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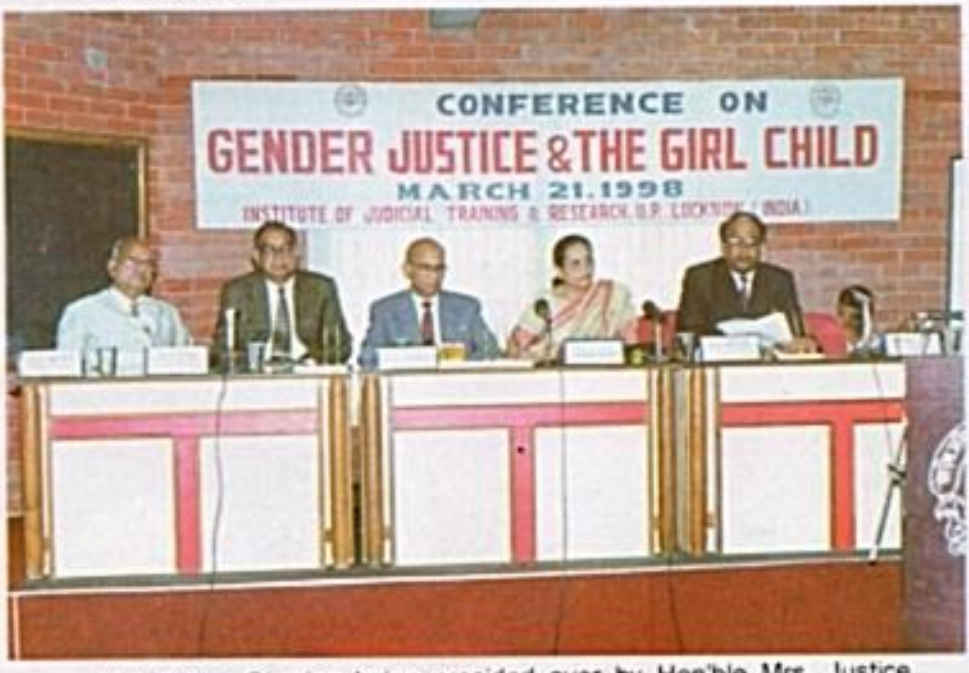
Hon'ble Mr. Justice Brijesh Kumar, Senior Judge, Allahabad High Court (Lucknow Bench) addressing the distinguished guests of the delegates.

Ms. Roop Rekha Verma, Vice Chancellor, Lucknow University emphasising a point to the distinguished gathering

Sri D.P. Varshney, Director, Institute of Judicial Training and Research Welcoming the guests.

Hon'ble Justice Mrs. Shobha Dikshit lighting the lamp in the inaugural session.

Hon'ble Justice Ms. Sujata Manohar, Hon'ble Justice Mrs. Shobha Dikshit, Hon'ble Mr. Justice K.N. Goyal, Hon'ble Mr. Justice Jagdish Bhalla, Hon'ble Mr. Justice Dev Kant Trivedi and Mr. D.P. Varshney, Director J.T.R.I., U.P. all rise while the National Anthem is sung.



Valedicting Session being presided over by Hon'ble Mrs. Justice Shobha Dikshit, Hon'ble Mr. Justice S.C. Mathur (left) was the Chief Guest. Also seen on the dais are Sri D.P. Varshney, Sri S.P. Tyagi & Sri O.P. Dwivedi.

Sri O.P. Dwivedi, Add. Director, (Research) proposing note of thanks.

Sri Nirvikar Gupta, Add. Director compering the programme.

Hon'ble Justice Ms. Sujata V. Manohar of the Supreme Court of India.

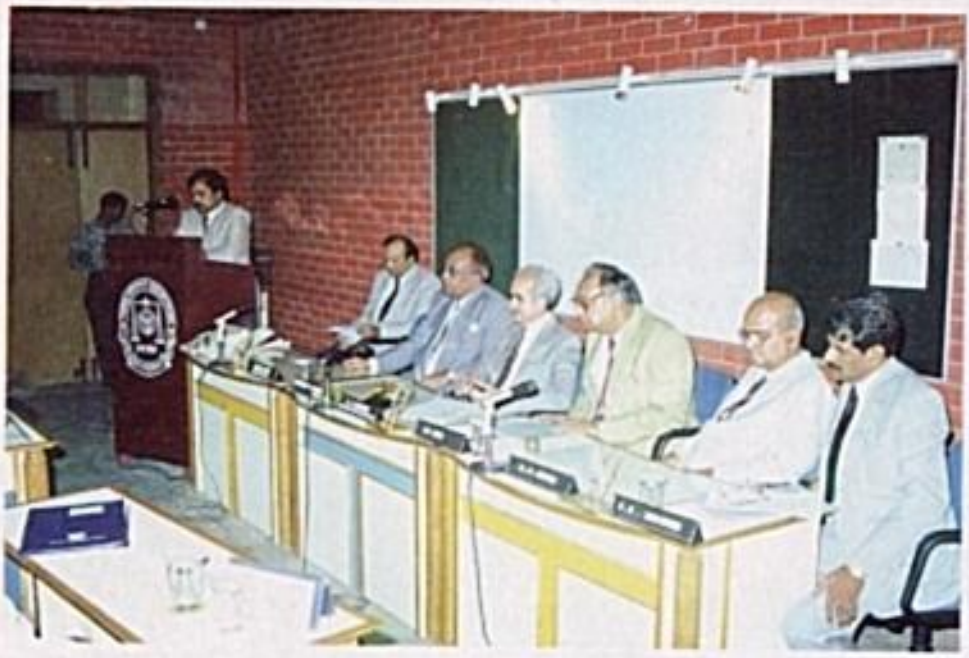
Hon'ble Justice Ms. Sujata V. Manohar of Supreme Court of India being escorted by the faculty members of the Institute.

Sri D.P. Varshney, Director, JTRI, U.P. presenting memento to the Hon'ble Chief Guest.

Galaxy of Judicial stars :

Hon'ble Justice Ms. Sujata V. Manohar, Hon'ble Mr. Justice A.S. Gill, Hon'ble Mr. Justice D.K. Trivedi, Hon'ble Mr. Justice Brijesh Kumar, Hon'ble Mr. Justice Dev Kant Trivedi and Hon'ble Mr. Justice A.N. Gupta.

Sri D.P. Varshney, Director, JTRI, U.P. and Sri H.R. Malhotra Registrar, Delhi High Court.



Faculty Members present in the Valedicting Session of the Foundation Training Programme of Delhi Judicial Service Officer.

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CRIMINAL LAW – NEW FACETS OF CRIME

Justice K. Jayachandra Reddy[1]

Criminal law is an important field of state of crime. The problems relating to crime, its punishment, trial and punishments are multi-farious. An effective prevention can be achieved only with active participation of the people in all the aspects of the problems.

Today, Criminal law is a product of changes over centuries which did not take place overnight. Criminal law has the underlying object of social control. The provisions of procedural and substantive law are basically important. It is but necessary that they should keep the pace with the moving times. Desires are multiplying. Correspondingly the wants are increasing beyond comprehension. The effect of it, socially and economically, has such an impact affecting social values and even basic human values ultimately resulting in crimes. It is paradoxical that while the society is advancing the crimes are increasing. This only indicates that the society may be moving but not really advancing. However, the law has to move with the times and effectively deal with these maladies.

This takes us to examine the types of crimes which have come to the surface contemporaneously with the advancement of the society. From this perspective, the Law Commission and other organisations selected some important subjects for discussion in a few conferences and they are i) Terrorism; ii) Child abuse; iii) Communal violence; iv) Violence in the family. v) Violence in the campus; vi) Treatment of senior citizens in the family and vii) Organised crimes and crime syndicate. There had been candid and threadbare discussions on all these subjects during the respective sessions. Papers on these subjects giving valuable suggestions which are thought provoking and constructive have been presented during many conferences. Therefore, it is not necessary to deal with them in detail, suffice if they are briefly touched upon.

Terrorism

Terrorism is now a global phenomenon. Hijacking, diplomatic killings, bombing, kidnapping, innocent murders, destruction are on the increase day by day. Such activities may be politically motivated or revolutionary in outlook and could be by one country against another and somewhat like an unconventional war. The object generally is to destabilize and weaken the Government by breaking up the social, political and economic order. The terrorists are indulging in organised crimes resulting in loss of lives of countless innocent people. They violate the law with contempt. The participants in this organised crime are quite often the youths as well as hardened criminals and it is a matter of common knowledge that they use latest sophisticated arms and ammunitions in committing

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[1] Chairman, Law Commission of India.

such ghastly crimes. They have their own ideology and philosophy and naturally the state which has to maintain the rule of law and peace is obliged as well as justified to take stringent measures to put down such terrorists activities. The terrorists have been indulging in wanton killings, arson, looting of properties and other heinous crimes in certain States and they have expanded their activities to other parts of the country also. In planting of explosive devices in trains, buses and public places, the object is to terrorise the people and create fear and panic in the minds of citizens and to disrupt communal peace and harmony and the same is clearly discernible. In general everyone has to agree that such terrorism requires to be taken serious note of and dealt with effectively and expeditiously. A new type of legislation to deal effectively with this kind of crime is necessary. It is for the Parliament to take immediate steps and enact a suitable law.

Organised Crime and Crime Syndicate

In large urban areas, the organised crime has taken deep roots. The organised crime is instrumental crime and making money is its primary goal to be achieved at any cost. To accomplish this, participants organise in more or less complex networks. Their activities offer illegal goods and services like manufacture and sale of alcohol, trafficking in drugs, robbery, prostitution, gambling, bootlegging etc. The buyers are willing to pay for these goods in the market transactions. It is these illegal monetary values underlying that eventually led to the growth of this organised crime and further criminal specialisation whose only common aim is attainment of wealth primarily and then if possible power and influence by illegal means. It has thus become an enterprise not infrequently aimed at purchase of respectability. Trafficking in psychotropic substances is one of the worst crimes threatening to destroy the very human structure. Drug addiction has become one of the curses of our times, a menace which threatens public health and results in dissolution of human personality and human degradation whose consequences spread to crime and lawlessness. The worst tragedy lies in its morbid assault on youths resulting in mental disorientation and emotional derangement driving the victim towards a fate for which there is hardly any recovery. The evil is known after the addict has crossed the point of no return. The younger generation of our country, who are the nation's future, is being destroyed. The whole world has recognised this and is so agitated that these issues are now the subject of international conventions. In India, the N.D.P.S. Act, 1985 has been enacted to combat this menace. It is felt that the provisions of the Act by themselves are not enough to combat this meance effectively and therefore, certain effective changes are also necessary. The criminologists should make an indepth study and offer their valuable suggestions.

The organised crime survives mainly because there is widespread demand for the illegal goods and services that it provides and public officials are willing to be corrupt. The criminal organisation, therefore, to a large extent thrives on a good deal of corruption in the right places. The illegal wealth generated by an organised crime is enormous, that perpetrators of this crime are in a position not to hesitate to compromise the vital institution of the state including the important wings like Police, Legislature or even Judiciary, either by money or

through threats or intimidation. It is a known fact that such organised crime syndicate are operating vigorously in several metropolitan areas. Therefore, there is an immediate need to curb their activities. In this scenario there is an immense need to have a special enactment to curb and control the crime, since the existing penal and the adjudicatory judicial system are inadequate to curb the same.

Violence in the College Campus

Violence in the educational institutions is assuming alarming proportions. Dangerous trends have set in. Horrendous incidents are taking place. Committing a crime in the campus by pupils is as heinous as committing in a temple. But the question is why such things are happening? It is imminent that all remedial measures have to be taken to set right this dangerous trend. For that the causes must be known and an indepth and careful study has to be done into these causes and the effect of those causes. Is their anything wrong with the system? Why has the relationship between a teacher and a pupil deteriorated? If a person has come high in his careers, he cannot but confess that he is more grateful to his teacher than to his parents. Why then its sanctity is slowly withering away? Is there something wrong with the students or the teacher or with both? What is the outcome of involving students in politics? Is it good or congenial for their welfare? A youth has to come out of the institution as a wise and an accomplished one with a future ahead of his own, his family and the country. It should, therefore, be the concern of every right thinking person to take stock of the situation and unitedly work for remedying the same. Parents, teachers, management, the State, the politicians and the intellectuals shedding all their differences and inhibitions should strive with sincerity and devotion to curb the malady. In the context of finding legal measures, if necessary, the Legislature should come forward with effective laws dealing with the situation. For this purpose, constructive and valuable suggestions have to come forward from all quarters of the society.

Child Abuse and Sexual Offences

Sexual assault of children is widespread and unfortunately it remains hidden from authorities. The researchers have found that in most cases of child molestations, the offender and the victim are acquainted with each other. It is the most heinous crime condemned highly by the society. Indulgence in such abuse manifests a state of mental perversion. The courts in most of the States have at one time or the other identified such crimes as grave Crimes. When it comes to the question of proof, there are so many obstacles in the way of prosecution. However, to minimise such obstacles, important changes have been brought about in the Indian Penal Code as well as in the Evidence Act (Section 376, IPC and Section 113-A,Evidence Act). The main difficulty in establishing the guilt of the assailant is the want of proper evidence and the proof of the guilt which invariably depends on the type of evidence that is led in. In this context, several suggestions have been made and we find that the rule of evidence governing such causes have also been modified.

Outraging the modesty of woman is made punishable under section 354, IPC. Section 509, IPC lays down that any person intending to insult the modesty of any woman, utters any word, makes any sound or gesture or exhibits any object, intending that words or gestures shall be heard or seen by the women or intrudes upon the privacy of such woman, shall be punished. The courts, however, interpreted that these sections do not cover virulent forms of sexual assault on woman. It would perhaps be appropriate that the offence of sexual assault also is added to the existing offence of outraging the modesty of woman.

Violence in the Family

An Indian marriage is a sacrament and the same is one of the oldest concepts. The bride burning is an alarming crime and is on the increase telling upon our social system and requires a special attention. A special culture of this crime has developed at a fast speed due to various socio-economic factors. It is said that criminal activities will always be proportionate to social activities and it is unfortunate that today Indian marriage reflects more of social and financial activities resulting in a conflict of matrimonial relations. To combat the evil, one of the important pieces of legislation is the Dowry (Prohibition) Act. Certain important provisions have been incorporated in the Indian Penal Code as well as in the Evidence Act (Sections 304-B and 498-A, IPC and Sections 113 (a) and (b), Evidence Act).The cause for this kind of crimes is due to utter disregard for moral and social values. It is unexplainable as to how a mother-in-law can forget that she was once a daughter-in-law and invariably it is the mother-in-law who is accused of being cruel to the daughter-in-law. It is horrifying to note that in some cases how the mother-in-law can go to the extent of torturing the daughter-in-law so horribly and take her life in such cruel and heinous manner in utter disregard of moral and human values. The socio-economic causes can under no circumstances be allowed to completely destroy the sacred human relations between the spouses and other members of the family.

After all, life is full of adjustments and compromises.

A Hindu marriage is considered to be an important sacrament contracted in performance of religious duties and the wife becomes an associate of the husband in life regarding all its aspects. But the human nature and the persons are the products of the society, economically, culturally and intellectually and there are bound to be inequalities leading to some conflicts. The advancement in society or improvements in culture alone do not by themselves guarantee in lessoning such conflicts. The factors on which the harmony of the matrimonial relations depends vary in each matrimonial partnership, and the angularities, if any, can be sorted out and rounded off by mutual trust and with a compromising spirit. However, there is no gainsaying that some more legal measures to curb these offences relating to marriage are necessary. But they should not be sharpened to damage the concept of family bondage, in other words the human bondage.

In the end, the conclusion is inescapable that crime and delinquency are the results of social disorganisation. The kind of crime in a community depends

upon the ability of the community to regulate itself. Social organisation is maintained by the commitment of the community to social rules and values. When such commitment breaks down, social control breaks down resulting in crime and delinquency. Therefore, relentless efforts should be to set right the human ecology, e.g., basically to set right our own home.

