International Environmental
Law Research Centre

IN RE:ARUNDHATI ROY.... CONTEMNER

Case No.: Contempt Petition (crl.) 10 of 2001, Judgment of 06 March 2002

International Environmental Law Research Centre
International Environment House
Chemin de Balexert 7
1219 Châtelaine
Geneva, Switzerland
E-mail: info@ielrc.org

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JUDGMENT:

'Rule of Law' is the basic rule of governance of any civilised democratic polity. Our Constitutional scheme is based upon the concept of Rule of Law which we have adopted and given to ourselves. Everyone, whether individually or collectively is unquestionably under the supremacy of law. Whoever the person may be, however high he or she is, no-one is above the law notwithstanding how powerful and how rich he or she may be. For achieving the establishment of the rule of law, the Constitution has assigned the special task to the judiciary in the country. It is only through the courts that the rule of law unfolds its contents and establishes its concept. For the judiciary to perform its duties and functions effectively and true to the spirit with which it is sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs. After more than half a century of independence, the judiciary in the country is under a constant threat and being endangered from within and without. The need of the time is of restoring confidence amongst the people for the independence of judiciary. Its impartiality and the glory of law has to be maintained, protected and strengthened. The confidence in the courts of justice, which the people possess, cannot, in any way, be allowed to be tarnished, diminished or wiped out by contumacious behaviour of any person. The only weapon of protecting itself from the onslaught to the institution is the long hand of contempt of court left in the armoury of judicial repository which, when needed, can reach any neck howsoever high or far away it may be. In In Re: Vinay Chandra Mishra (the alleged contemner) [AIR 1995 SC 2348] this Court reiterated the position of law relating to the powers of contempt and opined that the judiciary is not only the guardian of the rule of law and third pillar but in fact the central pillar of a democratic State. If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise the very corner-stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. It is for this purpose that the courts are entrusted with extraordinary powers of punishing those who indulge in acts, whether inside or outside the courts, which tend to undermine the authority of law and bring it in disrepute and disrespect by scandalising it. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.

No person can flout the mandate of law of respecting the courts for establishment of rule of law under the cloak of freedoms of speech and expression guaranteed by the Constitution. Such a freedom is subject to reasonable restrictions imposed by any law. Where a provision, in the law, relating to contempt imposes reasonable restrictions, no citizen can take the liberty of scandalising the authority of the institution of judiciary. Freedom of speech and expression, so far as they do not contravene the statutory limits as contained in the Contempt of Courts Act, are to prevail without any hindrance. However, it must be remembered that the maintenance of dignity of courts is one of the cardinal principles of rule of law in a democratic set up and any criticism of the judicial institution couched in language that apparently appears to be mere criticism but ultimately results in undermining the dignity of the courts cannot be permitted when found having crossed the limits and has to be punished. This Court in In Re: Harijai Singh & Another [1996 (6) SCC 466 has pointed out that a free and healthy Press is indispensable to the function of a true democracy but, at the same time, cautioned that the freedom of Press is not absolute, unlimited and unfettered at all times and in all circumstances. Lord Dening in his Book 'Road to Justice' observed that Press is the watchdog to see that every trial is conducted fairly, openly and above board but the watchdog may sometimes break loose and has to be punished for misbehaviour. Frankfurther, J. in Pennekamp v. Florida [(1946) 90 Led 1295 at p.1313] observed: 'If men, including Judges and journalists were angels, there would be no problems of contempt of Court. Angelic Judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding Judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to Judges. The power to punish for contempt of court is a safeguard not for Judges as persons but for the function which they exercise.'

The law of contempt has been enacted to secure public respect and confidence in the judicial process. If such confidence is shaken or broken, the confidence of the common man in the institution of judiciary and democratic set up is likely to be eroded which, if not checked, is sure to be disastrous for the society itself.

In this backdrop of the mandate of rule of law, we are called upon to deal with the case of the respondent against whom suo motu contempt proceedings have been initiated by this Court. The respondent, who is stated to be an author of name and fame, has landed herself in the dock of the court, apparently by drifting away from the path on which she was traversing by contributing to the art and literature. During whole of the proceeding she has not shown any repentance or remorse and persistently and consistently tried to justify her action which, prima facie, was found to be contemptuous. To frustrate the present proceedings, the respondent has resorted to all legal tactics and pretences. In view of this we have no option but to deal with the case on its merits, not being influenced by any other factor or circumstance except our commitment to protect the dignity and respect of the institution of judiciary so that the confidence of the common man is not shaken in the institution.

The facts of the case, which are not seriously disputed, are that an organisation, namely, Narmada Bachao Andolan filed a petition under Article 32 of the Constitution of India being Writ Petition No.319 of 1994 in this Court. The petitioner was a movement or andolan, whose leaders and members were concerned about the alleged adverse environmental impact of the construction of the sardar Sarovar Reservoir Dam in Gujarat and the far-reaching and tragic consequences of the displacement of hundreds of thousands of people from their ancestral homes that would result from the submerging of vast extents of land, to make up the reservoir. During the pendency of the writ petition this Court passed various orders. By one of the orders, the Court permitted to increase the height of the dam to RL 85 meters which was resented to and protested by the writ petitioners and others including the respondent herein. The respondent Arundhati Roy, who is not a party to the writ proceedings, published an article entitled 'The Greater Common Good' which was published in Outlook Magazine and in some portion of a book written by her. Two judges of this Court, forming the three-judge Bench felt that the comments made by her were, prima facie, a misrepresentation of the proceedings of the court. It was observed that judicial process and institution cannot be permitted to be scandalised or subjected to contumacious violation in such a blatant manner, it had been done by her. The action of the respondent had caused the court much anguish and when the court expressed its displeasure on the action of the respondent in making distorted writing or manner in which leaders of the petitioner Ms.Meda Patkar and one Dharmadikhari despite giving assurance to the court acted in breach of the injunction, the Court observed: 'We are unhappy at the way the leaders of NBA and Ms.Arundhati Roy have attempted to undermine the dignity of the Court. We expected better behaviour from them.'

Showing its magnanimity, the Court declared:

'After giving this matter our thoughtful consideration and keeping in view the importance of the issue of resettlement and rehabilitation of the PAFs, which we have been monitoring for the last five years, we are not inclined to initiate proceedings against the petitioner, its leaders or Ms.Arundhati Roy. We are of the opinion, in the larger interest of the issues pending before us, that we need not pursue the matter any further. We, however, hope that what we have said above would serve the purpose and the petitioner and its leaders would hereafter desist from acting in a manner which has the tendency to interfere with the due administration of justice or which violates the injunctions issued by this Court from time to time.'

The third learned Judge also recorded his disapproval of the statement made by the respondent herein and others and felt that as the court's shoulders are broad enough to shrug off their comments and because the focus should not shift from the resettlement and rehabilitation of the oustees, no action in contempt be taken against them.

