Judicial Miscellany

Institute of Judicial Training & Research
Uttar Pradesh
1/19, Vishwas Khand-1, Gomti Nagar, Lucknow—226016

PREFACE

As part of this Institute's programme of continuing training of judicial officers of the State we have been circulating among them from time to time lectures delivered at this Institute and also other reading material. In this anthology we have mainly compiled lectures delivered at this Institute at the refresher course for seniormost additional District Judges which was the first conducted by us. Some lectures delivered at subsequent courses and lectures delivered elsewhere have also been included. It is hoped that this compilation will be found useful by the offiicers. Several lectures and articles comprised in this volume will be found of interest to honourable judges of the High Court as well.

Unfortunately in this book the number of printing mistakes is disproportionately high. We have, however, got a fairly comprehensive errata added.

K. N. GOYAL
Retired Judge, Allahabad High Court
Honorary Director

Institute of Judicial Training &
Research, U.P.
1/19, Vishwas Khand-- 1,
Gomti Nagar,
LUCKNOW--226016.

Printed by
Star Print Service
Rajaji Puram, Lucknow
Phone : 53421

ERRATA

page No.

1. 5th line from the bottom: for "strategic" read "strategies".
3. 2nd line: for "a judicial officer" read "the judicial officers".
3. 16th line: for "upod" read "upon".
5. 8th line : for "oppressed" read "oppressor".
6. 7th line from the bottom: for "educationlists" read "educationists".
6. 5th line from the bottom: for "teaming" read "teeming".
7. 19th line: for "abrest" read "abreast".
7. 19th line: for "devolopment" read "development".
7. 4th line from the bottom: for "canfidence" read "confidence".
9. 15th line from the bottom: for "Addititional" read "Additional".
10. 23rd line: for "is" read "are".
11. 15th line from the bottom: for "then" read "than".
11. 7th line from the bottom: for "comes" read "come".
12. 14th line from the bottom : for "of" read "or".
14. Ist line: for "plan" read "plans".
14. 7th line: for "Getlemen" read "Gentlemen".
16. 8th line: for "auxillary" read "auxiliary".
16. 10th line: for "prohibition" read "execution".
16. 14th line: for "ro" read "to".
16. 11th line from the bottom: for "discretionarv" read "discretionary".
17. 3rd line: for "discipline" read "disciplined".
17. 15th line: for "as a deterrents" read "as deterrents".
18. 5th line from the bottom: for "Haphazared" read "Haphazard".
18. 5th line from the bottom: for "listing or" read "listing of".
19. Last line: for "enjoy" read "enjoys".
19. Last line: for "yoy" read "you".
21. 4th line: for "see" read "sea".
21. 12th line: for "required" read "required".
21. 15th line: for "vituperative" read "vituperative".
22. 9th line: for "loss" read "lose".
22. 10th line: for "is" read "are".
22. 10th line from the bottom: for "the" read "they".
23. 10th line: for "oue" read "one".
24. 9th line: for "scruting" read "scrutiny".
24. 29th line: for "constitutionally" read "constitutionality".
25. Ist line: for "discriminately" read "discriminatory".
25. 10th line: for "mid-directed" read "misdirected".
25. 23rd line : for "dominent" read "dominant".
25. 15th line from the bottom: for "decision" read "decisions".

Page No.

25. 14th line from the bottom : for "what" read "that".
26. 4th line : for "detriment" read "detrimental".
26. 13th line : for "or" read "of".
26. 14th line : for "become" read "became".
26. 12th line from the bottom : for "bar not" read "bar would not".
27. 13th line : for "discrition" read "discretion".
27. 15th line : for "demonstrate" read "demonstrates".
27. 20th line : for "or principle" read "of principle".
28. 17th line : for "enquity" read "equity".
28. 4th line from the bottom : for "dowery" read "dowry".
29. 7th line : for "provisions" read "provision".
29. 9th line : for "struck" read "strike".
29. 18th line : for "manoewring" read "manoeuvring".
29. 12th line from the bottom : for "walfare" read "welfare".
29. 11th line from the bottom : for "developmeut" read "development".
29. 8th line from the bottom : for "contentes" read "contents".
29. 8th line from the bottom : for "equlity" read "equality".
29. 5th line from the bottom : for "striking" read "striking".
29. Last but one line : for "on" read "an".
36. 18th line: for "Baroda" read "Barada".
37. 19th line : for "judges" read "judge".
37. 27th line: for "subjct" read "subject".
38. 1st line : for "2" read "3".
38. Last but one line : for "humantey" read "humanly".
40. 14th line : for "sittiug" read "sitting".
41. 16th line : for "contumner" read "contemner".
41. 17th line : for "and once" read "at once".
41. 18th line : for "as" read "on".
41. 3rd line from the bottom : for "Canada in" read "Canadian".
42. 18th line : for "set a rest" read "set at rest".
42. 8th line from the bottom : for "deal" read "deals".
42. 4th line from the bottom : for "person" read "presence".
43. 6th line : for "interupted" read "interrupted".
43. 13th line : for "interuption" read "interruption".
43. 14th line : for "judidial" read "judicial".
43. 20th line : for "compementary" read "complementary".
43. 10th line from the bottom : for "answer the such question as put" read "answer such questions as are put".
43. 10th line from the bottom : for "or any" read "or to produce any".
43. 7th line from the bottom : for "concerned" read "consents".

Page No.

43. 5th line from the bottom : for "Sections 345 and Section 345" read "Sections 345 and 349, Section 345".
43. 3rd line from the bottom : for "person" read "presence".
43. 3rd line from the bottom : for "346" read "349".
43. Last but one line : for "regardiag" read "regarding".
44. 8th line : for "Court which" read "Court to which".
44. 8th line : for "appellable" read "appealable".
44. 11th line : for "Cr. P. C." read "C.P.C.".
44. 14th line : for "Cr. P. C." read "C.P.C.".
44. 22nd line : for "of Court when" read "of Courts Act when".
44. 26th line : for "also such" read "also order such".
44. 29th line : for "Cr. P. C." read "C.P.C."
44. 30th line : for "Cr. P.C." read "C.P.C."
44. 32nd line : for "performance for" read "performance of a contractor for".
45. 9th line : for "intended or" read "intended to".
46. 5th line : for "amendmont" read "amendment".
46. 15th line : for "Supereme" read "Supreme".
46. 16th line : for "Suprme" read "Supreme".
46. 10th line from the bottom : for "Supercession" read "Supersession".
47. 4th line: for "published" read "punished".
47. 7th line : for "utter by" read "utterly".
47. 14th line from the bottom : for "Mulgakar's Case" read "Mulgaonkar's Case".
47. 5th line from the bottom : for "profection" read "protection".
49. 12th line : for "fo" read "for".
50. 9th line from the bottom : for "Luckow" read "Lucknow".
51. 26th line : for "rules" read "rulers".
53. 5th line : for "Judge" read "Judges".
53. 20th line : for "defence" read "deference".
53. 21st line : for "Welcome" read "Welcom".
54. 14th line from the bottom : for "Rae" read "Rai".
55. 12th line : for "controvercy" read "controversy".
65. 5th line from the bottom : for "avoides" read "avoids".
65. Last line : for "proivosion" read "provision".
67. 2nd line : for "an" read "and".
67. 3rd line : for "adequtate" read "adequate".
67. 12th line : for "lhe" read "the".
67. 15th line : for "of" read "or".
68. 1st line : for "endavour" read "endeavour".

Page No.

70. 9th line from the bottom : for "expaned" read "expanded".
72. 13th line : for "Americcan" read "American".
72. 19th line : for "judical" read "judicial".
73. 6th line : for "to" read "too".
73. 15th line from the bottom : for "suspicsion" read "suspicion".
77. 11th line : for "delisnquent" read "delinquent".
78. 8th line from the bottom : for "wreak" read "wreck".
78. Last line : for "other" read "order".
81. 6th line from the bottom : for "Supreme is" read "Supreme Court is".
82. 1st line : for "even the in case" read "even in the case".
87. 11th line from the bottom : for "whould" read "would".
91. 11th line : for "anh" read "and".
91. 19th line : for "245" read "246".
91. 6th line from the bottom : for "Concurrenl" read "Concurrent".
93. 28th line : for "cnacted" read "enacted".
94. 9th line : for "avoiding" read "validating".
94. 13th line : for "perpose" read "purpose".
95. 10th line : for "gamot" read "gamut".
96. 6th line : for "Keshwanda" read "Keshawanand".
97. 9th line from the bottom : for "Maopil Nair" read "Moopil Nair".
97. 8th line from the bottom : for "tex" read "tax".
97. 7th line from the bottom : for "competance" read "competence".
97. 5th line from the bottom : for "mus" read "must".
98. 15th line : for "Dehli" read "Delhi".
98. 20th line : for "No" raed "Now".
99. 2nd line : for "tne" read "the".
99. 11th line: for "our" read "an".
99. 20th line : for "lake" read "late".
99. 28th line : for "still boon" read "still born".
100. 11th line : for "But a when" read "But when".
100. 13th line : for "legislature" read "legislative".
101. 9th line : for "Dehli" read "Delhi".
102. 5th line : for "Dehli" read "Delhi".
103. 11th line : for "raige" read "range".
103. 6th line from the bottom : for "action" read "auction".
104. 9th line : for "dtscharge" read "discharge".
104. 28th line : for "closer" read "close".
104. 8th line from the bottom : for "lands" read "tends".
106. 16th line : for "injustice" read "justice".
106. 8th line from the bottom : for "escher" read "eschew".

Page No.

106. 4th line from the bottom : for "admisnitrative" read "administrative".
106. 4th line from the bottom : for "then" read "thin".
107. 5th line : for "are may him" read "wemay refer".
107. 8th line : for "reoson" read "reason".
107. 8th line : for "partaining" read "pertaining".
107. 17th line : for "there" read "them".
107. 18th line : for "tribouals" read "tribunals".
107. 22nd line : for "andi" read "audi".
107. 25th line : for "more" read "mere".
107. Last line : words "It was held that" are not to be read.
108. 5th line from the bottom : for "constantug" read "constant tug".
108. Last but one line : for "defendent" read "defendant".
110. 3rd line : for "ef" read "of".
110. 21st line : for word "I" is not to be read.
113. 6th line : for "to" read "too".
113. 31st line : for "carring" read "caring".
114. 5th line : for "evidece" read "evidence".
115. 6th line : for "or pleadings" read "of pleadings".
116. Last line : for "Parctice" read "practice".
117. 6th line : for "demasenour" read "demeanour".
118. 3rd line : for "knowlege" read "knowledge".
119. Heading : for "LAGISLATIVE" read "LEGISLATIVE".
119. 7th line : for "the back" read "on the back".
120. 17th line : for "intended" read "intended".
123. Last line : for "obsolate" read "obsolete".
124. 17th line : for "privisions" read "provisions".
124. 26th line : for "undestanding" read "understanding".
124. 35th line : for "vechicles" read "vehicles".
125. 1st line : for "imcomplete" read "incmplete".
126. Heading, 4th line : for "SECRETARY" read "SPECIAL SECRETARY"
126. 14th line from the bottom : for "dwelve" read "dwell".
126. 7th line from the bottom : for "Sessions Judge" read "and Sessions Judge".
128. 8th line : for "brickering" read "bickering".
128. 16th line : for "intere se" read "inter se".
128. 4th line from the bottom : for "tinest" read "tiniest".
129. 25th line : for "duell" read "dwell".
129. 30th & 36th line : for "courtious" read "courteous".
131. 15th line : for "deprived total" read "deprived of total".
133. 8th line : for "there" read "their".

Page No.

133. 3rd line from the bottom : for "distinictive" read "distinctive".
134. 23rd line : for "juridiction" read "jurisdiction".
135. 19th line : for "or" read "of".
136. 28th line : for "discuss" read "discussion".
137. 19th line : for "given the" read 'given in the".
137. 15th line : for "confess" read "confers".
138. 15th line : for "Shankaracharyn" read "Shankaracharya".
138. 30th line : for "protcreted" read "protected".
139. 8th line : for "autuority" read "authority".
141. 5th line : for "and secret" read "in secret".
141. 10th line : for "privileges" read "privilege".
143. 13th line : for "obtaining" read "prevailing".
144. 20th line : for "1958" read "1986".
144. Last but one line : for "community" read "immunity".
145. 21st line : for "Soliman" read "Soloman".
146. 3rd line : for "Courts" read "Court".
147. 23rd line : for "petititioner" read "petitioner".
147. 30th line : for "as the" read "as he".
148. 21st & 22nd line : for "Kerela" read "Kerala".
148. 22nd line : for "Karela" read "Kerala".
150. 18th line : for "Adultaration" read "Adulteration".
151. Ist line : for "अपने" read "अपनी"
151. 19th line : for "desciplinary" read "disciplinary".
152. 22nd line : for "वक्त-बे-वक्त" read "वक्त-बे-वक्त".
152. 27th line : for "में" read "मैं".
153. 25th line : for "अर्थ" read "अर्थ".
154. 4th line : for "उनमें" read "उनसे".
154. 15th line : for "ओर" read "और".
154. 17th line : "or" read "of".
154. 19th line : for "स्टाप" read "स्टाफ".
154. 21st line : For "rutine" read "routine".
154. 27th line : for "बिरादरी" read "बिरादरी".
155. 32nd line : for "बजट" read "बजट".
155. Last line : for "अवसर" read "अवसर".
158. 17th line : for "को" read "की".
161. 15th line : for "मनभेदों" read "मतभेदों".
161. 16th line : for "समलाया" read "समझाया".
162. 8th line : for "माममों" read "मामलों".
164. 12th line : for "को" read "की".
167. 2nd line : for "कार्य विवरण" read "का विवरण".

Page No.

169. Last but one line : for "of" read "or".
172. 15th line from the bo.tom : for "पिटीशन" read "पिटीशन".
178. 32th line : for "तदनुसार आवश्यकद्" read "तदनुसार आवश्यक".
182. 6th line : for "आवश्यकताए" read "आवश्यकताएँ".
182. 23rd,25th and 26th line : for "सवार्धिक" read "सामाधिक".
183 25th line : for "सवाम्व" read "सामाम्व".
188. 8th line : for "उक्त" read "उत्तर".
188. 8th line : for "आदेश के" read "आदेश 8 के".
188. 17th line : for "conjusion" read "confusion".
188. 20th line : for "बाद" read "बाद".
189. 13th line : for "सचि" read "साक्षी".
189. 22nd line : for "मध्यम" read "माध्यम".
191. 9th line : for "प्रस्तर के" read "प्रस्तर में".
191. 14th line : for "सुसंगत" read "सुसंगति".
193. 16th line : for "casual" read "causal".
193. 27th line, heading : for "ANALSIS" read "ANALYSIS".
194. 11th line : for "quality is" read "quality of".
195. 6th line : for "findings" read "findings".
196. 25th line : for "pererntage" read "percentage".
201. 2nd line : for "techipues" read "techniques".
203. Heading, 4th line : for "REMEBRANCER" read "REMEMB RANCER".
203. 23rd line : for "controvercy" read "controversy".
203. 26th line : for "controvercy" read "controversy".
204. 9th & 10th line : for "probisions" read "provisions".
204. 12th line : for "an its" read "and its".
205. 23rd line : for "an" read "in".
207. 8th line : for "effect" read "affect".
208. Ist line : for "supermacy" read "supremacy".
211. 3rd line : for "to" read "no".
211. 5th line : for "no" read "to".
211. 7th line : for "has" read "had".
216. 14th line : for "trubulent" read "turbulent".
222. 28th line : for "delievered" read "delivered".
222. 28th line : for "papular" read "popular".
223. 30th line : for "leter" read "latet".
229. 15th line : for "conscious" read "conscious".
232. Ist & 16th line : for "by" read "be".
232. Last line : for "judges" read "judge's".
233. 13th line : for "adversly" read "adversely".