His Excellency, President *Shankar Dayal Sharma*, in his message to the nation on the eve of the 48th Republic Day cautioned "I am convinced that India's need today is for a profound moral and ethical rejuvenation, the building of a nation-wide commitment to our national values and goals and the integration and unification of the people. Such rejuvenation must be accompanied by forthright rejection of casteism ....." The caution given by the president itself shows that we have merely travelled some distance. But to what extent we have advanced and progressed and whether we have fulfilled the expectations of the great leaders who attain freedom for us, is a serious matter for consideration. Therefore, any further move in bringing about legal changes should be constructive in the direction of establishing a free and happy society.

CODE OF CRIMINAL PROCEDURE : SUGGESTIONS FOR REVISION

Justice K.N. Goyal[1]

A thorough overhaul of the Code of Criminal Procedure has been long overdue. The Code enacted in 1973 on the recommendations of the then Law Commission virtually abolished commitment proceedings and separated the judicial magistracy from executive control, and gave further rights to accused persons such as the setting of a time limit for investigation of offences after which the accused will be entitled to bail as of right, the provision for anticipatory bail, the right to free legal aid, the right to argue on sentence after conviction and the counting of the period of imprisonment while under trial towards the sentence. Opinion has been divided on whether some of the changes so brought about were for the better or the worse, and it is high time that thought be given to the fundamentals of our criminal justice system itself.

We have blindly inherited the British system of adversarial justice. One important feature in which conditions in our country are wholly different is that in Britain the entry to the bar is very limited, and moreover there is an extensive legal aid system. Thus the lawyers there do not have to look for work. They are not under the compulsion to secure, by hook or by crook, bails or acquittals for their professional survival. In a large majority of cases they advise the offenders to plead guilty. Here if newspapers, movies and T.V. serials are to be believed, we should hope it is not correct,- some lawyers even act as advisers and harbourers of criminals. It is said that sometimes a criminal before going out to commit a murder files an F.I.R. (drafted by his counsel) by way of *peshbandi*. The lawyers give him shelter and escort him to a court of their choice for surrender. (This can however be true only of a few black sheep). Often we read in the press that an accused person disguised as a lawyer in a black coat and bands, surrounded by his lawyers, reached the court, slipping through the police Nakabandi. This often leads to a scuffle between the policemen and the lawyers concerned, who are supported by their colleagues. If a magistrate or a sessions judge is inclined to refuse bail the lawyers collectively browbeat him into granting it. A remand to police custody will never be allowed by them. They guide and abet the client in the winning over of prosecution witnesses. They tutor the accused and his witnesses. Even the most respectable criminal lawyers invent a defence theory for their client. If a case is foolproof they will not allow the trial to proceed. Most of them are incapable of handling a trial in which prosecution witnesses have not become hostile. The non-hostile prosecution witnesses who come to give evidence are endlessly harassed by the tactics of unscrupulous defence lawyers who seek adjournment on frivolous grounds. The entire practice of many lawyers is confined to bail applications and verifying the sureties. The presiding

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[1] Retired Judge, Allahabad High Court and retired Lok Ayukta, Uttar Pradesh ; former member, Law Commission of India

officers consider it discreet to follow the path of least resistance. One reason is that a judicial officer who on account of his strictness is subjected to boycott or other agitational tactics of such lawyers is often branded even by the High Court as "lacking in tact" and is transferred by way of punishment instead of being protected. The High Court itself wants to be spared the inconvenience of having to deal with such agitations. Thus many judges, consider it safer to court popularity with the bar by easily granting bail and adjournments and orders staying arrest and investigation.

Entry into the legal profession is easier in our country than elsewhere, it is certainly easier than in any other profession or vacation. Often the unemployed rather the unemployables, choose the law course as a last resort. So-called student leaders having links with local mafia are easily able to pass the LL.B. examination on the strength of their muscle-power, and are almost automatically enrolled thereafter. Instances are not unknown of one brother being a history-sheeter and another a lawyer-abettor or partner in his crimes.

Another important difference is that while in Britain the police is generally perceived to be honest, the public perception here is just the opposite. A British jury readily believes a police officer's evidence,-even a confession made to him,-while here no statement to a police officer is admissible at all except to a very limited extent, -that in a rare case covered by section 27 Evidence Act.

The situation is compounded by the widespread corruption of police officials, particularly in the lower ranks,- including the investigating officers. Even an elite investigation agency like the C.B.I., though not tainted so much by corruption of the pecuniary kind, is very much subject to manipulation by the politicians in power. The nexus between politicians, criminals and police has been officially documented in the Vohra Committee report which found that the nexus had resulted in a parallel government of the underworld.

This fact also explains the Government's total indifference to the state of affairs under which hardly 5% are convicted of any major crime, the rest going scot free. This may be contrasted with about 90% convictions in Britain. Murder will be out, is the adage, but in our benighted country most murder, robbery and theft cases go totally unsolved. In Lucknow a chain of murders of young boys subjected to sodomy, involving "similar facts", took place, and yet it was not even claimed to be solved, -all because some politicians were rumoured to be involved. A young woman's dead body was discovered from the official flat of an M.P. at New Delhi, and the case file remains practically closed. So many politicians are said to be involved in the smuggling of drugs as well as R.D.X. and other arms and ammunition, but nobody has been brought to book. And the Government is providing shadows and bodyguards for them and also supplying them carbines from its armament factory at highly subsidised rates!

Investigating officers are also the daroghas of police stations, and it is through them that the local, State and Central politicians get things done and even secure help in elections through coercion, booth-capturing etc. They are frequently transferred, not for administrative reasons but mostly at the behest of

the politicians who should have no business of meddling with such administrative details.

Cases take years to reach the trial stage. Before the new Cr.P.C. was enacted, sessions trials used to proceed from day to day until conclusion. Now, even after the trial is started it may take years to conclude. Investigating officers, due to too frequent transfers, are often untraceable by then and other witnesses are either terrorised or won over in the meantime.

The unduly large percentage of acquittals is alarming not merely because many guilty persons go scot-free, but also because many innocent persons are sent up for trial, the really guilty being shielded by the police either on account of corruption or slipshod work or under pressure of undesirable politicians. Due to dilatory processes in courts an innocent person, once charge-sheeted, gets endlessly harassad and fleeced, as it is years before his innocence is established.

We must, therefore, take some drastic steps for ensuring that the guilty are quickly punished and the innocent are spared the harassment of unwarranted prosecution.

The adversarial system borrowed from Britain has under the circumstances become an anachronism. There are other no less democratic countries whose systems could be studied and adopted with suitable modifications. The investigating agency must be properly trained in investigation methods, including effective cross-examination of suspects without resort to torture, and must be well equipped with modern gadgets and backed by a comprehensive computerised data relating to criminals. It should be separate from the administrative police which may be charged with only law and order and V.I.P. duties. The former must be independent of executive control. In U.S.A. there is the system of government attorneys controlling and directing the investigation. Only the initial detection of crime and the hot search stage remains the responsibility of the nearest policeman on the spot, and thereafter the specialised agency takes over. In the inquisitorial system followed in France and elsewhere on the Continent, the magistrates supervise the investigation and question the suspect and witnesses and decide who should be prosecuted.

In England and in several States of U.S.A. there is no bar to an adverse inference being drawn in a suitable case, -see *R* v. *Martinez Tobon*,(1994) 2 All ER 90, C.A., -from the failure of an accused to enter the witness box. Our law makers appear to be excessively obsessed by the right of silence or the privilege against self-crimination,-described by Jeremy Bentham as the thieves' Charter. See Hailsham : *On the Constitution* in the chapter on Police and Security, - although our Supreme Court has clarified that mere moral compulsion to enter the witness box for substantiating his defence does not violate an accused person's protection under article 20(3) of the Constitution : *See Tuka Ram Gaokar* v. *Shukla*, AIR 1968 SC 1050.

As observed by Professor Glanville Williams in his Hamlyn lecture on the Proof of Guilt :

"The sensible solution would be to require an accused person to listen to questions put to him by counsel for the prosecution, though with no penalty for refusal to answer. This is the French practice, with the difference that the questions are asked by the judge. In neither England nor France can the defendant be forced to confess his own guilt, though the two systems differ on whether questions can be addressed in his direction. In France, as elsewhere on the Continent, an unfavourable inference may be drawn from the accused's silence under questioning; in England, an unfavourable inference may be drawn from the accused's failure to volunteer for questioning. This is not such a great cleav age, but in the occasional cases where the point is important the balance of advantage seems to lie with the continental practice."

The learned author also points out that the American Law Institute's Model Code of Evidence (1942), Rule 201 (3), would allow the judge to comment upon the accused's failure to testify; and the Uniform Rules produced by the Commissioners of Uniform State Laws in 1953 would allow the prosecuting counsel to comment. See Keedy and Knowlton, Cases and Statutes on Administration of the Criminal Law (Indianpolis 1955) 338.

Apart from the excessive protection by our Code to the accused in this matter, another circumstance favouring the accused is that he is allowed all the time in the world to invent a "defence theory". Ordinarily the defence counsel discloses the defence theory for the first time by putting it to the main prosecution witness of facts as his last question at the end of his cross-examination. Often several years have by then elapsed after the occurrence.

In France, the accused is questioned by the Magistrate from the very beginning. Here, only a police officer questions him and records his statement in the case diary, but that record is not admissible in evidence. It is, therefore, a worthless record so far as the statement of the accused is concerned.

It is suggested that the accused should be compulsorily examined by the court before disposing of his first bail or anticipatory bail application or a writ petition or a petition under the Code praying for quashing the investigation or the F.I.R. or for restraining his arrest. This should be provided at least in cases of offences punishable with death, imprisonment for life or imprisonment for seven years or more.

In order to break the criminal-politician nexus, something should also be done for preventing criminals from contesting elections. There is at present a bar only against convicts, but unfortunately even history-sheeters and notorious gangsters are able to claim that they have never been convicted. Because of the terror inspired by them no witnesses are willing to depose against them. It is to cover such cases that various States have enacted special laws for dealing with gangsters and goondas under which they can be externed from a local area by an order of an executive magistrate even without evidence against them being

formally recorded. There are also laws of preventive detention, like the National Security Act, where a person who is a menace to public order can be detained without trial on the basis of subjective satisfaction of the executive. Such detentions are reviewed by an Advisory Board of three High Court judges (serving or retired), as provided by article 22 of the Constitution.

It is therefore suggested that any person against whom an extemment order or preventive detension order has been passed and such order has not been set aside by the Advisory Board or the High Court or Supreme Court, as the case may be, should be debarred from contesting any election or acting as an election agent or polling agent, whether under the Representation of the Peoples Act, 1951 or under any State law relating to municipalities and panchayats dealt with in the 73rd and 74th Amendments of the Constitution or to a cooperative society aided or controlled by the State. Cases of other history sheeters against whom the imputation relates only to 'law and order', as distinguished from 'public order', and as such who are immune from preventive detention should also be referred to the same Advisory Board of three judges, and if it approves, and its approval is not quashed on the judicial side by the superior Courts, should be similarly dealt with.

It is only when an effective criminal justice system is in place that the Penal Code can have any deterrent value. Its enforcement is, as per judge *Macklin Fleming* (in his book *"Of Crime and Rights"*), the best guarantee of human rights of law-abiding citizens. Further, it is only then that the evils of false encounters, third degree methods, and custodial deaths and disappearances can be resolutely curbed.

STAY ORDER

Justice Rajeshwar Singh[1]

The power to stay or restrain, before the parties adduce evidence or argue, sometimes even without studying relevant local Act or scrutinizing the statement of claim, is a mighty weapon to do justice, that occasionally also results in tremendous help to a person at fault. Had the characters of Hindu mythology, who asked for various boons from the Gods, they pleased, known of this power to stay anything and everything in a fraction of a minute, some of them at least would have asked for this "many-in-one". If a common man can get it in his lusty prime, his first order would be to stay aging. Exercise of this great power requires great caution and training.

In early fifties when one was appointed Munsif, District Judge used to guide him. One topic on which guidance was usually given, was that of ex-parte injunctions. The new comer was often supplied the relevant portion of the report of Public Justice Committee, that described how ex-parte injunctions played havoc.

Subordinate courts submitted every month or every quarter a statement showing the number of cases (1) in which ex-parte injunctions were granted (2) in which ex-parte injunctions were maintained after hearing, and (3) in which ex-parte injunctions were vacated after hearing. Some of these files could be examined.

In a western district there used to be some cash crops. No body came with an application for ex-parte injunction, when it was time for sowing the crop, or when the crop was nurtured. But there was a spate of applications for ex-parte injunction when it was time for harvesting the crop. The usual prayer was that the other party be restrained from harvesting the crop. Sometimes the person armed with an ex-parte injunction himself harvested the crop and charged the other party with disobeying the injunction, thus making this issue almost another suit.

On such applications for ex-parte injunctions some courts invariably ordered "Issue Notice, restrain meanwhile" without much argument or consideration. They had a dozen applications every day and a lot of popularity. Practice with other courts in such cases was to get KHATAUNI, irrigation slips and Khasra for 12 years files and to analyse them before taking a decision for ex-parte injunction and in some cases after analysing documents rejected injunction application without issuing notice. These courts on an average had a couple of applications a day and were not so popular, though some people having no voice praised these Presiding Officers in their village away from court.

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[1] Lok Ayukta Uttar Pradesh.

When a decree was passed, the Judgement debtor applied for stay of execution. Some courts then tried to remind themselves of Order 41 Rule 5 of the Civil Procedure Code, Specially sub rules (3) and (5) extracted below, while others forgot it staying execution in a routine manner. This latter class of officers had busy evenings, busy Sundays, and a lot of praise in court corridors.

ORDER 41 RULES 5. sub rules (3) and (5)

"(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied.

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(5) Notwithstanding any thing contained in the forgoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of Rule 1, the court shall not made an order staying the execution of the decree."

Then Article 226 of the Indian Constitution, an article of wide import, has its own significance. It is a powerful instrument of doing justice and warding off imminent danger through stay order. However, it seems peoples' representatives were not convinced of the merit of the way in which power to stay was being exercised and ex-parte order continued to subsist for years. So the Parliament inserted clause (3) in Article 226.

This provision, inserted by the Constitution (44th Amendment) Act, 1978 gives relief to a Respondent against whom a petitioner in a Writ Petition has obtained an ex-parte interim order, without furnishing copies of the relevant papers by means of which the respondent could have opposed the prayer for interim order. The relief to the respondent in such a case is to make an application to the court for vacating the interim order, after serving a copy of his application to the petitioner, The Court is enjoined to dispose of the application for vacation of the interim order within a period of two weeks of service of the copy upon the petitioner or from the date of the application (whichever is later); in case the Court fails to dispose of the application within the specified period, the ex-parte interim order will stand vacated.

But the persons, who execute, really matter. In practice more or less the position remains what it was. Ex-parte stay orders are issued; they continue for long without final disposal of the application for stay. Even when an ex-parte stay order is granted till a particular date with a set purpose; it has to be extended by

another Judge, before whom the case is fixed and who is not aware of the set purpose and what was observed on the first date, when the case is not taken up for want of time. In some cases it results in perfect justice and in others in immense agony to the other party even for a decade. Justice is frustrated.

Though amendment or convention an ex-parte order may be made as detailed and full of reasons as a final order and open to appeal, as an ex-parte injunction is under Order 47 Rule 1 (r) of the Civil Procedure Code. This will keep the Judge on the right track. He will study the statement of claim and refresh his memory of the relevant statutory provision. There will be no gossip that a particular lawyer be engaged to get an ex-parte order. The opposite party will know as to what is his fault. It will be able to decide whether to try for vacation of ex-parte order or to make amends.

