Reforming the Offence of Scandalizing the Court in India

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Under the *Contempt of Court 1971,* it is a criminal offence, punishable as a contempt of court, to 'scandalise' the court. The term 'scandalise' is left undefined under the Contempt Act. However, it is possible to approximate a loose working definition of the term out of case law, from both India and other Common Law jurisdictions which feature the offence. Broadly, scandalising involves 'any illegitimate act that substantially undermines public confidence in the administration of justice.'

Scandalising is an expansive and troublesome concept. It covers, for example, allegations of judicial corruption, bias, or negligence. The offence therefore has the potential to suppress criticism of the Judiciary. In theory, judges insist that justice is not a "cloistered virtue", and that legitimate criticism of the courts will not be punishable. But what is legitimate, and who decides? In scandalising cases, the uncomfortable reality is that on the one hand, a judge who has been criticized may have laid charges, and on the other, the very same judge (or one of his colleagues) will preside over the hearing. This potential conflict of interest is exacerbated by the uncertain nature and scope of defences available to a defendant, most tellingly that a defendant cannot rely upon the truth of his allegation. Several recent convictions for scandalising the court have been controversial, and refocused attention on the need for reform in the area.

A new bill before parliament proposes to amend the law in this area. The *Contempt of Courts (Amendment) Bill 2004* ['the Bill'] introduces a defence to a charge of contempt of court, namely that:

> *The Court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in the public interest and the request for invoking the said defence is bona fide.*

Quite simply, this Bill does not go far enough. Further amendments need to be made to the substantive and procedural law that governs cases in which a person has been accused of scandalising the court. [Such cases shall hereafter be denoted as 'scandalising cases', and the offence of scandalising the court shall hereafter be denoted as the 'scandalising offence'].Essentially, the scope of the offence needs to be limited and clarified, the defences available to the offence strengthened, and procedural safeguards for the accused improved.

I. Current Law on Scandalising

The Rationale of the Offence

The current law cannot be understood without first considering the rationale of the scandalising offence. The principal rationale of the offence, as recently explained by the Supreme Court of India in *In re: Arundhati Roy*, is that an effective rule of law requires a Judiciary to be "respected and protected at all costs."[1] The Supreme Court elaborated:

> 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… 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.

A related rationale is that judges are particularly vulnerable to criticism, thus justifying a special power to protect the Judiciary. Judges are said to be vulnerable because the nature of their office prevents them from responding publicly to criticism, and because other causes of action (eg. defamation) are inadequate to protect judges.

The expansive scope of the offence, and the absence of an unqualified defence of truth, are justified as being necessary to prevent a kind of 'judicial guerilla warfare.' Unscrupulous critics, it is argued, would exploit loopholes in a narrower offence to attack the court. These critics would also seize upon the defence of truth, even if their criticism were baseless, knowing that most judges would prefer to avoid a detailed and invasive examination of their personal affairs in the courtroom.

Finally, the notion of cultural relativism may influence the law of scandalising in India. Cultural relativism suggests that while the Judiciary may not need the protection of a broad scandalising offence in 'mature democracies', it still requires such protection in fledgling democracies where the rule of law is not so firmly established. This kind of siege mentality lingers in the post-colonial period.[2]

Relationship with freedom of expression

It must be understood that, in India at least, the scandalising offence is not legally subservient to any rights of freedom of speech or expression. Article 19(1)(a) of the Indian Constitution establishes the basic human right to freedom of speech and expression. However, Article 19(2) of the Constitution permits legislation to place reasonable restrictions on this right to freedom of speech in relation to contempt of court. It is therefore inaccurate, at least in a technical legal sense, to suggest that the right to freedom of speech overrules contempt of court laws in India

Conduct to which the offence applies

In the absence of a statutory definition, convictions for scandalising have arisen in a wide variety of circumstances:

- Scurrilous (i.e., vulgar or coarse) abuse of the court, such as a journalist describing a judge as "a microcosm of conceit and empty-headedness."[3]
- Imputations of corruption.[4]
- Imputations of a judge having bowed to external pressures, such as suggesting that a court overturned a conviction on appeal, because the original conviction had led to widespread industrial protests.[5]
- Imputations of bias on the part of a judge, such as because of religious, racial, gender or political prejudice,[6] and perhaps (though less likely) a suggestion that the Judiciary as an institution is biased.[7]
- Imputations that a judge or court has abused court processes or deliberately disobeyed rules of conduct, such as a suggestion that a court has entertained a dubious petition in order to harass a critic of the court, [8] or that a Chief Justice has deliberately misrepresented his age to avoid compulsory retirement.[9]
- Misrepresenting a judicial decision to an extreme degree.[10]
- Imputations of gross judicial negligence,[11] or critical comparisons of the performance of various members of a court. [12]

There are few limitations on the scope of the scandalising offence. Intention (or lack thereof) to scandalise the court is irrelevant. A person may be liable even if they did not intend to scandalise the court, or even if the person (e.g., a newspaper editor, journalist etc) merely reproduced the scandalising statement of another person. Nor is it necessary for the offending statement to have been published.[13] Furthermore, many convictions have arisen in India from comments made in official court proceedings, rather than public discourse in the classical sense. A common example is an affidavit alleging that a judge has been biased in hearing a case.

Permissible criticism

Judgments in scandalising cases invariably stress that criticism of the courts, within proper limits, will not be in contempt of court. The difficulty is defining the precise nature of the proper limits of criticism. In fact, the outstanding characteristic of scandalising law is its uncertainty.

A person may supposedly make "fair comment" on the merits of a judicial decision, so long as the comment does not go further and attack the integrity of the judges themselves.[14] Under close scrutiny, this defence is problematic. First, it is unclear (and highly subjective) when a comment is "fair". Second, it may also be uncertain when a comment relates to the merits of the decision, rather than the court itself. Courts have stressed that personal criticism of the judge is impermissible in the guise of criticizing a judgment.[15] For example, if a commentator criticized a court decision for ignoring or misunderstanding vital policy concerns, the criticism could potentially be construed as imputing negligence or bias on the part of the court.

Direct attacks on judges themselves are arguably permissible in some circumstances. An attack on his judge unrelated to his official capacity, such as an allegation of domestic violence, would not scandalise the court. And even if the attack relates to the judge in his official capacity, it may still

be permissible. A rather weak line of authority, based on an odd assortment of vague references to 'good faith', 'public interest', etc, suggests as much. The application of these authorities is painfully unclear. More fundamentally, this weak line of authority is in stark conflict with a much stronger line of authority confirming that, in India at least, truth is not a defence to a charge of scandalising. Given that truth is happily irrelevant in scandalising cases, talk of "good faith" and "public interest" seems hollow.

In summary, courts go to great lengths to assure that in theory, proper criticism of the courts will not be punished. In practice, these assurances are unclear and devoid of solid content, and it would be a brave defendant indeed who initially acted in reliance upon them.

Procedural issues in scandalising cases

The procedural aspects of scandalising cases are important, but often neglected. Without describing current procedural laws on scandalising at great length, it is still possible to identify two key problems.

One problem is that the conflict of interest mentioned previously, whereby a judge may be victim, prosecutor and arbiter all at once, is not entirely prevented. The Contempt Act attempts, but fails, to provide adequate safeguards. The safeguards it provides depend on the context of the allegedly scandalising act.

For acts of contempt that occur in the face of the court (i.e., in the judge's presence), a court may try the contemnor summarily, affording him fewer procedural safeguards than in normal cases. Presumably, to prevent judges administering rough and ready summary justice, the Contempt Act provides that the defendant may apply for the case to be heard by another judge who was not present at the time of the allegedly contemptuous act. However, this is of little benefit to the defendant. The court, which laid the charges, has a broad discretion to refuse such an application, and if it accedes to the application, the word of the original court is taken as (nearly indisputable evidence) evidence in the subsequent hearing before the new judge.

For allegedly scandalising acts that occur outside the court, the Contempt Act provides that a bench of at least two judges hear charges. However, this may also not provide much assistance to the defendant. For example, if a judge has been personally criticized, there is nothing to prevent him from sitting on this bench. If the criticism has been of the bench as a whole, then it is doubtful whether a truly neutral judge could be found.