Page No.

235. 3rd line : for "predominatly" read "predominantly".
235. 11th line : for "41" read "no 41".
235. 19th line : for "combines" read "combined".
238. 6th line from the bottom : for "exclusieve" read "exclusive".
239. 11th line : for "justice" read "justice".
241. 9th line : for "Selection" read "Selection".
241. 10th line : for "intergrity" read "integrity".
242 1st line : for intergrity" read "integrity".
244. 21st line : for "sate" read "state".
244. 24th line : for "effciency" read "efficiency".
245. 17th line, heading : for "Explantory" read "Explanatory".
248. 22nd line : for "appearanecs" read "appearances".
251. 5th Line from the bottom : for "professioual" read "professional".
253. 3rd Line : for "economical" read "economic".
253. Last but one line : for "these" read "those".
253. Last line : for "facilitates" read "facilitate".
254. 7th line : for "apparrnent" read "apparent".
254. 29th line : for "prorogative" read "prerogative".
254. 34th line : for "on" read "or".
254. 34th line : for "persen" read "person".
255. 1st line : for "his" read "its".
255. 10th line : for "In case Kraipak's" read "In Kraipak's case".
256. 29th line : for "he" read "she".
256. 31st & 32nd lines : for "of the vitiated" read "of the Board was vitiated"
259. 13th line : for "procedure" read "passport".
260. 26th line : for "Develepment" read "Development".
265. 23rd line : for "fundumental rights" read "fundamental rights".
266 19th line : "principle of natural" read "principles of natural".
270. 7th line from the bottom, heading : for "Dritation" read "Dictation".
271. 4th line : for "realy" read "really".
275. 21st line : for "by dressed" read "dressed".
276. 6th line : for "justice" read "injustice".
278. 13th line : for "odjourned" read "odjourned".
279. 2nd line : for "belive" read "believe".
280. 26th line : for "One" read "Once".
281. 10th line : for "she" read "the".
282. 1st line : for "in the judicial career of the judicial career of the judge" read "in the judicial career of the judge".
283. 19th line : for "defeat" read "defect".
284. 10th line : for "seems" read "seem".

Page No.

284. 14th line : for "offerred" read "offered".
284. 15th line : for "workship" read "worship".
285. 33rd line : for "scruting" read "scrutiny".
286. 14th line : for "the work unrepressented" read "the unrepresented".
286. 18th line : for "in" read "is".
286. 23rd line : for "sesential" read "essential".
286. 38th line : for "atmosbere" read "atmosphere".
287. 17th line : for "protection" read "protraction".
288. 25th Line : for "Assistance Judge" read "Assistant Judge".
288. Last Line : for "material" read "marital".
290. 7th line : for "top-rotchers" read "top-notchers"
290. 13th line : for "Bareare" read "Bar are".
290. 27th line : for "Transforms" read "Transfers".
292. 27th line : for "gests" read "gets".
295. 2nd line : for "ituation" read "situation".
295. 2nd line : for "doe" read "does".
295. 3rd line : for "f" read "of".
295. 5th line : for "effic ent" read "efficient".
295. 5th line : for "his" read "this".
295. 7th line : for "wor" read "work".
295. 7th line : for "neglec" read "neglect".
295. 9th line : for "ad" read "had".
295. 10th line : for "scrut ny" read "scrutiny".
295. 11th line : for "h w" read "how".
295. 11th line : for "deta ted" read "detected".
295. 12th line : for "comin o" read "coming to".
295. 13th line : for "mor ing" read "morning".
295. 13th line : for "a" read "an".
295. 13th line : for "earl er" read "earlie".
295. 14th line : for "do not w rk" read "do the work".
295. 15th line : for "start d" read "started".
295, 16th line : for "ot er" read "other".
295, 17th line : for "th" read "the".
295, 29th line : for "wheh" read "when".
295, 35th line : for "evey" read "every".
296, 30th line : for "pan" read "pan".
299, 14th line : for "ilkely" read "likely".
300, 25th line : for "sourec" read "source"
301, 13th line : for "head" read "heed".
303, 13th line : for "actirg" read "acting".
303, 20th line : for "recouse" read "recourse".
304, 17th line : for "shonld" read "should".

Page No.

307, 2nd line : for "committisd" read "committed".
308, 24th line : for "public an" read "public and".
309, 18th line : for "adusive" read "abusive".
310, 4th line from the bottom : for "mistake" read "mistake":
310, Last line : for "Is" read "is".
311, Last but one line : for "reports read "purports".
313, 12th line : for "engage" read "engage".
315, 1st line : for "undrestood" read "understood".
315, 33rd line : for "expreesed" read "expressed".
316, 13th line : for "form" read "forum".
316, 37th line : for "Reforms" read "Reforms".
317, 4th line : for "hc" read "he".
317, 16th line : for "Civi" read "Civil".
318, 6th line : for "triably" read "triable".
318, 18th line : for "Civil" read "Revenue".
319, 24th line : for "pessession" read "possession".
319, 24th line : for "argicultural" read "agricultural".
319, 26th line : for "trespsser" read "trespasser";
319, 27th and 28th line : for "considerattion" read "consideration".
320, 11th line : for "aferesaid" read "aforesaid".
320, 30th line : for "Mewais" read "Mewa's".
321, 17th line : for "as" read "a".
321, 23rd line : for "of and constructions" read "of constructions"
322, 6th line : for "demolition" read "construction".
322, 12th line : for "elief" read "relief".
322, 12th line : for "demclition" read "demolition".
322, 36th line : for "Se" read "Section".
323, 9th line : for "auit" read "suit".
323, 14th line : for "he" read "be"
323, 18th line : for "Zaidun" read "Zaibun".
323, 38th line : for "necessacy" read "necessary".
324, 5th line : for "nctually" read "actually".
324, 11th line : for "over the possession" read "over the disputed".
324, 14th line : for "transction" read "transaction".
324, 31st Line : for "Jagamba Prased" read "Jagdamba Prasad"
328, 19th line : for "orderrs" read "orders".
328, 27th line : for "Land" read "and".
329, 6th line : for "declase" read "declare".
329, 23rd line : for "declarc" read "declare".
330, 6th line : for "outed" read "ousted".
330, 23rd line : for "ignorned" read "ignored".

Page No.

330, 23rd line : for "get" read "got".
330, 35th line : for "a" read "as".
331, 35th line : for "ancellary" read "ancillary".
331, 36th line : for "incorrcsecetness" read "incorrectness".
331, 40th line : for "considared" read "considered".
332, Ist line : for "under-" read "understood".
332, 3rd Line : for "to stood entertain" read "to entertain".
335, 16th line : for "or" read "of".
337, 30th line : for "if" read "it".
340, 10th line : for "cancept" read "concept".

———

CONTENTS

Preface

Errata

1. Presidential Address — 1
   Hon'ble Mr Justice K. Jagannatha Shetty, Judge Supreme Court (then Chief Justice of Allahabad High Court)
2. Address at Inaugural Function — 6
   Hon'ble Mr Justice D.N. Jha, Ex-Chief Justice Allahabad High Court (then Senior Judge)
3. Valedictory Address — 9
   Hon'ble Mr Justice Amitav Banerji, Chief Justice Allahabad High Court (then Senior Judge)
4. Duties and Functions of District Judges — 15
   Hon'ble Mr Justice K.C. Agrawal
5. Writ Jurisdiction — 24
   Hon'ble Mr Justice R.M. Sahai
6. Contempt of Court — 31
   Hon'ble Mr Justice U.C. Srivastava
7. Development of Administrative Law in Post Independence India — 50
   Hon'ble Mr Justice K.N. Goyal,
   Hon. Director Institute of Judicial Training and Research, U.P. (formerly, Judge Allahabad High Court)
8. The Bar and the Bench at the District Level — 57
   Hon'ble Mr Justice K.N. Goyal.
9. Powers of Appellate and Revisional Courts (Civil) — 62
   Hon'ble Mr Justice S.D. Agarwal
10. Social Justice and Judiciary — 66
    Hon'ble Mr Justice S.D. Agarwal
11. Doctrine of Bias with Reference to Administrative and Judicial Decisions — 73
    Hon'ble Mr Justice V.K. Mehrotra, Judge Himachal Pradesh High Court (then Judge Allahabad High Court)
12. Modern Management Techniques in the Courts — 83
    Hon'ble Dr Justice B.N. Misra
13. Constitutional Limitations on Executive and Legislative Actions — 89
    Hon'ble Mr Justice B.D. Agarwal (Retd).
14. Role of a Judge in Expeditious Disposal of Cases — 108
    Hon'ble Mr Justice O.P. Mehrotra
15. Legislative Drafting — 119
    Hon'ble Mr Justice G.B. Singh
16. Role of District Judge- Relations among judicial officers and with court officials and members of the bar. — 126

Sri K. L. Sharma, Special Secretary-cum-Additional Legal Remembrancer to U.P. Govt.

17. Privileges of the Legislature with Special Reference to Judiciary 133
Sri N. K. Narang, Joint Secretary-cum-Joint Legal Remembrancer (Parliamentary Affairs) to U. P. Govt.

18 जिला न्यायाधीश द्वारा प्रशासनिक नियंत्रण न्यायमूर्ति श्री ओम प्रकाश मेहरोत्रा 150

19. लोक अदालत योजना 158
Hon'ble Mr Justice R. C. Dev Sharma (Retd.) Administative Chairman, U.P. Legal Aid and Advice Board, U.P.

20. अपराध एवं विज्ञान 182
रण बहादुर सिंह, निदेशक, विधि विज्ञान प्रयोगशाला उत्तर प्रदेश ।

21. निर्णय लेखन 188
न्यायमूर्ति श्री कमलेश्वर नाथ

22. Management of Judicial System 193
Sri J K. Mathur, District Judge

23. Delegated Legislation 203
Sri A.K. Srivastava, Joint Secretary-cum-Joint Legal Remembrancer to U. P. Govt.

24. An Independent Judiciary-Pressures & Problems in the Lawasia Region 208
Mr Fali S. Nariman, Senior Advocate, Supreme Court

25. Principles of Natural Justice 253
Hon'ble Dr Justice R.R. Misra

26. Manners and Etiquette for Judicial Officer in Court 273
Hon'ble Mr Justice U. C. Srivastava

27. Some Aspects of the Responsibility and Personality of a Judge 279
Hon'ble Mr Justice Y.V. Joshi (Retd. Judge Bombay High Court)

28. Protection of Judges; Contempt of Court 302
Hon'ble Mr Justice V. K. Mehrotra.

29. Bar of Jurisdiction of Civil Courts in Revenue and Consolidation Cases. 315
Hon'ble Mr Justice K. N. Misra

30. Basic Features of the Constitution 333
Hon'ble Mr Justice K. C. Agrawal

Presidential Address

DELIVERED BY

HON'BLE MR. K. JAGANNATHA SHETTY, CHIEF JUSTICE

(High Court of U. P.)

[Now Judge, Supreme Court of India]

ON

25th April, 1987

ON THE OCCASION OF

Inauguration of

INSTITUTE FOR JUDICIAL TRAINING AND RESEARCH LUCKNOW.

At the outset, I must thank the Hon'ble Chief Minister for sanctioning this "Institute for Judicial Training and Research". This is a unique Institution which I have been dreaming of for the past several years and I am glad that it has come true in this State. This Institute is of multi-purpose. Firstly, it serves as a training ground for fresh recruits. Secondly it could provide refresher courses to those who are in service. Thirdly it could give training or refresher course for Government Counsel and for employees in courts. In fact, no other State so far has established such an Institute. The Institute has a good and dynamic director though Honorary. He has devoted all his attention for the establishment of this Institute. I thank him also for all the work he has done. I hope the judicial fraternity will take the maximum benefit from this Institute.

It is not in dispute and indeed, is the firm conclusion of all the knowledgeable persons all over the world that in addition to initial training, periodical refresher courses are absolutely necessary for updating one's knowledge. It is also necessary to absorb and assimilate new techniques. Apart from the benefit of training, mere interaction among persons with exchange of ideas would be useful. It is through such interaction, knowledge is acquired, experience is gained and strategic are evolved to improve the administration.

So far as the administration of justice is concerned, it is an art. Mere knowledge of the law may not be sufficient. We cannot afford to learn that art at the expense of and prejudice to the litigant public. That is

why the Law Commission repeatedly stressed the need to impart practical training to Judicial Officers.

In the 54th Report : 53.8, the Law Commission has observed :

> "The quality and output of work of Judicial Officers will, to a great extent, depend not only on the mental and intellectual equipment which they possess, but also on their ideals and sense of service. The State should therefore, do its maximum to ensure that they enter on their duties with the best of equipment and with the highest sense of service."

The Law Commission in the said Report also suggested the subjects for training :

43. 15 :

> "The subjects to be included should be such as to deal with the relationship of law to other social sciences, including in particular, economics and sociology. The emphasis should not be on technical law or procedure, but on law as a part of an interdisciplinary study on the application of the law to the facts of a particular case."

This kind of training for judicial officers in the interdisciplinary study is necessary because, the administration of justice involves innumerable problems and it requires wisdom and not mere intelligence. Wisdom, the deepening of the intellect is more than mere intelligence. It includes the comprehension of the effects of decisions. It includes the knowledge in the fullest sense of learning, legal and general. Mere study of law alone cannot give this required wisdom. We must not be oblivious of the fact, that legal philosophy is but one branch of learning. There are other branches of learning of equal importance as well. We must study those branches also particularly, History, Economics and Sociology. Some are, however, of the opinion that we get every thing from the case stated in the pleadings and the evidence produced by the parties. It is wrong to assume so. We could see only the fragments of social problems through the narrow windows of litigation. The justice may suffer if we do not understand the gamut of the problem behind the case before the court. For that we must possess sufficient knowledge of problems of society and facts of life which we could get only from other branches of learning.

This Institute must also take up correspondence course to our judicial officers. All important judgments pronounced by the High Court, which are relevant to the administration of justice in subordinate Courts should be

digested and sent to all the judicial officers at least once a month. Such a course would be highly useful to a judicial officer for updating their knowledge.