In Order 16 Rule 10 (3) Civil Procedure Code relating to witnesses it is explicit that a warrant for a witness can be issued after a proclamation, in lieu of a proclamation or even at the time of issuing a proclamation that is simultaneously with it.

But in Order 39 strictly speaking there is no provision for issuing a notice and ex-parte injunction simultaneously.

Rules 1 and 2 of Order 39 Civil Procedure Code deal with the power of the court to issue injunction. Rule 3 laying down procedure says that the Court shall not grant injunction without notice to the opposite party except under certain circumstances. When these circumstances exist and an injunction is granted without notice to the opposite party, the opposite party may either through an application under Rule 4 ask the court issuing injunction to set aside that order or he may appeal to superior court under Order 43 Rule 1 (r). There is no provision that while issuing notice the Court may also issue injunction. Moreover, when an appeal can be filed against an ex-parte order, such order has to be a reasoned order. Why the same procedure cannot be followed in respect of every ex-parte stay order irrespective of the status of the court.

Even in bail cases to keep them disciplined and transparent some Judges prefer to give reasons in a line or two. Such as "A day light murder with eye witnesses Rejected", "A midnight hit and run case-Allowed", or "No injury in this 307 case-Allowed".

It is always worthwhile to pause and answer the question" what will happen, if the normal rule of giving an opportunity to the other party of being heard is not violated? If the consequences of non-violation of the normal rule are not really grave, it is better to refrain from giving an ex-parte order. If ex-parte order has to be passed it must be a detailed and well reasoned order. Giving of reasons is the only guarantee against being arbitrary. And only this factor distinguishes a Court from a Police Station.

A woman thrown out by her husband, brought a suit praying that she be allowed to sue as an indigent person. The State admitted that the woman was an

indigent person and she had no means to pay court fee. The woman gave her statement in support of her claim to sue as an indigent person, the opposing husband did not bring out a material fact in her cross-examination of 3 or 4 lines and he did not produce evidence. The Civil Judge mentioning the aforesaid facts allowed the woman to sue as indigent person. The husband moved superior court and got the proceedings of trial court stayed, the stay order continued for half of a decade or a little more. Then husband's petition was dismissed without relying on any material other than what was in the judgment of the trial court. The Judge granting staying order had at least two decades' experience at the Bar besides his experience as a Judge. Only the State was loosing the amount of court fee in consequence of the order of Civil Judge, the State had admitted that the woman was indigent person and it did not complain against the order of Civil Judge. The husband had nothing to lose by non-payment of court fee by the woman. The husband's counsel got *Shukrana* not for winning the case but for blocking it for 5 or 6 years.

Had it been obligatory for the Judge to pass fully reasoned order even though it was on the back of the wife or had the Judge liked to consider what harm the husband would suffer, if stay order was not granted, probably he would not have passed the ex-parte stay order.

A very learned senior of mine once narrated that there was a renowned Home Minister of India who was always late by hours at functions and meetings even if he had no other engagement. Once questioned, the Hon'ble Minister replied "If one is in time no body takes notice of him; but if one is late by hours he immediately catches attention on arrival and everyone asks who this gentleman is.

If an ex-parte order is refused after due analysis of the material available, none is happy and none is obliged. Even the beneficiary sitting at a remote place is more or less unconcerned. But if an ex-parte order is granted, immediately the client and counsel are immensely happy. When the same order is vacated after hearing, another litigant and his counsel are happy. The person granting it also gets praise, popularity and an immediate assertion "obliged". This results in greatest happiness of greatest number making the view in favour of ex-parte orders as plausible as the Hon'ble Home Minister's explanation.

The latest variety of stay order may be given the name ORAL. It may be scarce but it is most effective. There is no appeal, revision or other convenient remedy against it. That is why it turns out to be really powerful. And who knows this scarce variety may become more prevalent in the years to come.

This ORAL variety may be illustrated by giving facts of a case from a Kabal Town Court. A helpless woman filed a suit. After a tough fight, and a hide and seek for a decade, punctuated by many known varieties of stay orders the woman got an ex-parte decree. Ex-parte-because the other party had no defence and after an intelligent calculation it found it more conducive to continue the post-judgment fight indefinitely. The woman asked for executing the decree by attachment of the salary of the judgment debtor because due to clever

manipulation by the husband the woman could not present residential address of the judgment debtor or particulars of his properties. Under the Civil Procedure Code only a part of salary can be attached and that attachment can only continue for two years. The decree was for a big amount and whole of it could not be realised through two years salary attachment. But as stated the woman was helpless, so she thought that something is better than nothing. Naturally, she was in a hurry for execution as the inflation was eating into the fruits of her decree.

Then the husband started application for setting aside ex-parte decree, getting it dismissed in his absence, then application for restoration, appeal against dismissal of restoration application, writ against the order of appellate court, objection under section 47 C.P.C. after dismissal of which appeal and other remedies against dismissal of objection under section 47 C.P.C. and so on. During most of this period there was no written stay order. But the learned trial court would not issue process for attachment saying orally that it would be better to issue it after decision of application for setting aside ex-parte decree, appeal or objection under section 47 C.P.C. years passed. Had there been a hearing on regular application for stay of execution, the woman could have at least pressed for some security for performance of decree and some reason would have been given for not accepting her prayer. But for this oral stay order there was no reason in support and against it no convenient remedy.

Now the Reader has to think for himself and chalk out his own policy. As an American Judge said the ultimate guarantee for justice is only the personality of the Judge. It works where the law fails.

RULE OF LAW : WHETHER A TWINKLING STAR UP ABOVE THE CONSTITUTION?

P.D. Kaushik, H.J.S.[1]

Justice Methew has observed in the case of Smt. Indira Nehru Gandhi v. Raj Narain, (AIR 1975 SC 2299 at page 2385, Paragraph 293) :- "I cannot conceive The Rule of Law as a twinkling star up above the Constitution.

His Lordship observed further that if Rule of Law is to be of basic structure of the Constitution, specific provision must be found in the Constitution itself; to be a basic structure it must be terrestrial concept having its habitat within the four corners of the Constitution. His Lordship has observed that concept of Rule of Law implies equality before the law, but the constituent elements of concept of equality aspect of democratic republicanism should be gathered in Article 14.

His Lordship further observed in subsequent paragraphs that one cannot test the validity of an ordinary law with reference to the essential elements of an ideal democracy. It can be tested only with reference to principles of democracy actually incorporated in the Constitution.

In the opinion of Justice Methew the Constitution maker eschewed to incorporate due principles clause in the Constitution apprehending that vague contours of that concept will make a court third chamber and the concept of basic structure as brooding omnipresence in the sky apart from the specific provisions of Constitution.

Just a few year later, the passport of Maneka Gandhi, a Journalist, dated June 01, 1975 was impounded in public interest by an order dated July 02, 1977. Moreover, the Government declined to furnish the reasons of the decision in the interest of general public. Smt. Maneka Gandhi filed writ petition under Article 32 of the Constitution. The Full Bench of Hon'ble Supreme Court of India vide its judgment reported in 1978 (1) SCC 248, Mrs. Maneka Gandhi v. Union of India, while dealing with procedure to cancel passport under the provisions of Passport Act, 1967, observed that although the Supreme Court's earlier pronouncements that "Law" within the meaning of Article 21 means enacted "law" or "State law", yet the majority judges held that the CONCEPT OF REASONABLENESS must be projected in the procedure contemplated by Article 21. The procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right, just and fair" and not arbitrary, fanciful or oppressive; otherwise it would be no procedure at all and the requirements of Article 21 would not be satisfied.

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[1] Distt. & Secession Judge, Raibarely.

Their Lordships observed further that duty to act judicially need not be superadded, but it may be spelt out from the nature of power conferred, the manner of exercising it. The Rule of audi alterem pertem (no decision shall be given against a party without affording him a reasonable hearing) was intended to inject justice into the law and the court must take every effort to salvage this cardinal rule to the maximum extent permissible in a given case.

The Apex Court held that "the life of the law is not logic, but experience and every legal proposition must in the ultimate analysis, be decided on the touchstone of pragmatic realism.

Success of democracy depends on success of Rule of Law. Judges do not make laws yet administering socioeconomic laws. PROCESS OF JUDICIAL INTERPRETATION HAS THE FELT OF NECESSITIES OF THE TIMES.

A big premises comprising about six bighas of land located nearby Calcutta was sold in the year 1982 by Official Receiver for a sum of Rs. 4,00,000/-. The purchase money having been deposited, proceeding to eject about 38 families, which were living thereon, were launched. The Single Judge of Calcutta High Court held them to be tress passers. However, the Division Bench of Calcutta High Court preferred to do social justice by ordering the premises to be sold to the respondents on payment of Rs. 1,00,000/- more. Feeling aggrieved the appeal was preferred before the Apex Court. The Apex Court in its judgment reported in 1984 (3) SCC page 410, *Sadhu Ram Bansal v. Pulin Behari Sarkar* and others, observed that "Jurisprudence has shifted away from fine spun technicalities and abstract rules to recognition of human needs and if these can be fulfilled without deprivation of existing legal rights of any party concerned, the Courts must lean towards that." *THE MEANINGFUL DEFINITION OF THE RULE OF LAW MUST BE BASED ON THE REALITIES OF CONTEMPORARY SOCIETIES AND THE REALITIES OF CONTEMPORARY SOCIETIES ARE – MEN ARE IN ACUTE SHORTAGE OF ACCOMMODATION.*

Social justice was held to be one of the basic aspirations of our Constitution. The Court observed that ":We will do well to remember that justice – social, economic and political ---- in preamble of our Constitution. The Courts are pledged to administer justice as by law established. In formulating the concept of justice, however, the inarticulate factor that large number of human beings should not be dislodged from their possession if it is otherwise possible to do so cannot but be a factor which must and should influence the minds of judges in the facts of the case.

The concept of distributive justice was applied by the Apex Court, however, within the framework of the Constitution itself. In (1985) 1 SCC 479 *Lingappa Pochanna Appelwal* v. State of Maharastra, the Apex Court observeld that principles of distributive justice seeks to reopen transaction between parties having unequal bargaining power.

Right to livelihood was considered to be integral facet of right to life, under Article 21 of the Constitution by the Apex Court, in Judgment Today, 1994

(2) SC 94, *Narain Kumar Chandla* v. State of Haryana. Right arm of employee having been amputated due to Cancer, Employer, it was held, must adjust him in suitable post and protect his last drawn pay.

Right to life was also extended to right to honour, right to reputation. (KIRAN BEDI V. COMMISSION OF ENQUIRY) AIR 1989 Page 714.

Apex Court has further held Right to shelter in a Fundamental Right, which spring from the right of residence assumed in Article 19 (1) C and right to life under Article 21 of the Constitution *(U.P. AWAS EVAM VIKAS PARISHAD V. FRIENDS COOPERATIVE HOUSING SOCIETY*, AIR 1996 SC 114 at page 116).

In Miss Mohini Jain's case, 1992 Vol. II SUIR (CIVIL) page 43 Apex Court found that, it is correct that 'right to education' has as such not guaranteed as fundamental Right under Part III, however, since the objective flowing from the preamble cannot be delivered and shall remain on paper unless the people of Country are educated, as such, the right to education is, therefore, concomitant to the rights enshrined under Part III of the Constitution. The Apex Court held that every citizen has right to education under the Constitution. The State is under obligation to establish education as institution to enable the citizen to enjoy the said right.

Considering allotments of land under RAJASTHAN LAND ACQUISITION RULES 1956, the Apex Court in a case reported in Judgment Today, 1996 (8) SC 387 held : IN *A DEMOCRATIC SOCIETY GOVERNED BY RULE OF LAW, POWER IS CONFERRED ON THE HOLDER OF PUBLIC OFFICE* or the concerned authorities by the Constitution by virtue of appointment. The politician who hold public office must perform public duties with sense of purpose and a sence of direction.

Explaining Function of Democracy Apex Court went to the extent of holding that "The most elementary qualification demanded of a Minister is honesty and incorruptibility. He should not only possess these qualification but should also appear to possess the same.

Considering the role of Minister in Welfare State vis-a-vis is Discretionary Quota, the Apex Court in case reported in Judgment Today 1996 (8) SC 613, Common Cause and Registered Society v. Union of India held that Minister holds a Trust on behalf of the people. He has to deal with the people's property in just and fair manner. The Apex Court ultimately held that Capt. Satish Sharma in his capacity as a Minister of Petroleum and Natural Gas deliberately acted in a wholly arbitrary and unjust manner and while deciding the petition directed the petitioner to receive rupees fifty thousand as cost and directed that the cost shall be paid by Minister personally.

It is now settled law that bureaucracy is accountable as the lack of transparency in the system prompts nepotism arbitrariness. *THE OBJECT IS TO ENSURE COMPLIANCE OF RULE OF LAW.*

In case reported in Judgment Today, 1997 (2) SC 463, State of Bihar v. *Subhash Singh*, Apex Court observed, in our democracy, Government by Rule of Law, judiciary has expressly been entrusted with power of judicial review of administrative action and when a particular officer was found guilty of unexplained delay, personal cost was imposed.

A brief summary of pronouncements made by Apex Court clearly indicates the Rule of Law has been accepted as concept not confined within the express provision of the Constitution.

The Rule of Law is a very comprehensive concept as observed by Ex. Chief Justice of India *Sri. P.B. Gajendra Gadkar, "Dharmat dharmam ityuchyute"* means that which sustains social structure and helps the progress of society in all directions is Dharma i.e. Law.

In a democracy the main instrument to achieve the dream of Welfare State is Rule of Law. As such in the twilight of twenty first century, we hope and trust, Rule of Law must always shine like a diamond in the skies up above the Constitution of the Country.

HUMAN - RIGHT CHALLENGES

O.P. Dwivedi[1]

Prevention of Human Rights Act, 1993 was enacted in high mood of respect to international community but it has failed to achieve desired affect. Human-rights, more in the shape of human values are inalienable to human beings, meant for human protection, human living, and human recognition with human dignity. But their violators are more beyond the clutches of human rights law, than detected, due to lack of adequate awareness and education in this context. Respect and submission to human rights is a way of life and Mahatma Gandhi, the forgotten father of the country, is still relevant as an example. He called it Upanishad way of living, and became human rights casuality himself. When U.N.Charter of Human Rights was being drafted, his views were sought and his message to United Nations Human Rights commission was "The true source of rights is duty. If we discharge our duties, rights will not be far to seek. If, leaving duties unperformed, we run after rights, they will escape us like the will-o-wisp. The more we persue them, farther will they fly," Let us make haste to re-surrect Gandhi and not wait as human rights are basic in a civil state.

If we throw a glance in the back drop, it will be evident, that of necessity to humanity, English Bill of Rights, 1689, the French Declaration of Rights of Citizens 1789, U.S. Declaration of Independance 1776, and the devastation of the second world war (1939-44) made it incumbent upon the world community to ensure universal Declaration of Human Rights, endorsed by United Nations General Assembly on Dec., 10, 1948. After Independance, when Indian constitution was given to people on 26th Jan., 1950, it contained deep rooted vibrations and over tones with overwhelming human values, which some times is made open to charge of soft state and permissive society in our democracy and rule of law. United Nations further supplemented the Human Rights by covenant on civil and political Rights and optional Protocol, ratified by India in 1979. Looking to need of states, the human rights required widening of its ambit and world conference on Human Rights was held in Vienna in June, 1993. It was considered in this conference that Human Rights education, training and public information are essential for promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding tolerance and peace. The conference finally, recommended that states should strive to eradicate illiteracy and should direct education towards full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. Vienna Conference did not stop here but called upon all states and institutions to include human rights, humanitarian law, democracy and Rule of law as subject in curricula.

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India has already witnessed in 1984, that due to religious nationalisation, human rights have got serious jolt, when operation-Blue-star (in June 1984) divided Hindus to sikhs and liberation of Babri Masjid in Ayodhya in (Sept., 1984) alienated Hindus with Muslims. No doubt as a service to the weaker section, Family Court Act, 1984 was brought in the same year to ensure procedural justice to woman. And thus the Vienna Conference of 1993 resulted in Promulgation of Protection of Human Rights Ordinance (Oct., 30 of 1993) on Dec., 23, 1993, in India.