Another problem is more fundamental. Under Articles 129 and 215 of the Constitution, the Supreme Court and High Courts of India are respectively vested with the inherent power to hear contempt of cases. It would seem, at least in the eyes of the Judiciary, that this power includes being able to set *procedure* for trying contempt cases. In contempt cases, the Court is free "to adopt its own procedure."[16] The Supreme Court has stated that this power:[17]

> cannot be either abridged by any legislation or abrogated or cut down. Nor can they be controlled or limited by any statute or by any provision of the Code of Criminal Procedure or any Rules.

These comments demonstrate that courts may disregard, if they wish, the procedure set out in the Contempt Act. For the most part, however, courts seem to follow the procedure under the Contempt

Act. Nevertheless, the inherent – and expansive – powers of the court to summarily try contempt cases is a spectre looming for all defendants.

II. Abuse of the Scandalising Offence

As we have seen, scandalising offence is expansive in its scope, the defences available to a scandalising charge are uncertain, and the procedure for dealing with scandalising cases is questionable. It is perhaps not surprising, therefore, that the scandalising offence has been abused by judges to muzzle criticism. In this context, it is instructive to consider examples of abuse from abroad. Several international observer organizations, including the Asian Human Rights Commission, Article 19,[18] and the International Bar Association, have documented such abuses of the scandalising offence. The abuses recorded by these organizations are sobering, particularly in relation to two countries, Sri Lanka and Malaysia.

Sri Lanka

Sri Lanka provides a number of dubious examples of convictions for scandalising the court.

In *Hewamanne v. de Silva,*[19] the editor and publisher of a newspaper and others were found liable for contempt of court. They had published a notice of a motion relating to the Judiciary found on the order paper of Parliament the next day. The news item was a verbatim reproduction of the said notice except for the two headlines. Such a conviction seems to suppress the ability of the press to report - not to mention comment upon - the interaction between the legislative and judicial branches of government. In a vibrant democracy, the ability to report on such events is of the greatest importance.

A more recent abuse occurred in *Michael Anthony Fernando case.*[20] Mr. Fernando, a human rights activist, filed an appeal before the Supreme Court of Sri Lanka against the joining of two previous fundamental rights petitions. The appeal was heard by, among others, Chief Justice, Sarath N. Silva, one of those who had decided to join the earlier petitions. Upon realising this, Mr. Fernando protested. The Court asked him to stop and, when he refused, he was summarily tried the same day, again before the Chief Justice, for contempt of court and sentenced to one years' imprisonment.

As Article 19 notes, the *Fernando case* is troublesome on a variety of counts, irrespective of the merits of Mr Fernando's appeal. First, there was a failure on the part of the Supreme Court to observe a fundamental tenet of justice, namely that one cannot sit in judgement in one's own case, both in relation to the appeal and in relation to the contempt hearing. Second, Mr Fernando's imprisonment seems grossly disproportionate to the harm done. It is clear that a far less oppressive sanction in this case, such as removal from the Court or even a fine, would have been sufficient. Third, Mr Fernando was not given an opportunity to obtain legal advice or to prepare his defence, as the case was heard summarily. All in all, the decision has been subject to much criticism, and done little to uphold public confidence in the administration of justice.

Malaysia

Malaysia also provides a disturbing legacy of abuse of the scandalising offence.

In *Attorney General and Others v. Lee,*[21] a lawyer had written letters criticizing a previous decision of the Malaysian Supreme Court. The lawyer was convicted of scandalising the court, because the Supreme Court felt that his criticism, despite being written in temperate language, imputed that the decision was "unjust and biased" and contained an 'implicit threat' that unless the decision were to be reviewed, there would be no justice. The court explained:[22]

> For the present, except possibly—and we say this with great reservation—for the limited purpose of proving it in actual court proceedings, any allegation of injustice or bias, however couched in respectful words and even if expressed in temperate language, cannot be tolerated, particularly when such allegation is made for the purpose of influencing or exerting pressure upon the court in the exercise of its judicial functions.