The various cannons and decisions prescribe many admonitions as to judicial behaviour and indicate the scope and limit of judicial activity. I may briefly summarise : A Judge should not be swayed by partisan demand or public clamour. He should not be guided by personal popularity nor should he be apprehensive of unjust criticism. He should be studious and courteous. He should be patient and punctual. He should be just and impartial.

Bracton in the 13th Century wrote :

> "Let not one, who is unwise and unlearned, ascend the judgment seat, which is, as it were, the throne of God.....

The judicial work is not like a Collector's work said a learned man "The Collector's work is like a woman's work—It is never done". At any hour of the day or night, the Collector may be called upod to act. He serves several masters and has to satisfy several demands. But the Judge serves only one master, that is the mandate of law. He satisfies only one demand that is the demand to bring justice or to remove injustice, He need not to run after several masters. He must, however, keep his life disciplined. He must keep his conscious pure and clean. He must be blind to favour or prejudices, but clear to see where the truth lies. The work in Courts is not purely mechanical. The cases do not always proceed on set lines. There is no limit to the variety of new situations which can arise in human relationship. No court and no judge made precedents can provide guidance to all situations. Nor can any fixed formula furnish solution. It is in such situations, for which there is no guidelines or precedents, that the personality of the judge would be of assistance. That is why a pioneer in legal sociology Engene Ehrlich said : "that the ultimate guarantee of justice in a court of law is the personality of the Judge". You must develop such a personality.

I may now deal with the part you have to play in the Courts. In our system of administration of justice, the whole burden of the trial cannot be assumed by counsel. The responsibility equally lies with the judicial officers who preside over the Courts. The counsel are engaged to assist us in administering justice. Your function is, therefore, just not to accept the argument of one side and reject the argument of the other. You cannot afford to sit quietly by and see a manifest wrong done. It is your right and also duty to unfold the ramifications of the case. You must use every bit of your experience and should, if possible, elicit additional facts so as

to bring out the nugget of truth. You must use your hind sight to go beyond the conflicting versions of rival parties.

The system of administration of justice which we have in this country is basically similar to those administered in the United Kingdom, United States, Australia, Canada and a number of other countries. The common complaint against this system is as to delay in disposal of cases. We must, therefore, see that unnecessary delay is not caused in the trial of the cases. I may now give you some tips in this regard :

(i) The delay is caused generally at the stage of issuing summons. Long delay takes place in getting service effected upon the defendants. You should closely watch the work of the Process servers. There should be a close monitoring of their work. Stringent and prompt action should be taken against process servers who are making false reports.

(ii) Likewise, judicious use of the provisions of Order 11 C. P. C. (Discovery and inspection of documents) and Order 12 C. P. C. (Admission) could considerably narrow down the area of controversy and avoid delay in disposal of cases.

(iii) Arguments should be heard soon after the close of evidence. Before the arguments, you must go through the file and understand what the controversy is in the case. This would enable you to cut down the lengthy arguments from the Bar. You should not go on hearing leaning backward on your seat. You must always bend forward, and listen attentively. Take down the notes of submission by counsel. That will help you to produce better judgment.

Never stop at your first draft of the judgment. Always go through it. See how it reads and re-readit. Correct and recorrect it. Does not matter how many times, till you are satisfied that it is accurate and clear to the reader.

In small towns if you are posted, you would be the centre of attraction. Sometimes you come into contact with the public in the Court or in public functions. When they meet you, and when they exchange words with you, you have to understand their inner motives that inspire their actions and approaches. Beware you have to guard yourself from their seemingly innocent actions and approaches. One wrong step by you in their company

may land you in life long misery. Best way is to keep every body at a respectable distance. Have one standard both in Court and in your private life. Be sympathetic to the poor and oppressed. Have a close scrutiny of the legal aid brief coming before you. Let not justice suffer for want of proper drafting or want of proper arguments in such case since such cases are generally handled by junior lawyers. Use the power given to you to protect the weak against strong and to protect the innocent against the oppressed. Never deviate from the chosen path.

Remember always the oath taken by you in assuming office. Nowadays oath is taken as a licence by witnesses to state falsehood in Courts. Solemnity of oath is not adhered to. Some judicial officers appear to forget its solemnity. I can just give one advice as to what importance it should be given and how it has to be adhered to : it should become a part of life.

Before I conclude, I must thank Honorary Director and officers of the Institute for giving me this opportunity to address you. This Institute will have the full support of the High Court. Hon'ble judges have agreed to give lectures to trainees. A large number of Hon'ble Judges have come to attend this inaugural function in this hot summer and despite the inconvenience of accommodation at this place.

With all the good wishes of mine and my wife, to the Institute, and to the trainees of the refresher course, let me thank you again. Jai Hind.

———

Address of

HON'BLE MR. JUSTICE D. N. JHA, THEN SENIOR JUDGE,

AT THE INAUGURAL FUNCTION

ON

April 25, 1987

The training and development in legal profession is destined to play a significant role in the social and economic development of the country. The training helps to develop skilled personnel who can effectively render service in the field of activity. Improvement of training and continuing education at all levels enhances organisational effectiveness as well as facilitates persons to realise their full potential in the world of working.

Aristotle had said that liberties of the public look upon the Judges as living justice. They are indeed accepted by personification of legal order. It is upon the Judges that this representative responsibiltiy falls in our society. Whenever a Judge fails in integrity, energy, objectivity or patience his failure is observial. An untrained person in the profession, devoid of professional and moral qualification can destory the image of the institution of justice. The technique and method taught in the class room with respect to subject matter turns out to be inadequate without proper training in profession. The legal education may equip an individual with harmony but if a person is unaware of its proper use at proper occasion he would stand to lose in a legal battle.

Legal education, in my opinion, is an important factor in creating social order founded on the values of socio-economic justice. Freedom and equal opportunity tends to accelerate the economic development, progress and prosperity of a country. The momentum of economic and political changes in India in the past two decades has dampened the conflict between traditional and modern environments and exposed the contradictions with developing society. Let the legal educationlists, jurists, legal technocrats and all those responsible for legal education must unite and rise to the occasion to meet the aspirations of the teaming millions of India. The shortage of trained legal personnel and failure on the part of legal technocrats to evolve an appropriate system of legal education in our environment and absence of relevant operating courses has resulted in marked lack of legal values. The technocrats cannot lose sight of national stream of Indian

realities. To solve the national problem they look upon foreign laws for guidance. It is really doubtful that such scholars can solve the modern challenges. The country is in need of scholars eminence who have creative thinking and are possessed of legal technology and at the same time are also devoted to solve the emerging national problems in order to achieve national aims and objectives in the changing socio-economic environment. The society expects them to realise their social responsibility and use their academic learning in the national interest.

The society today is becoming more complicated and the tremendous multiplication of legislation promulgated from time to time to regulate various aspects of society, require dependence on professional experts. Therefore, there is necessity of training personnel in judiciary.

No programme of continuing legal education for the district judiciary exists in this country. It is only for the new entrants in the profession that there existed training schools where they were trained to handle their professional task. There was no scope for educating them on ethical values of legal profession and that is why the ethical values are gradually dissipating. It is, therefore, necessary that a person who joins the district judiciary is made abrest of current legal literature and devolopment. He should be made to participate in continuing legal education programmes concerning all branches of law, behavioural science and moral development.

In short, at all levels the personnel have to be trained so as to aid the profession in advancing highest possible standards of integrity and competence.

A refresher course at all promotional levels for a very short duration can be organised and it should be manned by dedicated technocrats. It is, therefore, necessary that members of the district judiciary must be bred with public approach.

To be a good Judge one may not always be possessed of a brilliant academic background, but he must agree to work hard, know and assimilate the basic principles and tenets of law. He should be capable to maintain high and honest standards in the profession. There is no machinery to ascertain whether a particular law graduate who enters the service, is mentally fit for this profession. Certain young officers at times after a lapse of few years feel completely frustrated and start losing canfidence in the whole system and also on their capabilities. One must bear in mind the well known dictum :—

"It is the essence of democracy to obey no master but the law."

The members of district judiciary have to act and behave like priests in this temple of justice. They have to serve and aid in the administration of justice to maintain liberty upon which the safety of the society depends.

The country, therefore, needs men of ability, spirit and sacrifice and not idlers who fritter away their energies in frivolities. The members of the district judiciary are cream of the people who constantly and closely have to work with other substratum of society. The equipments in a nutshell, therefore, of the member of the judiciary should be :—

1. He should take note of the changing conditions and equip himself accordingly.
2. He should be taught to think in terms of broad nationalism and to work for the uplift, oneness and unity of the country as a whole.
3. He should get out from the shackles of narrow exclusiveness, groupism, casteism, parochialism and provincialism.
4. He must realise that he as a citizen owes a heavy duty to the society in which he lives. He must remember that duty is the perfect subordination of self constituted authority.
5. He must develop self confidence and firm faith in future ambition. He should learn not to perish on the rocks of frustration.
6. He must be trained to develop comradeship and brotherhood. He must be trained not to be unmindful of extending due respect to his senior colleagues.
7. Lastly, he must be taught to learn to avoid sharp practices.

A member of judiciary requires to be trained to have appreciation of his inner power. The creative power in a Judge requires training so that he may be able to serve the nation and to get best out of life.

———

Valedictory Address by :

HON'BLE MR. JUSTICE AMITAV BANERJI,

AT THE CONCLUSION OF THE REFRESHER COURSE

AT THE STATE INSTITUTE OF JUDICIAL TRAINING, LUCKNOW.

on Saturday the 23rd May, 1987.

Mr. Chairman, State Institute of Judicial Training, Mr. Justice V. K. Mehrotra, distinguished guests, officers of the Higher Judicial Service and Nyayik Sewa and trainees, of the Refresher Course.

I have great pleasure to be here this afternoon to be with you. I have great happiness that the first ever Refresher Course comes to an end this evening after three weeks of intense lectures and discussions I am particularly happy that you have gone through this course under the able guidance of the Chairman, Brother K. N. Goyal. I do feel that you have had enough hours of patient listening in this Course and you have to sit through another speech, but then every good thing must come to an end someday—and today is that day and it is also necessary that it ends well too. I propose to dwell on certain aspects, which I feel is my duty to tell you.

I was actively associated with the scheme and programme of this Refresher Course for Senior Addititional District Judges. This course was mooted with a view to strengthen the hands of our District Judges in their judicial and administrative work. Court management for the District Judge has become a specialised work. District Judges have to discharge the functions of a civil court, a sessions court, as administrative head of the judiciary in the District, paterfamilias to the members of the judicial fraternity in the District, as administrative head of the Court employees and has constantly to deal with the Bar, the litigants the district administration and the Registrar of the High Court. His is a multi-dimensional role and he needs expert advice on court management. Even in his work in Court he has to allocate jurisdiction and work to all officers under him, look after the work of the administrative office, accounts, Nazarat, and further inspect Courts and offices in the judgeship, besides keep an eye over the building and properties, houses etc. and keep the High Court posted with future requirements and make timely requisition of forms,

stationery and funds. Now he has to keep complete account i. e. the official car. Apart from this he has to do a lot of judicial work. And then much of his time is taken in meeting lawyers, public, administrative officers, and others. LOK ADALATS also take a lot of his energy and time—mostly in organising them. Besides he has another time consuming affair—to attend to V. I. P.'s of the Judiciary. All this calls for tact, good cheer and organising ability.

A question arises in my mind—is the District Judge well equipped to handle all these matters ? I am firmly of the view that he is not. The complex nature of work and responsibility he has—requires specialised training to deal with situations which crop out of mostly frivolous matters or which has nothing to do with his court work. Our DJs do not get any professional management training nor do they take an advanced management course. This is where an Institute for Judicial training becomes an imperative requirement. Our course for senior officers will have to be reoriented to advice and equip our judicial officers in administering the Judgeship.

In these days of growing problems some created by agitations, strikes, bandhs and some by administrative lapses or plain law and order situation, the DJ is faced with matters which are not in the realm of subjects he has been dealing with as a Judge, he finds himself in a quandry. He needs advice but has none to consult. His junior colleagues have lesser experience than him in such matters. He often takes decisions which is characterised as 'playing safe' for he is clear in his mind that the problem must not snowball into something that may call for intervention by the High Court. In this process he makes compromises with well settled principles to placate a party. These are often counter productive. The DJ gets an image of a weak administrator and he becomes ineffective. In recent years there has been an increase of such incidents all over the State. The question again comes to my mind—are our DJs well equipped to deal with such matters ?

A good judicial officer is normally a quiet, dignified person who mostly keeps aloof from any trouble. He exercises his power in judgments and orders his hands down. When he becomes DJ, he finds he can no longer keep aloof—he has to be in centre-stage and has to take steps to nip in the bud all matters which may snowball into bigger problems. His entire career and reputation is sometimes on the anvil. Sometimes due to failure to anticipate matters or events, or due to error of judgment or lack of timely action he is blamed and condemned by the lawyers and the litigant. Things become really difficult for him. They look difficult because he is not fully prepared to meet the situation—not well equipped to be precise.

Our object has been to impart such training so as to equip our officers to meet such exigencies. Your Chairman and others have strived hard to prepare a course of lectures for you. Eminent Judges have delivered lectures on key subjects and some have discussed problems with you as well. Experts from other branches were here to talk to you. The effort has been to consolidate the vast field these subjects occupy in a capsulated form so that you can go back with expertise and specialised knowledge in these subjects.

I am particularly thankful to those speakers who spoke on subjects of Court management, accounts, legislative drafting, and on Constitution and its provisions. Each of these subjects, you will notice in course of your work as DJ will be of prime importance to you.

Of course you don't have to deal with Constitutional remedies as District Judge. But which DJ will be able to deal with his work satisfactorily without a sound knowledge of Constitutional provisions. He must also be aware of the pronouncements by the Supreme Court—for the law declared by that Court is binding on all Courts under Article 141. The concept of 'natural justice' has been developed by the decisions of the Supreme Court and a clear concept of the principles must be there in the mind of all Senior judicial officers. There are many other provisions which must not only be known but clearly understood as well. One must know Article 323A and 323B which relate to Tribunals. These days there is growing tendency to transfer more and more subjects and jurisdictions to Tribunals and depriving the Civil Court of the said jurisdiction. So you will notice that it is imperative to read and know more about Constitutional provisions then you have known hitherto. Gentlemen, I would ask you to read the above provisions and the case law thereon to broadbase your knowledge and outlook. The better equipped Judge takes lesser time to dispose of a case. Ignorance of law is not excusable and more so for one who has to preside over a court of law. Your knowledge of Constitutional provisions will help you even when you go to the Secretariat to be adviser to the Government in legal matters or when you are elevated to the Bench of the High Court. Sixty percent of the cases before the High Court comes under Writ jurisdiction, these days.