This ordinance took the shape of Protection of Human Rights Act, 1993 (Act 10 of 1994). The efforts of world community did not rest here and on 23, Dec., 1994 through a Resolution, the United Nations General Assembly, proclaimed years 1995 to 2004 as United Nations Decade for human Rights education and the government of India has also taken initiative to implement it. Consequently, National Human Rights commission was constituted with Hon'ble C.J.I. *Rang Nath Misra* (Retd.) as the first chairperson of commission under Rules with Head quarter at Delhi and National Human Rights commission Recruitment Rules 1996 were enforced, with a provision to prepare annual report from 1st April to 31 March. The National Human Rights commission has also made (Procedural) Regulations 1994 in its delegated powers, coming into force on 1st March, 1994. For the present the National commission is being headed by Hon'ble C.J.I. M.N.Venkatachalliah (Retd.).

All this legislative rhetoric in prevailing contradictions remain only paper tiger due to blatant shameful abuse by wielders of powers, with conservative working methodology alien to this International and National activity. Society needed to be overhandled by human rights education to reduce the gap between public opinion and legislation on human rights along with activities of commission. To have a simple example, it is pointed out that 50th anniversary of Declaration of human rights was observed on 10.12.97 and then commission disclosed that between Jan., 1997 to July, 1997, 588 custodial deaths have taken place, with Uttar Pradesh at the top with 109, Maharashtra 85, followed by Delhi 25. This has to be uprooted and eliminated with fire, fury and frenzy and has not to be at all tolerated like waving red rug to the bull. Time and conditions are ringing the bells from the conppy of sky, to prevent human-rights violations.

We each day read and hear about the terrorism in Jummu and Kasmir or in Assam or in Punjab. When 23 Pandits of peaceful community of Jammu were victimised by terrorists, American congressman frank pallone New jersy democrat did not keep quiet and expressed his indignation to 4.5 state department asserting that "Mr. Speaker, we must work with Indian government in bringing peace and security to this volatile region. I have asked India's National Human Rights commission to play an instrumental role in resolving this issue. We must continue to show our support to N.H.R.C. I will ask the U.S. State department to encourage the Indian government to designate the Kashmiri Pandit community as an 'internally displaced people' (I.D.P.) so that they may receive extensive humanitarian assistance. 'Not only the victims of terrorism, invoke human assistance but also the vulnerable groups like children, disabled persons, persons

born out of wed lock, indigenous population, persons belonging to ethnic, religious or linguistic minorities and the like all incite world, community for human help to protect human values through human rights law. Social inequality, illiteracy or cultural back-wardness of woman will not intercede in its way.

But a positive via-media has to be carved out at national level to resist abuse of power by police impeding human rights in the colour of investigation and detection of crime. It appears that protection granted under the constitution and procedural criminal law against arrest or custody is inadequate or suffers from lack of will for protection of accused by custodians of law or due to their attitude of indifference and the like, ultimately resulting in negation of Rule of law and the constitution, threatening human rights. It is argued on their behalf that detection of crime is more important to them than protection of human rights. To them inhuman social behaviour needs and makes it necessary to handle these criminals in a equally inhuman manner. No doubt they may be striking their own balance in the situation but it is not right balance as barbarism has no limitations. Repeated stress has been laid by law that custodial deaths, custodial rape, custodial hurt cases need prompt investigation and speedy disposal. But the desired impact does not appear to have taken affect.

On 2.6.98 Home Minister Sri L.K. Advani informed parliament quoting that deaths in police-custody have increased and in 1997-98 total custodial deaths numbered 88 as compared to 136 of 1995-96. Andhra Pradesh topped with 21, followed by 19 in Maharastra, 18 in Madhya Pradesh, 16 in Uttar Pradesh, 12 each in Delhi and Rajasthan. Such a situation should have no place in a civilised society, though constitution provided enough protection through Art. 21 and 22 as well as extending protection through procedural due process for back when *Ashok Kumar Johari* wrote letter on 29th July, 1997, and Supreme Court treating it writ petition passed order that "In almost every state, there are allegations and these allegations are in increasing frequency of deaths in custody described generally by news papers as lock up deaths. At present there does not appear to be any machinery to effectively deal with such allegations. Since this is an all India question concerning all states, it is desirable to issue notices to all state governments to find out whether they desire to say any thing in the matter." Supreme Court also gave notice to law commission of India for suitable suggestions. When the petition was finally decided, Supreme Court issued guide lines. Again in Joginder Kumar's case (1994 ACC 431) elaborate guidelines were prescribed. But they remain paper tigers for the police department including the senior officers. Had these directives, been heeded, they contemplated enough safeguards to put end to these abuses. What was called for was the monitoring of implementation by senior police officers and surprise checking on the basis of these guide lines. The change of attitude of subordinate police officers is promptly needed for it, along with their appropriate education regarding respect of human rights.

Supreme Court in this situation stepped up and with widening scope took notice to award compensation. In SAHELIS case (AIR 1990 SC 513) where a child was kept in lock-up twice, beaten, and thrown on floor resulting into death.

Delhi Administration was ordered to pay compensation of Rs. 75000=00 to the mother of deceased child. In Nilabati Behera (AIR 1993 SC 1960) where 22 years old deceased died in police custody, mother's letter was treated as writ petition and Apex court granted a compensation of Rs. 1,50,000/-. In Arvinder Singh Bagga (1994 (6) SCC 565) Lawfully married women was detained under the pretext by police and was given mental and psychological torture while in police custody, Supreme Court allowed compensation of Rs. 10,000=00 to her and Rs. 5,000=00 to her husband. In P. Rathinam (1994 SCC (Cri) 1163) interim compensation of Rs. 50,000=00 was granted by Supreme Court where a tribal woman was found to be victim of commission of rape in police custody and in presence of her husband. On the death of Salvinder Singh grover (1994 SCC (Cr.) 1464) Rs. 200000=00 as exgratia compensation was allowed against custodial death. Even in these circumstance it is called for that the National Human Rights commission itself should have its own teeth to bite as the procedure for trial is too cumber for human rights violation prosecutions and relief by commission pose a serious challenge to its effectiveness.

Author field of Human Right violations so wide spread and popularly known as by the Armed forces under the colour of greater good or larger interest of national security. Armed forces have strict discipline and even while acting under the Armed Forces (special powers) Act, 1958, in the disturbed area, human rights are violated by armed personnel although lot of 'Dos' and 'Donts' orders were issued by senior army officers. A statistics shows that in Jammu & Kashmir in 1990 only 16, in 1991 only 5, in 1992 Nil, in 1993 only 12, in 1994 only 6, in 1995 only 2, in 1996 only 9 personnel were punished by Army Officers for human right violations in that area. Similarly during operations in North East area as many as 23 personnel were punished for such violations between 1990 to 1995. NHRC does not appear to be playing any role in respect of such violations by armed-personnel and punishments imposed by army officers appear to be inadequate and only a lip service to law. At the same time army reprisals, resulting in human right violations also arise from authority and need be taken care of by NHRC. Similarly, para military forces such as B.S.F., R.P.F.,P.A.C. also spell out of the ambit of Act, 1993 thought they are easily open to such violations in the colour of their authority and deployment. Section 19 of the Act is the obstruction which needs be suitably amended so that NHRC may have access. If child labour is human rights problems in U.P., the child marriage in Rajasthan on one side and then on another side repoll and post poll human right violations pose a tool serious challenge to NHRC.

At least five cardinal human rights need be zeolously guarded which are the Right to peace, the right to development, the right to healthy environment, the right to enjoyment of common heritage of man kind and the right to humanitarian assistance. They may be stretched in their way to bring within it, human violation of human values, essential for humanised subsistance. Needless to say that entire gamut of covenant on civil and political rights is guaranteed within the ambit of our constitution. Justice V.R.K. Iyer succintly put it in meaningful words that 'we live in a period of civilization where human rights have received recognition but poignant paradox of contemporary times is that humans with out rights are on the

increase, blood and tears, trauma and torture claim victims every where. Human inhumanity takes many forms. (Human Rights and inhuman wrongs). Genesis of human rights is concept of natural rights to man as a gift of nature.

Press with its freedom for creative role, can play a pivotal role in this field of human rights protection by investigative journalism. The press is required to manage its own affairs for a critical and constructive role in the field of human rights detection. Instead of cost of quality of life, press can go for austerity and self-restraint, and instead of power they must clamour for respect, which alone can give sustenance to their right. It is through their right to free speech that they can bring to book the instances of abuse of power and human right violations in society. They can thus become better interpreters between the government and the people for better ends of protection of human rights.

It appears that working of prevention of Human Rights Act, 1993 for about more than four years, had brought forth the latoches and lacunae experienced in actual performance of National Human Rights Commission. The problems and constraints basically lay in delay in implementation of recommendations and lack of its own biting strength. Therefore, a committee headed by Hon'ble Chief Justice of India, *A.M. Ahmadi* (Retd.) has been constituted which has sought views and suggestions of activists, non-governmental organisation and general public so that constraints in functioning of NHRC could be impeded by suitable amendment. Magnitude of problem of Human Rights is criminalisation and communalisation of politics. Another challenge to human rights arises from economic inequality e.g. gap of rich and poor resulting in exploitation. Said Martin luther King, that though the civil rights movement did lead to the passing of legislation that allowed the Black to sit with the white at the same restaurant table, it did not guarantee that the Black would have the same capacity to order dishes. International human rights conference of Tehran held on May 13, 1968 said, "since human rights and fundamental freedoms are indivisible, the full realisation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. "T.S. Batra (human Rights a critique) suggested the 'world federal government so that the mankind may live in peace and prosperity free from all wards, all wants, thus paving the way for enjoyment of Human Rights as and when these become a reality of the lowest of the lowly. "This is the fond hope to be realised, for which a constant and continuous endeavour is the demand of the hour and National Human Rights commission within the ambit of 1993 Act is only a means to the desired end.

GRAVITY OF CRIME

V.K. Maheshwari , H.J.S.

Since the dawn of humanity on earth, crime as well as laws, rules, and customs for punishing the offenders exists. The cardinal principle of criminal jurisprudence is that the quantum of sentence should be proportionate to the gravity of the crime. Graver the degree of offence the severe is the punishment. In the words of Sir Cieero, "Let the punishment match the offence" quantum of punishment should always depend upon the severity of the crime. Thus it becomes crystal clear that gravity of the particular crime must be taken into consideration before prescribing punishment for it.

What is the parameter for gravity question arises. There are several factors for measuring the gravity of crime viz, the nature, the circumstances under which it is committed, intention of offender, impact of the offence on the society, harm caused and status of the victim, weapon used, age, past history and part played by a particular offender in the commission of crime. It is not only difficult, rather impossible to prescribe just, proper and befitting punishment unless the gravity is taken care of and in law, the point cannot be legislated upon fairly. It basically involves the thinking process of a Judge keeping in view the objective standards of a particular case. Benjamin Disraeli had remarked that justice is Truth in action. Truth hidden in the distinct circumstances should definitely be caught hold of by the legal stream.

Indian Penal Code is the only statute which has effectively placed due recognition to every aspect of the crime. In fact Indian Penal Code is a finished product of great beauty. Whatever may be imagined as anti-moral, anti-social or anti-national was once found well worded in the code in any form. Not only the specified categories but the minute variations have also been beautifully distinguished in it. For example, culpable homicide i.e. causing death of a human being has precisely and elaborately been defined in the Indian Penal Code but a clear distinction has been drawn regarding culpable homicide committed under different circumstances with different intention, culpable homicide committed under the specified circumstances with the knowledge and intention only falls within the definition of murder and the rest catagories of culpable homicide are not termed as murder. Different term of punishment have been provided for every distinct category. Had there been the equal punishment for every type of culpable homicides, it would obviously have amounted to the utter miscarriage of justice.

The personality of the whole Indian Penal Code reveals that not only Culpable Homicide but other offences have also been classified magnificoently and the distinction as to the quantum of punishment is well worded. Let us take the another example of 'Hurt' which has been classified in two heads viz simple Hurt and grievous Hurt and different type of punishment have been provided for each category. The code does not observe Stop even at this juncture but further

allocates different heads, with different punishments keeping in view of gravity of offence. The provisions of sections 323, 324, 327, 328, 330, 332, 334 and 337 deserve special mention. 'Simple Hurt' is apparently involved in these sections with the slight variations of minute nature and thus, the juristic sense is beautifully woven while drafting these provisions having attached due wieghtage to the jurisprudential requirements i.e. the gravity of offence, aggravating and mitigating circumstances , intention of accused, status of victim and weapon used in the commission of crime and other relevant factors.

Similarly, 'Grievous Hurt' has been placed under different sections lexically and logically keeping in view the aforesaid aspects. Other offences like theft, house-breaking, cheating etc. have also been classified prudently under their sub-heads with due distinctions. The Indian Penal Code had been drafted by Lord Macualay about 150 year ago and since then the Code is enjoying legal confidence of the highest order for the revered farsightedness in its pedatic drafting.

The Indian Penal Code deserve to be treated as a guiding legislation for the subsequent penal enactments. No subsequent penal legislation has taken into account the various circumstances regarding gravity of crime while prescribing the quantum of punishment and the equal quantum of punishment has been provided in most of the statutes for offences committed with distinct and different gravity. Take the case of Prevention of Food Adulteration Act which provides the same quantum of punishment to the importer, manufacture, distributor, dealer or retailer for selling or offering for sale an adulterated food article. Suppose an importer imports tones of adulterated food with the knowledge of its being adulterated and on the other hand a retailer sells a small quantity of it without knowledge of it being adulterated. The Act provides the same punishment for both of them. Can we justifiably say that the gravity of the act committed by the importer and the retailer is the same and similar? Obviously, the answer is 'No'. Thus, if the gravity of both these acts is not the similar, why the punishment is the same and how each of them can be awarded a just and proper punishment under these circumstances?

I have no hesitation to remark that the spinal issue the gravity of crime has not all striked the legal brains while drafting, Narcotic Drugs and Psychotropic Substance Act which provides for severe punishment but the quantum of sentence prescribed is almost the same irrespective of the gravity, mensrea, overall impact and other relevant consideration. Fineline distinction like that of Indian Penal Code were required to be incorporated in the Act. Penal legislations must provide more light than heat.

It is also necessary to mention the provisions of Sec. 25 Arms Act which make no distinction between big manufacture and a causal retailer of unlawful arms. This section further makes no distinction between an offender found in possession of unlawful sophisticated fire arm and a person found in possession of a small knife slightly bigger in length than prescribed law.

Similarly under U.P. Excise Act, suppose a person exports or imports or manufactures several thousand bottle of illegal intoxicant and another person is simply found in possession of a very small quantity of illegal intoxicant, both of them are punishable with equal quantum of punishment under Sec. 60 of U.P Excise Act.

Logically, every legislation has lesscons to learn and promises to keep but when the personal liberty of a citizen is likely to be affected by some Act it becomes mandatory that the penal law should take into account the pregnant considerations like gravity of crime, role of the offender, mensrea, the circumstances under which the crime was committed etc. while enacting penal law. The aforesaid Criminal pathology or legislative culture cannot be ignored. Legal inspiration may be gathered from Lord Macaulay's draftsmanship. The aforesaid dynamics should be the guiding factor for all further penal legislations and the legislations in presentie deserve to be suitably amended. Let us hope for the better.

SUSPENSION OF PROCEEDINGS UNDER SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985

P.K. Chaturvedi[1]

Sickness is always memorable event and every near and dear expresses his feelings and willingness to render help within his capability. Sickness of an industrial company becomes matter of national importance, therefore, this statute has conferred special privileges to those companies, for that a statutory authorities BIFR and Appellate Authority thereof have been created.