Regardless of the merits of the case, this line of reasoning was clearly dangerous. It suggested that *any* allegation of injustice or bias, however temperate or justified, would scandalise the court. Furthermore, it held that 'implicit threats' could be read into critical discussion of judgments. Not surprisingly perhaps, later cases seized upon this expansive reasoning to justify convictions in dubious circumstances, particularly in cases involving covert political elements.

Attorney-General, Malaysia v Manjeet Singh Dhillon[23] arose out of the 1988 constitutional crisis. Put simply, after a prolonged period of tension between the Prime Minister, Dr Mahathir Mohammad, and the Malaysian Supreme Court, the PM lashed out. He unilaterally dismissed several members of the Supreme Court, and effectively replaced them with puppet judges. Protesting these developments, the Secretary of the Bar Council of Malaysia, in his official capacity, questioned these developments in an affidavit. The Secretary was quickly charged, and found guilty of, scandalising the court.
It is worth pausing for a moment to consider this use of contempt powers. At the time of the case, a most fundamental shift was occurring in the Malaysian legal landscape: the separation of powers was being whittled away, if not totally abolished. At no moment was public debate so important. Yet contempt powers were used to muzzle this public debate, and the Prime Minister was able to bring about reforms with little difficulty.

This sowed the seeds for further abuse of contempt powers for political purposes, as the trial of former Deputy Prime Minister, Anwar Ibrahim shows. Anwar Ibrahim was a popular Deputy to Prime Minister Mahathir, and they appeared to have a falling out. Soon after, Anwar Ibrahim was charged with sedition (these charges were later amended). One of his lawyers was imprisoned for alleging (with solid supporting evidence) that the prosecutors had attempted to fabricate evidence, though this sentence was later reversed on appeal.[24] In another incident, when his other lawyers questioned the judge's dubious decision to disallow large amounts of evidence tendered by the defence, including any evidence relating to political conspiracy, they were threatened with being in contempt of court.

What has emerged in Malaysia is a disturbing trend to use the contempt power to threaten lawyers criticizing the operation of the court. Often, it is the mere threat of conviction that is used to quell dissent, even if the threat has no basis. A recent example of this was the *Raja Segaran No. 2 case.*[25] The case involved an application for an injunction to prevent a Bar Council meeting to discuss allegations of judicial corruption. The respondents, the Bar Council, sought to have the judge

disqualified from hearing the case, on the basis that his son was a member of the Bar and therefore had a vested interest. The Bar Council cited a recent UK authority suggesting that disqualification was necessary in such circumstances. For citing this case, the Chief Executive Officer of the Bar Council was threatened with the charge of contempt! No conviction was ever recorded, but the mere fact that a person could be threatened for citing legal authority is disquieting.[26]

Learning from the international examples

It would be comforting to think that the examples from Sri Lanka and Malaysia are isolated, and could never happen in India. However, it is vital to bear in mind that the tests employed by the Sri Lankan and Malaysian courts, and the procedure adopted by them, are essentially the same in character as that in India. That is the nature of the scandalising offence: as it currently stands, it is so broad and vague that it can readily be abused.

We may hasten to add that in most cases, the scandalising offence has not been abused in India. But even in India, there have been reports of questionable use of the power. S.P. Sathe cites one case where a newspaper was required to apologize for reporting that a beneficiary of an illegal allotment of largesse was the son of a judge, despite the fact that the Court itself had noted this allotment in another decision.[27] Another example involved an Allahabad High Court judge who, unable to secure a reserved berth on a train at New Delhi railway station, held up the entire train, constituted an open court on the platform and charged the terrified station master with contempt.[28]

Ultimately, whether or not these abuses are an isolated phenomenon in India is a moot question. The point is that such abuses, even if rare, are *possible* under the current state of the law. In this sense, even if the offence has not been abused in India to this point, it is still possible to prevent any foreseeable problems – to nip them in the bud, as it were.

Given this, there appear to be two key questions for reform of the scandalising offence. The first is whether there remains any convincing rationale for the current expansive scandalising offence, notwithstanding its potential for abuse. If there is no such convincing rationale, then the next question is, how to reform the offence: should it be merely narrowed, or abolished outright?