There is another area—which is always within your reach, the OFFICE OF LR & Judicial Secretary. Here too you will need a much wider knowledge of law and Constitutional law. Your Chairman, adored the office of LR Judicial Secretary of the State for many years with great distinction. He was an acquisition to the Bench of the Court—for his knowledge of Constitutional law was profound, his knowledge of legal drafting, rules of

interpretation of statutory provisions stood him out amongst others. It was not because he was appointed LR and JS but because of his hard labour and mastery over legal principles, his wide vision and correct approach to questions in issue. I repeat Gentlemen, we are very happy that a person of his eminence heads this Institution.

One aspect of the matter needs attention. Some judicial officers think that they need do no more than the quota assigned. They are then fit to be graded as an average officer. I firmly believe that placings in the Tribunals, deputation posts and similar postings should only be reserved for outstanding officers and not for average officers. Promotions to the High Court should only be of outstanding officers with very good career record. It is only through these you will make the Service proud of you. Mere claim for promotion by quota on selection posts will be self defeating. The Judicial Service in this State had an outstanding record and contribution of which anyone could be proud of. There has been a steep fall in the standards with the result that much of the halo around your service has faded. Judicial officers alone can revive their effort to bring the Service on its pristine glory. Foremost is maintaining judicial ethics, be learned in reality, and be courteous. Make reading of law journals a habit and be uptodate in your knowledge of law. Such an officer will be an asset to the Service—his output will increase, automatically.

The Chief Justice of India speaking at the Valedictory address at the Bar Council of India Seminar observed "Of all the reasons influencing the speed with which the justice delivery system functions there is no more important than the observance of discipline within the institution. There is a discipline which must be observed by the legal profession. So also there is a discipline which must be observed by the judge of judicial officer... The courts likewise must at every level ensure that they observe the court hours punctually... A good judge is one who, while courteous to counsel, is firm in controlling the duration of proceedings These are only few instances. In the state in which we are today, nothing but the most stringent discipline is called for. We live in an age whose compulsions require every institution and enterprise to function constantly at peak performance with an output of the highest quality. Public confidence will hold faith with the administration of justice only so long as it answers sufficiently to that standard."

We have to develop this Institute into an Institute of excellence. I have full hopes that this Institute will become so provided all those concerned apply themselves with dedication. This institute ought to be made a place of research as well, especially in the field of legislative draft-

ing, with particular emphasis on drafting in Hindi. It is essential that the laws so drafted are easily understood by the literate public. Every phrase or sentence should not require interpretation by the Court.

Gentlemen, I have taken much of your time and before I conclude I thank all of you who participated in this First Refresher Course. I am also thankful to all those who came here in this blistering summer to deliver lectures. The Officers and the staff of the Institute deserve praise for their efforts. The Institute was very fortunate that it was inaugurated by the Chief Minister, who announced a substantial amount towards its development, The function was presided over by Chief Justice Shetty, who now adores the Bench of the Supreme C urt and also attended by the Union Law Minister. So many distinguished persons came to your Institute to be with you and share their views with you. The entire object of all these was to make this Institute run on right lines and grow into a model institute to impart judicial training to our future judicial officers.

One aspect remains. The judiciary has come in for criticism about the delay in court proceedings and poor output. Some have suggested a complete overthrow of the present system but they have not suggested any alternative blueprint. These utterances are positively harmful not only for the judicial system but also for the democratic set up in the country. I am happy that our Chief Justice of India has observed "I do not subscribe to the view that the judicisl institution is in a state of collapse. In my mind it can be more accurately described as a state of acute crisis. It is my profound conviction that we can still pullback and, although the process of reinstating the judicial institution to a satisfactory condition may take time, the pending arrears of cases can be brought within manageable proportions."

I firmly believe that this can be done and we should all do our work with a little more effort. It goes without saying that there has to be certain modification in the procedure. The members of the State Judicial Service are invited to make suggestions in this regard. This Institute may collate them and draw the attention of the High Court on the administrative side for consideration.

I firmly believe that if the system collapses then democratic institutions and the concept of "rule of law" will also be eclipsed. It is our duty to strengthen the system with all our might. People have often asked 'how productive is the judicial wing of the administration'. The question is absurd but has to be answered, since it attacks the system. These critic observe that 'judiciary often places obstacles in the way of administra-

tion', I have an answer for them. Suppose the legislature plan to build a grand building, it approves the plans and provides funds also. The Executive collects bricks, steel etc. and starts construction but without mortar. That building cannot last long. It will collapse, for it is not built soundly. Application of proper mortar makes the building strong. Judiciary is the mortar. Apparently invisible, yet it provides strength and durability. Getlemen, feel proud of your Service, your judicial fraternity and resolve to uphold the majesty of law at all times. I thank you.

———

DUTIES AND FUNCTIONS OF DISTRICT JUDGES

by

HON'BLE MR. JUSTICE K. C. AGARWAL

The idea of Institute is novel and its success depends upon your active co-operation and serious participation. During your stay of four weeks at the Institute, you will hear speakers on various issues and subjects. Not only you will listen to their talks, but will also be expected to, and you will in any case, I am sure, discuss their contents amongst yourselves.

You are Senior Additional District Judges. Soon, you may be appointed as District Judges. In that capacity, you will have manifold problems. It is unfortunate, but true, that judiciary is being criticised on various counts. Bhagwati, C. J. remarked that the system is on the verge of collapse. R. S. Pathak, C. J., may not agree with this view, but it appears he too has lurking doubts. So, people hold the view that the system requires drastic changes if it has to live upto the expectations. Whatever be the view points of legal luminaries, one thing is clear that the system is under strain. There is a limit to human endurance. The expenses involved deter many from approaching the Courts. The rituals of the Court room proceedings are meaningless and incomprehensible to most except the warring lawyers. Sometimes, judges themselves have incomplete and faulty knowledge of the law, so their interpretation too becomes faulty. Like other sections of our highly monetised society, judges too are tempted by considerations other than law. Most important of all, there are various kinds and varieties of social and political pressures at various levels, working on the minds of the judges. They no longer function in secluded cloisters but more or less, on the public platform.

As a District Judge you will mostly be called upon to decide appeals. An appeal, as the term is now broadly used, is generally regarded as continuation of the original suit, rather than inception of a new action. Appellate jurisdiction is derived from the statutory provisions by which it is created, and can be acquired and exercised only in the manner prescribed. Thus, the determination and the existence and extent of appellate jurisdiction depends upon the terms of the statutory or constitutional provisions in which it has its source. If an appeal does not fall within the appellate jurisdiction, the appeal should be dismissed. The District Judges are expected to consider the provisions under which appeals have been

preferred, in order to ascertain their maintainability and also the scope of power which they have in deciding them. It may be pointed out that the appellate jurisdiction implies inclusion of the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. Also implied is the power to protect the jurisdiction and to make the decisions of the court thereunder effective. In aid of its appellate jurisdiction the court has authority to control all auxillary and incidental matters necessary to the efficient and proper exercise thereof, for which it may, when necessary, prohibit or restrain the prohibition of any act that may interfere with the proper exercise of its rightful jurisdiction in cases pending before it. This view has been taken by the Supreme Court in one of its decisions. A Full Bench of our Court has also taken the same view.

Another matter to which a brief reference I wish ro make is about the power to grant injunctions. Recently courts have earned a bad name in this regard. It is this which led to the amendment of Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. It is commonly thought by judicial officers that the power to grant injunction or refuse to do so is discretionary. But, discretion has to be exercised in accordance with law. It is not the discretion given to an arbiter or to a person not acquainted with law. Injunctions should be granted or refused in accordance with law and for the purpose for which such power has been conferred. The object or purpose of injunction is to preserve and keep things in the same state or condition and to restrain acts, actual or threatened, which would be contrary to equity and good conscience. It is not my purpose to tell you the basics about granting or refusing to grant injunctions but only is to ask you to tell your subordinates to decide applications for injunctions by keeping the basic principles into consideration. As I have mentioned above, Munsifs or Judges erroneously think that since the power to grant injunction or refuse to do so is discretionary, it is their pleasure to deal with such applications in any manner they like. A person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter which has to be considered.

Cardozo in his book, The nature of the Judicial Process, at page 141 has said :

> "The Judge even though he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal or duty or of goodness. He has to draw his inspiration from settled principles. He is

not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise his discretion informed by tradition, methodised by analogy, discipline by system, and subordinate to necessity of order in the social life."

The greatest threat to humanity, short of a nuclear calamity, is from environmental contamination, and also inadequate, unreliable and unsafe water supply system. Already cities such as Calcutta, Delhi, Bombay which are heavily populated, cannot house, feed or support the people. The cities are turning into urban nightmares, and people live in contaminated environments. The intermittent water distribution is hazardous to health. When the main supply is turned off, whole system acts under a vacuum. It attracts pollution from faulty joints. My only purpose of making a reference to this problem is that when cases come before you, you must deal with them expeditiously and punish the culprits by awarding punishments which may act as a deterrents to others. It is estimated that 60 to 90 per cent of human cancer is caused by environmental factors that can perhaps be controlled.

The function of criminal law is to preserve public order and decency, to protect the citizens from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption.

Statutory additions to the Criminal Law are too often made on a simple principle that "there ought to be a law against it." The greater part of the law relating to sexual offences is the creation of Statute and it is difficult to ascertain any logical relationship between it and the moral ideas, which most of us uphold. Adultery, fornication, and prostitution are not criminal offences, homosexuality between males is a criminal offence, but between females is not. As a court of law, however, you are not concerned with one act having been provided as criminal whereas not others.

It would be hard to think of a field of law that needs clarifying more than that of statutory interpretation. Needless verbosity is the mother of difficulty. It was said in Gibbons v. Ojden (22 U. S., 1) at page 232, that :

"One-half the doubts in life arise from the defects of language".

Lord Mansfield, C. J. said :

"Most of the disputes in the world arise from words. Dictionaries often solve little."

Hence, dictionary should be the last resort to the baffled judge. The

recent trend of the Supreme Court is to decide cases by taking into account the intention and object with which a provision is framed.

As a District Judge you should prepare a plan about the disposal of the cases pending at the magisterial level as well as at higher levels. Policy should be chalked out for dealing with the pending cases in consultation with the Chief Judicial Magistrate. Recently, on survey, the Chief Metropolitan Magistrate, Kanpur, found two major causes of delay. They are :

(*i*) non production of witnesses by the prosecution, and

(*ii*) non-appearance of accused. On an average hardly 5 or 6 witnesses appear in a particular case on behalf of the prosecution. Delay in procuring their attendance is enormous. Timely issuance of summonses is the basic need. Police offices should be directed from time to time about the expedient issuance of notices and, if need be, for that purpose S. S. P. should be requested for deputing one officer to assist the Court for achieving this purpose.

In Courts, on an average, one official is posted for handling 100 files. The details have been worked out in Kanpur. One official is wholly inadequate to maintain the various registers and to make compliance of Court's orders. On an average 40 to 50 cases are listed in a Criminal Court every day. The inadequacy of Court staff is directly responsible for inefficiency and corruption. For coping with the work, it has been often found that private assistance is taken by the Court Ahalmad who pays them from his own pocket. What the source of payment is does not require much imagination to explore. The work of the Court is done in a leisurely fashion without attaching any importance to speed. This results in the cases being adjourned from time to time on account of witnesses being not available. This has to be stopped. In the Administrative Conference held in the past, suggestions were given by the Committees constituted by the Chief Justices, but I am sorry to point out that those recommendations have not been implemented. I am doubtful that they have even been studied and understood.

In Police offices there should be a Cell specifically for the purposes of service of summons. Haphazared listing or 40 or 50 cases per day before a Magistrate is in the interest of some of the persons handling the files. It has been found that thousands of petty criminal cases are pending at the magisterial level. Most of these cases are for offences under the Motor Vehicles Act, Gambling Act, Excise Act etc. It has come to notice that

charge sheets submitted after investigation do not see the light of the day due to vested interests. The charge sheets are even torn and thrown away Even the police is not interested in the prosecution, despite the submission of charge sheets. The reasons are not far to seek. In the Courts, neither is any method adopted to check about the registration of charge sheets nor is anybody interested in it. This has to be cured if the judiciary has to be restored to its old reputation. The District Judges can play a vital part in unearthing such cases provided, of course, they have a desire to do so. Some of the District Judges adopt neutral attitude with respect to the problems arising before them and do not take any step to solve them. Why, is well known to all of you. They are "forward looking" Judges.

Every District Judge should hold monthly meetings and discuss legal and other administrative problems with his subordinate officers. No discrimination or distinction should be made in inviting them. No preference should be given to the seniors. A junior officer should be given the same importance and respect as the seniormost Additional District Judge. The District Judge should emphasise on the officers the desirability and the utility of keeping a digest of rulings and should also maintain one himself.

It is being seen more now than ever before that Judges have the tempation to try to cultivate popularity. But, I agree with the observation cited by Mr. Cowper from Justice Forester that :

> "A popular Judge is odious and pernicious."

Justice Frank further said :

> "If Judges want to be preachers, they should dedicate themselves to the pulpit. If Judges want to be primary shapers of the policy, legislature is the place."

Chief Justice Hughs voiced the same feeling when he said :

> "We do not write on a blank sheet."

Good rapport should be maintained by the District Judge with district officers of other branches. That will ensure smooth running of the administration of the Court. Judicial officers have often been complaining about facilities and perquisites available to executive and officers of other branches. That is not proper. Yours is judicial office which cannot be compared with anyone else. Your working hours are much less than those of executive. The latter can be required and are needed on unearthly hours. In my opinion, a judicial officer only denigrates himself and the judiciary by all the time talking about the benefits which a member of other Services enjoy. Yoy have to have restraint.

Administration of district judgeship has recently become very complicated and also, if I could use the phrase, "troublesome". There are four categories of persons who have to be taken care of by you as District Judges. They are :

(*i*) officers subordinate to you,

(*ii*) officials of class III,

(*iii*) class IV employees, and

(*iv*) lawyers.

The problems before you would be enormous, but you will be required to tackle them wisely and sincerely. None of the four categories should have a feeling of being ignored. Judicial officers are often reported to have divided themselves into groups on the basis of caste, religion and region. There are groups within groups also. The District Judges should not differentiate amongst the officers on any consideration. For him, there is neither any religion nor caste. You have to treat them in the same neutral way, as you decide cases in the courts. The position and status of a District Judge is that of power. It is often found that those who are in positions of power, and who are known for their intellect and academic attainments should be doubly careful not to turn arrogant. The higher they climb in the ladder of success, the greater the tendency to turn power-mad. You should always remember that humility alone will pay. You should meet everybody who comes in your contact with courtesy, being polite and not forgetting any help received from others.

One piece of advice, I would wish to convey to you, is that you must see the judgments rendered by the officers subordinate to you by picking out some of them, at random. This will give you an idea about the officers' judicial work and you might also provide guidance to them, if felt necessary. This will also help you in giving anuual remarks.