The Act was enacted as its preamble says or menifests in the public interest with a view to securing the timely detection of sick and potentially sick companies owning industrial undertaking as defined in section 3 (f) of the Act, the speedy identification through a board of experts in relevant fields with a view to devise suitable preventive, ameliorative, remedial and other suitable steps as the circumstances of sickness warrant through appropriate schemes and their expeditious implementations.

The object is to check the sickness and in case the company has already become sick then to prepare scheme for its revival or rehabilitation by providing financial assistance by way of loan, advances, or guarantees or providing reliefs, concessions or sacrefices. Thus the basic concept behind the statute is to revive and rehabilitate a sick company, if found possible, by extending assistance after thorough examination of the units by experts. Sometimes sickness becomes blessing in disguise for the sick company.

Section 22 of the Act deals with measures which are very necessary in the interest of a sick company. It imposes following restrictions :-

(i) On the activities of persons or financial institutions etc. who have given any type of financial assistance to the sick industrial company by way of loan or advances.

(ii) Persons or bodies who have entered into any type of contract with sick industrial company, assurance of property, agreements, settlements, awards, standing order or other instruments having force of law to which the sick industrial company is the party applicable immediately before the date of such order.

(iii) Persons who are shareholders.

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[1] Dy. Director (Research) I.J.T.R. Lucknow.

The section provides that in case an enquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or under consideration or sanctioned scheme is under implementation or where on appeal under section 25 against the order of BIFR is pending in AAIFR, then certain proceedings against the sick industrial company are to be suspended or presumed to be suspended automatically without any specific order. The nature of such proceedings which suspends automatically are the execution of any type of distressive action against the properties of sick company or like, winding up of sick company and appointment of receiver, and if the aggrieved party wants to continue with such proceedings then the party or person has to seek prior consent or approval of BIFR or AAIFR, as the case may be.[2] Supreme Court, however, observed that it may be against the principle of equity if the creditors are not allowed to recover their dues from the company but the creditors has to approach BIFR for Consent. It was further observed that if the consent is not granted remedy will not extinguish. It will only postpone the action and sub-section (5) provides for exclusion of the period for which remedy is suspended while computing the period of limitation for recovering the dues or initiating the proceedings.[3]

Distressive proceedings will also include suit for recovery of money, enforcement of security or guarantee against the sick company.

The provisions of this section have prevailing effect over any other law inspite of any contrary provision of Companies Act or any other statute or regulations made thereunder or any other instrument or document of company having the effect of law because SICA is special Act enacted for special purpose, therefore, the provisions of this sub section shall also prevail over the provisions of sections 29 and 31 of State Financial Corporation Act, 1952 since both the statutes have non obstance clause but the SICA, being the later enactment, will prevail.

Proceedings :

It includes legal proceedings as well but Supreme Court pointed out that section 22 (1) bars proceedings and not legal proceedings[4]. But the fact that the head note of the section shows and intends to give message that the properties of sick company cannot be made subject matter of any type of coercive action of like nature as the distress till the BIFR disposses off the reference made to it under section 15. Giving narrow meaning to the word "proceeding" will run counter to the scheme of statute and will frustrate the very purpose of section 22 (1) of the Act.

Execution, distress or like

These words clearly intends to convey that the properties of sick

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2 Gram Panchayat v. *Shree Vallabh Glass Works Ltd.*, AIR 1990 SC 1017.
3 Gram Panchayat (Supra).
4 Maharastra Tubos Ltd. v. S.I.I.C. Ltd., 1993 AIR SCW 991.

company shall not be made the subject matter of coercive action of similar nature and character till the BIFR dispose of the reference which may frustrate the purpose of BIFR's proceedings.

Appointment of Receiver

Generally, the order of appointment of receiver operates as an injunction against the interference by the parties with their possession, therefore, gives an impression of coercive measure as the receiver takes over the management and possession of the property of the company so attached in a proceeding, however, it is presumed that he will act in the best interest of the company and all parties concerned. As majority of the High Court have held that receiver can be appointed for managing the affairs of a company, therefore, section 22 (1) provided a restriction in the appointment of an receiver and reference u/s 15 has been entertained by the BIFR, then the proceedings of appointment of receiver will not abate or extinguish, it will come into abeyance only.

Suits

Suits for the recovery of money or for the enforcement of guarantee in respect of loan or advance given to the sick company are also liable to be suspended or abate but also if the suit has already been decreed by the Court then the execution of decree will become suspended because it will result into proceedings of distressive nature.

Criminal Proceedings

Section 22 (1) affords no protection against prosecution for an offence[5] as it does not have such provision for suspension of prosecution of officials of companies under any law including Companies Act, other Acts, like sales Tax or Income Tax Acts[6&7]

Property Tax etc.

There provisions are also applicable to the recovery of property taxes under Local Act and section 22 (1) thereunder does not put any restriction on the power of Gram panchayat of Municipality to impose taxes on property (s) but it puts a restriction only one coercive measures for recovery of any amount due from the sick industrial company but the power of municipality or local body remains totally unimpaired. Similar to it, proceedings for the recovery of other taxes like Sales Tax, Income Tax etc. cannot be initiated against the sick industrial company without the permission of BIFR or AAIFR, as the case may be,[8&9] and if the approval is not granted the remedy is not extinguished, it is only

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5 Trans Asia Carpet Ltd. v State of U.P., (1992) 8 Corporate Law Advisor 160 All : 1992 Cr. L.J. 673 : 1992 All. L.J. 357.

6 Vijay Mills Co. Ltd. v. State of Gujrat, (1990) 4 C.L.A. 3 Guj.

7 Andhra Sinters Ltd. v. Provident Fund Commissioner, Pet. No. 813/1993 decided on 7.4.1993 by A.P. H.C.

8 Aluminium Industries Ltd. v. C.T.O., (1991) 6 CLA (Shr) 52 A.P.

postponed. But the garnished proceedings under Sales Tax Act are not hit by this section[10].

Refusal to supply of goods under a Contract

Since non-supply of goods in future cannot amount to action proposed against the property of company, therefore it does not attract the provisions of section 22 (1) of the Act. Thus refusal of electric supply to sick company does not attract the provisions of this section[11].

Right of Lessor under Lease Agreement

It is not free from doubt whether repossession of property belonging to the lessor for non-payment of lease rent payable under the lease agreement is outside the scope of this sub section (1) of section 22. The answer seems to be justified in the affirmative but Andhra Pradesh High Court held the action within the scope of sub section[12].

(B) Suspension of rights and powers of share holders of sick Industrial Company

Section 22 (2) deals with those circumstances wherein share holders resort to nominate or appoint any person as a director of company or pass a resolution at any meeting of such company when the management of the sick industrial company has been taken over or changed in pursuance of any scheme sanctioned under section 18 of the Act.

This sub-section restrains the share holders to create any untoward situation where the BIFR is coming to a viable solution. Perhaps due to this reason also it has been provided that the provision of this sub-section shall prevail over Companies Act, 1956, or any other law or Memorendum and Articles of Association of such company or any instrument having the force of law. Thus when the management of sick industrial company has been taken over or changed by the BIFR then the following consequences follow :-

(a) Share-holders or any other person like Financial Institution, Central or State Government or Banks who have been given rights under the agreement of loan or otherwise to appoint or nominate a person as a director shall be debarred to do so. (S. 22 (2) (a)).

(b) Secondly, share holders of such industrial company shall restrain themselves to pass any resolution at any meeting

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[9] Reliance Ispat Industries Ltd. v. Commr. of Sales Tax, (1993) 91 STC 521 (MP).
[10] Tata Davy Ltd. v. U.O.I.,(1992) 7 CLA (Shr).
[11] Andhra Cements Ltd. v. A.P. State Electricity Board, AIR 1991 A.P. 269; Modi Spinning & Weaving Mills Ltd. v. U.P.S.E.B., AIR 1992 All. 247.
[12] Andhra Cements Ltd. v. Nagarjun Investment Ltd. civil Rlv. Pit. No. 1200/1993 decided on 7.4.1993 by A.P. H.C.

including annual, general or extraordinary, of such company. If any resolution at any meeting of such company is passed under any pressing condition then such resolution shall not be given effect to. For that share holders have to move an application to the BIFR, or AAIFR, as the case may be, which are empowered to grant approval for the same. Only then the resolution passed by the share holders shall come into force with regard to such industrial company. (S.22 (2) (b)).

But it is, here by necessary to make it clear that the injunction under section 22 (1) (a) is absolute in nature because the share holders or any other person are restrained to seek even approval for appointment or nomination of a director.

(C) Suspension of Contract Etc. :

Sub section (3) of section 22 deals with the rights of contracting parties arising out of such contracts or agreements or assurances etc. It provides that during the period of consideration of any scheme under section 18 is sanctioned thereunder for implementation, the BIFR may order specifically for the suspension of proceedings.

The proceedings which shall remain suspended relate to contracts, assurances of properties of the company, agreements, settlements, awards, standing order or other instruments to which sick company is party or which may be applicable to such company immediately before the date of such order and that any of the rights, privileges, obligations and liabilities accruing or arising under the instruments, as mentioned above, before the said date shall remain suspended or can be enforced in such manner with such adaptation as may be specified in the order of the BIFR. Such declaration by the BIFR for the suspension of rights, privileges, obligations and liabilities thereunder may be made at any stage of enquiry till the implementation of scheme.

But the legal proceedings for demand of amount secured under the bank guarantee against the bank cannot be said to be barred where the company against which the bank guarantee are going to be encashed has been declared sick[13].

A proviso has also been given which stipulates that declaration for suspension cannot be made for a period exceeding two years initially but it is extendable year to year and extendable up to seven years in aggregate. Like sub section (1) and (2) of this section, the provision of this sub section have overriding effect over the other contrary provisions of any law or deed having the effect of law.

[13] Allahabad Bank v. M.P. Electricity Board, Rampur, AIR 1996 S.C. 1.

Winding up Proceedings

It is also clear from the provisions of the Act that the winding up proceedings also attract the provisions of this section, and winding up petition as required to be kept in abeyance pending the enquiry under section 16 or framing of scheme under Act or pending implementation of scheme framed thereunder. The intention of legislature was to provide for restraint against legal proceedings in relation to the properties of the sick company and not against determination of liability in the suit. The continuance of pending proceedings for winding up, if allowed by the court in exercise of its discretion, would clearly conflict with the paramount object for which section 16 (4) was enacted, because financial assistance envisaged under section 19 cannot be forthcoming if the winding up proceedings is not dismissed. Various other schemes envisaged under section 18 cannot effectively be administered having the winding up proceedings alive without the same being dismissed.[14] But the Calcutta High Court in Smith Stainstreet Pharmaceuticals Ltd. v. Nester Pharmaceuticals Ltd. in Pet. No. 155/92 decided on 20.1.1993 held that once winding up of a company has been ordered will be outside the purview of this Act. Thus the view that pending proceedings should be dismissed and already ordered winding up will be outside the scope of Act is the correct view.

Exclusion of period of suspension

Sub section (5) of this section excludes the period of suspension of proceedings for the purpose of determination statutory limit of initiating proceedings provided in Limitation Act.

Subsidiary Company

Sometimes situation may arise when a subsidiary company of a Holding Company in respect of which reference has been made to BIFR, enquiry is pending and all the distressive proceedings including winding up have been suspended, may like to seek the benefit of this section. Holding and subsidiary companies as separate entities therefore protective umbrella of BIFR over the Holding Company shall not extend to its subsidiary.[15]

Shortcomings

There are some obvious weaknesses and shortcomings in the provisions of this section. It shows inadequate feelings for the sorry state of creditors, suppliers of sick industrial companies whose dues practically freezes on account of BIFR's order. It would have been possible for them to recover their dues had it been a wound up at the earliest opportunity. As the period between the institution of an enquiry by BIFR and final disposal of same is being considerably long, therefore, in curing the sickness of a sick industrial company, the operation of

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[14] Testeels Ltd. v. R.R. Cheritable Trust, AIR 1988 Guj. 213.

[15] Dena Bank v. khatav Dyes & Fibres ltd., Com. Pet. No. 70/1989 decided on 26.3.92 by Bom. H.C.

SICA is likely to spread sickness to other companies dealing with the services and supplies to that company.

The ordeals for the others is all the more unbearable because of prevailing uncertainty of duration of sickness of a company. The period is not limited upto the sanction of scheme of a sick company. The suspension of coercive proceedings etc. under section 22 extends to the time till the sanctioned scheme is implemented. There are no means and measures of ensuring the speedy implementation of the scheme. Even if the sanctioned scheme has a fixed schedule, the possibility of its being stretched cannot be ruled out. Apperently on the face of it appears absolutely unfair to permit third parties to bear the losses incurred by the sick company. And if the third party is insecured creditor, the chances of their realising their dues may be remote. When the sick company will be able to clear its liabilities which is under rehabilitation is anybody's guess. Those who have put their neck into the company's hands can only pray for its early recovery. It is only if their prayers, are heared by God then only they may get relief. There is little scope for the BIFR to do the needful.

The operation of sub section (3) unavoidably entails hardships not only for those who contracted with the sick company but also those who may be fool hardy enough to enter into any contract or agreement or arrangement with if after coming it under the BIFR's protective umbrella. The BIFR, may, if it is essential for the company's revival, suspend the contracts etc. for a period which may be extended to seven year which is a very long period and few would dare to deal with such a company as long as it enjoys BIFR's sanctuary. The BIFR offers convalsant companies not virtually moratarium on debts but freedom from the shackles of distasteful contracts, inconvenient arrangements etc., the bending of ceiling laws (with the concurrence of concerned State Government) in the disposal of valuable surplus land, and access to cheap money from the financial institutions without the hassles of market loans. The spell is likely to be enjoyable, as long as the going is good, for those controlling a sick company but only for those who have burnt their fingers through transactions with it, protraction of the agony for whose rights against a company are kept in abeyance is undesirable if the company cannot be resuscitated within a period of two or three years from the date of its reference to BIFR.

Thus the provisions of this section may prove boon to the sick company but definitely curse to the creditors and those who are dealing or have dealt with the such company.

POWER OF POLICE TO ARREST

Azizur Rahman[1]

Article 21 of the Constitution of India guarantees right to life and personal liberty. The right can not be taken away except according to procedure established by law even of an offender.

Offender is he, who commits a crime. The main characteristics of crime have been discussed in P. Rathinam vs. Union, 1994 Cr.L.J. 1605 (S.C.) in the following words :-

(i) It is a harm, brought about by human conduct which the sovereign power in the state desires to prevent.

(ii) Among the measure of prevention selected is the threat of punishment, and

(iii) Legal proceedings of a special kind are employed to decide whether the person accused did in fact cause the harm, and is, according to law, to be held legally punishable for doing so. Protection of society is the basic reason of treating some acts as crime. Where there is no feeling of security there is no true freedom.

The offender is dealt with by Police. The role of Police in arrest and subsequent behaviour has always been under criticism. Supreme Court in Delhi Judicial Service Association v. State of Gujrat 1991 Supreme Court Journal 457 has explained the role of Police till now as follows :-

> "The main object of Police is to apprehend offender to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect the citizens' life and property. The law enjoins the Police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender.

The Supreme Court has further expressed, in the said citation, regret over the role of Police in the following words.

> "It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of Police Officer and Police excesses in dealing with the law and order situation have been the subject of adverse comments from this court as well as from other courts but it has failed to have any corrective effect on it. The

1 Addl. Distt. Judge, Ghaziabad.

> Police has power to arrest a person even without obtaining a warrant of arrest from a court. This amplitude of this power casts an obligation on the Police to take maximum care in exercising that Power. The Police must bear in mind, as held by this court that if a person is arrested for a crime his constitutional and fundamental rights must not be violated.

The Supreme Court in Sunil Batra versus Delhi Administration, A.I.R. 1979 (S.C.) page 1675 has also discussed the role of Police and has not approved it.