III. Re-Assessing the Rationale for the Current Broad Scandalising Offence

Two key rationales have traditionally been suggested in support of a broad substantive test for scandalising the court, without an unqualified truth defence. These rationales, together with possible rebuttals, will now be considered and discussed.

Protection of the rule of law

The principal rationale for the scandalising offence is that an effective Judiciary is necessary for a proper rule of law. If the public loses confidence in the Judiciary, it is said, then orders of the courts will neither be enforced nor obeyed, and the rule of law will quickly unravel.

However, in many ways this fear seems overly dramatic. There is no empirical basis for it; as the Australian Law Reform Commission notes, “a great deal of the argument in the area is pure

speculation." [29] If further criticism were to reveal that the Judiciary, as a human institution, is imperfect, then

> It is short-sighted, indeed paranoiac, to argue that, because the community, on being confronted with the realities, might 'rise up' and destroy the system, it should be kept in some sort of state of innocent delusion.

Indeed, credible evidence suggests that if anything, subjecting the Judiciary to greater public criticism does *not* lead to a disregard for the rule of law. In England, for example, convictions for scandalising the court have become exceedingly rare. The last conviction was more than seventy years ago, with some commentators and judges going so far as to suggest that the offence has become "virtually obsolescent."[30] The same can be said of the United States. And any suggestion that the Indian Judiciary is more vulnerable, because of so-called 'cultural relativism', is quite simply ill-founded. It relies on an almost colonial belief that the public in India, despite having lived in a democracy of more than fifty years, is more prone to irrational action against the judiciary than its counterparts in mature Western democracies. It is patronizing in the extreme. Today, if the Indian people were to lose confidence in the Judiciary, it is doubtful that this would be due to gullibility or mis-appreciation of the Judiciary's role.

Most tellingly, a broad scandalising test may be counter-productive, in at least two senses.[31] First, the publicity devoted to a critic's conviction may be far greater than the publicity generated by the initial scandalising act. Put in another way, convicting someone may make them into a kind of martyr, providing publicity and legitimacy to the contemnor's cause. Second, and more importantly, it is strongly arguable that suppressing reasonable criticism of the court will actually undermine public confidence in the court rather than uphold it. Consider, for example, the outcry generated by the conviction in *In re: Arundhati Roy*.[32] Regardless of the legitimacy or otherwise of Roy's actions, it is fair to conclude that the conviction probably did 'back-fire'. Had the Court refrained from convicting Roy, the affair might have passed with Roy's actions having far less influence on the public's confidence in the courts.

The embarrassment that defence of truth may cause to the Judiciary

It has been argued that truth should not be a defence to a charge of scandalising the court, because it would be unseemly for judges' personal affairs to be put under the scrutiny of a trial. Some fear that this would lead unscrupulous critics to make baseless claims to discredit the Judiciary, knowing that the judges maligned would be unlikely to bring forward proceedings dealing with their private lives. It would be better, it is said, for individuals to bring their allegations forward through a non-public mechanism such an in-house mechanism.

However, there are several highly persuasive rebuttals to argument. First, in-house mechanisms for dealing with allegations of corruption against Indian judges are unsatisfactory, following an informal process, lacking transparency, and keeping findings confidential. Second, the constitutional process for removing judges for misconduct has never been utilized successfully, and is considered so cumbersome as to virtually be obsolete.[33] In this sense, it is all the more vital to ensure that judges remain accountable through informed public discourse. Third, it must be borne in mind that even with a defence of truth, baseless or reckless allegations will lead to conviction. The onus would be on the accused to prove the defence. Fourth, if there is cause for a judge to be embarrassed, then frankly, it should be exposed. It is a far greater ill for judicial misconduct to go unnoticed than for judges to undergo the embarrassment and burden of defending themselves from unwarranted criticism. Like everyone else in society, judges must be accountable for their actions.

The final analysis

Ultimately, an appropriate scandalising offence requires a kind of balancing act.

On the one hand, some sort of scandalising offence seems necessary to protect the rule of law, or more precisely, the key role of the Judiciary in the rule of law. Total abolition of the scandalising offence seems too risky, but by the same token, it seems clear that a draconian scandalising offence is hardly necessary.