To fill the role of a judge is a rigorous undertaking. He must develop the proper moral and ethical qualities as well as intellectual ones. It was said long back by Asuthosh Mukerji that a judge should lead the life of a Hindu widow. Hand's view of the judge was austere, even spartan. Speaking of Justice Benjamain M. Cardozo, Learned Hand said :

> "He was wise because his spirit was uncontaminated, because he knew no violence, or hatred, or envy, or jealousy, or ill-will. I believe that it was this purity that chiefly made him the judge we so much revere ; more than his learning, his acuteness, and his fabulous industry."

Individuals, who are occupying high public offices, should take care that they never become a prey to the evils of avarice and lust. A question arises whether it is possible to get rid of them. When the ship of life gets tossed in the see of wordly activities, these elevated souls in their wisdom strictly adhere to the injunction in the scriptural texts so that the Lord save them from any unpleasant situation. These men firmly believe that they are mere "trustees", who have been sent to the earth to render service to the Lord and his creation. The merciful Almighty has created the world not for the satisfaction of our animal instincts. He has assigned certain jobs for each person. And they will have to be discharged with fervour and without passion.

In order to be a good judge, a judge is required to hear patiently, work diligently and decide honestly. He should not suffer either from pride or prejudice. A judge must forgive jealousy. Jealousy spreads all over the body. It is aided by three friends—desire, anger and vitupenative tongue. The moment a person is denied of what he wishes to possess and when he finds another person enjoying it, he starts hating him. In case he does not get the object he likes, he will fly into rage and in that state pass harsh unsavoury remarks about others. An uncontrolled tongue is bound to leave a person in a dangerous and regrettable situation. If you are free of jeolousy, you have achieved a lot in your life. Another quality, which a District Judge must have in order to be a successful administrator and for running the same smoothly is to take assistance of his subordinate judges in administration. Work of a judgeship cannot be properly done without assistance and help of junior officers as well as ministerial staff. Taking of assistance may result in parting with some of the powers. But if you are not prepared to delegate powers, you are not likely to succeed. A District Judge is like a leader.

Recently, while dealing with departmental appeals filed in the High Court by Class III and Class IV employees, I had a sad experience. The cases remain pending at district level for unduly long time. This is bad and has a very serious effect on the employees, whether the same is allowed or dismissed. In these cases, I could find no justification for the delay. The District Judges must look into the same and must always keep a constant watch over the disposal of the departmental cases. Pendency of departmental cases for unduly long time creates frustration amongst the employees. That leads to several conflicts.

A country is great by the character of its people, not by their number. Are the people honest ? Are they intelligent, hard working and dutiful ? Are they prepared to sacrifice self-interest for the sake of others ?

While advising Lakshman, Maryada Purushottam Ram Chandra ji said :

"You should give up pride, egoism, wickedness and crookedness. Neither should you find fault with anyone. Control your mind. speech and body, and never be perturbed.

Do not be slack in doing good actions even for a single day.
Do not give up Truth,
Do not be overjoyed if you get a fortune, neither should you be dejected if you loss it. Your mind should be well balanced."

The teachings given by Lord Krishna to Arjun is also quotable:

"O Partha, yield not to unmanliness
This does not befit you. O
scorcher of foes, arise, giving up
the petty weaknesses of the heart.
Treating happiness and sorrow,
gain and loss, and conquest and defeat
with equanimity, engage in battle. Thus
you will not incur sin.
Your right is for action alone, never
for the results. Do not become the agent
of the results of action. May you not have
any inclination for inaction.

The unholy persons who look for themselves, the incur sin."

Prophet Mohammed said :

"When you speak, speak the truth ;
perform when you promise : discharge
your trust ; be chaste in all actions ; have
no impure desires ; withhold your hands
from striking and from taking that which is
unlawful and bad.
He is true in the truest sense of the word
who is true in word, in thought, and in deed.

Say what is true, even if it is bitter and
displeasing to you.
The best of Charity is that which the right
hand gives and the left hand does not know it."

In the words of Nanak.

"Impurity of heart is greed, impurity of tongue
is falsehood, impurity of the eyes is gazing
on another's wealth. Impurity of the ear is
listening to slanders."

In substance, oue should be faithful to his duty at all times, regardless of the situation. Faithfulness to duty brings the greatest of rewards.

Good conduct enhances ones merit.

WRIT JURISDICTION

by

HON'BLE MR. JUSTICE R. M. SAHAI

Writ jurisdiction of High Courts is a part of judicial review which is of paramount importance in constitutional democracy. Unlike England and Europe where sovereignty is unitary and indivisible our constitution envisaged divided or limited sovereignty, by vesting it in Parliament, Executive and Judiciary. It did not accept Parliamentary supremacy in vogue in Britain, nor did it approve of nominated or elected judiciary by President or Congress in America. Rather it adhered to legislation by elected representative in field specifically carved out for it, its honest and faithful implementation by the Executive and its careful scruting and interpretation by independent judiciary. To Achieve the objective of determining legislative transgression and curb administrative arbitrariness the extraordinary jurisdiction, original in nature, was created under 226 of the Constitution. The judiciary was contemplated to play not a secondary but a decisive role in development of society political, social and economic. In words of Granville Austin, "the members of constituent assembly brought to the framing of the judicial provision of the constitution an Idealism equalled only by that shown to fundamental rights. Indeed the judiciary was seen as an extension of rights, for it was the courts that would give the Rights force. Judiciary was to be an arm of social revolution".[1]

What then is the width and depth of this judicial power which is visualised as custodian of protecting people from democratic tyranny". "The Court was designed, not to represent the changing wants and wishes of the people but to be paramount guardian of those ends and institutions of the government without which the people would be nothing more than aggregation of individuals"[2]. For this it is essential to understand what exactly is meant by judicial review, the seed of which was laid by Lord Coke in 17th century in England and chief justice Marshall in 19th century in America. Judicial review in the sense in which it is understood today has two broad features one of determining constitutionally of legislative acts other of maintaining social balance by striking down arbitrary, illegal

---

1. The Indian Constitution by Granville Austin.
2. Philosophy of American constitution by Paul Eidelburg.

and discriminately executive actions. Smith and Zurehir define it as, "The examination or review by the courts, in cases actually before them if legislative status and Executive or administrative acts to determine whether or not they are prohibited by written constitution or are in excess of powers granted by it, and if so, to declare them void and of no effect."[3] In striking down a law or invalidating arbitrary action the judiciary does not act like a third chamber but establishes faith and confidence in rule of law. The primary objective of law and its enforcement is to achieve welfare of the people and prosperity of the nation. It may be frustrated if the legislature or Executive in its mid-directed zeal may become oppressive and tyranical. It can be kept in check and within bound by exercise of judicial review only. The power of judicial review is based on the ideal that, "Constitution created a government of limited powers". The social benefit of effective judicial review is awakening or development of conscious of right even in the humbliest. The history of growth of democracy and evolution of concept of judicial review is in fact culmination of Right is might. A democracy cannot thrive unless it is founded on justice to all with fairness. Therefore, for smooth and effective functioning of democracy for avoiding its deviation from right path and to maintain balance between government and governed, the Court's arm should be strengthened because it is the only institution capable of creating confidence in people. It was said by P. H. Odegard, "The Court rather than the legislature had played the dominent role in interpreting standards such as equal protection, due process, fair trial and ordered liberty". Justice Romert Semons of Supreme Court of Nebarark said, "To strengthen courts is to strengthen America". It was no exaggeration. It is true of any parliamentary Democracy. A close study of judicial decision rendered by Courts of this country demonstrates what the High Courts through Article 226 have played a prominent role in development and advancement of philosophy of welfare state. What is the basis of it? Or why it has been possible for judiciary of this country to play such effective role. The answer lies in the pervading philosophy of law on which our constitution has been structured. It was a concept fully developed and firmly established in ancient India. A nation like individual grows and matures on fairness and morality. And that is possible on impartial administration of justice. A king was noble if he was impartial and fair in justice. Any deviation from it resulted in fall of kingdom howsoever strong it may have been. History of our country is full of such kings and nobles who have administered their State with human approach. Manu, the sage said, "Law in fact is the sovereign and leader and regulation

---

3. Dictionary of American Public—Edward Conard Smith and Arnald John Zurehir.

of the society. The whole race of mankind is kept under law". The Vedic concept of sovereignty was that the State was a trust and monarch was the trustee of people. Rule of law can be said to prevail if the ruler is prevented from framing tyrant law or enforcing activities which are detriment to the interest of society or the people. Dr. Radhakrishanan said in the Constituent Assembly, "We have held that ultimate sovereignty rests with the moral law, with the conscience of humanity. People as well as kings are subordinate to that Dharm, righteousness is the king of kings". Kautilya said, "In the happiness of his subject lies the king's happiness. In the welfare of his subject, his welfare. The king's good is not which pleases him, but of that which pleases his subjects".

The High Courts after advent of Constitution have been entrusted with this pious responsibility. From mere arbiter or disputes between two suitors it become like 'Peter at the gates' holding the 'keys to the Constitution'. The writs were issued in England for nearly more than a century before they were incorporated in our Constitution. Dr. Ambedkar the architect of the Constitution said in the Constituent Assembly, "These writs have been in existence in Great Britain for a number of years. Their nature and remedies they provide are known to every lawyer and consequently we thought that it is impossible for the man who has most fertile imagination to invent something new it was hardly possible to improve upon writs which have been in existence probably for thousands (hundreds) of years and which have given complete satisfaction to every Englishmen with regard to protection of his freedom... and which... have been fonnd to be knave proof and fool proof". Judicial review exercised through Article 226 is a basic feature of our constitution. It cannot be taken away nor the jurisdiction can be abridged. Even in England when legislature provided that no writ of certiorari could be issued against orders passed and they were final it was not accepted and it was held that the bar not apply if the defect went to the jurisdiction.

Under Article 226 a writ of direction can be issued by the High Court throughout the territories in relation to which it exercises jurisdiction to any person or authority including government for enforcement of fundamental right or for any other purpose. The comprehensive phraseology in which the Article is couched is indicative of wide sweep of it. To make its impact intense and effective it empowers the Courts to reach any injustice of whatever nature, unhedged with any technicality by issuing even directions or orders and for any purpose. Each of the expressions expand the jurisdiction of the Court. By the first it has been empowered to issue not only writs as technically understood in England but to issue directions or

orders without which it might not have been easy to uphold the rule of law. 'The mentor of law is justice'. For realisation of this the power extends to violations of not only fundamental right but for any other purpose. It may be legislative overlapping or executive excess. With advent of activist approach the role of judiciary is widening everyday. The prevading ideal behind it is justice to the lowest and weakest on the same plain as to richest and highest. There is no fetter no restriction except the one the anxiety to do justice. That is why one of the issues which was agitated right from inception and shall continue to engage attention of courts is if a person approaching under Article 226 should be denied relief because alternative remedy was available to him. It has swung around either way depending more on personality and feel of the person dispensing justice as it is primarily dependant on discrition. Various exceptions have been carved out of it from time to time. But a study of these decisions unquestionably demonstrate the anxiety of courts not to be fettered by any rule of procedure. Although invariably every decision insists that ordinary remedy available should be exhausted before invoking extraordinary jurisdiction but this rule has never been a hinderance where exigencies of situation demanded immediate action. For instance if the order or action is void or without jurisdiction or in violative or principle of natural justice the courts do not insist on going in appeal or making representation. Even otherwise, the basic purpose of availing alternative remedy is to get the facts marshalled. Where on facts stated in the order the order is bad or the action is so-arbitrary as to shake the judicial conscience it would be travesty of justice to refuse to entertain a petition because of alternative remedy. But the most important development has been in sphere of locus standi. The classic concept of the remedy being available to an aggrieved person has gone sea change. "Our processual juris prudence is not of individualist Anglo Indian mould. It is broad based and people oriented and envisions access to justice through class action, public interest litigation and representative proceeding. Individual little Indians in large numbers seeking remedies in courts, through collective proceedings, instead of being driven to an expensive plurality of litigation, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of cause of action and person aggrieved and individual litigation is becoming obsolescent in some jurisdiction". (Akhil Bhartiya Soshit Karmchari Sangh v. Union of India A. I. R. 1981 S. C. 290). The horizon was broadened further by opening the doors of justice for public spirited individuals expousing cause for welfare of others, in famous Judges case.

Limitation to invoke this jurisdiction is yet another aspect which has

been debated now and then. In England it is six months. Because there is no chapter three there. Can it be legitimately said that the Fundamental right guaranteed in the Constitution lapses if certain period expires. That would be eroding the basic sanctity implicit in these rights. Can a person be deprived of his liberty or denied the relief because he did not approach within six months or after expiry of any statutory period of limitation. Even in writs or directions issued in direction of the court no such restriction can be placed. It is another matter that the court may refuse to grant any relief to an aggrieved person because it may result in disturbing the chain of events after a long time. But that is not because a person is prevented from approaching the court but it is in the realm of refusing to exercise discretion. At the same time a person seeking relief must approach for vindication of his grievance without any delay. Delay of few days may even disentitle him from getting any relief, whereas the injustice brought out by illegal or arbitrary action may be set at right after lapse of months or even years. But the writ jurisdiction is essentially an enquity jurisdiction. The genesis of it in England was to relieve a person from rigour of common law technicality and hardship. In our country the very purpose of it is to assist in maintenance of rule of law. It, therefore, requires the person approaching the court to come with clean hands. And the court exercising jurisdiction should grant relief for sake of justice and maintaining rule of law only.

Even before constitution was enforced the High Courts of Calcutta, Bombay and Madras enjoyed this power. The Calcutta High Court in council in Emperor v. Burah and Boot Singh I. L. R. 3 Cal. 63 (1877) struck down the law as it was in excess of power given by the Imperial Parliament. In Secretary of State v. Moment I. L. R. 40 Cal. p. 391 (1913) it was held by Privy Council that any legislation which took away the right of an Indian to seek relief in civil court was in contravention of Section 65 of Constitution Act of 1958 and was ultra vires. From 1950 onwards the courts while upholding individual liberty have advanced social and economic progress of the country. It has endeavoured to strengthen social structure by emphasising the interest of community without undermining individual interest. Any legislation or executive action effecting a citizens liberty or freedom has been unhesitatingly struck down. But where attempt has been made to check social evil for instance gambling immoral traffic in women, obscenity etc. the courts have refused to interfere and upheld not only the Act but actions under it. The evil of bride burning due to dowery would have remained like Sarda Act for purposes of statutory record only if the courts would not have taken hard and tough attitude. Every day writ petitions filed against apprehended arrest of accused even if there is some

exercise of their judicial function by the courts cannot be the subject of proceedings in contempt. In India very often the same officers exercised executive as well as judicial functions. Sometimes it becomes difficult to draw a distinction between their two capacities but a distinction must be drawn and it is only if the criticism is of the judicial acts that action by way of proceedings in contempt may be taken."

