 20 (9) of the Constitution, to “receive a fair hearing from an independent, impartial, and competent court” is to be ensured by the judiciary. Viewed in this light as well, the provision under Article 126 (1) must also be understood in terms of the “authority” and duty of the courts.

18. A “fair hearing” is not only an individual right but also the fundamental pathway of the administration of justice. That is, in every act and proceeding of justice, the principles of a fair hearing must be followed. The principles of a fair hearing generally embrace the rule of open hearings, except in exceptional circumstances. While an open court or open Bench constitutes the general norm of a fair hearing, an in-camera hearing constitutes the exception. Unless the Constitution, law, or a court order directs confidentiality³², documents submitted in an open court or open Bench, notices issued by the court, orders made, and decisions delivered from the Bench must remain accessible to the concerned parties. Proceedings conducted under the principles of a fair hearing and in open court ensure that judges remain under public scrutiny at all times, thereby preventing arbitrariness and indiscipline, and helping to make the justice system accountable and credible³³. In this context as well, the right to information, the right to communication, and the freedom of opinion and expression are closely related to and implicated by the court’s exercise of powers. It cannot be said that a court, which has the duty to ensure a fair hearing and to conduct proceedings in an open Bench, may disregard these rights. The public retains the right to seek information about what occurs or is occurring in the court, to have the media transmit such information, and to comment on orders and judgments that have been issued. For this reason, even when exercising the power to punish for contempt, the court must act impartially and in strict adherence to the principles of a fair hearing. It is certainly relevant to consider whether the freedoms of information, communication, and expression of individuals are being respected alongside the right to confidentiality. Even while all these conditions are duly observed in the course of administering justice, if it is established that the authority of the court has been infringed and the “dispensation of justice” has been obstructed, such conduct constitutes a matter of contempt.
19. The administration of justice by an independent and competent judiciary, along with the freedoms of opinion and expression, and the rights to information and communication, may also be examined from the perspective of human rights law. Article 14 of the International Covenant on Civil and Political Rights, 1966, which Nepal has ratified, guarantees that everyone shall be equal before the courts and tribunals and that no one shall be deprived of the **right to a fair and public hearing by a competent, independent, and impartial tribunal established by law** in the determination of their rights and obligations or any criminal charge

³¹ Article 20 (9) prescribes that “every person shall have the right to a fair trial by an independent, impartial and competent court or judicial body”. Fair trial has been prescribed as right relating to criminal justice in Section 10 of the National Penal Code, 2074.

³² For example, see: Section 17 of the Right to Privacy Act, 2075; Section 6 of the Crime Victims Protection Act, 2075; Sections 11, 25, 26, and 35 of the Child Act, 2075; Section 183 of the National Penal Code 2074; Section 276 of the National Civil Procedure Code, 2074; Sapana Pradhan Malla v. Government of Nepal, Prime Minister and Secretariat of Council of Ministers, Nepal Law Magazine 2064, Decision No. 7880 (concerning issues of confidentiality of female and child victims, or persons affected by HIV/AIDS).

³³ In *AG v Leveiler Magazine Ltd* [1979] AC 440, 450, Lord Diplock states: “If the way that courts behave cannot be hidden from the public ear or eye this provides a safeguard against judicial arbitrariness or idiosyncrasy and maintains public confidence in the administration of justice. The application of this principle of open justice has two aspects: as respects proceedings in the court itself it requires that they should be held in open court to which the press and public are admitted and that, in criminal cases at any rate, all evidence communicated to the court is communicated publically. As respects the publication to a wider public of fair and accurate reports of proceedings that have taken place in court the principle requires that nothing should be done to discourage this. Cited in C.J Miller supra note 3 at p 464.

against them³⁴. A fair and public hearing ensures the impartiality of proceedings. Hearings must ordinarily be conducted openly by the court. However, in certain limited or exceptional circumstances, such as the protection of public morality, peace, and order; national security; the safeguarding of individual privacy; or the needs of justice, the press or the public may be excluded from all or part of the proceedings. Typically, such circumstances arise in cases involving the protection of children and guardianship, the safety of victims or witnesses, the adjudication of sexual offenses, matters of family relations, particularly in cases of separation or divorce, sexual competence, disputes related to sexual violence, personal privacy, or intellectual property. In such cases, judges may order that the hearing be conducted in a closed or in-camera session. Such an order may be issued either under the direction of law or at the request of a party. However, even where a hearing is conducted in a closed or in-camera session, the judgment must still be made public. Human rights law does not readily recognize the concept of a faceless judge or anonymous justice. Rather, it envisions justice that is open, transparent, and complete. Accordingly, all persons have the right to seek and receive information regarding proceedings or judgments held in open court, and to disseminate such information orally, in writing, by print, or through other forms of communication or art. Within existing legal limits, the media enjoys the freedom to report on or comment upon such judgments, and this is acknowledged and accepted under human rights law.