Thus in the changed circumstances law is not the property of very few. Every person must know the powers of Police in dealing with an arrested person.

Code of Criminal Procedure speaks of an "Officer Incharge of a Police Station" in its various Sections. The Officer Incharge of a Police Station has been defined in Section 2 (0) of the Criminal Procedure Code as follows :-

Section 2(0)

> "Officer Incharge of a Police Station includes when the officer incharge of the Police Station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to such officer and is above the rank of a constable or, when the State Government so directs, any other Police Officer so present."

An Officer of Railway Protection Force is not a Police Officer under this definition. Similarly officers of enforcement or custom officers are not Police Officer. It has been hold in Director of Enforcement vs. Deepak Mahajan, 1994 (1) Supreme Court Journal 599 as thus :-

"No doubt it is true that there is a series of decisions holding the view that an officer of enforcement or a custom officer is not a Police Officer vested with the Powers of arrest and other analogous power."

In this respect reliance can also he placed on Ramesh Chandra vs. The State of West Bengal, 1969 (2) S.C.R. 451, Illias vs. Collector of Customs Madras, 1969(2) S.C.R. 613 and Gadaku Jyota Sawant vs. State of Mysore, 1966 (3) S.C.R. 698.

The arrest in its ordinary and natural sense means the apprehension or restraint or the deprivation of one's personal liberty to keep a person under confinement. It may be by putting or actually touching the person in its custody depriving his personal liberty.

Police officer has been empowered to arrest a man without warrant or under warrant issued by a court of law, warrant of arrest received from outside the District.

Police officer while working without warrant has power u/s 41 of the Code of Criminal Procedure.

Section 41 reads as follows :-

Section 41

When police may arrest without warrant :-

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person :-

(a) Who has been concerned in any cognizable offence, or against whom a reasonable complaints has been made, or credible information has been received, or a reasonable suspicion exists, or his having been so concerned, or

(b) Who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person any implement of house-breaking; or

(c) Who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession any thing is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) Who obstructs a Police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ; or

(f) who is reasonably suspected of being a deserter from any of the Armed Force of the Union, or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who being a released convict, commits a breach of any rule made under Sub-section (5) of Section 356 ; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer provided that the

requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears, therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition;

(j) Any officer-incharge of a Police Station may, in like manner, arrest or cause to be arrested any person belonging to one or more of the catagories of persons specified in section 109 or Section 110.

The extent of jurisdiction of the Police u/s-41(1) (a) Cr.P.C. has been explained by the Hon'ble High Court in Anurag Barnwal vs. State, 1986 A.W.C. page 612 (D.B.) and Ram Lal Yadava v. State, 1989 J.I.C. page 177 (F.B.) as follows :-

"Section 41 (11) (a), Cr.P.C. thus confers powers on a police officer regarding the arrest of a person with respect to a cognizable offence. This statutory power is exercised by a Police officer during the investigation of a cognizable offence. It is a step in investigation as the accused is interrogated after his arrest and at times the interrogation of the accused leads to important discoveries which connect him with the crime and are admissible under section 27 of the Evidence Act and the involvement of other persons in the crime is also known. The power of the Police to arrest a person under Section 41, Cr.P.C. can not thus be interfered with by this Court in exercise of its inherent powers.

In our opinion the High Court has no inherent power under Section 482, Cr.P.C. to interfere with the arrest of a person by a police officer even in violation of Section 41 (1) (a) Cr.P.C. either when no offence is disclosed in the first information report or when the investigation is malafide, as the inherent powers of the Court to prevent the abuse of the process of the Court or to otherwise secure the ends of justice come into play only after the chargesheet has been filed in Court and not during investigation which may even be illegal and unauthorised. If the High Court is convinced that the power of arrest by a police officer will be exercised wrongly or malafide in violation of Section 41 (1) (a) Cr.P.C. the High Court can always issue a writ of Mandamus under Article 226 of the Constitution restraining the Police officer from misusing his legal power."

Section 50 of the Code directs the person arrested to be informed of grounds of arrest and of right to bail as follows :-

"Section 50 (1) every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest."

(2) "Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf."

Section 55 of the Code deals with the procedure when police officer deputes subordinates to arrest without warrant. Section 55 reads as follows :-

Section 55 (1) when any police officer incharge of the Police Station or any police officer making an investigation under chapter XII requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which he is arrested is to be made and the officer so required shall, before making the arrest, notify, to the person to be arrested the substance of the order and, if so required by such person, shall show him the order,"

In this provision the Police Officer making the investigation may also direct and depute any subordinate Police Officer by an order in writing to arrest without warrant any person wanted in a cognizable offence. Such subordinate Police Officer may be a Police Chaukidar also. It is necessary for the arresting Police Officer to notify, to the person to be arrested, the substance of the offence. In case such an arresting officer fails to comply the said requirements he may suffer resistance under right of private defence of life and property and it may not be an offence u/s 332 I.P.C. Various pronouncements have been made explaining such powers of Police.

In Shanna alias Lulla vs. State of U.P., 1986 U.P.Cr. Cases page 230 (Para-6), the Hon'ble Division Bench has observed in this respect as follows :-

"Section 50 (1) Cr.P.C. requires that every police officer arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other ground for such arrest. .....In this situation the detention of the prisoner is illegal."

The said position has also been explained in Mustaque Ahamad vs. State, 1986 U.P. Cr. Cases, page 2 that there is no material on the record to prove that in fact full particulars of the offence for which he was arrested were not communicated to him by the police or to say there was no entry in the general diary. In this case the appellant was caught red-handed at the time of occurrence and was taken to the Police Station. In these circumstances it can not be accepted that the appellant was not informed of the particulars of the offence for which he was arrested. In Subhash Bhandari vs. State, 1986 A.W.C. Page 1049, the General Diary entry records that the petitioners were informed about the crime registered against them and the ground of arrest. The entry obviously lacks the statement that the petitioners were informed of the full particulars of the

offence which normally included the name of the complainant and the date, time and place of alleged offence. .....In this situation it is difficult to accept that the compliance of the mandatory provision of section 50 of the Code of criminal Procedure was done and for that reason the detention of the petitioners has to be held illegal on this ground.

The consequence may arise from such illegal detention. The person may claim bail or damages in view of such illegal detention. In a matter relating to sections 50, 167 (2), 57 and 309 (2) of the Cr.P.C. and Article 22 of the Constitution, our Hon'ble Court held in Noor-Ul-Huda alias Nanka vs. Superintendent Central Jail, Naini and others, 1984 U.P. Criminal Cases, pages 37 (D.B.) as thus :-

> "In this regard, in our view, both the statutory illegality or constitutional illegality (meaning there by the violator of any provision of the Code of Criminal Procedure or any Article of the Constitution of India relating to the arrest or custody) stand at par and aggrieved person who regards himself to be the victim of illegal custody or detention in violation of statutory or constitutional provisions if advised, may be in claiming the damages."

The said right of arrested person provided u/s-50 and 55 has also been guaranteed by our constitution. Article 22 of the Constitution deals with such right of arrested person. It reads as thus :-

> "Article 22 (1) No person who is arrested shall be detained in custody without being informed as soon as may be of the grounds for such arrest nor shall he be deemed the right to commit, and to be defended by a legal practitioner of his choice.
>
> (2) Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest exclusive the time necessary for the journey from the place of arrest to the Court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate,"
>
> (3) Nothing in Clause (1) and (2) apply,
>
> (a) to any person who for the time being is any enemy alien or
>
> (b) to any person who is arrested or detained under any law providing for preventive detention and so on.....

The said provisions provide that the communication of full particular of the offences for which the accused is arrested or other ground for such arrest should be conveyed to such person in writing through "Police General Diary" or the "Memo" prepared by the Police. Merely informing the penal section in which arrest is made, is not enough but he must be informed of entire accusation. The

provision is mandatory and non-compliance to the procedure is treated to be prejudicial to the interest of the accused. It is also necessary because it facilitates him to prepare his defence before trial. The non-compliance of the procedure renders the arrest and detention illegal. In Rama Kant vs. State, 1988 A.Cr.R. 698 (Para-20) the Hon'ble Court held that the non-compliance of Article 22 (1) is not capable of being rectified as an irregularity in procedure. It reads as follows :-

> "The requirement of Article 22 (1) of the Constitution of India have been interfered by this court as far back as 1965 in the case of Vimal Kishan of State of U.P., A.I.R. 1965 Allahabad 56 to signify that although it is not necessary for the authorities to furnish full details of the offence but the information given to the arrested person should be sufficient enough to enable him to understand why he has been arrested and to that end should be somewhat similar to the charge framed by the court for the trial of a case. The view taken in Vimal Kishan's case was reiterated in the case of Gyan Chandra Gaur vs. State of U.P. Decided by this Court and in Subhash Bhandari's case (Supra). In this case of Ashok Kumar Singh vs. State of U.P., 1987 L.L.J. 273 it has been held that the constitutional flaw, for non-compliance of Act 22 (1) is not capable of being rectified as a irregularity in procedure."

In the instant case the General Diary contained that Rama Kant had been arrested according to procedure. This does not satisfy the requirements of Article 22 (1) of the Constitution and section 50 (1) of the Code of Criminal Procedure. Thus the detention of petitioner Rama Kant in the circumstances can not be sustained. He was directed to be set at liberty forthwith unless wanted in any other case.

In Rama Akbal Pandey v. Union of India and others, 1992 A.Cr.J. 315 (L.B.) in General Diary it was mentioned that accused met him and he was told the reasons of his arrest and then he was taken into custody. It was held that mere mention in the General Diary that reason for arrest were told to the petitioner at the time of his arrest was not sufficient compliance of section 50 of the Cr.P.C. and Article 22 of the Constitution of India. The bail thus was allowed.

In this respect reliance can also be placed on the case of Hazari Lal vs. State of U.P. and others, 1991 Lkw. L.J. page 230. In this case the sentence written in the General Diary was 'Abhiyukt ko giraftari ka karan va jamanat ka adhikar batakar hirasat me liya gaya." In this case it was held that petitioner's detention was illegal and unconstitutional and mere mention in the General Diary that reasons for arrest were told to the petitioner at the time of his arrest was not the sufficient compliance of provision of section 50 of the Code and Article 22 of the Constitution of India.

In Avadh Bihari vs. State of U.P., 1939 A.C.C. 593 (D.B.), also the effect of producing the accused for remand after the expiry of twenty four hours has been considered and the Hon'ble Court held the remand granted in contravention of Art. 22 of the Constitution and Section 167 of the Code is bad and the

petitioner can not be kept in detention in judicial custody hence the petitioner was allowed to be released forthwith.

The Police Officer has been further empowered to persue and reassert a person who escaped from lawful custody. Section 60 Cr.P.C. deals with it and it reads as follows :-

> "Section 60 (1) if a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India.
>
> (2) The provision of section 47 shall apply to arrest under Sub-section (1) although the person making such arrest is not acting under a warrant and is not a Police Officer having authority to arrest."
>
> The Police has also been empowered to arrest with a view to prevent the commission of a cognizable offence. Section 151 of the Code deals with it. It reads as follows :-
>
> Section 151 (1) :- A Police Officer knowing of a design to commit any cognizable offence may arrest, without order from a Magistrate and without a warrant the person so designing, if it appears to such officer that the commission of the offence can not be otherwise prevented."
>
> (2) No person arrested under Sub-section (1) shall be detained in custody for a period exceeding twenty four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force."

This power can be invoked where immediate action is required to check the offender to commit a cognizable offence and it can not otherwise be prevented. The section can not be invoked simply if it is likely to commit a breach of peace or disturb the Public tranquility. The 'apprehension' alone that such a man may commit cognizable offence is not a ground to arrest a man under this section. Chapter VIII deals with security for keeping the peace covering Section 106 to 124 of the Criminal Procedure Code. The object of these provisions are not to punish the person but to prevent against possible hazard to community as well as commission of crimes. There is no provision for investigation as contemplated in Chapter XII of the Code. Police has to submit a report alone to the Magistrate to initiate proceedings. The proceeding under this Chapter are criminal in nature but it does not relate to any offence.

In Director of Enforcement vs. Deepak Mahajan, 1994 (1) S.C.J. 599 it was held that :-

> "In all the above provisions of the Code, the word used is 'person' alone. That the person ordered to give security for keeping peace or to be of good behaviour are not persons accused of an offence. So

Section 436 is made inapplicable to the security proceedings as well as u/s-133, 144 and 145 of the Code."

The Police officer may arrest "Under warrant issued by the Court." The warrant so issued by the Court may he classified into bailable and nonbailable warrant. The bailable warrant has been explained u/s 71 of Cr.P.C. The Section requires that on such warrant an endorsement shall be made by the Court issuing a warrant. The number of sureties, the amount of bond of such sureties and at which time he is to attend the Court but before doing so the Police Officer has to notify the grounds of arrest and shall also show him the warrant as required u/s-75 Cr.P.C.

The Courts are authorised to issue non-bailable warrants. The said warrant may be issued in bailable offence as well as non-bailable offence. The Section 76 Cr.P.C. reads as follows :-

"Section 75 :- The Police Officer or other person executing a warrant of arrest shall (Subject to the Provision of Section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

Provided that such delay shall not, in any case, exceed 24 hours exclusive of the time necessary for the journey from place of arrest to the Magistrate's Courts."

The Police Officer as explained above has power to arrest accused of a cognizable offence "without warrant" and "under warrant of arrest of a competent Court.' They have also power to arrest to prevant the commission of a cognizable offence. So arrested a man can not be placed at a place of choice of such public officer but only at the Police Station.

Further Supreme Court in Prem Shankar Shukla vs. Delhi Administration AIR 1980 SC page 1535 has opposed handcuffing of a prisoner until there is reasonable apprehension of prisoner's escape from custody or disturbance of peace by violence. If any prisoner is handcuffed without justification it would violate the fundamental right under Articles 14 and 19 of the Constitution.

The victims of the police were not alone the down trodden or criminals but also very high ups. The police is also in habit of treating them with third degree method and humiliates them at occassions. A Contempt proceeding, where in the Chief Judicial Magistrate was arrested, assaulted and handcuffed, was reported in Delhi Judicial Service Association v. State of Gujrat, 1991 (3) Supreme Court Journal 456 at para 55. The Supreme Court herein laid guidelines to avoid any arrest and humiliation of Judicial Officer which could affect the administration of justice in future. The following guidelines were required to be followed :-

The facts of the instant case demonstrate that a presiding officer of a court may be arrested and humiliated on flimsy and manufactured

charges which could affect the Administration of justice. In order to avoid any such situation in future, we consider it necessary to lay of down guidelines which should be followed in the case of arrest and detention of a judicial Officer. No person whatsoever may be his rank designation is above law and he must face the penal consequence of infraction of criminal law. A Magistrate, Judge or any other Judicial Officer is liable to Criminal prosecution for an offence like any other citizen but in view of the paramount necessity of preserving the independance of judiciary and at the same time ensuring that infractions of law are properly investigated. We think that the following guidelines should be followed :-

(A) If a Judicial Officer is to be arrested for some offence, it should be done under intimation to the district Judge or the High Court as the case may be.

(B) If facts and circumstances necessitate the immediate arrest of a Judicial Officer to the Subordinate judiciary, a technical or formal arrest may be effected.

(C) The fact of such arrest should be immediately communicated to the District and Sessions Judge of concerned District and the Chief Justice of the High Court.

(D) The Judicial Officer so arrested shall not be taken to a Police Station without the prior order or direction of the District and Sessions Judge of the concerned District, if available.

(E) Immediate facilities shall be provided to the Judicial Officer for Communication with his family members, Legal Advisers and Judicial Officer, including the District and Sessions Judge.

(F) No statement of a Judicial Officer who is under arrest be recorded nor any Panchanama be drawn up nor any Medical Tests be conducted except in the presence of the Legal Adviser or another Judicial Officer of equal or higher rank, if available.