However, after the judgment was pronounced in IA No.14 of 1999 on 15th October, 1999 (reported at 1999 (8) SCC 308), an incident is stated to have taken place on 30th December, 2000 regarding which Contempt Petition No.2 of 2001 was filed by J.R. Parashar, Advocate and others. According to the appellgations made in that petition, the respondents named therein, led a huge crowd and held a Dharna in front of this Court and shouted abusive slogans against the court including slogans ascribing lack of integrity and dishonesty to this institution. It was alleged that when the petitioners therein protested, they were attacked and assaulted by the respondents. In the evening on the same day, the respondents are stated to have attacked, abused and assaulted the petitioners. A complaint was stated to have been lodged with the Tilak Marg Police Station on the next day. In the aforesaid contempt proceeding notices were issued to the respondents in response to which they filed separate affidavits. All the three respondents therein admitted that there was a Dharna outside the gates of this Court on 30th December, 2000 which was organised by Narmada Bachao Andolan and the gathered crowd were persons who lived in the Narmada Valley and were aggrieved by the majority judgment of this Court relating to the building of the dam on the Narmada River. In her affidavit the respondent, amongst other averments, had stated:

‘On the grounds that judges of the Supreme Court were too busy, the Chief Justice of India refused to allow a sitting judge to head the judicial enquiry into the Tehelka scandal, even though it involves matters of national security and corruption in the highest places.

Yet when it comes to an absurd, despicable, entirely unsubstantiated petition in which all the three respondents happen to be people who have publicly -though in markedly different ways - questioned the policies of the government and severely criticized a recent judgment of the Supreme Court, the Court displays a disturbing willingness to issue notice.

It indicates a disquieting inclination on the part of the court to silence criticism and muzzle dissent, to harass and intimidate those who disagree with it. By entertaining a petition based on an FIR that even a local police station does not see fit to act upon, the Supreme Court is doing its own reputation and credibility considerable harm.’

(EMPHASIS SUPPLIED)

The assertions in the aforesaid contempt petition attributed that the contemnors shouted abusive slogans against the court including slogans ascribing lack of integrity and dishonesty to the institution undoubtedly made the action of the contenmor gross contemptuous and as such the court had initiated the contempt proceedings by issuing notice. But in view of the denial of the alleged contemnors to the effect that they had never shouted such slogans and used such abusive words as stated in the contempt petition, instead of holding an inquiry and permitting the parties to lead evidence in respect of their respective stand, to find out which version is correct, the court though it fit not to adopt that course and decided to drop the proceedings. But in the very show cause that had been filed by the respondent No.3, Smt. Arundhati Roy, apart from denying that she had not used any such words as ascribed to her, she had stated in three paragraphs, as quoted earlier which were absolutely not necessary, after denying that she had never uttered the words ascribed to her and those paragraphs having been found prima-facie contemptuous, the suo-motu proceedings had been initiated and notice had been issued. However, the Court felt that respondent No.3 therein (Arundhati Roy) was found to have, prima facie, committed contempt as she had imputed motives to specific courts for entertaining litigation and passing orders against her. She had accused courts of harassing her as if the judiciary were carrying out a personal vendetta against her. She had brought in matters which were not only not pertinent to the issues to be decided but has drawn uninformed comparisons to make statements about this Court which do not appear to be protected by law relating to fair criticism. It was stated by her in the court that she stood by the comments made by her even if the same are contumacious. For the reason recorded therein, the Court issued notice in the prescribed form to the respondent herein asking her to show cause as to why she should not be proceeded against for contempt for the statements in the offending three paragraphs of her affidavit, reproduced hereinearlier.

In her reply affidavit, the respondent has again reiterated what she had stated in her earlier affidavit. It is contended that as a consequence of the Supreme Court judgment the people in the Narmada Valley are likely to lose their homes, their livelihood and their histories and when they came calling on the Supreme Court, they were accused of lowering the dignity of the court which, according to her is a suggestion that the dignity of the court and the dignity of the Indian citizens are incompatible, oppositional, adversarial things. She stated: ‘I believe that the people of the Narmada valley have the constitutional right to peacefully against what they consider an unjust and unfair judgment. As for myself, I have every right to participate in any peaceful protest meeting that I choose to. Even outside the gates of the Supreme Court. As a writer I am fully entitled to put forward my views, my reasons and arguments for why I believe that the judgment in the Sardar Sarovar case is flawed and unjust and violates the human rights of Indian citizens. I have the right to use all my skills and abilities such as they are, and all the facts and figures at my disposal, to persuade people to my point of view.’

She also stated that she has written and published several essays and articles on Narmada issue and the Supreme Court judgment. None of them was intended to show contempt to the court. She justified her right to disagree with the court’s view on the subject and to express her disagreement in any publication or forum. In her belief the big dams are economically unviable, ecologically destructive and deeply undemocratic. In her affidavit she has further stated:

‘But whoever they are, and whatever their motives, for the petitioners to attempt to misuse the Contempt of Court Act and the good offices of the Supreme Court to stifle criticism and stamp out dissent, strikes at the very roots of the notion of democracy.

In recent months this Court has issued judgments on several major public issues. For instance, the closure of polluting industries in Delhi, the conversion of public transport buses from diesel to CNG, and the judgment permitting the construction of the Sardar Sarovar Dam to proceed. All of these have had far-reaching and often unanticipated impacts. They have materially affected, for better or for worse, the lives and livelihoods of millions of Indian citizens. Whatever the justice or injustice of these judgments, whatever their finer legal points, for the court to become intolerant of criticism or expressions of dissent would mark the beginning of the end of democracy.

An 'activist' judiciary, that intervenes in public matters to provide a corrective to a corrupt, dysfunctional executive, surely has to be more, not less accountable. To a society that is already convulsed by political bankruptcy, economic distress and religious and cultural intolerance, any form of judicial intolerance will come as a crippling blow. If the judiciary removes itself from public scrutiny and accountability, and severs its links with the society that it was set up to serve in the first place, it would mean that yet another pillar of Indian democracy will crumble. A judicial dictatorship is a fearsome a prospect as a military dictatorship or any other form of totalitarian rule.

The Tehelka tapes broadcast recently on a national television network show the repulsive sight of Presidents of the Bhartiya Janata Party and the Samata Party (both part of the ruling coalition) accepting bribes from spurious arms dealers. Though this ought to have been considered prima facie evidence of corruption, yet the Delhi High Court declined to entertain a petition seeking an enquiry into the defence deals that were referred to in the tapes. The bench took strong exception to the petitioner approaching the court without substantial evidence and even warned the petitioner's counsel that if he failed to substantiate its allegations, the court would impose costs on the petitioner.

On the grounds that judges of the Supreme Court were too busy, the Chief Justice of India refused to allow a sitting judge to head the judicial enquiry into the Tehelka scandal, even though it involves matters of national security and corruption in the highest places.