20. There is an additional reason why the right to information, freedom of expression, and the freedom of the press and communication must be examined with seriousness. Historically, under common law, anyone repeating abusive or defamatory conduct was liable to bear responsibility³⁵. However, over time, common law evolved to provide that journalists are not to be punished when they repeat such abusive or defamatory expressions. Three arguments are advanced to justify why the press should be treated differently in such exceptional circumstances. First, journalists exercise rights as representatives or agents of the public, observing and reporting judicial proceedings from the perspective of the people. It is said that journalists are the eyes and ears of the public. They inform the people about what transpires in the courts. Second, in democratic countries, the public has the right to know what is happening in public institutions, how judges or court personnel are performing their duties and how justice is being administered. Through reporting and commentary, journalists present to the public the state of democratic accountability of public institutions, thereby indirectly strengthening the foundations of democracy. Third, by reporting and commenting on court proceedings, journalists inform the public about how they may utilize the courts in their own interests and what improvements are needed in these institutions. Such work ultimately enhances public access to justice. Except where the law or the court has clearly ordered that certain matters be kept confidential, either temporarily or permanently, journalists must have the right to report on, comment upon, or critique matters related to the work and proceedings of the courts or judges that are publicly available. The disclosure of such publicly available truthful information is not considered harmful; rather, the revelation of truth constitutes an important

³⁴ ICCPR Art 14(1) states, "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."

³⁵ Rule of Common Law: "One who repeats or otherwise republishes defamatory matter is subject to liability as if he had originally published it"

defense against allegations of contempt³⁶. In democratic countries, the publication or broadcast of fair, truthful and accurate, neutral, and complete reports or commentary (*reportage or comment*), made without malicious intent to cause personal harm, is recognized as acceptable and falls within the special privileges of the press³⁷. Whether in cases of defamation or contempt, the press may invoke the defense that it has published or disseminated fair and neutral reporting, or transmitted matters of public interest to the people as a wire service would, and such a defense has been acknowledged in judicial proceedings³⁸. A fair hearing and an independent press represent two competing values. Courts have, in recent times, recognized the necessity of maintaining an appropriate balance between these values³⁹.

21. The question of whether to prioritize a fair hearing or the freedom of expression, and how to strike a balance between these two values, is also influenced by the state of the rule of law, the manner in which democracy is institutionalized, the functioning of state structures, and the prevailing judicial culture. These factors may vary across different countries. For example, generally speaking, in the United States, greater importance is accorded to freedom of expression; that is, unless there exists a clear and present danger to a fair hearing, expression is not to be restrained. Justice Holmes with regards to clear and present danger opines the following:

“The question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about substantive evils that the congress has a right to prevent⁴⁰”.

22. The American view is that, in the absence of a clear and present danger, restrictions should not be imposed on freedom of thought and expression guaranteed under the First and Fourteenth Amendments to the Constitution. By contrast, in the United Kingdom, greater weight is accorded to a fair hearing. On the question of which should be given priority between freedom of expression and a fair hearing, jurist C. J. Miller observes:

“To a foreign observer of the American legal system it seems that the public interest in freedom of expression has been accorded a clear preference over the public interest in fair trial....In England, the common law has, at least historically, followed a different path in seeking to reconcile the conflicting interests involved. Indeed, there is strong authority for the view that *pendente lite* the paramount public interest lies in protecting the due administration of justice both in criminal and civil cases and it is only at the conclusion of a trial that the balance shifts to allow full and public debate⁴¹.”

³⁶ See generally, Jeffrey Todd Burke v. Sparta Newspapers, Inc, 592 S.W.3d 116 (Tenn. 2019); C.J. Miller, supra note 3 at p.463-65; Richard Peltz, *Fifteen Minutes of Infamy: Privileged Reporting and the Problem of Perpetual Reputational Harm*, 34 Ohio Northern Univ. L. Rev.717, (2008), 720. Discussing the agency rationale, public supervision rationale; and the information rationale of fair and accurate and complete media reporting and comment and arguing that media has a fair comment, fair reportage, neutral reportage and wire service privilege.