(G) There should be no handcuffing of a Judicial Officer. If however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be over-powered and cuffed. In such case, immediate report shall be made to the District and Sessions Judge concerned and also to the Chief Justice of the High Court. But the burden would be on the Police to establish the necessity for effecting physical arrest and handcuffing the Judicial Officer and if it be established that the physical arrest of handcuffing of the Judicial Officer was unjustified, the Police Officer causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally

liable for compensation and for damages as may be summarily determined by the High Court."

The said directions to police must not remain confined to a class of person. In Jogendra Kumar vs. State of U.P., 1994 Cr.L.J. page 1986 also Hon'ble Supreme Court has expressed certain guidelines as incident to personal liberty guaranteed under the Constitution of India for all those persons who have been arrested, in the following words :-

1. An Arrested person being held in custody is entitled, If he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

2. The police officer shall inform the arrested person when he is brought to the Police Station of this right.

3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22 (1) and enforced strictly.

It shall be the duty of the Magistrate before whom the arrested person is produced to satisfy himself that these requirements have been complied with.

The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the rights of the arrested persons found in the various Police Manuals.

These requirements are not exhaustive. The Directors General of Police of all the State in India shall issue necessary instructions requiring due observance of these requirements. In addition, departmental instruction shall also be issued that a Police Officer making an arrest should also record in the case diary, the reasons for making the arrest."

In case the said provisions and directions are complied with, it will strengthen the rule of law and the fundamental rights shall be safeguarded from the hands of police officer.

DEVELOPMENT OF LEGAL AID IN INDIA AND ITS ROLE AS A PANACEA FOR ERADICATION OF SOCIAL INJUSTICE

Tej Bahadur Singh[1]

(Continued from 8th & 9th issue)

According to Section 21: (1) Every award of the Lok Adalat shall be deemed to be a decree of a Civil Court or order of any other court or tribunal.....".

Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award. (Sub-section 2 of Section 21).

Legal Aid and Indian Constitution

In our Constitution there is ample provision regarding "Legal Aid", as Preamble of the Constitution ensures Social,Economic and Political justice to the people of the country.

The expression "Social Justice" embraces within its ambit a system of administration of justice which must provide a cheap, expeditious and effective instrument for realisation of justice by all sections of the people irrespective of their social or economic position or their financial resources.[2]

Article 14 provides that every person (rich or poor) is equal before law and entitled to equal protection of the law. But where an indigent person finds himself unable to knock the door of the court the pledge of Article 14 will go in vain.

According to Article 21, "No person shall be deprived of his life or personal liberty except according to procedure established by law". It is embodied in Article 21 of the Constitution that free legal service is an essential element of procedure established by law. In Suk Das v. Union Territory of Arunachal Pradesh[3], the Supreme Court expressed:

"Free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21."

Article 22 (1) adumbrates the concept of processual justice wherein the rich and poor have been given equal access to justice. In the words of Article 22

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1 Dy. Director (Admn.) J.T.R.I. (U.P.), Lucknow.

2 Babu Ram V. Raghunath Ji Maharaj, AIR 1976 SC 1734 (Para 1).

3 (1986) 2 SCC 401 (Para 5).

(1); "No person who is arrested shall be detained in custody without being informed as soon as may be of the grounds for such arrest nor shall he be denied the right to consult and to be defended by a Legal Practitioner of his choice".

This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the state is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the provision of such lawyer.[4]

Article 38 says that it is the duty of state to maintain social, economic and Political justice. Likewise Article 46 of Indian Constitution also throws duty on the State to promote educational and economic interest of Scheduled Castes and Scheduled Tribes and weaker sections of the Society and it is also the duty of the state to protect them from social injustice. A question even strikes in mind, whether these bare provisions are sufficient to enable the economically handicapped persons to get equal justice. I think no. It is possible only when efforts be made to bring awareness among the poor and legal aid be provided to them.

The question of legal aid to the indigent persons remained for a long time a subject of academic discussion but in 1976 by 42nd amendment a new article 39A was incorporated in Constitution which provides for equal justice and free legal aid to the poor.

Besides this there are a number of entries in the legislative list which empower the Union and the State Government to make legislation for providing legal assistance to the indigent persons. These entries are, entries 77 and 78 in union list concerned with 'persons entitled to practice before the Supreme Court and High Courts'; entries 2 and 13 in concurrent list concerned with 'Code of Criminal Procedure and Civil Procedure' ; entry 11A in concurrent list concerned with 'Administration of Justice, constitution and organisation of all court, except the Supreme Court and the High Courts' ; entry 20 in concurrent list concerned with 'Economic and Social Planning'; entry 23 in concurrent list concerned with 'social security; entry 24 in concurrent list concerned with 'welfare of labour including conditions of work etc.; entry 26 in concurrent list concerned with 'legal and other professions."

In addition to this there is a residue entry that is 97 in Union list which may cover the matter not mentioned in lists II or III. Expert Committee suggested

"All these solemn undertakings can not be honoured without the active technology and task force of large scale and multiform legal aid."[5]

4 Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1369 (1374-75).

5 Report of the Expert Committee on Legal Aid, Processual justice to the people (1973), p. 1.

Provisions of Legal Aid in Procedural Laws

Provisions under Civil Procedure Code

Order 33 of Civil Procedure Code, 1908 is a good example which enables the poor persons to approach to the Court of Law. A plaintiff suing in a civil court must pay the court fee prescribed by law. But a person who is poor and is not in a position to pay the Court fee, Order 33 enables such person to bring and prosecute the suit without payment of court fees at the initial stage.

Rules 9A, 17 and 18 of Order 33 are very relevant in this context.

In short, Rule 9A of Order 33 empowers the court to assign a pleader to an unrepresented indigent person.

Rule 17 of the Order 33 empowers the indigent defendant to plead a claim of set-off or counter claim.

Rule 18 of Order 33 authorizes the Government to provide for free legal services to an indigent person.

The High Court may, with the previous approval of the State Government, make rules for carrying out the supplementary provisions made by the Central or State Government for providing free legal services to indigent persons referred to in sub-rule (1): (Rule 18 (2)).

Order 44 of Civil Procedure Code deals with the appeal by indigent person.

Provisions under Criminal Procedure Code

In Criminal Procedure Code it is statutory obligation of the State to provide legal aid to the accused in session trial cases. Sub-sec. (1) of Sec. 304 provides : "where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

Section 304 (2) empowers the High Court to frame rules with previous approval of the State Government providing for the mode of selecting pleaders for defence as mentioned in Sub-section (1).

Not only in session trial cases but State is empowered to provide legal aids, by notification in all cases.[6]

In Janardhan Reddy v. State of Hyderabad[7] the Supreme Court held that it cannot be laid down as a rule of law that in every capital case where the accused is unrepresented, the trial should be held to be vitiated.

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6 Section 304 (3) of Criminal Procedure Code, 1973.

7 AIR 1951 SC 217.

In Tara Singh v. The State,[8] the Supreme Court observed: "The right conferred by Sec. 340 (1) does not extend to a right in an accused person to be provided with a lawyer by the state or by the police or by the Magistrate. That is a privilege given to him and it is his duty to ask for a lawyer if he wants to engage one and to engage one himself or get his relations to engage one for him. The only duty cast on the Magistrate is to afford him the necessary opportunity." But now the position is different. In several cases the Hon'ble Supreme Court has recognised the right to be provided free legal service as a fundamental right[9] of the indigent accused person who is unable to engage a lawyer.

Thus it is evident from the above that the plant of 'Legal Aid' has been sown in our country. But it remains for us, government, judiciary and voluntary organisations to nurture it.

Legal Aid and Judicial Activism

Legal aid is an attempt to give justice to poor and its denial implies failure of democratic values and of rule of law itself.

Legal aid in India has reconciled with the emerging needs and problems of the disadvantaged of the Society and is making sincere efforts to ensure the access to justice for majority of the population. Oliver Goldsmith said : "Laws grind the poor, rich men rule the law". The saying might be true of his own time but now it is not exactly true.

There are several cases wherein Hon'ble the Supreme Court has injected life into law. In the famous case of Bidi Supply Co. v. Union of India[10] Justice Vivian Bose has observed:

> " I am clear that the Constitution is not for the exclusive benefit of Governments and States; it is not only for lawyers and politicians and officials and those highly placed. It also exists for the common man, for the poor and the humble, for those who have businesses at stake, for the "butcher, the baker and the candlestick maker...."

In Chairman Board of Mining examination v. Ramjee, AIR 1977 SC 965, Justice Krishna Iyer observed :

> " Law is meant to serve the living and does not beat its abstract wings in the jural void. Its functional fulfilment as social engineering depends on its sensitised response to situation, subject matter and the complex of realities which require ordered control....."

Philosophically legal aid owes its genesis to the 'Law' itself. It is intention behind every legal norms to protect the interest of community. While describing the nature of 'Law" the Supreme Court has expressed:

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8 AIR 1951 SC 441.

9 Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1369; Khabi v. State of Bihar, AIR 1981 SC 928; Suk Das v. Union Territory, AIR 1986 SC 991.

10 AIR 1956 SC 479 (487).

"Law must be precise, simple, clear, comprehensive and there is a duty on the law-maker at every level not to injure the community by tangled webs of rules, orders and notifications whose meaning is revealed only through transcendental meditation or constant litigation....."[11]

Before the emergence of Public Interest Litigation, justice was a remote reality for the mass of illiterate, under-privileged and exploited persons in the country and justice was being administered on the pattern of Anglo-saxon jurisprudence i.e. each party to the case produces his own evidence tested by cross examination by the opposite party and the Judge decides the case only on the basis of material produced before him by both parties. But the question is, whether by this adversarial procedure justice can be given to those illiterate, under privileged and exploited persons whose fundamental rights are being infringed for years. The simple answer is 'No'. In order to give justice to such striving masses public interest litigation (Social interest litigation) came into existence.

Prisoner has also right to seek justice from prison authorities; and for the purpose he is entitled to legal aid. The famous case on the point is Sunil Batra v. Delhi Administration,[12] wherein Hon'ble the Supreme Court held :

'Legal aid shall be given to prisoners to seek justice from prison authorities, and, if need be, to challenge the decision in court in cases where they are too poor to secure on their own. If lawyer's services are not given, the decisional process becomes unfair and unreasonable, especially because the rule of law perishes for a disabled prisoner if counsel is unapproachable and beyond purchase. By and large, prisoners are poor, lacking legal literacy, under the trembling control of the jailor, at his mercy as it were, and unable to meet relations or friends to take legal action. Where a remedy is all but dead the right lives only in print. Article 39A is relevant in the context. Article 19 will be violated in such a case as the process will be unreasonable. Article 21 will be infringed since the procedure is unfair and is arbitrary."

In Khatri and others v. State of Bihar[13] Supreme Court observed.

"The State is under a constitutional obligation to provide free legal services to an indigent accused not only at the stage of trial but also at the stage when he is first produced before the magistrate as also when he is remanded from time to time.

But even this right to free legal services would be illusory for an indigent accused unless the Magistrate or the Sessions Judge before whom he is produced informs him of such right. The Magistrate or the Sessions Judge before whom the accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of lawyer on account of

11 N.K. Chauhan v. State of Gujrat, AIR 1977 SC 251 (254).

12 (1978) 4 SCC 494 (Paras 120, 197B).

13 (1981) 1 SCC 627 (Paras 5, 6)

poverty or indigence, he is entitled to obtain free legal services at the cost of the State."

In Peoples Union for Democratic Rights v. Union India,[14] the Apex Court has laid down:

"Those who are decrying public interest litigation do not seem to realise that courts are not meant only for the rich and the well-to-do, for the landlord and the gentry for the business magnate and the industrial tycoon, but they exist also for the poor and the downtrodden the have not and the handicapped and the half-hungry millions of our countrymen .....The time has now come when the courts must become the courts for the poor and struggling masses of this country. They must shed their character as upholders of the established order and the status quo. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations....."

In Kishore Chand v. State of Himanchal Pradesh,[15] the Supreme Court held :

"Assigning an experienced defence cannot to an indigent accused is a facet of fair procedure and an inbuilt right to liberty and life envisaged under Articles 14, 19 and 21 of the Constitution. Weaker the person accused of an offence, greater the caution and higher the responsibility of the law enforcement agencies."

In Tyron nazareth v. State of Goa[16] the accused was not represented before the trial court by a lawyer and he was convicted and sentenced to 10 years R.I. and fine of Rs. 1 lakh. The conviction and sentence were confirmed by the High Court. The Supreme Court was of the opinion that in the absence of a lawyer the accused was deprived of the opportunity of making effective defence before the trial court. The conviction and sentence were accordingly set aside and the case was remanded to the trial court for de novo trial with the direction.

In case of State of Maharashtra v. Manubhai Pragaji Vashi,[17] Supreme Court held that the right of free legal aid and speedy trial are guaranteed fundamental rights under Article 21..... The principles contained in Article 39A are fundamental and cast a duty on the State to secure that the operation of the legal system promotes justice on the basis of equal opportunities and further mandates to provide free legal aid in any way-by legislation or otherwise, so that justice is not denied to any citizen by reason of economic or other disabilities.

In this way above discussion reveals that 'Legal Aid' is like a medicine which acts as a panacea for eradication of 'Social Injustice' that is not less than any serious disease.

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14 AIR 1982 SC 1473 (1478) ; See also S.P. Gupta v. Union of India, AIR 1982 S.C. 149.

15 (1991) 1 SCC 286 at p. 287.

16 1994 (Supp.) (3) SCC 321.

17 AIR 1996 SC 1.

QUIZ No. 6 : Result

The correct solution to Quiz No. 6 is as follows :

1. (a) Union of India v. Shree Ganesh Steel Rolling Mills Co. Ltd. (1996) 8 SCC 347.

   (b) Yes

2. (a) 4

   (b) 5

   (c) 8

   (d) 9

   (e) 2

   (f) 3

   (g) 1

   (h) 10

   (i) 6

   (j) 7

3. Babbar Sweing Machine Co. v. T.N. Mahajan (1978) 4 SCC 188 (para 17).

4 (a) Chief Constable of North Wales Police v. Evans (1982) 2 All ER 141.

   (b) State of M. P. v. M.V. Vyavsaya, (1997) 1 SCC 156 (besides several other cases).

5. (a) Yes

   (b) State of U.P. v. T.P. Lal Srivastava (1996) 10 SCC 702 also Adavala Sathaiah v. Sp. Dy. Collector (1997) 1 SCC 130;

   Shimla Dev. Auth. V. Santosh Sharma, (1997) 2 SCC 637

6. (a) The averments in the plaint.

   (b) Materials which may be produced by the parties at appropriate stage in the suit.

   (c) State of Orissa v. Klockner & Co., (1996) 8 SCC 377.

7. (a) Secretary JDA v. Daulat Mal, (1997) 1 SCC 35;

   (b) Yadunandan v. State of Rajasthan, (1996) 1 SCC 334;

(c) Gursharan Singh v. N.D.M.C. (1996) 2 SCC 459;

(d) Coromandel Fertilizers Ltd. v. Union of India, 1984 (Supp). SCC 657; and many others.

8. (a) For instance, if an enactment is extended to a territory by a notification by Government in exercises of its power of "conditional legislation", that notification cannot be modified, as held in Lachmi Narayan v. Union of India, (1976) 2 SCC 953.

Another example would be that of nomination of members of Rajya Sabha or State Legislative Council by the President/Governor. After a nomination has been made it cannot be cancelled or changed.

(b) The General Clauses Act 1897 governs Central enactments only.

9. (a) Nair Service Society v. Rev. Father Alexander, AIR 1968 SC 1165, followed recently in Bihari Lal v. Bhuri Devi . (1997) 2 SCC 279.

(b) Sirse Municipality v. C.K.F. Tellis, (1973) 1 SCC 409.

(c) Bakhtawar Singh v. Gurdeo Singh, (1996) 9 SCC 370.