Yet when it comes to an absurd, despicable, entirely unsubstantiated petition in which all the three respondents happen to be people who have publicly -though in markedly different ways - questioned the policies of the government and severely criticized a recent judgment of the Supreme Court, the Court displays a disturbing willingness to issue notice.

It indicates a disquieting inclination on the part of the court to silence criticism and muzzle dissent, to harass and intimidate those who disagree with it. By entertaining a petition based on an FIR that even a local police station does not see fit to act upon, the Supreme Court is doing its own reputation and credibility considerable harm.

In conclusion, I wish to reaffirm that as a writer I have right to state my opinions and beliefs. As a free citizen of India I have the right to be part of any peaceful dharna, demonstration or protest march. I have the right to criticize any judgment of any court that I believe to be unjust. I have the right to make common cause with those I agree with. I hope that each time I exercise these rights I will not dragged to court on false charges and forced to explain my actions.'

We have heard the learned counsel appearing for the parties at length and perused the relevant record.

Before dealing with the main case we propose to dispose of the preliminary objection raised by Shri Shanti Bhushan, Senior Advocate who has appeared for the respondent-contemner. Without filing a formal application it has been urged on behalf of the respondent that the Hon'ble Judges who issued notice in Criminal Petition No.2 of 2001 should not be a party to the present proceeding and the case be transferred to some other Bench, allegedly on the ground that the respondent-contemner had reasonable apprehension of bias on the part of the said Judges to whom she claims to have allegedly attributed motives. Such a prayer was made after the commencement of the proceedings which, we feel, was not bonafide. The apprehension expressed by the respondent much less being reasonable in fact has no basis. It has to be kept in mind that notice was issued to the respondent not for having attributed motives to a particular judge but for imputing motives to the court in general for allegedly harassing her as if the judiciary were carrying out personal vendetta against her. The contemptuous part of her affidavit, noticed hereinbefore, does not attribute any motive or make any allegation against any judge. It has to be kept in mind that the present proceedings are distinguishable from the proceedings contemplated under Section 14 of the Contempt of Courts Act (hereinafter referred to as 'the Act'). Initially on the petition of one J.R. Parashar, notice had been issued by a Bench constituting of G.B. Patnaik and U.C. Banerjee,JJ. When the contemners appeared in that case, and filed show cause, no prayer had been made seeking recusal of any judge. Finally that application registered as

Contempt Petition No.2/2001 was heard by a Bench of G.B. Patnaik and Ruma Pal, JJ. and disposed of by the judgment dated 28th August, 2001 discharging the contemners and initiating a suo motu proceedings because of disparaging comments in the show cause filed by Arundhati Roy. In pursuance to such notice, the proceeding was registered as Suo Motu Contempt Petition (Criminal) No.10/2001. In the proceeding contemner appeared on 29.10.2001 and filed her show cause. No prayer for recusal had been made on that day. When the case was taken up for hearing on 15.1.2002, prayer for recusal had been made, which was not allowed. The narration of facts indicate only a frustration on the part of the contemner and such belated prayer for bench haunting is to be curbed as it would be against the administration of justice.

In the instant case cognizance of the criminal contempt against the respondent has been taken by the COURT, suo motu under Section 15 of the Act. Whereas sub-section (2) of Section 14 permits a person charged with the contempt to have charge against him tried by some Judge other than the judge or judges in whose presence or hearing the offence is alleged to have been committed and the court is of opinion that it is practicable to do so. No such provision is made under Section 15 of the Act. Obviously for the reason that when action is at the instance of the COURT, there is no question of any motive of and prejudice from any Judge. Accepting the plea raised by the respondent would amount to depriving all the Judges of the court to hear the matter and thus frustrate the contempt proceedings, which cannot be the mandate of law. The apprehension caused by the respondent is imaginary, without basis and not bonafide. The oral prayer made for one of us not to be a member of the Bench, hearing the matter, is rejected.

Mr.Shanti Bhushan made another endeavour to defer the proceeding, allegedly on the ground of reference made to the Constitution Bench vide an order in Dr.Subramanian Swamy v. Rama Krishna Hegde [2000 (10) SCC 331]. It is contended that as truth can be pleaded as a defence in contempt proceedings and that the decision of this Court in Perspective Publications (P) Ltd. v. State of Maharashtra [1969 (2) SCR 779] has been referred to be reconsidered, the present proceedings are required to await the judgment of the Constitution Bench. Such a submission is without any substance inasmuch as the question of truth being pleaded as defence, in the present case, does not arise. Contempt proceedings have been initiated against the respondent on the basis of the offending and contemptuous part of the reply affidavit making wild allegations against the court and thereby scandalised its authority. There is no point or fact in those proceedings which requires to be defended by pleading the truth.

After referring to various judgments of this Court and courts of other countries, the learned Senior Counsel for the respondent has asserted that no proceedings for contempt can be initiated against any person on the ground of his/her allegedly scandalising the court. Much reliance is placed upon the judgment in Brahma Prakash Sharma & Ors. v. The State of Uttar Pradesh [1953 SCR 1169]. In that case contempt proceedings were initiated against the members of the Executive Committee of the District Bar Association at Muzaffarnagar in the State of Uttar Pradesh because of certain resolutions passed by the Committee in which it was alleged that the two Judicial Officers were thoroughly incompetent in law, did not inspire confidence in their judicial work, were given to stating wrong facts when passing orders and were over-bearing and discourteous to the litigant public and the lawyers alike. A number of other defects were also catalogued in the resolution passed by the Association. The High Court directed the issue of notice to the members of the Committee of the Bar Association to show cause why they should not be dealt with for contempt of court in respect of certain portion of the resolution which was set out in the notice. In answer to those notices, the alleged contemners appeared and filed affidavits. The Bench, hearing the case, came to the conclusion that with the exception of the two alleged contemners, who were not the members of the Executive Committee at the relevant date, the remaining six were guilty of contempt of court. It was, however, held that the aforesaid six members of the Bar were not actuated by any personal or improper motive and the statement made on their behalf was that their object not intended to interfere with but to improve the administration of justice. Nevertheless it was observed that the terms used in the resolution were little removed from personal abuse and whatever might have been the motive, they were guilty of contempt. In concluding portion of the judgment it was stated:

'We think that the opposite parties acted under a misapprehension as to the position, but they have expressed their regrets and tendered an unqualified apology. In the circumstances, we accept their apology, but we direct that they pay the costs of the Government Advocate which we assess at Rs.300.'