³⁷ For example, see Section 4 of the Contempt of Courts Act, 1971 of India, which does not consider fair and accurate reporting, and Section 5, which does not consider fair and accurate commentary, as contemptuous. Similarly, Section 4 of the Contempt of Court Act, 1981 of the United Kingdom provides: “Subject to this section, a person is not guilty of contempt of court under the strict liability rule in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith.”

³⁸ Richard Peltz, supra note 39.

³⁹ *Attorney General v Times Newspaper* [1974] AC 273 cited in Surya Dhungel, Bipin Adhikari, B.P. Bhandari and Chris Murgatroyd, COMMENTARY ON THE NEPALESE CONSTITUTION (1998 DeLF Kathmandu) 466

⁴⁰ *Schenck v United States*, 249 US 47 (1919)

⁴¹ See C.J. MILLER, supra note 3 at p 19- 20. See also, *New York Times Co. v. Sullivan*, 376 U.S. 254, 292 (1964) where the court held that the state cannot, under the First and Fourteenth Amendments, award damages to a public official for defamatory falsehood relating to his official

23. In recent times, the United Kingdom has also come under the influence of European human rights law. In Europe, giving due importance to the right to information, any restriction on freedom of expression must be interpreted cautiously and narrowly. Such a restriction must not be arbitrary, and it must be sufficiently clear and foreseeable; it must be necessary in a democratic society. Courts have indicated⁴² that such a restriction or control must be proportionate to a legitimate aim, undertaken in good faith, address an essential social need, and be applied only to the extent strictly necessary to protect the authority or impartiality of the court. This approach of the European courts is now followed elsewhere as a general human rights principle when considering restrictions on rights.
24. **The court is a public institution. People may have interest and opinion on cases sub-judice before the courts and these opinions may be expressed in various forms. Judges from time to time may have to encounter unpleasant reactions and comments and it is neither possible nor appropriate to pursue and keep track of them. Where such reactions or comments have not adversely affected the dispensation of justice nor have they directly challenged the authority of the court, it is preferable that they be disregarded. then it is better for the judges to ignore these issues. At present, the need is to maintain a proper balance and harmony between freedom of expression and the power to initiate proceedings for contempt of court, while strengthening the values of a tolerant democracy. A court that conducts open hearings must accept open communication. The indiscriminate use of the weapon of contempt should not be applied to distort justice. The following observation expressed by Lord Atkin is noteworthy in this context:**
- “The path of criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. **Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men**⁴³.”
25. **The present Constitution entrusts the judiciary with the responsibility (a) to exercise judicial power in accordance with the principles of the Constitution, law and recognized principles of justice, (b) the duty as a court of record, to preserve and protect its own judicial authority as well as that of the courts subordinate to it and (c) the authority to initiate contempt proceedings in accordance with the law provided any person obstructs in the dispensation of justice or disobeys the orders or judgments of the court. These powers and responsibilities must be construed and exercised in a manner that maintains harmony with the fundamental values of the Constitution, its democratic character, the principles of a fair hearing, and the primary obligation to administer justice through open court proceedings. The court bears the duty to exercise its powers in a balanced manner, with due respect to freedom of thought and expression, the right to information and communication, and other fundamental rights. However, where any publication or**

conduct unless he proves "actual malice"; and *Garrison v. State of Louisiana*, 379 U.S. 64, 74-75 (1964), which following *Sullivan*, asserted that appellant's accusations concerned the judges' official conduct and, did not become private defamation because they might also have reflected on the judges' private character

⁴² *Sunday Times v UK* (No2 Series A No 217 (1992) 14 EHRR 229)

⁴³ *Andre Paul Terence Ambard v The Attorney General of Trinidad and Tobago*, [1936] 1 All ER 704; [1936] A.C. 322

expression obstructs the course of justice; seeks to create confusion in judicial proceedings by making unwarranted or malicious allegations; or is undertaken with the intent to divert the court and the judges or staff involved therein, the parties to the case, or legal practitioners from the path of justice; or is carried out with a tainted motive so as to undermine the dignity and reputation of the judiciary in the eyes of the public, such conduct cannot be tolerated. Such acts undoubtedly constitute contempt of court, and the court retains the authority to restrain such conduct and to punish the offender in accordance with law. A dispute presented before the court must be able to be adjudicated without interference or obstruction.