On the other hand, there are many good reasons for limiting the scope of the scandalising offence as much as is reasonably possible. Limiting the scope would prevent abuse of the offence, even if such abuse has not occurred as of yet in India. It would allow valid allegations of corruption and misconduct to be brought forward. It would provide a means of judicial accountability in the absence of any other effective mechanisms.

Therefore, this paper concludes that the current expansive and vague scandalising offence is not justified, and a more limited – and crucially, more clearly defined - form needs to be introduced.

IV. Recommendations for reform of the scandalising offence

Based on the previous discussion, several key areas of reform are required:

Substantive reforms

The categories of conduct which may constitute scandalising need to be narrowed considerably, to only include imputations of corruption, bowing to external pressures, bias or misuse of court powers. Additionally, a misrepresentation of a judicial decision should be punishable, but only when no reasonable person could make such a representation, all other forms of criticism should go unpunished.

For a conviction to arise, it should be necessary to show, on the balance of probabilities, that the defendant intended to scandalise the court. It must also be proven that the scandalising act was published to the public at large.

Certain acts should be explicitly protected from prosecution for scandalising. People should be free to comment in any way upon the merits of a judicial decision. The media should be free to report an act made under parliamentary privilege. And most importantly, an individual should be free to make an allegation against a judge in a formal complaint of bias against the court, or in any other complaint to the proper authorities.

Finally, stronger defences should be established. An unqualified defence of truth should be provided. The qualified defence proposed under the Bill currently before Parliament is unsatisfactory in two respects. First, the bill suggests that the court ‘may’ allow the defence, thus leaving judges the discretion to refuse the defence. Second, the defence is qualified with vague notions of ‘bona fide’ intent and being ‘in the public interest’, thus entrenching uncertainty already plaguing the current law. In addition to an unqualified defence of truth, there should also be a defence based on honest and reasonable belief in the truth of an allegation, and a ‘fair comment’ defence (as exists under civil defamation law) for statements of opinion rather than fact.

Procedural reforms

Several reforms are needed to provide greater procedural safeguards for the accused. First, the power of courts to summarily try scandalising cases should be abolished. Second, procedural safeguards should ensure that a person charged with contempt in the face of the court is entitled to legal representation. Third, a judge should not be able to hear a case arising out of a personal attack on him.

Constitutional reforms

As discussed previously, the relationship between the Contempt Act and the Constitution is somewhat uncertain. Thee Supreme and High Courts may not be bound to follow the Contempt Act, having been vested with original jurisdiction under the Constitution. It is recommended that the Constitution be amended to clarify that the Courts are bound to follow legislation with respect to scandalising the Court, unless such legislation effectively abolishes the power of the Supreme Court or High Courts to punish for scandalising the court. The Constitution should also be amended, as recommended by the National Committee to Review the Working of the Constitution,[34] to ensure that the power to punish for contempt of itself is inherent only in the Supreme Court and every High Court, and that no other court, tribunal or authority may punish for contempt of itself.

V. Conclusion

A scandalising offence needs to strike an appropriate balance between judicial protection and judicial accountability through public criticism. The current law of scandalising, which is vague and subject to abuse, does not achieve this balance. The *Contempt of Court (Amendment) Bill 2005* does not adequately address problems with the current law. The defence of truth it proposes may be refused by a court, and is qualified by vague notions which do little to clarify the already uncertain state of the current law. Just as importantly, the Bill ignores a host of other reforms that are necessary.

In 1936, Lord Atkin stated that "justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men."[35] These words ring true today. Respect for the Judiciary is a vital part of an effective rule of law. But respect cannot be enforced; it can only be earned. Until necessary reforms are undertaken, the law of scandalising will not reflect this reality.