The Hon'ble Judge also observed ; "It would indeed be extra-ordinary if the law should provide a remedy, the conduct of even a member of the highest judicial tribunal in the exercise of his judicial office may be the subject of an enquiry with a view to see whether he is fit to continue to hold that office and yet no one should be able to initiate proceeding for an enquiry but a complaint to the appropriate authority by reason of a fear of being punished for contempt and I can find no justification for this view".

Mr. Justice Krishna Iyer and Mr. Justice P. N. Bhagwati, in spite of their being inclined to the view that criticism of executive functions may not amount to contempt of court held Barada Kant Misra guilty of contempt of court.

If an inferior judges criticises the inspection report of High Court Judge in unbecoming and strong language it would obviously be contempt as was held by Patna High Court in State vs. Nagamani A. I. R. 1959 Patna 372. In the said case regarding the inspection report the D. M. wrote letter to the Registrar of the High Court in which he used such phrases to be 'I am surprised to find' etc., 'a distorted version based probably on statement made by some interested parties' 'has jumped to the conclusion' and also the word 'absurd'. Administrative decisions including disciplinary proceedings are subjct to judicial review by the High Court and the Supreme Court, and false and reckless allegations made regarding administrative function or decision might invite disciplinary action, and in case false, reckless and baseless allegations are made against any High Court taking disciplinary action, the High Court on its judicial side and the Supreme Court as the final court of the country may find these averments to be either wrong or right and once they so held, the confidence of the people in the judiciary shall continue unmarred. Action for making false statement for perjury etc. can also be taken by the High Courts and the Supreme Court. Unfortunately in India serious view of perjury is still not taken and not many prosecutions are launched for punishment of perjury. Besides this disciplinary proceedings for making false and reckless allegations can also be taken.

Sections 3 to 7 of the Contempt of Courts Act, 1971 contains defences to

contempt of court. Section 2 lays down that "Innocent publication and distribution of matter regarding a civil or criminal proceedings shall not make a person liable for contempt of court if he had no reasonable grounds for believing that the proceedings was pending, and similarly it is not contempt if any publication is made in connection with any civil or criminal proceeding which is not pending at the time of publication. Section 4 provides that a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof while Section 5 lays down that a person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided. Section 6 protects against contempt of court in respect of any statement made by a person in good faith concerning the presiding officer of any subordinate court to the High Court to which it is subordinate. Section 7 of the Act also affords a good defence against contempt of court for it is laid down in Section 7 that a person cannot be held guilty of contempt of court for publication of information relating to proceeding in Chamber or in camera except in cases where publication is contrary to the provisions of any enactment or where the court on grounds of public policy or in exercise of any power vested in it strictly prohibits the publication of all information relating to the proceedings.

Sections 14 to 20 of the Contempt of Courts Act embody the principles of natural justice. Procedural safeguards contained in these provisions are intended to secure the liberty of any person charged with contempt of court. Natural justice is an integral part of rule of law and no action for contempt of court can be taken without affording due opportunity of defence. Section 14 of the Contempt of Court Act, 1971 provides that where contempt has been committed in the face of Supreme Court or a High Court, the matter may be heard by a judge other than the judge in whose presence or hearing or view the contempt has been committed. The Court may where it is practicable to do so and in the interest of proper administration of justice on the request of the contemner place the matter along with a statement of the facts of the case before the Chief Justice for the trial of the contempt of court before any other Judge. A judge is no exception to the rule that a person ought not to be judge in his own cause and in a case where contempt has been committed in the face of the Supreme Court or a High Court, it can be heard by another judge. The Supreme Court in case of Sukh Dev Singh v. Toja Singh, AIR 1954 SC 186 held that judges should bear in mind the oft quoted maxim that justice must not only be done but must seem to be done and as far as is humantey possible, there should be a feeling of confidence that he will receive fair, just and impartial trial by

judges, who have no personal interest in his case. Cognizance of a criminal contempt has to be taken by a Bench as laid down in Section 15 under the Contempt of Courts Act, 1971 and action may be initiated either on the motion of the Advocate General or any other person with the consent in writing of the Advocate General. Criminal contempt may also be taken suo moto by the High Court or the Supreme Court. A civil contempt can be taken cognizance of by a single Judge of the High Court and in the case of a civil contempt appeal lies as a matter of right under Section 19 from the decision of a single judge to a bench of not less than two judges and in a case where the order or decision is that of a Bench the appeal lies to the Supreme Court. Pending consideration of the appeal operation of the order of sentence can be suspended.

A very significant provision to be found in Section 16 of the Contempt of Courts Act, 1971 is that a judge or magistrate or any other person acting judicially may be liable for contempt of his own court or any other court in the same manner as any other individual is liable. Exception has, however, been made in sub-Section (2) of Section 16 that a Judge or magistrate shall not be liable for contempt of his own court in case he makes any observation or remarks regarding a subordinate court in appeal or revision pending before such judge or magistrate. Section 16 it may be mentioned was not found in the Bill which was drafted by the Sanyal Committee. Section 16 begins with the words 'subject to the provisions of any law for the time being in force'. This obviously refers to other laws which contain provision regarding protection of judicial officer in respect of acts done by them as such, like Judicial Officers. Protection Act and Section 77. I. P. C. The protection under Judicial Officers Protection Act is only in respect of civil action only. For criminal action in discharging of duty or purporting to be in exercise of the same has if the same has not been done in good faith prosecution can be launched if sanction for the same is accorded by the relevant Government. Protection in regard to civil action is available provided act has been done in good faith believing that he had jurisdiction to do so even if in fact he had no jurisdiction.

There was no time limit for initiation or taking of action for contempt of court prior to the enactment of the Contempt of Courts Act, 1971. No stale claim ought to be tried. Section 20 provides for limitation of one year for the initiation of any proceedings for contempt in public interest. The decision of the Supreme Court in the case of State of Punjab v. Sarwan Singh (AIR 1981 SC 1054) is apposite and it has been laid down that the object of Section 468 of the Code of Criminal Procedure in providing limitation for a criminal action is in keeping with the concept of fairness of trial embodied in Article 21 of the Constitution. With the passage of

time and considerable delay some material evidence may not be available in the absence of which a contemnor or any accused may not be able to defend himself. Besides this long delay may mean initiation of fictitious proceeding and this would constitute an abuse of the process of Court.

There has been legislative activity in England in the domain of contempt laws. The British Parliament has enacted the Contempts of Courts Act 1981. The Act was passed on the basis of the report known as Phillimore Committee Report and it comprehensively suggested reforms in the law of contempt in England. Earlier Sections 11 to 13 of the Administration of Justice Act, 1930 made some provisions regarding the contempt of Court Section 11 was to afford protection against innocent publication and distribution of material causing interference with the course of justice in a pending proceedings while Section 12 laid down that publication of information relating to proceeding before any court sitting in private by itself shall not be contempt of court. For the first time Section 13 conferred right of appeal in case of civil and criminal contempt of court. The law of contempt of court is a codified law in England and there is striking similarity in a large number of sections of the Contempt of Courts Act, 1981 of England and Contempt of Court Act, 1971 (India).

Under the Contempt of Court Act, 1981 the use of tape recorders in court or publication of a record of proceeding by a tape recorder is a contempt of court. Tape recorded proceedings of a court may, however, be published if leave is granted by the Court. There is no coresponding provision in the Contempt of Courts Act 1971, and unless in India use of tape recorders is specifically prohibited the use of tape recorders may be permissible with a view to publishing court proceedings. Publication of court proceedings subserves the interest of justice, for it acts as a safeguard against arbitrariness, and public confidence is sustained in the administration of justice. Another significant section in the Contempt of Court Act, 1981 is Section 13 which provides for legal aid being given in the contempt of court proceedings. There is no such provisions in the Contempt of Courts Act, 1971 and necessity of the same may be felt in suitable cases in this country also.

The power to punish for Contempt of Court must be used sparingly and that is why mere technical contempts have not been taken serious notice of and punishment imposed.

Section 13 of the Contempt of Courts Act, 1971 has recognised the principle that no court shall impose a sentence for a contempt of court unless it is satisfied that the contempt is of such a nature that it substanti-

ally interferes, or tends substantially to interfere with the due course of justice. What is a technical contempt has been interpreted in the case of Attorney General v. Times Newspapers Ltd., (1973) 3 All England Reporter 54-Lord Diplock held in this case that technical contempt is contempt which on the face of it is an interference with the due course of law but which is not intended nor in fact operates as such.

The question whether a person should be punished for contempt has to be approached not from the point of the Judge whose honour and dignity require to be vindicated but from the point of view of the public whose right and interest in the due administration of justice has to be protected. The strains and mortification of litigation cannot be allowed to lead litigants to tarnish, and destroy the system of administration of Justice by vilification of Judges. It is not open to the court to invariably accept the easy and ready solution of accepting apology and imposing a fine. A contemacious disregard of all decencies, such as that exhibited by the contumner in this case can only lead to a serious disturbance of the system of administration of justice unless duly repaired and once by inflicting an appropriate punishment as the contemner which must be to send him to jail at once for his misconduct. (See 1983, 4 SCC 125-Assa Ram M. Jain v. A. J. Gupta and others).

Insult to Judges and jurymen has been held to amount to contempt of court, but the insult to the counsel or the opposing litigant has been treated differently. In the case of Parshuram Dataram Shamdasani v. K. E. (1945 AC 254) it was held that words used in the course of arguments, however irrelevant, do not amount to contempt when they relate to an opponent, whether counsel or litigant. When a party in court or a witness in witness box threatens or insults a counsel in discharging his duties or motives are also ascribed it is contempt of court. An insult to a Judge in performance of his duties would be a criminal contempt as the same would mean scandalising the court. By legislation the provisions of the Contempt of Courts Act can be made applicable to Tribunals also. Section 17 of the Administrative Tribunals Act applies provisions of Contempt of Courts Act with certain modification and Tribunals have same jurisdiction, power and authority in the matter as the High Court has.

A counsel under instructions of his client can withdraw from any case and there is no contempt of court involved in it, but in the case of R. v. Swart (1977-II WWR 751), a Canada in Court held a lawyer guilty of contempt of Court. The Court denied an adjournment and the lawyer tried to withdraw from the case. There was a confrontation between lawyer and

the Judge and the Judge convicted the lawyer for contempt of Court. The Court of Appeal of Manitoba reversed the judgment and held that both the lawyer and the Judge over-acted and the attempted withdrawal was an error of judgment on the part of the lawyer. The implication of this judgment is that if the withdrawal by the lawyer was a device to have the case retried, it could be a contempt of Court. The lawyer who owes a duty to the Court would be well advised to continue to appear and if it is felt that the proceedings of the court have not been fair or just, appeal should be made to the higher court for setting aside of the erroneous order. The withdrawal of counsel for getting a case adjourned or transferred may be professional misconduct but it is difficult to say if that by itself would amount to contempt of court.

The Contempt of Courts Act, 1971 as laid down under Section 21 does not apply in relation to Nyay Panchayats or other village courts by whatever name known for the administration of justice established under a law. Earlier there were differences of opinion between different High Courts if Nyay Panchayats and other village courts were courts. This controversy has been set a rest by enactment of Section 21. Panchayati Adalats or Nyay Panchayats are not manned by trained judicial officers and it was only proper that Section 21 was inserted in the Contempt of Courts Act, 1971 to divest them of the power of punishment for Contempt of Court.

Section 22 of the Contempt of Courts Act lays down that the provisions of this Act shall be in addition to and not in deregation to the provisions of any other law relating to Contempt of Courts.

The other laws relating to the Contempt of Court Act are to be found in the Criminal Procedure Code, 1973 and Code of Civil Procedure, 1908 as amended uptodate. The object of Section 22 of the Act is to keep intact the power to punishment of contempt in the face of the subordinate court for which provisions has not been made in the Contempt of Courts Act, 1971. Section 14 of the Contempt of Courts Act, lays down the procedure where contempt is in the face of the Supreme Court or a High Court. Sections 345 to 351 of the Code of Criminal Procedure (Sections 480 to 486 of the Code of Criminal Procedure, 1898) deal with contempt of Court. Section 345 of the Code of Criminal Procedure, 1973 lays down that where any such offence as described in Section 175, Section 178, Section 179, Section 180 or Section 226 of the Indian Penal Code is committed in view or person of civil, criminal or revenue court, the court may cause the offender to be detained in custody and may detain till rising of the court the same day, take cognizance of the offence and (after giving the offender reasonable opportunity of showing cause why he should not be

punished under this section) sentence the offender to a fine not exceeding Rs. 200/- and in default to payment of fine to simple imprisonment for a term which may extend to one month unless such fine be sooner paid.

Court has to consider the facts constituting offence under Section 228 of the Indian Penal Code, and the record will show the nature and stage of the judicial proceedings at which the court was interupted or insulted.

The Indian Penal Code has described five kinds of contempts in different sections Section 175 deals with intentional omission to produce a document by a person legally bound to produce it, Section 178 deals with refusal to take oath when duly required to take one, Section 179 lays down refusal to answer question by one who is legally bound to state the truth. Section 180 deals with refusing to sign a statement made to a public servant and Section 228 deals with insult and interuption to a public servant sitting in any stage of a judidial proceedings. It may be mentioned that if a counsel proceeds in putting irrelevant and vaxatious question to a witness he is guilty of contempt of court, but generally the courts have been showing and should show great latitude and indulgence to the members of the Bar so that harmonious relations between the Bench and the Bar are not impaired.

Section 346 of the Criminal Procedure Code is compementary to Section 345 inasmuch as if the court after taking cognizance of offence of contempt of Court for purposes of Section 345 is of the opinion or is of the view that the offence committed is serious and that the punishment of fine would not meet the ends of justice, then he should record the facts constituting the offence and the statement of the accused if any and forward the case for trial by a magistrate who has jurisdiction to try the same. The court instead of punishing the offender may direct that the accused shall be tried by magistrate who will proceed to the case as if it were instituted on a police report. Under Section 349 of the Code of Criminal Procedure, 1973, a person called upon to produce the document or a thing before a criminal court refused to answer the such question as put to him or any document or thing in his possession or power, he may be sentenced to simple imprisonment for any term not exceeding 7 days unless in the meantime such person concerned to be examined and to answer or to produce the documents or things and in the event of refusal, he may be dealt with according to the provisions of Sections 345 and Section 345 contains general provisions for taking action for contempt of court commited in view or person of the court while Section 346 is a special provisions regardiag refusal by a witness to answer questions as required under Section 179 I. P. C. and to produce the documents or things in his possession

or power as required by Section 175 I. P. C. Section 345 applies to all courts, civil, criminal and revenue while Section 349 applies only to criminal courts.

Section 350 provides for summary punishment for non-attendance by witness in obedience to summons and this Section 350 also applies to only criminal courts. Against every conviction or sentence under Section 345, Section 349 or Section 350 appeal under Section 351 Cr. P. C. lies to the Court which the decree or order of such court are appellable.