26. **Fourth Question for Determination:** Considering the nature of the present cases and the issues raised, has contempt of court occurred, and should the respondents be punished for contempt or not? Broadly, two matters require adjudication in these cases: First, the petition submitted by Toyanath Dhungana, seeking punishment on the ground that certain news reports published in *Kantipur Daily* on 27th, 28th, and 29th of Mangsir 2074, constituted contempt of court; Second, in the writ petition 070-WO-0571 filed by Prof. Dr. Shashi Sharma, seeking annulment of the decision placing her on retirement from the post of Dean, following the decision of this court dated 2074/9/23, Dr. Govinda K.C. issued a statement on 2074/9/24 calling for the resignation of then Chief Justice Gopal Parajuli, which was reported by online media including onlinekhabar.com. Based on the report submitted by Section Office Netra Bandhu Paudel regarding this matter, it appears that the issue of contempt arising from these circumstances is a matter for judicial determination. In the case against Dr. K.C., it appears that matters beyond those mentioned in the documents he submitted along with his statement are of a different nature. However, since both matters have been conveyed to the public through the media, and the question arises whether such dissemination obstructed the administration of justice, it is necessary that both matters be adjudicated together.
27. Among the matters in dispute, *Kantipur Daily* published news concerning the age of the then Chief Justice Gopal Parajuli under the following headlines: on 2074/10/27, “Four Different Date of Birth of the Chief Justice”; on 2074/10/28, “Alteration of the Date of Birth of the Chief Justice through a Copy”; and on 2074/10/29, “Three Date of Birth in the Chief Justice’s Citizenship.” It is alleged that such unnecessary publication was an attempt to create confusion among the public, to misrepresent the official citizenship record, and thereby to undermine the authority of the court. Furthermore, in the context where the citizenship issue of the Chief Justice had already been raised in the contempt case against Dr. Govinda K.C. and that case was sub-judice, these repeated publications were intended to influence the mindset of the judges tasked with deciding the matter and obstruct the impartial dispensation of justice. The allegations suggest that the respondents repeatedly published such news with the intent to interfere with the fair conduct of judicial proceedings. Upon examining the rejoinder and the deposition made by the respondents along with the attached files, it appears that they have asserted their full fidelity and faith in an independent judiciary, maintaining that they did not publish any news in a manner that would obstruct the dispensation of justice. They contended that the news published in *Kantipur* pertained solely to the date of birth of the Chief Justice, Mr. Gopal Parajuli, and was not related to the dispensation of justice. Furthermore, they maintained that the citizenship and academic certificates were not matters they had fabricated, and that merely publishing information obtained from official government records does not constitute contempt of court. Upon examining the various remarks and decisions of the Judicial

Council attached to the case file, it appears that, based on the citizenship of Mr. Gopal Parajuli, the Council through a decision dated 264/04/32 had established his date of birth as 2009/04/21. After his reappointment as a judge of the Appellate Court in 2048, he accepted that same date of birth for approximately twenty years. Subsequently, on the basis of a citizenship certificate obtained on 2067/08/09, he filed an application on 2071/08/29 seeking to amend the record regarding his age and establish his date of birth as 2010/01/16. However, based on the order of then Chief Justice Mr. Ram Kumar Prasad Shah, the Secretary of the Judicial Council ruled that the date of birth could not be changed to 2010/01/16. Thereafter, then Chief Justice Sushila Karki, on 2073/09/01, held that “the same person cannot have different dates of birth in different contexts,” and based on the citizenship certificate submitted at the time of service entry, reaffirmed the date of birth as 2009/04/21. It further appears that upon assuming the office of Chief Justice, Mr. Gopal Parajuli reinstated the date of birth as 2010/01/16 through the decision of the Judicial Council dated 2074/02/30. Following the initiation of the present matter, it has also emerged from the records attached to the case file that, according to the latest remarks and decision of the Judicial Council Secretariat dated 2074/11/30, Mr. Parajuli’s his academic and the records of the Examination Control Office indicate his date of birth as 2011/01/13.