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[1] 2002 SOL Case No. 138, para [1].
[2] As recently affirmed by the Privy Council in *Ahnee v DPP* (1999) AC 294.
[3] *R v Gray* (1900) 2 QB 36

[4] Eg *In re Ajay Kumar Pandey* 1998 SOL Case No. 533, *T. Deen Dayal v High Court of Andhra Pradesh* 1997 SOL Case No. 182, *LD Kaikwal v State of U.P* 1984 SOL Case No. 014; *Vishwa Dev Sharma v State of Rajasthahn* 1993 SOL Case No. 023; *C. Ravichandram v Justice A.M Bhattacharya* (1995) 5 SCC 457.
[5] *Attorney-General (New South Wales) v Mundey* [1972] 2 NSWLR 887.
[6] *Padmahasini @ Parmapriya v C.R Srinivas* 1999 SOL Case No. 690.
[7] *E.M Sankaran Namboodiripad v T. Narayanan Nambiar* (1970) 2 SCC 325; cf *P.N. Duda v P. Shiv Shankar* (1988) 3 SCC 167.
[8] *In re Arunduti Roy* 2002 SOL Case No. 138.
[9] *Madras High Court Advocates Association v Dr A.S. Anand, CJ of India* 2001 SOL Case No. 104; and *In re S.K Sundaram* 2000 SOL Case No. 734
[10] *Narmada Bachao Andolan v Union of India* 1999 SOL Case No. 639.
[11] *Brahma Prakash Sharma and others v. The State of Uttar Pradesh* 1953 SCR 1169.
[12] *Shri Surya Prakash Khatri v Smt. Madhu Trehan and others* Crl. Contempt Petition No. 8 OF 2001, High Court of Deli, May 28, 2001.
[13] Section 2(c) of the Contempt Act makes this clear by stating that either a "publication…or the doing of any other act whatsoever" may amount to criminal contempt.
[14] Section 5, Contempt Act.
[15] *J.R. Parashar v Prasant Bhushan* 2001 SOL Case No. 501, para [15].
[16] *Sukhdev Singh Sodhi case* 1954 SCR 454, 463.
[17] *Pritam Pal V. High Court Of Madhya Pradesh, Jabalpur Through Registrar,* 1993 SCC-0529 (SC), paras [41]-[42]..
[18] Article 19 is a charity registered in the UK, whose mission is to promote freedom of expression. Their name is derived from Article 19 of the Universal Declaration of Human Rights, which guarantees the right to the freedom of opinion and expression.
[19] [1983] 1 SLR 1.
[20] S.C. (F/F) No. 55/2003 or 6 February 2003.
[21] [1987] LRC (Crim) 580 Mal SC.
[22] Ibid 584.
[23] [1991] 1 M.L.J 167.
[24] [2001] 3 AMR 3149
[25] Raja Segaran a/l Krishnan v. Bar Malaysia & 11 Ors [2000] 4 AMR 4971.
[26] See Chew Swee Yoke, *Contempt of Court: Freedom of Expression and Rights of the Accused,* paper presented at the 11th Malaysian Law Conference, 8-10 November 2001, Kuala Lumpur, Malaysia.
[27] S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, 2002, Oxford University Press, New Delhi, citing *In re Harijui Singh; In re Vijay Kumar* (1996) 6 SCC 466 in contrast with *Common Cause, A Registered Society v India* (1996) 6 SCC 530.
[28] Coomi Kapoor, 'The contempt test: how broad are the court's shoulders?', *Indian Express*, 31/05/2001; Madhav Godbole, *Public Accountability and Transparency: The Imperatives of Good Governance,* 2003, Orient Longman, Hyderabad, page 327.
[29] Australian Law Reform Commission, Report No 35, *Contempt* (1987), 246.
[30] *Secretary of State for Defence v. Guardian Newspapers Ltd*., (1984) 3 All ER 601 at 605 (Viscount Diplock).
[31] Barend van Niekerk, *The Cloistered Virtue: Freedom of Speech and the Administration of Justice in the Western World* (1987), Chapter 1, 1-45.
[32] 2002 SOL Case No. 138.
[33]See the comments of former Chief Justice of the Supreme Court, S.P. Bharucha, quoted in Rajindar Sachar, "Whither the Judiciary", *the Hindu*, 15 May 2002, page 10.
[34] The National Commission to Review the Working of the Constitution, *Review of the Working of the Constitution*, 31 March 2002, para [7.4.7].
[35] *Ambard v Attorney-General of Trinidad and Tobago* [1936] AC 322, 335.