The High Court in its judgment had concluded that the allegations made against the judicial officers come within the category of contempt which is committed by 'scandalising the court'. The learned judges observed on the authority of the pronouncement of Lord Russel in Reg. v. Gray [(1900) 2 G.B. 36] that this class of contempt is

subject to one important qualification. In the opinion of the judges of the High Court, the complaint lodged by the contemners exceeded the bounds of fair and legitimate criticism. This Court referred to various judgments of English Courts and concluded:

'The position therefore is that a defamatory attack on a judge may be a libel so far as the judge is concerned and it would be open to him to proceed against the libellor in a proper action if he so chooses. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt. One is a wrong done to the judge personally while the other is a wrong done to the public. It will be injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties. It is well established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement; it is enough if it is likely, or tends in any way, to interfere with the proper administration of law.'

(EMPHASIS SUPPLIED)

We cannot agree with the submission made on behalf of the learned counsel for the respondent that in the light of Brahma Prakash Sharma's case no contempt proceedings can be initiated against the respondent for scandalising the court. No wrong appears to have been done to any judge personally by filing the offending affidavit but the contemptuous part of the affidavit demonstrates the wrong done to the public. The respondent has tried to cast an injury to the public by creating an impression in the mind of the people of this backward country regarding the integrity, ability and fairness of the institution of judiciary.

Similarly reliance of Shri Shanti Bhushan, Senior Advocate on Shri Baradakanta Mishra v. The Registrar of Orissa High Court & Anr [1974 (1) SCC 374] is of no great help to his client. After referring to the definition of criminal contempt in Section 2(c) of the Act, the court found that the terminology used in the definition is borrowed from the English Law of contempt and embodies certain concepts which are familiar to that law which, by and large, was applied in India. The expressions 'scandalize', 'lowering the authority of the court', 'inteference', 'obstruction' and 'administration of justice' have all gone into the legal currency of our sub-continent and have to be understood in the sense in which they have been so far understood by our courts with the aid of English Law, where necessary. Sub-clause(i) of the definition was held to embody the concept of scandalisation, as discussed by Halsbury's Laws of England, 3rd Edition in Volume 8, page 7 at para 9. Action of scandalising the authority of the court has been regarded as an 'obstruction' of public justice whereby the authority of the court is undermined. All the three clauses of the definition were held to justify the contempt in terms of obstruction of or interference with the administration of justice. It was declared that the Act accepts what was laid down by the Privy Council and other English authorities that proceedings in contempt are always with reference to the administration of justice. The scandalisation within the meaning of sub-section (i) must be in respect of the court or the judge with reference to administration of justice. This Court concluded that the courts of justice are, by their constitution, entrusted with functions directly connected with the administration of justice, and it is the expectation and confidence of all those who have or likely to have business therein that the court perform all their functions on a high level of rectitude without fear or favour, affection or ill-will. It is this traditional confidence in courts of justice that the justice will be administered to the people which is sought to be protected by proceedings in contempt. The object obviously is not to vindicate the judge personally but to protect the public against any undermining of their accustomed confidence in the institution of the judiciary. Scandalisation of the court was held to be a species of contempt which may take several forms. Krishna Iyer, J. while concurring with the main judgment authored by Palekar, J. observed that the dilemma of the law of contempt arises because of the constitutional need to balance two great but occasionally conflicting principles - freedom of expression and fair and fearless justice. After referring to the judgments of English, American and Canadian Courts, he observed: 'Before stating the principles of law bearing on the facets of contempt of court raised in this case we would like to underscore the need to draw the lines clear enough to create confidence in the people that this ancient and inherent power, intended to preserve the faith of the public in public justice, will not be so used as to provoke public hostility as overtook the Star Chamber. A vague and wandering jurisdiction with uncertain frontiers, a sensitive and suspect power to punish vested in the prosecutor, a law which makes it a crime to public regardless of truth and public good and permits a process of brevi manu conviction, may unwittingly trench upon civil liberties and so the special jurisdiction and jurisprudence bearing on contempt power must be delineated with deliberation and operated with serious circumspection by the higher

judicial echelons. So it is that as the palladium of our freedoms, the Supreme Court and the High Courts, must vigilantly protect free speech even against judicial umbrage - a delicate but sacred duty whose discharge demands tolerance and detachment of a high order.'

According to him the considerations, as noticed in the judgment, led to the enactment of the Contempt of Courts Act, 1971 which makes some restrictive departures from the traditional law and implies some wholesome principles which serve as unspoken guidelines in this branch of law. Section 2(c) emphasizes to the interference with the courts of justice or obstruction of the administration of justice or sacandalising or lowering the authority of the court - not the judge. According to him, 'The unique power to punish for contempt of itself inheres in a court qua court, in its essential role of dispenser of public justice. After referring to host of judicial pronouncements, Krishna Iyer, J., concluded:

'We may now sum up. Judges and Courts have diverse duties. But functionally, historically and jurisprudentially, the value which is dear to the community and the function which deserves to be cordoned off from public molestation, is judicial. Vicious criticism of personal and administrative acts of Judges may indirectly mar their image and weaken the confidence of the public in the judiciary but the counter-vailing good, not merely of free speech but also of greater faith generated by exposure to the actinic light of bona fide, even if marginally over-zealous, criticism cannot be overlooked. Justice is so cloistered virtue.'

The Court in that case did not spare even a judicial officer and convicted him of the offence by awarding the punishment of paying a fine of Rs.1000/- or in default suffer imprisonment for three months.

In In Re: S.Mulgaokar [1978 (3) SCC 339] Beg, CJ observed that the judiciary is not immune from criticism but when that criticism is based on obvious distortion or gross mis-statement and made in a manner which is designed to lower the respect of the judiciary and destroy public confidence in it, it cannot be ignored. He further declared' 'I do not think that we should abstain from using this weapon even when its use is needed to correct standards of behaviour in a grossly and repeatedly erring quarter.'

In that case when the matter was taken up in the court, the contempt proceedings were dropped without calling upon the counsel appearing for the respondent in response to the notice. The action had been initiated on some news items published in the Indian Express which was termed to be milder publication. The erring sentence in the publication was, 'So adverse has been the criticism that the Supreme Court Judges, some of whom had prepared the draft code, have disowned it'. It was found that the judges of court were not even aware of the contents of the letter before it was sent by the Chief Justice of India to the Chief Justices of various High Courts suggesting, inter alia, that Chief Justices could meet and draft a code of ethics themselves or through a Committee of Chief Justices so as to prevent possible lapses from the path of rectitude and propriety on the part of Judges. The error was pointed out to the Editor of the Indian Express in a letter sent by the Registrar of this Court. In reply, the Registrar received a letter from the Editor showing that the contents of the letter, which were confidential, were known to the Editor. Instead of publishing any correction of the mis-statement about the conduct of Judges of this Court, the Editor offered to publish the whole material in his possession, as though there was an issue to be tried between the Editor of the newspaper and this Court and the readers were there to try it and decide it. It was pointed out that the writer of an article of a responsible newspaper on legal matters is expected to know that there is no constitutional safeguard or provision relating to the independence of the judiciary which could possibly prevent Judges themselves meeting to formulate a code of judicial ethics or to constitute a committee to formulate a code of judicial ethics and etiquette. The article proceeded on the assumption that there was already a formulated code of ethics sent to the Chief Justice which in fact was not correct. The counsel appearing for the alleged contemner to whom the notice was issued tried to convince the court that there was no intention on the part of the writer of the article or the Editor to injure the dignity or position of the court but the intention was only to direct public attention to matters of extreme importance to the nation. The Chief Justice made his statement clear and removed the mis-apprehensions, if there were really and in discretion dropped the proceedings. Nowhere in the judgment the court opined that publication of offending material against the court did not amount to scandalising the court. Krishna Iyer, J. while concurring observed:

'The contempt power, though jurisdictionally large, is discretionary in its unsheathed exercise. Every commission of contempt need not erupt in indignant committal or demand punishment, because Judges are judicious, their valour non-violent and their wisdom goes into action when played upon by a volley of values, the least of which is personal protection - for a wide discretion, range of circumspection and rainbow of public considerations

beningnantly guide that power. Justice if not hubris; power is not petulance and prudence is not pusillanimity, especially when Judges are themselves prospectors and mercy is a mark of strength, not whimper of weakness. Christ and Gandhi shall not be lost on the Judges at a critical time when courts are on trial and the people ('We, the People of India') pronounce the final verdict on all national institutions. Such was the sublime perspective, not plural little factors, that prompted me to nip in the bud the proceeding started for serving a larger cause of public justice than punitive action against a publisher, even assuming (without admitting) he was guilty. The preliminary proceeding has been buried publicly; let it lie in peace. Many values like free press, fair trial, judicial fearlessness and community confidence must generously enter the verdict, the benefit of doubt, without absolutist insistence, being extended to the defendants. Such are the dynamics of power in this special jurisdiction. These diverse indicators, carefully considered, have persuaded me to go no further, by a unilateral decision of the Bench. This closure has two consequences. It puts the lid on the proceedings without pronouncing on the guilt or otherwise of the opposite parties. In a quasi-criminal action, a presumption of innocence operates. Secondly, whatever belated reasons we may give for our action, we must not proceed to substantiate the accusation, if any. To condemn unheard is not fair play. Bodyline bowling, perhaps, is not cricket. So my reason do not reflect on the merits of the charge.'

He further observed that contempt power is a wise economy to use by the Court of this branch of its jurisdiction. The court will act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process. The court should harmonise the constitutional values of free criticism and the need for a fearless curial process and its presiding functionary, the Judge. A happy balance has to be struck, the benefit of the doubt being given generously against the Judge, slurring over marginal deviations but severely proving the supremacy of the law over pugnacious, vicious, unrepentant and malignant contemners, be they the powerful press, gang-up of vested interests, veteran columnists of olympian establishmentarians. After referring to certain principles to be kept in mind while dealing with the contempt proceedings and referring to host of judgments of the foreign and this Court, he concluded:

'The Court is not an inert abstraction; it is people in judicial power. And when drawing up standards for press freedom and restraint, as an 'interface' with an unafraid court, we must not forget that in our constitutional scheme the most fundamental of all freedoms is the free quest for justice by the small man. 'When beggars die, there are comets seen' and 'when the bull elephants fight, the grass is trampled'. The contempt sanction, once frozen by the high and mighty press campaign, the sufferer, in the long run, is the small Indian who seeks social transformation through a fearless judicial process. Social justice is at stake if foul press unlimited were to reign. As Justice Frankfurther stated, may be 'Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions' (a question I desist from deciding here), but when comment darkness into coercive imputation or calculated falsehood, threats to impartial adjudication subtly creeps. Not because Judges lack firmness nor that the dignity of the Bench demands enhanced respect by enforced silence, as Justice Black observed in the Los Angeles Times case [314 US 263 et al] but because the course of justice may be distorted by hostile attribution.'

In Dr.D.C. Saxena v. Hon'ble the Chief Justice of India [1996 (5) SCC 216] this Court held that if maintenance of democracy is the foundation of free speech, society equally is entitled to regulate freedom of speech or expression by democratic action. Nobody has a right to denigrate others right of person and reputation. Bonafide criticism of any system or institution including the judiciary cannot be objected to as healthy and constructive criticism are tools to augment forensic tools for improving its function.

Relying upon some judgments of foreign courts and the cherished wishes expressed or observations made by the Judges of this country it cannot be held as law that in view of the constitutional protection of freedom of speech and expression no-one can be proceeded with for the contempt of court on the allegation of scandalising or intending to scandalise the authority of any Court. The Act is for more comprehensive legislation which lays down the law in respect of several matters which hitherto had been the subject of judicial exposition. The legislature appears to have kept in mind to bring the law on the subject into line with modern trends of thinking in other countries without ignoring the ground realities and prevalent socio-economic system in India, the vast majority of whose people are poor, ignorant, uneducated, easily liable to be misled, but who acknowledly have the tremendous faith in the Dispensers of Justice. The Act, which was enacted in the year 1971, much after the adoption of the Constitution by the People of India, defined criminal contempt under Section 2(c) to mean:

‘’Criminal contempt’ means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which -

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.’

This Court has occasion to deal with the constitutional validity of the Act and came to the conclusion that the same was intra vires. If the constitutional validity of criminal contempt withstood the test on the touchstone of constitutionality in the light of the fundamental rights, it is too late to argue at this stage that no contempt proceeding can be initiated against a person on the ground of scandalising the authority of the court.

Dealing with the meaning of the word ‘scandalising’, this Court in D.C. Saxena’s case (supra) held that it is an expression of scurrilous attack on the majesty of justice which is calculated to undermine the authority of the courts and public confidence in the administration of justice. The malicious or slanderous publication inculcates in the mind of the people a general disaffection and dissatisfaction on the judicial determination and indisposes in their mind to obey them. If the people’s allegiance to the law is so fundamentally shaken it is the most vital and most dangerous obstruction of justice calling for urgent action. Dealing with Section 2(c) of the Act and defining the limits of scandalising the court, it was held:

‘Scandalising the court, therefore, would mean hostile criticism of judges as judges or judiciary. Any personal attack upon a judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the judge as a judge brings the court or judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature of a judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It would, therefore, be scandalising the judge as a judge, in other words, imputing partiality, corruption, bias, improper motives to a judge is scandalisation of the court and would be contempt of the court. Even imputation of lack of impartiality or fairness to a judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. When the contemnor challenges the authority of the court, he interferes with the performance of duties of judge’s office or judicial process or administration of justice or generation or production of tendency bringing the judge or judiciary into contempt. Section 2(c) of the Act, therefore, defines criminal contempt in wider articulation that any publication, whether by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority or any court; or prejudices, or interfers or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner, is a criminal contempt. Therefore, a tendency to scandalise the court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the court is a criminal contempt. Any conduct of the contemnor which has the tendency or produces a tendency to bring the judge or court into contempt or tends to lower the authority of the court would also be contempt of the court.’