The Code of Civil Procedure contains exhaustive provisions for the protection and enforcement of rights of parties guaranteed under substantive law. Under Order 21 Rule 32 Cr. P. C. a perpetual injunction may be granted while under the provisions of Order 39 Rule 2 interim orders of injunction may be granted. In case a temporary order of injunction is disobeyed, action as provided for in Order 39 Rule 2-A Cr. P. C. is to be taken. Order 39 Rule 2-A is a special provision for taking of action for disobedience of interim order of injunction and it has been held in the case of Indu Tewari v. Ram Bahadur (AIR 1981 Alld. 309) that when adequate remedy under Order 21 Rule 32 and Order 39 Rule 2-A is available, remedy under the Contempt of Courts Act is not to be invoked. In this case it was also held that the least that can be said is that it would not be proper exercise of discretion on the part of the High Court to exercise its jurisdiction under the Contempt of Court when an effective remedy is available under the provisions of the Code of Civil Procedure. If a temporary injunction order is violated, the court may under the provisions of Order 39 Rule 2-A order the appropriate person to be guilty of such disobedience or breach of trust and may also such person to be detained in the civil prison for a term not exceeding three months unless in the meantime the court directs his release. The purpose of Order 39 Rule 2-A Cr. P. C. is really not to punish a person for disobedience of interim order of injunction but to have the order enforced. Order 21 Rule 32 Cr. P. C. relates to the execution of perpetual injunction granted under specific Relief Act. Perpetual injunction may be granted for specific performance for execution of conjugal rights or for an injunction. If a decree is not obeyed, rather there is wilful failure to be obeyed the decree for execution of conjugal rights may be enforced by attachment of property or in the case of a decree for specific performance of contract or for an injunction by his detention in civil prison or by attachment of property or by both.

A Corporation may also be held guilty of contempt of Court for disobedience of an injunction order by attaching the property of the corporation or with the leave of the Court by detention in civil prison of the

Directors or other principal Officers thereof and by both attachment and detention for every order by means of which punishment or fine is awarded.

The Press, Radio, and Television are being increasingly used today. Through these media news may be published as to how justice is administered. Under the British Common Law, system, as administered in this country any trial by newspaper has been treated as contempt of Court. A contempt of court may be committed by publication of any matter that is intended or prejudice or may be held likely to prejudice pending trial. Imputation of improper or dishonest motives is a serious contempt. In a case of England which has come to be popularly known as "Thalidomide Children case" a drug containing the Thalidomide caused deformity in children and many children were born with great deformities. Action was taken against the Company. The parties were negotiating in the settlement and the Sunday Times published an article "Thalidomide Children-Cause for National Shame" Upon publication of this article in the Sunday Times, the Attorney General, moved the Division Court of the Queen's Bench Division. The Queens Bench Division restrained the publication on the ground that it constituted contempt of court. The Court of Appeal on an appeal preferred by the newspaper discharged the injunction order. Decision in appeal was however over-ruled by the House of Lords. The Sunday Times' contention was that the injunction restraining the publication of the article was against the provisions of Article 10 of the European Convention of Human Rights. The matter was taken to the European Court of Human Rights by the Sunday Times and the European Court of Human Rights by a majority upheld the contention of the 'Sunday Times.' The views of Lord Denaing who had delivered the leading judgment on behalf of the Court of Appeal was accepted and in public interest the article of 'Sunday Times' was allowed to be circulated. The public interest was considered to have outweighed the prejudice which could be caused to the parties to the dispute. The freedom of speech is of paramount importance and at the same time the Court must be protected prima facie fairly. There was thus a conflict of interest between the freedom of speech and fair trial of the cases and Section 5 of the English Contempt of Courts Act, 1981 has laid down that a publication or a discussion in good faith of public affairs or other matters of general public interest is not to be treated as contempt of court under the Strict Liability rule, if the risk of prejudice of particular legal proceeding is merely incidental to the discussion. The House of Lords it may be mentioned has liberally interpreted the provisions of Section 5 in the case of Attorney General v. English (1962 II All England

Report 903). There is no provision in the Contempt of Courts Act, 1973 similar to section 5 of the English Contempt of Courts Act, 1981 which was enacted on the basis of Phillimore Committee Report. The Press Council of India has however in its report submitted to the Parliament in 1983 recommended amendmont of the Contempt of Court Act, 1971 by providing that "The discussions of affairs of general public interest and in good faith will not constitute contempt, if the prejadice to the particular legal proceedings is merely incidental to the discussion."

The Courts in India have it can be said adopted a liberal and a reasonable view in regard to the publication of matters which may be pending in a court of law. Merely because a case is pending or in other words is subjudice, a controversy affecting the nation or a large section of people cannot by itself be shut out from discussion. The controversy may not affect the contesting parties but on account of its importance it may concern a large number of people. The Supereme Court in the case of Prabhu Dutt v. Union of India (1982 (1) Suprme Court cases 1) has held that the Court would take notice of only such comments which pointedly refer to the proceedings before it and which may be construed to interfere with judicial process.

No public discussion can be stifled by filing a suit or other legal proceeding regarding it. The High Court of Delhi in Case of Digvijay Narain Singh v. A. P. Sen (1971 ILR. 1 Delhi 14) has held that condemnation of murder cannot be prevented if it is of general public importance. But expression of opinion that the accused is guilty of murder might not be permissible and the contempt jarisdiction may attract it.

A writ petition (Anil Kumar Gupta v. K. Rao, 1974 ILR. 1 Delhi 1) was filed before the Delhi High Court challenging the appointment of Mr. A. N. Ray as the Chief Justice of India and while the writ petition was pending Mr. K. Subbarao one of the former Chief Justices of India published an article "Supercession of Judges" in the Statesman of New Delhi. The High Court of Delhi dismissed the petition for taking action for contempt of court against Mr. K. Subbarao on the ground that the question of appointment of the Chief Justice of India was of national importance and it was an issue which was discussed and spoken about to such an extent that the matter cannot be said to be one which is ex-facie of a judicial nature Merely because a case is pending in a court, it would not prevent discussion of matters of public importance.

H. M. Seervai in his Constitutional Law of India III Edition has raised very pertinent question that a prosecution for libel on the charge

legal flaw is dismissed. It is by intervention of courts that the ideal of social equality and human dignity visualised by the constitution has been maintained. For instance the social status and equality of woman has been strengthened by process of judicial review. In this regard there are instances where our courts have gone ahead than the Supreme Court of America which tolerated a law which denied right of vote to women. In our own state the Court of Wards Act discriminated against women. The provisions was struck down. But when it involved hazard of social health the courts refused to extend their protective canopy. "The courts will not struck down an Act as imposing unreasonable restrictions merely because it creates an absolute liability for infringement of the law which involves grave danger to public health". At the same time the law providing for domicillary visits by this very court was struck down as it infringed an individual liberty. In fact entire social structure of society has been effectively moderated and toned up by exercise of power of judicial review. The employer and employee relationship has been given new thrust by extending protection to the weaker. In rent control legislations the interpretation of the provisions in favour of tenant to protect him from manoewring of the landlord have been made to promote social harmony. A growing and developing country is bound to have socio-economic tension. The political pressure for immediate and complete transformation on one hand and judicial effort to maintain balance between individual and society is bound to create challenges. But as said by Louis Brendis, "The remedy is not to displace courts but to make them efficient instruments of justice". The interest of individual has to be sacrified for betterment of society. But in a society which is structured on rule of law the deprivation must be in accordance with procedure established by law. The entire employer employee relationship both government industrial or in public sector, landlord and tenant conflict, grant of licence its renewal and rejection imposing of tax and their collections, acquisition of land and payment of compensation, accident claim etc. have been shaped and moulded by the courts to the needs of society in furtherance of walfare state. The recognition of basic human rights, the development of rule of Promissory Estoppel against Government and Corporations, primacy to right to livelihood are some of recent developments through the medium of Article 226. The widening of contentes and reach of doctrine of equlity, the pillar on which rests foundation of democracy has been the task of judicial review. The dynamism of this concept has been broadened and it has been taken beyond the tradition and doctrinaire limits. The stricking down of agreements or clause opposed to public policy or compelling the government to be fair in distribution of largess have been achieved by the judicial decision only. I would conclude by on extract of Justice Madon in a recent judgement by S. C. The role of the courts has been summed

up as "The law exists to serve the needs of the society which is governed by it, if the law is to play its allotted role of serving the needs of the society, it must reflect the ideas and ideologies of that society. It must keep time with the heartbeats of the society and with the needs and aspirations of the people. As the society changes, the law cannot remain immutable the early nineteenth century essayist and wit, Sydney Smit, said, "When I hear any man talk of unalterable law, I am convinced that he is an unalterable fool". The law must, therefore, in a changing society march intune with the changed ideas and ideologies. Legislatures are, however, not best fitted for the role of adapting the law to the necessities of the time, for the legislative process is too slow and the legislatures often divided by politics, slowed down by periodic elections and overburdened with myriad other legislative activities. A constitutional document is even less suited to this task, for the philosophy and the ideologies underlying it must of necessity be expressed in broad and general terms and the process of amending a Constitution is too cumbersome, and consuming to meet the immediate needs. This task must, therefore, of necessity fall upon the courts because the courts can by the process of judicial interpretation adapt the law to suit the needs of the society."

Thank you.

CONTEMPT OF COURT

by

HON'BLE MR. JUSTICE U. C. SRIVASTAVA

The dignity, glory and reputation of Courts which exist for doing justice is necessarily to be protected and maintained not only for due administration of justice, but also for reposing of confidence of general public in it. The primary object of contempt is to protect against any interference with or obstruction to or any tendency to interfere or obstruct due administration of justice. In legal parl'ance the word 'contempt' means interference with cause of justice, violation of orders of Court and scandalising the Court or offending against the dignity of Judge in a proceeding or decided case. Restrictions have been imposed for making comments on Judges and trials of cases and persons violating the restrictions used to be tried for crimes called 'Contempt of Court'. The expression seems to suggest protection of dignity of court against insult or injury but, it is a mode of indicating the majesty of law in its active manifestation against obstruction and outrage.

Ronald L. Goldfarb in the 'Contempt Power' says that "the law of contempt is not the law of men, it is the law of kings. It is not law which representative legislators responsibly reflecting the populi originally wrote, but is rather evolved from the divine law of kings. Though this is not the only source of power, it is the seed from which the powers grew, it was later adopted and cultivated by men not adverse to its exercise. Later institutions agreeably adopted it, less as adjuncts to the kings than to protect their own dignity and supremacy".

In the words of Mr. Justice Krishna Iyer, in Barada Kant Misra's case the contempt law is the accommodation of two constitutional values—the right of free speech and right to independent justice. The ignition of contempt action should be substantial and malafide interference with fearless judicial action, not fair comment or trivial reflection on the judicial process and personnel.

The contempt of court has its origin in England and it is in vogue in a number of countries following the common law system. In England the contempt used to be tried by jury like any other criminal trial. The Star Chamber assumed jurisdiction to punish those who committed contempt

of court and when Star Chambers were abolished the ordinary Judge started trying contempt summarily. The power to summarily punish for contempt of court has not been available to inferior courts and it is only the higher courts or the courts of record which have enjoyed this power except in those cases where legislature has specifically conferred jurisdiction upon subordinate courts to punish for contempt of court.

The basic principle on which taking of action for contempt of court is founded is that "it warrants judicial action in defence of judicial or legislative power itself". The exercise of power of contempt in order that judicial proceedings take place unhampered has long been recognised and Lord Harwicks in the case St. James Uring Past (1741 II Atkins 469) observed that "there cannot be anything of greater consequence 'than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters."

The contempt of Court is not intended to protect the personal dignity of the judiciary nor does it seek to protect the private rights of the parties or litigants although individuals also benefit from the protection that the law of contempt provides. The term 'Contempt of Court' has been commented upon as inaccurate and misleading in some cases. In the case of the Johnson v. Grant, 1923 SC 789 Lord President Clyde held as follows :—

> "The phrase the 'contempt of court' does not in the least describe the true nature of classes of offences with which we are here concerned. The offence consisting in interfering with the administration of law, in impeding and perverting the course of justice.....it is not the dignity of the court which is offended .....a petty and misleading view of the issues involved—it is the fundamental supremacy of the law which is challenged".

In the words of Hon'ble Mr. Justice Desai in the case of Ram Dayal Morarka v. The State of Madhya Pradesh (1978-2 SCC 630) Contempt jurisdiction is a special and to some extent unusual type of jurisdiction wherein the prosecutor and Judge are combined in one. To some extent it trenches upon the fundamental right of free speech and expression and stifles criticism of a public officer concerned with administration of public justice in discharge of his public duty. The Contempt of Courts Act, 1926 was enacted in order to remove doubts about the power of High Courts to punish contempts of subordinate courts. The Contempt of Courts Act, 1926 was a short Act containing only three sections. The preamble mentions that it was an Act to define and limit the powers of certain courts in punishing for contempt of Courts and since doubts had arisen as to the powers of the High Court of Judicature to punish for contempt of Courts,

it was considered expedient to resolve those doubts and limit powers exercised by the High Court in punishing for contempt of courts. Section 3 of the said Act laid down that a contemner may be punished for simple imprisonment for a term which may extend to 6 months or fine which may extend to Rs. 2000/- or with both. A proviso was, however, added to Section 3 by the Contempts of Courts Amendment Act, 1937, to the effect that notwithstanding anything elsewhere contained in any law, no High Court shall impose sentence in excess of that specified under the section for any contempt either in respect of itself or of a court subordinate to it.

Contempts have been recognised as either criminal or civil and although criminal contempt may take different and diverse forms, they all share a common characteristic of interference with due administration of justice either in a particular case or more generally as a continuing process, as observed by Lord Diplock in A. G. V. Leveller Magazine Ltd., 1979 AC 440 at 449. The other class of contempt is known as civil and essentially it involves non-compliance with an order of Court. But punishment for civil contempt is also concerned with upholding the dignity of the administration of justice and its effective administration. In the Contempt of Courts Act, 1971 civil and criminal contempt have been defined and it shall be referred to in detail a little later.

The power to punish for contempt of court has placed restriction upon the right of freedom of speech and expression and there has always been a problem that there should be a balance between the exercise of the valuable right of freedom of speech and expression and the power of the courts to punish for contempt of court with a view to ensuring fair and unhampered trial of cases. The conflict between the freedom of speech and expression and the exercise of summary power to punish for contempt of court has been almost as old as the present judicial system which may be termed as common law system.

The need of Contempt of Courts Act, 1926 was felt on account of difference of opinion between the Madras and Bombay High Courts on the one hand and the Calcutta High Court on the other hand regarding protection of Subordinate Courts.

The Constitution of India came into force on 26th January, 1950 and it recognised the power of the Supreme Court and the High Courts to take action for Contempt of Court of themselves as Courts of Record. Article 129 of the Constitution of India recognised the power of the Supreme Court to punish for its contempt and similar powers have been given to the High Courts under Article 215 of the Constitution.