The highest scorers were Sarvasri V.K. Maheshwari, Special Judge, Balveer Prasad, Civil Judge (S.D.) and Rajvir Sharma, Civil Judge (S.D.) : 94/100 marks each, (Q. 3 not attempted; rest all correct).

The runners up are Sarvasri R.P. Verma, Civil Judge (S.D.) and Anoop Kumar Goel, Civil Judge (J.D.) with 74 marks each.

Heartiest congratulations to all winners, Keep it up, Quiz or no Quiz.

The Quiz is being suspended for the present. It can be re-started on two conditions.

(1) a sizeable number of officers expressing their wish to take part, and.

(2) prize money being available.

Thanks, and au revoir.

K.N. Goyal

INSTITUTE NEWS*

U.C. Dhyani†

The Institute has three coordinated wings, mainly – The Training, The Research and the Publication supplemented by seminars, conferences, workshops cultural, sports and yoga activities.

I. Training Activities

Training of Judges is a highly specialised subject where the emphasis is on participation and interaction. Training is not only a philosophy, it is an article of faith. The time rolls on and when it changes, every institution has to change and refashion its policy. Accordingly training in this premier institute is a planned process to modify attitude, knowledge, skill or behaviour through horizontal learning to achieve effective performance in an activity. We strive in the work situation to develop the abilities of the individual and to satisfy current and future manpower needs of the judicial institution.

Systems approach to training of Judges proceeds from identifying training needs to planning and designing training programme, implementing training programme, assessing results and lastly, the performance problems. Training here is a systematic process, a branch of learning, complete in itself.

Details of training programmes organised by the institute during 1997-98 is laid below.

Training Programmes Organised by the Institute during 1997-98

3.2.97-5.4.97	Foundation Training Programme of Civil Judges (J.D.)
7.4.97 –11.4.97	Refresher Training Programme for A.P.Os.
19.4.97 – 24.4.97	Trainer's Training Programme
28.4.97 – 24.5.97	Refresher Training Programme of Civil Judges (J.D.)
9.6.97 – 13.6.97	Refresher Training Programmes for A.P.Os.
17.6.97 – 21.6.97	Refresher Training Programme of Nationalised Banks/Govt. Undertaking Law Officers
24.6.97 – 27.6.97	Refresher Training Programme of D.G.C. (Cri.)
15.7.97 – 27.8.97	Refresher Training Programme of Civil Judges (J.D.)

† Deputy Director (Training), I.J.T.R., U.P., Lucknow.

9.9.97 – 14.9.97	Finance Management for District Judges
16.9.97 – 19.9.97	Finance Management for District Judges
4.10.97 – 8.10.97	Finance Management for Addl. District Judges
12.11.97 – 1.12.97	Capsule Course for Judges, Family Courts
6.1.98 – 10.1.98	Capsule Course for A.D.Js. on Land Acquisition : Practice & Procedure
16.1.98 – 13.2.98	Foundation Training Programme of A.P.Os.
27.2.98 – 23.3.98	Foundation Training Programme of A.P.Os.
16.4.98 –23.5.98	Foundation Training Programme of Civil Judges (J.D.) of Delhi Judicial Service

In training programmes case study, discussion sessions, exercises and syndicate studies were used extensively to make the discussion more effective, background material was given before the discussion. This helped the trainees to develop the skills in analysing methods and decision making, in addition to equip them in writing orders and judgments. The objective behind it is to produce hard working, honest, sincere and devoted judges by persuasive methodology.

Every effort was made to bring changes in the attitude of judges. For the beginners, knowledge oriented programme worked well but for in service participants, attitudinal changes were a must. It is true that the old habits die hard but we tried to bring attitudinal transformation in the cadre for the survival of the system. We might have undertaken lesser number of judges in the training programme but what ever we produced we introduced in them the qualitative changes befitting to the spirit of judges.

Quality legal training in legal subjects not covered in the university, skills, attitudes and capacities that enable the participants to become conscious subjects of their growth and active responsible participants in a systematic process is also an object. The refresher courses were organised for removing judicial obstinacy, judicial cynicism and judicial skepticism from the personality of the judges and to expose them to modern legal ideas.

The broad theme in the Foundation courses included the following amongst other things in progression and according to suitability or feasibility;

a. Perceptional, motivational and communicational problems.

b. Goal orientation, result orientation, team building, leadership, Court management, crisis management including management of men and materials besides managing stress and educational situations.

c. Body management, mind management, time management, stress management.

d. Value based programme on attitudinal changes.

e. Transactional and game analysis.

f. Sociological, behavioural and philosophical jurisprudence.

g. Exposure to local laws of a state.

h. Court manners, behaviour and etiquettes.

i. Yoga, Naturalisation and value based programme methology in practice.

In the training programmes organised by the Institute in the last year emphasis was laid on skill oriented training and attitudinal training. This was very clear in our minds that unless the attitude of the judicial officers is correlated to the job and the skills shared the institution of judiciary might not get the desired result on work culture. Supplementing that, value based programme on attitudinal change was the sine-qua-non of judicial training. A perceptible change in the attitudes of the persons manning posts in judicial hierarchies was intended to brought about, because, with correct skills sans attitudinal ethics, a clever person becomes cleverer and a meat eater might turn a cannibal. Trainer's training programme was also organised by the Institute from 19.4.97 to 24.4.97 and the Director of the Institute Sri D.P. Varshney took up all the sessions single handedly. Skill oriented training de hors attitudinal change may backfire and may play havoc on the system and also may create disaster. The concept of the attitudinal change controls and regulates the reigns of skill orientation and that is why the ethical contents are introduced and supplanted to the skill oriented training programmes.

On the practical side, the exercises were given on all kinds of suits on the civil side and all type of cases in the criminal side and the cumulative performance of a trainee was evaluated on the basis of the marking collected by him. The principle to proceed with such exercise was from 'known to unknown' from 'simple to complex' and from 'practice to theory'. That way first a simple money suit, then a suit for malicious prosecution, followed by injunction, possession and specific performance suits were given in that order. Intensive and fruitful discussion, had taken place, which were directly proportional to the sharpening of judicial decision making skills.

The techniques employed in attitudinal and behavioural programmes were games, simulations and exercises besides role plays and sensitivity training with extensive use of audio-visual aids.

The techniques and methodologies employed in skill oriented programmes were workshops, case studies, group discussions, syndicates, seminars, and symposiums, with a minimum use of the out dated lecture technique which is of a non participative and non productive nature.

The following programme are proposed to be conducted in the current financial year.

Tentative Training Calendar, 1998 (July, 1998 to March, 1999).

14 July to 18 Aug., 98	Refresher Training Programme of Civil Judges (Junior Div.)
21 July to 19 Aug., 98	Refresher Training Programme of Addl. District Judges
27 Aug. to 25 Sept., 98	Refresher Training Programme of Civil Judges (J.D.)
3 Sept. to 21 Sept., 98	Professional Training Programme on Legislative Drafting and Conveyancing
6 Oct. to 13 Nov., 98	Refresher Training Programme of Civil Judges (J.D.)
10 Oct., 1998	National Level Seminar on Docket explosion : Causes & Remedies
7 Oct. to 20 Nov., 98	Refresher Training Programme of Civil Judges (S.D.)
27 Nov. to 24 Dec., 98	Refresher Training Programme of Civil Judges (J.D.)
10 Dec. to 9 Feb., 99	Foundation Training Programme of newly recruited Direct H.J.S. Officers
12 Jan. to 15 Feb., 99	Refresher Training Programme of Civil Judges (J.D.)
13 Feb., 99	National/International Level Seminar on Court Management
19 Feb. to 26 March, 99	Refresher Training Programme of Newly Promoted Addl. District Judges
23 Feb., to 27 March, 99	Refresher Training Programme of Civil Judges (J.D.)

This Institute specialises in conducting assessment of job-requirements, training needs, designing and management of training programmes to cater to the needs of various levels of Distt. Judicial Organisation.

The IJTR believes in quality and strives to retain and upgrade constantly its reputation as a premier Institute of the country in the area of judicial decision making by its participants.

II. Research Activities

The institute has full fledged developed research faculty. In the last financial year 1997-98 two research projects have been completed, for which interim report was submitted to Govt. of India, Ministry of Welfare, New Delhi. These projects related to impact study of SC/ST and PCR Acts as below:

(i) Evaluation study on the scheme of legal aid to persons under the protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Acts, 1989.

(ii) Evaluation study on the scheme of relief and Rehabitation provided to the SCs and STs, victims of Atrocities.

Both these researches included data collection from Lucknow and Barabanki in Uttar Pradesh and Gwalior and Bhopal Distt. of Madhya Pradesh. Enumerators were also utilised to assist in collection of data.

On the doctrinal side of research following write ups were prepared;

1. Judgments in rem
2. Child labour abuse in India.
3. Legal research and methodology.
4. Green jurisprudence.
5. Development of legal aid in India.

These research write ups were subsequently given the shape of brochure for wider circulation, being of practical utility.

Added to it, under the able stewardship of the Director of the Institute, the collective faculty team worked out amendments in Civil Procedure Code to be submitted to Law Commission of India through the Hon'ble High Court. Similarly replies to the questionnaire were prepared to be submitted to the First National Judicial Pay Commission.

Research faculty planning for the year 1998-99 is as below:

(1) To prepare a comprehensive research plan subject to the approval of Hon'ble High Court and to be submitted to state government.

(2) To do research work at least on four topics as approved Laws delays and back log of cases is the prime problem requiring solution through research.

(3) Human Right violations have world wide focus and year 1995 to 2004, being declared as Human Rights decade, two more doctrinal researches,

are to be conducted relating to Human Right education awareness, and challenges.

III. Publication Activities

The Institute has been publishing 'JTRI Journal' and Quarterly 'Digest' and the following issues have been published during the last financial year.

(1) JTRI Journal Gender Justice special issue.

(2) Quarterly Digest- April, 1997

(3) Quarterly Digest-January, 1998

The Quarterly Digest contains the substance of the latest cases decided by the Hon'ble Supreme Court and Hon'ble Allahabad High Court by its full bench and the Division Benches "JTRI Journal' contained articles on Gender Justice. It will be pertinent to note here that the International Seminar on 'Gender and Law' was organised by this Institute on November 11, 1997 in collaboration with British Council Division. In which Ms. Ann Stewart of Warwick University, U.K. participated and similarly on March 21, 1998 seminar on 'Gender Justice and the Girl Child' was organised by the Institute in which Hon'ble Justice Ms. Sujata V. Manohar of Supreme Court of India was the Chief Guest. The Gender Justice special issue of JTRI Journal was an endeavour to commemorate the theme of above seminars.

The following issues of 'JTRI Journal' and 'Quarterly Digest' are proposed to be published in the current year.

(a) JTRI Journal-June, 98 Sept., 98 Dec., 98 & March. 99

(b) Quarterly Digest-April,98 July, 98 Oct. 98 & Jan., 99.

Emphasis is laid on timely publication of the above issues and their circulation among the members of the judicial fraternity.

Seminars, Conferences & Workshops

On 14.9.97 Seminar was organised on 14.9.97 on "Stress and strains confronting Distt. Judiciary" with Hon'ble Mr. Justice K.J. Shetty, the Chairman of the First National Judicial Pay Commission as the Chief Guest and Hon'ble Mr. Justice D.P.Mohapatra the Chief Justice of Allahabad High Court presided over. Thereafter on 8-9.11.97 Dr. Ann Stewart of warwick university presided the group discussion, workshop and seminar on the 'Gender and Law' Officers of District Judge level all over the country participated & cooperated.

The next seminar was organised on 21.3.98 on 'Gender Justice and the girl child" with Hon'ble Justice Ms. Sujata V. Manohar, of Supreme Court of India as the Chief Guest.

Dignitaries

Visits of high dignitaries like Hon'ble Mr. Justice M. Badruzzaman,

Director General, Judicial Administration Training Institute, Dhaka (Bangla Desh), Dr. Ann Stewart of Warwick University (U.K.) Mr. Vijay Kumar Bharadwaj, Advisor to Chief Judge, Alberta, Canada, Dr. D.K. Agarwal Attorney at Law (Canada) apart from the visits of Hon'ble JusticeMs. Sujata V. Monohar of Supreme Court of India, Hon'ble Mr. Justice K.J.Shetty, Chairman, First National Judicial Pay Commission, Hon'ble Mr. Justice D.P. Mohapatra, the Chief Justice of Allahabad High Court, Hon'ble Judges of the High Courts, Hon'ble Mr. Justice Rama Rao, Director General of Andhra Pradesh Judicial Academy, Hyderabad and also its Director Mr. T.C.H. Surya Rao and Hon'ble speaker of the U.P. Legislative Assembly Mr. Keshari Nath Tripathi were the major events of 1997-98.

Other Activities

The Institute has been full of sports and cultural activities round the year. Sprawling 31 acre building complex of the institute gives the look of stadium provided the Rain God is kind enough not to wash out the pitch, the arena, the ground, the Court and the alike situated in its campus. Its picturesque building and imposing infrastructure is second to none in the Country. Friendly Cricket Matches were played between the participants on one side, and faculty & staff of the Institute on the other side quite frequently and the running shields was awarded to the winning teams by the chief guests witnessing the occasion. Republic day, Independence Day and Gandhi Jayanti - all National Days were celebrated with enthusiasm, patriotic-fervour, amity and gaiety followed by speeches and sports activities. Cultural evenings were organised in the courses of training programmes and mostly on the penultimate days of the conclusion of long or short term duration courses.

DIRECTOR'S MISCELLANY

I- JTRI – A MILESTONE OF PROGRESS

IJTR is a modernistic apparatus for judicial training but what is more important is that it is in heavy demand for having broken new ground in the matter of (judicial) training and employee development professionalism of the justice department. As a matter of fact judicial training is probably one of the most difficult specialisation areas under the umbrella of human resource development management. Having ventured into the forays of this sensitive area, we increasingly hear of IJTR as an organisation instituting exclusive judicial training. Here Judges have downed the apparel of training managers and have taken crucial portfolios on judicial employee development programmes and their roles are getting more and more enriched with each passing day. The IJTR faculty has taken it upon its shoulders a responsibility for enabling the process of competency building in the judicial organisation in the State of U.P. in particular and all over the country in general – something no other judicial Institute has so far thought of.

Training at the I.J.T.R. has come a long way and has a new focus – no more tutor cantered but learner-center. It aspires, like out research wing to some extent, to transcend the barriers of space-moving out of classrooms to adventurous outdoors where travels through new media-books will be replaced by computers. CD rooms and the internet. Trainers here have already transformed themselves into facilitate and helpers. And more than anything else, for the judicial organisation, training has imbibed a new meaning. It is no longer a luxurious paid holiday. It is also not a cost centre that gets slashed during a resource crunch. It has a bottomline orientation and is born out of goals an objectives of the judicial department working in close co-ordination with performance objectives and policy structures laid down by the top functionaries of the department.

As we go along, we intend to raise more and more curtains to reveal new training initiatives and unfold experiential learning technologies.

Future trends in judicial training are intended to touch upon methods of training delivery system, so as to usher in an exciting Hi-Tech. Training Programme smooth as clock work which would be more than a mere bag of tricks in personality development of the judicial personnel. The IJTR hopes to shine the light on the learning managers and the rank and file of the judicial Department, with blessings of all concerned, in a future not too distant. The milestone shall never turn into a touchstone, we promise.

2- Reaction of Training Experience - D J Gyanpur Writes

Respected Bhai Saheb,

We are proud that you are discharging your duty so magnificently as Directors of the institute. It is your personality that now, Director is an independent and supreme authority in the institute having full discretion to manage affairs of the institute. Every person having concern with the institute or Judges of U.P. Judiciary and the Hon'ble Court have words of praise for your integrity and devotion to duty in furthering the cause of our training institute.

Dt. 26.12.97

Yours sincerely,

(K.N. Ojha)

Distt. Judge