In E.M. Sankaran Namboodripad v. T.Narayanan Nambiar [1970 (2) SCC 325] it was contended on behalf of the contemers that law of contempt must be read without encroaching upon the guaranteed freedom of speech and expression in Article 19 of the Constitution and the intention of the contemner in making the statement should be examined in the light of his political views as he was at liberty to put them before the people. It was further argued as that the species of contempt called ‘scandalising the court’ had fallen in desuetude and was no longer enforced in England, the freedom of speech and expression gave immunity to the appellant-contemner to publicise the political philosophy in which he believed. Rejecting such a plea, the Court held:

‘The appellant has contended before us that the law of contempt should be so applied that the freedom of speech and expression are not whittled down. This is true. The spirit underlying Article 19(1)(a) must have due play but we cannot overlook the provisions of the second clause of the article. While it is intended that there should be

freedom of speech and expression, it is also intended that in the exercise of the right, contempt of court shall not be committed. The words of the second clause are:

'Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restriction on the exercise of the right conferred by the sub-clause... in relation to contempt of court, defamation or incitement to an offence.'

These provisions are to be read with Articles 129 and 215 which specially confer on this Court and the High Courts the power to punish for contempt of themselves. Article 19(1)(a) guarantees complete freedom of speech and expression but it also makes an exception in respect of contempt of court. The guaranteed right on which the functioning of our democracy rests, is intended to give protection to expression of free opinions to change political and social conditions and to advance human knowledge. While the right is essential to a free society, the Constitution has itself imposed restrictions, in relation to contempt of court and it cannot therefore be said that the right abolishes the law of contempt or that attacks upon judges and courts will be condoned.'

In Sheela Barse v. Union of India & Ors. [1988 (4) SCC 226] the Court acknowledged that the broader right of a citizen to criticise the systemic inadequacies in the larger public interest. It is the privileged right of the Indian citizen to believe what he considers to be true and to speak out his mind, though not, perhaps, always with the best of tastes; and speak perhaps, with greater courage than care for exactitude. Judiciary is not exempt from such criticism. Judicial institutions are, and should be made, of stronger stuff intended to endure the thrive even in such hardy climate. But we find no justification to the resort to this freedom and privilege to criticise the proceedings during their pendency by persons who are parties and participants therein.

The law of contempt itself envisages various exceptions as incorporated in Sections 3, 4, 5, 6 and 7. Besides the aforesaid defences envisaged under the Act, the court can, in appropriate cases, consider any other defence put forth by the respondent which is not incompatible with the dignity of the court and the law of contempt. Taking a cue from the language of Section 8 of the Act, learned Senior Counsel appearing for the respondent submitted that a reply submitted to a contempt notice can, in no case, amount to contempt of court in the light of second exception to Section 499 of the Indian Penal Code. Such a broad and general proposition is contrary to the law of contempt as adjudicated by the courts in the country from time to time and the limits prescribed by the Act and the judicial pronouncements which are well within the knowledge of all reasonable citizens. It has to be always kept in mind that the law of defamation under the Penal Code cannot be equated with the law of contempt of court in general terms. The Privy Council in Surender Nath v. Chief Justice and Judges of the High Court [10 Cal. 109] observed that 'although contempt may include defamation, yet an offence of contempt is something more than mere defamation and is of a different character'. Approving the aforesaid view, this Court in Bathina Ramakrishna Reddy v. State of Madras [AIR 1952 SC 149] held:

'When the act of defaming a Judge is calculated to obstruct or interfere with the due course of justice or proper administration of law, it would certainly amount to contempt. The offence of contempt is really a wrong done to the public by weakening the authority and influence of Courts of law which exist for their good. As was said by Willmot C.J., Wilmot's Opinion p.256; Rex v. Davies 30 at p.40-41.

'attacks upon the judges excite in the minds of the people a general dissatisfaction with all judicial determinations.... and whenever man's allegiance to the laws is so fundamentally shaken it is the most fatal and dangerous obstruction of justice and in my opinion claim out for a more rapid and immediate redress than any judges as private individuals but because they are the channels by which the King's justice is conveyed to the people.'

What is made punishable in the Indian Penal Code is the offence of defamation as defamation and not as contempt of court. If the defamation of a subordinate court amounts to contempt of Court proceedings can certainly be taken under S.2, Contempt of Courts Act, quite apart from the fact that other remedy may be open to the aggrieved officer under S.499, Penal Code. But a libel attacking the integrity of a Judge may not in the circumstances of a particular case amount to a contempt at all, although it may be

the subject matter of libel proceeding. This is clear from the observation of the Judicial Committee in the case of the Matter of a Special Reference from the Bahama Islands, 1989 A.C. 188.'

Even a person claiming the benefit of second exception to Section 499 of the Indian Penal Code, is required to show that the opinion expressed by him was in good faith which related to the conduct of a public servant in the discharge of his public functions or respecting his character so far as his character appears in that conduct. Under the law of contempt statements made in pleadings, petitions and affidavits of the parties, in a number of cases, have been held defamatory statements amounting to offences under the section unless it is shown that they fall within any of the exceptions. The statements made in an affidavit filed in the court was held to amount to a criminal contempt by this Court in In Re: Sanjiv Datta, Deputy Secretary's, Ministry of Information & Broadcasting, New Delhi & Ors. [1995 (3) SCC 619] The benefit of the exception even under the law of defamation, much less in contempt proceedings may not be available if the insinuations are made against an institution of the State and not restricted to the person as an individual or a collection of persons.

Relying upon the observations made by this Court in P.N. Duda vs. P.Shiv Shanker & Ors. [1988 (3) SCC 167 it has been argued on behalf of the respondents that if despite severe criticism and wild allegations made by P. Shiv Shanker against the institution of judiciary, no action was taken, the present proceedings also required to be dropped. In that case P. Shiv Shanker who, at the relevant time, was the Minister of Law, Justice and Company Affairs, delivered a speech before a meeting of the Bar Council at Hyderabad in which he made derogatory statement against the Supreme Court and its dignity attributing partiality towards economically affluent sections of the people by using language which is extremely intemperate, undignified and unbecoming of a person of his stature and position. In his speech the Minister had, inter alia, observed:

'The Supreme Court composed of the element from the elite class had their unconcealed sympathy for the haves i.e. the Zamindars. As a result, they interpreted the word 'compensation' in Article 31 contrary to the spirit and the intendment of the Constitution and ruled the compensation must represent the price which a willing seller is prepared to accept from a willing buyer. The entire programme of Zamindari abolition suffered a setback. The Constitution had to be amended by the 1st, 14th and 17th Amendments to remove the oligarchic approach of the Supreme Court with little or no help. Ultimately, this rigid reactionary and traditional outlook of property, led to the abolition of property as a fundamental right.