28. The subject matter of the present dispute is not the actual date of birth of the then Chief Justice, Mr. Gopal Parajuli, but whether the publication of news concerning his date of birth constitutes contempt of court. From this perspective, the controversy regarding the date of birth of the then Chief Justice appears to relate to his personal life rather than to the dispensation of justice. Since it does not pertain to the dispensation of justice, there arises no basis to allege that the publication of such news obstructed the judicial process. Secondly, both the body that grants citizenship or issues its copies, namely the District Administration Office, and the body that repeatedly determines which date of birth shall be recognized, namely the Judicial Council, are public authorities. Publication of news regarding the actions and records of such public authorities is a natural and legitimate function. Therefore, the contention raised by the respondents in their rejoinder that they did not create the date of birth but merely published what appeared in the official records is found to be acceptable. Indeed, the publication of factual information recorded by a public authority falls within the ambit of the freedom of thought and expression guaranteed by the Constitution, as well as the freedom of the press and media. The dissemination of fair, accurate, and respectfully worded news or commentary is encompassed within the liberties of the press and media, as has been previously recognized. Viewed from this perspective, it cannot be held that the publications in *Kantipur Daily* dated 2074/10/27/2, and 29 constituted contempt of this court.
29. Let us now view the expression made by the respondent, Prof. Dr. Govinda K.C. His statement appears to be connected with the decision rendered by this court in the writ petition 070-WO-0571 on 2074/9/23. That decision reinstated Prof. Dr. Shashi Sharma to the position of Dean of the Institute of Medical Sciences for the remaining tenure (i.e., four days) after her term was prematurely terminated without providing her an opportunity to be heard. It appears from the records that a prior dispute had already arisen regarding the appointment of Dr. Shashi Sharma to the position of Dean, and that a state of non-violent resistance (*Satyagraha*) had ensued, with a background of an agreement between Dr. Govinda K.C. and the Government of Nepal. In this context, the court’s decision to reinstate her to the position of Dean for the remaining four days of her term led to the situation in question. On the very next day following that

decision, the respondent, Prof. Dr. Govinda K.C., publicly stated that: “Our judiciary does not deliver justice; it colludes with corrupt and criminal elements, protects them, and punishes the honest, remaining under the control of a criminal gang.” It is evident from the report of Section Officer Netra Bandhu Paudyal and the documents annexed to the case file, including the press release, that on 2074/9/24 at 4:00 p.m., the respondent announced the commencement of a fast unto death stating: “In a situation where the rule of law and governance by law are being subverted, and the law is being used as a tool to serve base personal interests and to cover up judicial offenses, there is no alternative but to confront the root of the problem. Therefore, to preserve the dignity of the judiciary, there is no option but to oppose the corrupt and mafia-controlled Chief Justice, Mr. Gopal Parajuli.” The same matter was published as news by onlinekhabar.com on 2074/9/24 at 14:48 hours. Subsequently, on the same day, 2074/9/24, the respondent, Prof. Dr. Govinda K.C., was taken into custody and, pursuant to the order, was produced before this Court at 9:30 a.m. the following morning, 2074/9/25. Thereafter, during his deposition, the respondent explained that he had issued the press release himself and stated: “The press release was not issued in an indecent or disrespectful manner so as to constitute contempt of court. I have full respect for the court.” The respondent stated that, “I do not believe that I have committed contempt of court” (QA 5). He further explained: “I issued the press release because certain decisions and actions of the Rt. Honorable Chief Justice, Mr. Gopal Parajuli, undermined the dignity of justice” (QA 6). He also submitted details of the documents dated 2074/9/25 along with his deposition. In this context, it appears that Prof. Dr. Govinda K.C.’s response was primarily knee-jerk reaction to the decision rendered by this court on 2074/9/23. The decisions of this court must be respected by all. If a party is dissatisfied with a decision, they may follow the legal procedure and submit a review petition. However, no one has the liberty to speak recklessly against a judge or the court regarding its orders or decisions. From this perspective, the statements made by Prof. Dr. Govinda K.C. in the press release, as well as in his statement and the accompanying documents, are entirely unbecoming. Given his position as a distinguished physician and professor, and his recognition as a social activist, the language, style, and demeanor employed in issuing the press release cannot be considered appropriate, restrained, or decorous. However, the manner in which the press release issued by Prof. Dr. Govinda K.C. was treated, namely, being immediately apprehended from the site of his fast, without being given sufficient time to prepare his defense, brought before the court while it had not yet convened, and compelled to give a statement in haste, cannot be regarded as being in accordance with the principles of fair hearing. An institutional response by the court to an individual’s impassioned expression must never itself be impassioned. To act otherwise would run contrary to the fundamental tenets of an independent and impartial judiciary. The court, in cases of contempt, must adhere to the procedural methods it deems appropriate. In certain circumstances, conduct that occurs within the court or the courtroom, such as disrespectful behavior, attacks on court staff, or criminal acts within the precincts of the court, may constitute contempt on the face of the court, and the court may be required to have the person involved immediately taken into custody. The court notes that such measures were in fact taken⁴⁴. However, it appears that the acts of the respondent, Dr. Govinda K.C., were merely an impassioned response carried out outside the precincts of the court. In such matters, it is generally the practice of the court to issue a notice and allow time for the