Holmes Alexander in his column entitled '9 Men of Terror Squad' made a frontal attack on the functions of the U.S. Supreme Court. It makes an interesting reading:

Now can you tell what that black-robbed elite are going to do next. Spring more criminals, abolish more protections. Throw down more ultras. Rewrite more laws. Chew more clauses out of the Constitution. May be, as a former Vice-President once said, the American people are too dumb to understand, but I would bet that the outcropping of evidence at the top in testimony before the US Senate says something about the swelling concern among the people themselves.

Should we not ask how true Holmes Alexander was in the Indian context.

Twenty years of valuable time was lost in this confrontation presented by the judiciary in introducing and implementing basic agrarian reforms for removal of poverty what is the ultimate result. Meanwhile even the political will seems to have given way and the resultant effect is the improper and ineffective implementation of the land reform laws by the executive and the judiciary supplementing and complementing each other.

The Maharajas and the Rajas were anachronistic in independent India. They had to be removed and yet the conservative element in the ruling party gave them privy purses. When the privy purposes were abolished, the Supreme Court, contrary to the whole national upsurge, held in favour of the Maharajas.

Mahadhipatis like Keshavananda and Zamindars like Golaknath evoked a sympathetic cord nowhere in the whole country except the Supreme Court of India. And the bank magnates, the representatives of the elitist culture of this country, ably supported by industrialists, the beneficiaries of independence, got higher compensation by the intervention of the Supreme Court in Cooper case [R.C. Cooper v. Union of India, (1970) 1 SCC 248]. Anti-social elements i.e. FERA violations, bride burners and a whole horde of reactionaries have formed their haven in the Supreme Court.'

After examining the entire speech, this Court found that the Minister had examined the class composition of the Supreme Court. His view was that the class composition of any instrument indicates its pre-disposition and its prejudices. After referring to various judgments of this Court and the foreign courts, the Court held: 'As we have mentioned before the speech of the Minister has to be read in its entirety. In the speech as we have set out hereinbefore it appears that Shri P. Shiv Shanker was making a study of the attitude of this Court. In the portion set out hereinbefore, it was stated that the Supreme Court was composed of the element from the elite class. Whether it is factually correct or not in another matter. In our public life, where the champions of the down-trodden and the politicians are mostly from the so-called elite class, if the class composition is analysed, it may reveal interesting factors as to whether elite class is dominant as the champions of the oppressed or of social legislations and the same is the position in the judiciary. But the Minister went on to say that because the judges had their 'unconcealed sympathy for the haves' they interpreted the expression 'compensation' in the manner they did. The expression 'unconcealed' is unfortunate. But this is also an expression of opinion about an institutional pattern. Then the Minister went on to say that because of this the word 'compensation' in Article 31 was interpreted contrary to the spirit and the intendment of the Constitution. The Constitution therefore had to be amended by the 1st, 14th and 17th Amendments to remove this 'oligarchic' approach of the Supreme Court with little or no help. The interaction of the decisions of this Court and the constitutional amendments have been viewed by the Minister in his speech, but that is nothing new. This by itself does not affect the administration of justice. On the other hand, such a study perhaps is important for the understanding of the evolution of the constitutional development. The next portion to which reference may be made where the speaker has referred to Holmes Alexander in his column entitled '9 Men of Terror Squad' making a frontal attack on the functions of the U.S. Supreme Court. There was a comparison after making the quotation as we have set out hereinbefore, : 'One should ask the question how true Holmes Alexander was in the Indian context'. This is also a poser on the performance of the Supreme Court. According to the speaker twenty years of valuable time was lost in this confrontation presented by the judiciary in introducing and implementing basic agrarian reforms for removal of poverty what is the ultimate result. The nation did not exhibit the political will to implement the land reforms laws. The removal of the Maharajas and Rajas and privy purses were criticised because of the view taken by this Court which according to the speaker was contrary to the whole national upsurge. This is a study in the historical perspective. Then he made a reference to the Keshavanand Bharti v. State of Kerala [1973(4) SCC 225] and I.C. Golak Nath v. State of Punjab [AIR 1967 SC 1643] cases and observed that a representative of the elitist culture of the country, ably supported by industrialists and beneficiaries of independence, got higher compensation by the intervention of the Supreme Court in Cooper Case. This is also a criticism of the judgment in R.C. Cooper Case. Whether that is right or wrong is another matter, but criticism of judgments is permissible in a free society. There is, however, one paragraph which appears to us to be rather intemperate and that is to the following effect:

Anti-social elements i.e. FERA violators, bride burners and a whole horde of reactionaries have found their haven in the Supreme Court.

This, of course, if true, is a criticism of the laws. The Supreme Court as it is bound to do has implemented the laws and in implementing the laws, it is a tribute to the Supreme Court that it has not discriminated between persons and persons. Criminals are entitled to be judged in accordance with law. If anti-social elements and criminals have benefited by decisions of the Supreme Court, the fault rests with the laws and the loopholes in the legislation. The courts are not deterred by such criticisms.

Bearing in mind the trend in the law of contempt as noticed before, as well as some of the decisions noticed by Krishna Iyer, J. in S. Mulgaokar case, the speech of the Minister read in its proper perspective, did not bring the administration of justice into disrepute or impair administration of justice. In some portions of the speech the language used could have been avoided by the Minister having the background of being a former judge of the High Court. The Minister perhaps could have achieved his purpose by making his language mild but his facts deadly. With these observations, it must be held that there was no imminent danger of interference with the administration of justice, not of bringing administration into disrepute. In that view it must be held that the Minister was not guilty of contempt of this Court.'

It may be noticed that the criticism of the judicial system was made by a person who himself had been the Judge of the High Court and was the Minister at the relevant time. He had made studies about the system and expressed his opinion which, under the circumstances, was held to be not defamatory despite the fact that the court found that in some portion of the speech the language used could have been avoided by the Minister having the background of being the former Judge of the High Court. His speech, under the circumstances, was held to be not amounting

to imminent danger of interference with the administration of justice nor of bringing the administration into disrepute.