⁴⁴ Yadav Raj Pokharel vs. Ram Krishna Dangol, Nepal Law Magazine 2066, Decision No. 8076, pg. 252; Ganesh Bahadur Sunar vs. His Majesty’s Government, Nepal Law Magazine 242, Decision No. 2404, pg. 586 (Phampteling against the Chief Justice); Kailash Kumar Hamal vs. Far-Western Regional Court, Nepal Law Magazine 2047, Decision No. 4104, pg. 266 (Calling the judge corrupt and writing obscene words on the detention slip)

person's appearance. It cannot be deemed that there existed an absolute necessity for immediate apprehension. To arrest a *Satyagrahi* on a hunger strike merely hours after the publication of a press release, by obtaining a report through staff, listing the matter on the cause list, constituting a Bench, issuing an order for immediate arrest, taking the individual into police custody, and producing him before the court the next morning at 9:30 a.m. without allowing sufficient time to prepare a defense cannot be regarded as appropriate in the light of the principles of fair hearing. **Respect for the right to a fair hearing is the primary duty of the court.** “This is not a matter that is to be followed only when demanded, nor is it one that may be disregarded. The court is bound to uphold matters guaranteed as rights of person by the Constitution. Justice must not only be done, but must also be seen to be done is a long-standing principle followed by this court. The integrity and dignity of the court are reflected in the mirror of impartiality. Viewed in light of all these considerations, there is no assurance that the principles of a fair hearing were fully observed in the present dispute. In this context, the statements made by the respondent, Dr. Govinda K.C., the contents of the press release, and the material disseminated by online media appear to be improper and unbecoming. It does not appear that the statements made by the said individual fall within the scope of conduct expected of him. With the expectation that, in the future, his statements will uphold propriety, decorum, and the dignity of the court, and that he will also follow the lawful remedies available in case of dissatisfaction, it is observed that, in the present matter, the principles of fair hearing were not properly followed and therefore, the press release issued or statements made by Dr. Govinda K.C. cannot in the eyes of justice be held to constitute contempt of court.

30. In brief, having considered the foregoing analysis of the Constitution and laws of Nepal, the principles of human rights law, the doctrines developed in comparative jurisprudence, and the general practice consistently followed by this court, it is evident that contempt is primarily concerned with acts that obstruct the dispensation of justice or disobey the orders or decisions of the court. In determining whether an alleged act constitutes contempt, it is necessary to examine: the nature and seriousness of the conduct in question; whether it amounts to a direct attack on the impartiality of the court; whether it creates confusion in the public's perception of judicial proceedings; or whether it undermines the dignity of the court. Only if such effects are shown to have occurred may proceedings and penalties for contempt be appropriately invoked. In exercising this power, due regard must be given to the rights guaranteed by the Constitution and the principles of fair hearing, and conclusions must be reached in a balanced and tolerant manner. Based on the analysis of various preceding cases, it is evident that, as regards the issues raised: the publications in *Kantipur Daily* do not substantiate a claim of contempt of court, and although the press releases and statements issued by Prof. Dr. Govinda K.C. appear unbecoming, the proceedings against him did not fully adhere to the principles of fair hearing. Consequently, he cannot be held guilty, and the claim that he should be punished for contempt cannot be sustained. In view of the foregoing, both claims are accordingly dismissed. It is hereby ordered to remove the case from the case registry and accordingly submit the case file to the Record Section.

Concurring with the above Opinion

Justice Deepak Kumar Karki

Justice Meera Khadka

Justice Hari Krishna Karki

Justice Biswambhar Prasad Shrestha
Justice Ishwor Prasad Khatiwada
Justice Prakash Man Singh

Bench Officer: Bhim Bahadur Niraula

Research Assistant: Shreya Sanjel

Dated: Year 2076 of the Month of Magh Date 23 Day 5

(Corresponding to Year 2020 of the Month February Date 6 Day 5)