As already held, fair criticism of the conduct of a judge, the institution of the judiciary and its functioning may not amount to contempt if it is made in good faith and in public interest. To ascertain the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. All citizens cannot be permitted to comment upon the conduct of the courts in the name of fair criticism which, if not checked, would destroy the institution itself. Litigant losing in the Court would be the first to impute motives to the judges and the institution in the name of fair criticism which cannot be allowed for preserving the public faith in an important pillar of democratic set up, i.e., judiciary. In Dr.D.C. Saxena's case (supra) this Court dealt with the case of P.Shiv Shanker by observing:

'In P.N. Duda v. P. Shiv Shanker [1988 (3) SCC 167] this Court had held that administration of justice and judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by the conscience and oath to their office, i.e, to defend and uphold the Constitution and the laws without fear and favour. Thus the judges must do, in the light given to them to determine, what is right. Any criticism about the judicial system or the judges which hampers the administration of justice or which erodes the faith in the objective approach of the judges and brings administration of justice to ridicule must be prevented. The contempt of court proceedings arise out of that attempt. Judgments can be criticised. Motives to the judges need not be attributed. It brings the administration of justice into disrepute. Faith in the administration of justice is one of the pillars on which democratic institution functions and sustains. In the free market-place of ideas criticism about the judicial system or judges should be welcome so long as such criticism does not impair or hamper the administration of justice. This is how the courts should exercise the powers vested in them and judges to punish a person for an alleged contempt by taking notice of the contempt suo motu or at the behest of the litigant or a lawyer. In that case the speech of the Law Minister in a Seminar organised by the Bar Council and the offending portion therein were held not contemptuous and punishable under the Act. In a democracy judges and courts alike are, therefore, subject to criticism and if reasonable argument or criticism in respectful language and tempered with moderation is offered against any judicial act as contrary to law or public good, no court would treat criticism as a contempt of court.'

In the instant case the respondent has not claimed to be possessing any special knowledge of law and the working of the institution of judiciary. She has only claimed to be a writer of repute. She has submitted that 'as an ordinary citizen I cannot and could not have expected to make a distinction between the Registry and the Court'. It is also not denied that the respondent was directly or indirectly associated with the Narmada Bachao Andolan and was, therefore, interested in the result of the litigation. She has not claimed to have made any study regarding the working of this Court or judiciary in the country and claims to have made the offending imputations in her proclaimed right of freedom of speech and expression as a writer. The benefit to which Mr.P.Shiv Shanker, under the circumstances, was held entitled is, therefore, not available to the respondent in the present proceedings. Her case is in no way even equal to the case of E.M.S. Namboodaripad (supra). In that case the contemner, believing in the philosophy he was pronpounding had made certain observations regarding the working of the courts under the prevalent system which, as already noticed, was found to be contemptuous.

The Constitution of India has guaranteed freedom of speech and expression to every citizen as a fundamental right. While guaranteeing such freedom, it has also provided under Article 129 that the Supreme Court shall be a Court of Record and shall have all the powers of such a Court including the power to punish for contempt of itself. Similar power has been conferred on the High Courts of the States under Article 215. Under the Constitution, there is no separate guarantee of the freedom of the press and it is the same freedom of expression, which is conferred on all citizens under Article 19(1). Any expression of opinion would, therefore, be not immune from the liability for exceeding the limits, either under the law of defamation or contempt of Court or the other constitutional limitations under Article 19(2). If a citizen, therefore, in the garb of exercising right of free expression under Article 19(1), tries to scandalise the court or undermines the dignity of the court, then the court would be entitled to exercise power under Article 129 or Article 215, as the case may be. In relation to a pending proceeding before the Court, while showing cause to the notices issued, when it is stated the court displays a disturbing willingness to issue notice on an absurd despicable, entirely unsubstantiated petition, it amounts to a destructive attack on the reputation and the credibility of the institution and it undermines the public confidence in the judiciary as a whole and by no stretch of imagination, can be held to be a fair criticism of the Court's proceeding. When a scurrilous

attack is made in relation to a pending proceeding and the noticee states that the issuance of notice to show cause was intended to silence criticism and muzzle dissent, to harass and intimidate those who disagree with it, is a direct attack on the institution itself, rather than the conduct of an individual Judge. The meaning of the expressions used cannot come within the extended concept of fair criticism or expression of opinion, particularly to the case of the contemner in the present case, who on her own right is an acclaimed writer in English. At one point of time, we had seriously considered the speech of Lord Atkin, where the learned Judge has stated:

'The path of criticism is public way: the wrongheaded are permitted to err therein... Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.'

[Andre Paul vs. Attorney General (1936), AC 322].

and to find out whether there can be a balancing between the two public interests, the freedom of expression and the dignity of the court. We also took note of observations of Bharucha, J. in the earlier contempt case against the present contemner, who after recording his disapproval of the statement, observed that the Court's shoulders are broad enough to shrug off the comments. But in view of the utterances made by the contemnor in her show causes filed and not a word of remorse, till the conclusion of the hearing, it is difficult for us either to shrug off or to hold the accusations made as comments of outspoken ordinary man and permit the wrongheaded to err therein, as observed by Lord Atkin.

We are not impressed with any of the arguments of the learned counsel for the respondent which could persuade us to drop the proceedings and are of the opinion that it has to be found on facts as to whether the offending portion of the affidavit of the respondent amounts to scandalising the court and thus a criminal contempt within the meaning of Section 2(c) of the Act.

In the offending portion of her affidavit, the respondent has accused the court of proceeding with absurd, despicable and entirely unsubstantiated petition which, according to her, amounted to the court displaying a disturbing willingness to issue notice. She has further attributed motives to the court of silencing criticism and muzzling dissent by harassing and intimidating those who disagree with it. Her contempt for the court is evident from the assertion 'by entertaining a petition based on an FIR that even a local police station does not see fit to act upon, the Supreme Court is doing its own reputation and credibility considerable harm'. In the affidavit filed in these proceedings, the respondent has reiterated what she has stated in her earlier affidavit and has not shown any repentance. She wanted to become a champion to the cause of the writers by asserting that persons like her can allege anything they desire and accuse any person or institution without any circumspection, limitation or restraint. Such an attitude shows her persistent and consistent attempt to malign the institution of the judiciary found to be most important pillar in the Indian democratic set up. This is no defence to say that as no actual damage has been done to the judiciary, the proceedings be dropped. The well-known proposition of law is that it punishes the archer as soon as the arrow is shot no matter if it misses to hit the target. The respondent is proved to have shot the arrow, intended to damage the institution of the judiciary and thereby weaken the faith of the public in general and if such an attempt is not prevented, disastrous consequences are likely to follow resulting in the destruction of rule of law, the expected norm of any civilised society.

On the basis of the record, the position of law our findings on various pleas raised and the conduct of the respondent, we have no doubt in our mind that the respondent has committed the criminal contempt of this Court by scandalising its authority with malafide intentions. The respondent is, therefore, held guilty for the contempt of court punishable under Section 12 of the Contempt of Courts Act.

As the respondent has not shown any repentance or regret or remorse, no lenient view should be taken in the matter. However, showing the magnanimity of law by keeping in mind that the respondent is a woman, and hoping that better sense and wisdom shall dawn upon the respondent in the future to serve the cause of art and literature by her creative skill and imagination, we feel that the ends of justice would be met if she is sentenced to symbolic imprisonment besides paying a fine of Rs.2000/-.

While convicting the respondent for the contempt of the Court, we sentence her to simple imprisonment for one day and to pay a fine of Rs.2,000/-. In case of default in the payment of fine, the respondent shall undergo simple imprisonment for three months.