The Contempts of Courts Act, 1926 was not found adequate and as such the Contempt of Courts Act, 1952 was enacted. From the statement of objects and reasons which led to the enactment of Contempt of Courts Act, 1952 it is obvous that this law was made as there was no specific provision of law which enabled a High Court to exercise this power in respect of contempt committed beyond its territorial jurisdiction. The Contempt of Courts Act, 1952, was re-enacted with only minor changes in the Act of 1926. It did not change the position of being a sketchy statute.

The restrictions to criticise or comment on Judges interfered with the right to express and propagate one's view freely. The Constitution of India recognised this and under the Constitution of India freedom of speech and expression was elevated to the status of fundamental right but reasonable restrictions in exercise of the same by legislations in relation to certain matters including security of State, decency, morality or in relation to contempt of the Court were made permissible. Article 19 (1) and (2) of the Constitution being relevant is reproduced below :—

> "Article 19. Protection of certain rights regarding freedom of speech etc.
>
> (1) All citizens shall have the right :—
>
> (a) to freedom of speech and expression ;
>
> (b) to assemble peaceably and without arms.
>
> (c) to form associations or unions ;
>
> (d) to move freely throughout the territory of India.
>
> (e) to reside and settle in any part of the territory of India, and
>
> (f) to practise any profession, or to carry on any occupation, trade or business.
>
> (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by said sub-clause in interests of (the sovereignty and integrity of India), the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence".

The summary provision of punishment contained in the Contempt of Courts Act, 1926 and the Contempt of Courts Act, 1952 though valid and constitutional fell short of the expectations of the people and interfered with their fundamental rights of freedom of speech and expression. It was

felt that the Act of 1952 did not contain sufficient safeguards for the functtioning of the press particularly. A Committee under the Chairmanship of the then Additional Solicitor General of India, late Sri H. N. Sanyal was formed by the Government of India and this Committee submitted a very comprehensive and detailed report suggesting drastic changes in the law of contempt of courts. The Draft Bill produced by the Sanyal Committee which was referred to a Select Committee undergoing a number of changes and the Bill was finally introduced in the Rajya Sabha on 19th February, 1968 and the Contempt of Courts Act 1952 was replaced by the Contempt of Courts Act, 1971. The Act of 1971 has undoubtedly made considerable improvements upon the Contempt of Courts Act, 1952 by making some restrictive departures from the traditional law, and guidelines have also been provided. The Supreme Court has recognised this in the case of Barada Kant Misra v. Registrar, Orissa High Court (AIR 1974 SC 710 para 65).

The Contempt of Courts Act, 1971 has given definition of the term Contempt of Court in Section 2 which is reproduced below :—

> Section 2. Definitions—In this Act unless the context otherwise requires.
>
> (*a*) Contempt of Court means civil contempt or criminal contempt.
>
> (*b*) "Civil contempt" means wilful disobedience to any judgment, decree, direction, order writ or other process of a Court or wilful breach of an undertaking given to a Court.
>
> (*c*) "Criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of other act whatsoever which—
>
> (*i*) Scandalises or tends to scandalise, or lowers or tends to lower the authority of any Court, or
>
> (*ii*) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings, or
>
> (*iii*) interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice in any other manner.

Reference to earlier English and Indian cases has been made in the case of Barada Kant Misra and it will be seen that the definition of Contempt of Court in the Act of 1971 is borrowed from the English law of

contempt. Barada Kant Misra, holding the post of subordinate judge after reversion from the post of a cadre in Orissa Superior judicial service, was charged with contempt for making averments in a representation in the form of an appeal to the Governor regarding his suspension. The representation attributed mala-fide, bias and prejudice to the High Court, Barada Kant Misra wrongly alleged that the Government had cancelled the previous disciplinary proceedings against him and three of the High Court Judges were biased and prejudiced against him The High Court did not accept the Government order cancelling his demotion. There were other letters also written by Barada Kant Misra to the Registrar of the Orissa High Court and the Supreme Court observed that Barada Kant Misra in his letters stated in unequivocal terms that the dispensation of justice by the High Court on its administrative side was most atrocious and vindictive and it is on that ground that the contemner would not obey the court's order, would not submit any explanation and would take all possible measures before the Supreme Court, and the Governor and the Chief Minister and not surrender to the jurisdiction of the High Court. The Supreme Court repelled the contention advanced by Sri A. K. Sen on behalf of Baroda Kant Misra that reference to the administrative acts of the High Court did not amount to contempt of Court. Majority of the judges of the Supreme Court held, if the attack on the judge functioning as a judge affects administration of justice, it becomes a mischief punishable for contempt of court and it matters not whether such an attack is based on what a judge is alleged to have done in the exercise of his administrative responsibilities. The judge's functions may be divisible but his intergrity and authority are not divisible in the context of administration of justice Unwarranted attack on him for corrupt administration is as potent in doing public harm as an attack on his adjudicatory function. It has also been held by the majority that "judicial capacity is an ambivalent term and it means capacity of or power to a judge and is capable of taking in all functional capacities of a judge, whether administrative, adjudicatory, or any other, necessary for administration of justice".

Mr. Justice Krishna Iyer and Mr. Justice P. N. Bhagwati as he then was, however, struck a different note and they approved the following observations of Mr. Justice Kidwai in the case of Rex. v. B. S. Nayyar (AIR 1950 Alld. 551).

> "The first thing to be remembered is that courts are not concerned with contempt of any authority except courts of law in the exercise of their judicial functions. Thus, any speech, writing or act which does not have effect of interfering with the

that a minister takes bribe or shows favour would fail on the charges being proved to be true. But against a corrupt judge if a charge was levelled that he was taking bribe or showing favour the person making the allegation may be published for contempt of co rt. There should not be two different laws for a minister and Judge. In the matter of Special Reference from Bahama Islands (1893 AC 138) publication in a newspaper to the effect that a justice was utter by incompetent and a shirker was held not to amount to contempt of court, but it could be made the subject matter of proceedings for libel. This decision runs counter to the Supreme Court case of Barada Kant Misra where the theory was accepted that Judge is an integrated peronality and any attack on a Judge which reduced the belief and confidence in him as a Judge is contempt. Mr. Justice Mukherjee in the case of B. Rama Krishna Reddy v. Manrass (1952 SCR 455) has held that specific instances to the effect that the officer takes bribe or behaves improperly with the litigants if found to be true would be for the benefit of the public and action for contempt of courts may be taken if it is found that the allegations were false. In this case the appellant admitted that the allegations made were on hearsay and he was held guilty of contempt of court.

Proceedings for contempt of court in what has come to be known Mulgaonkar's case (AIR 1978 SC 747) were dropped. The Chief Justice's writing letters to Chief Justices of the High Courts in India suggesting a code of conduct for judges to be drawn by the Chief Justice was not an act in the judicial capacity of the Chief Justice of India.

In Mulgakar's case the court laid down six principles which are to be kept in mind and these are :—

(1) Wise economy of the use of the contempt power by the Court. The court shall act with seriousness and severity where justice is jeopardised by a gross and/or unfounded attack on the judges, where the attack is calculated to obstruct or destroy the judicial process, otherwise the court should ignore the dogs may bark, the caravan will pass.

(2) The constitutional right of fair criticism including the fourth estate and the need for profection of judicial process and its presiding functionary, the judge, must be harmonised and a happy balance must be struck between the two.

(3) The difference between personal protection, obstruction of public justice and community's confidence in that process

must be clearly kept in mind, because the former is not contempt but the latter is.

(4) The Fourth Estate which is indispensable intermediary between the State and the people and necessary instrumentality in strengthening the forces of democracy should be given fair-play within responsible limits when the focus of its critical attention is the court including the highest court.

(5) Judges should not be hypersensitive even when distortions and criticism overstep the limits but they should deflate such vulgar denunciations by dignified bearing condenscending indifference and repudiation by judicial rectitude; and

(6) If the Court considers, after evaluating the totality of factors that the attack on the judge or judges was scurrilous, offensive, intimadatory or malicious beyond condonable limits, the strong arms of law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of Rule of law fouling its source and stream.

The Supreme Court also dropped the contempt preceedings in the case of Shyam Lal (AIR 1978 SC 481). The Times of India had published a comment on the Supreme Court Judges in Habeas Corpus case. The proceedings were dropped, but the then Chief Justice, Mr. Justice Beg, made some observations in defence of the judgment in Habeas Corpus case. Unwarranted criticism of a judgment of court of law would also amount to contempt. In Ram Dayal Morarka's case in which a pamphlet was issued after the decision in appeal attacking the judgment of Magistrate, the Supreme Court observed that fair and reasonable criticism must be encouraged because judges cannot claim infallibility and a fair and reasonable comment would be helpful to a Judge to see his own shortcomings, limitations and imperfection. But if the criticism is likely to interfere with due administration of justice or undermines the confidence which public rightly reposes in courts of justice, the criticism would cease to be fair and reasonable criticism as contemplated by section 5, but would scandalise the Courts and substantially interfere with the administration of Justice. The Court held that the appellant was guilty of committing contempt of Court.

In the Constitution of United States there is no provision similar to Article 19 (2) to (6) of the Indian Constitution and as such in the United States restrictions on freedom of speech and expression as are found in India are absent. The test of 'clear and present danger' evolved by the

American Judges is inapplicable to India. In the case of Babu Lal Pharate (AIR 1961 S. C. 884) the Supreme Court has rejected the test of 'clear and present danger' laid down in the case of Schenk's case (1918 249 U. S. 47).

Section 5 of the English Contempt of Courts Act, 1981 has made a departure from the traditional strict liability rule by laying down that a discussion in good faith of public affairs is not contempt of court.

The power of punishment for contempt of Court is a very potent tool in the hands of Judges, but it has always been emphasised that it must be used very very sparingly and this jurisdiction as Lord Denning has observed should not be used as means to uphold the dignity of Courts and Judges which must rest on surer foundations. The judges have to rely on their own conduct and behaviour fo maintaining the dignity and efficiency of the present system of administration of justice.

———

DEVELOPMENT OF ADMINISTRATIVE LAW IN POST-INDEPENDENCE INDIA

by

JUSTICE K. N. GOYAL†

One did not hear much of administrative law until relatively recently. In the earlier part of this century students of British Constitutional Law who were fed with Dicey's exposition of the rule of law in England were laconically referred to the French *droit administratif* in a rather unfavourable light. They were taught that while in Britain a police officer or a civil servant could be sued personally for compensation for a tort committed by him in transgression of his official powers, his French counterpart could not. Later, however, this deprecatory comparison was conceded by British writers and judges to be unfair. They recognised after an objective and in-depth study of the French system that the citizen was able to secure better redress for wrongs committed by men in authority from the *Conseil-d-etat* than the citizen is England could from the law courts. (It was a different matter that that system which owed its success to the special traditions of the French Civil Service could not be transplanted into other soils). Second, the presence of a system of administrative law in Britain also came to be perceived, recognised and developed.

In our country one is pleasantly surprised to learn that even as far back as sixty years ago a Tagore Law Lecture[1] was delivered on the subject of administrative law in the wake of Montague-Chelmsford reforms.

The doctrine of *ultra vires* had, however, a longer lineage in the Anglo Saxon jurisprudence. The laws relating to local corporations and joint stock companies were the original breeding ground of this doctrine.[2] The law of agency, the law of master and servant and the law relating to

---

† Judge, Allahabad High Court (Luckow Bench). Text of the first Hargovind Dayal Srivastava Memorial Lecture at Lucknow on November 7, 1983, under the Chairmanship of Sri S. D. Misra, President, Avadh Bar Association and Chairman of the H. D. Srivastava Memorial Society. The Lecture series was inaugurated by Mr. Justice D. N. Jha, Senior Judge, Lucknow Bench of the Allahabad High Court.

1. COMPARATIVE ADMINISTRATIVE LAW by Narendra Nath Ghose (T.L.L., 1918).
2. *See* Bryce on ULTRA VIRES.

trustees were other branches in which the principles of scope of authority and good faith were applied. In our country, besides, analogous principles were applied to alienation of joint Hindu family property by the *karta* of the family.

Even under the common law of torts, the old Specific Relief Act and the Code of Civil Procedure remedies were available against administrative wrongs of commission and omission. The Limitation Act also made specific mention of such suits. The old Code of Criminal Procedure also provided for a writ of habeas corpus. But the pre-1950 jurisdiction of courts over official wrongs was very limited in nature and was also conditioned by feudal doctrines borrowed from Britain, such as, that the King can do no wrong, that the Sovereign cannot be sued in his own courts, that a statute does not bind the Crown unless specifically mentioned, and so on,—though some of these doctrines had, at least partly, ceased to be valid even in their mother country.

The British-Indian Constitution of 1935 not only gave birth to the insititution of Federal Court but also gave to the "subjects" grounds on which they could assail even Acts of Legislature. One was the division of legislative powers between Central and Provincial Legislatures. Another was the constitutional prohibition against making of any law for acquisition of property without making provision for compensation[3]. There was also a limited guarantee of equality[4]. The civil servants were also given constitutional safeguards against arbitrary dismissal or reduction in rank.[5] This last led to the landmark decision of the Privy Council in *I. M. Lall's case*.[6] These restrictive provisions came to be made because of the feeling of the foreign rules that the politicians to whom the limited powers were being transferred could not be trusted to wield their newly acquired powers fairly, particularly in relation to classes which had stood by the former.

Keshav Talpade's case[7] in which during the Quit India Movement, a Defence of India Rule of 1939 relating to preventive detention was struck down by the Federal Court headed by a benign British judge[8] broke new ground in the field of validity of delegated legislation.

---

3. Section 299.
4. Section 298.
5. Section 240.
6. *High commissioner for India* v. *I. M. Lall*, AIR 1948 PC 121.
7. *Keshav Talpade* v. *Emperor*, AIR 1943 FC 1.
8. Sir Maurice Gwyer, C. J., who later served this country with distinction as Vice-Chancellor and builder of the Delhi University.

Came the Constituent Assembly which was set up by the founding fathers even in anticipation of Independence. Parliamentary democracy was borrowed from Britain but not its unitary system which could not possibly be imposed on the vast country, the subsequently expressed views of late Chief Justice Mahajan notwithstanding. Hence the Constitution makers perforce had to look beyond the unwritten English Constitution and to carry forward the federal concept of the 1935 Act. Imbued, moreover, by the ideals of American and Irish freedom fighters they incorporated in the statute a whole Part on Fundamental Rights, and not merely the property rights and the limited prohibition of inequality that had found place even in the 1935 Act. The constitution makers thought fit to assure the services too of a fair deal in order to enlist their co-operation in saving the country from disintegration and in building a new India. Checks and balances between the Executive, the Legislature and the Judiciary, between the Centre and the States and between the rights of the individual citizen and the collective needs of the society were built in. The Constituent Assembly debates, however, show that the non-lawyer members had prophetically expressed concern that the Constitution which was being so hammered out was going to usher in the lawyers' paradise.

Inspired by the reported success of the Russian five year plans our leaders had started thinking in terms of national economic planning even in the midst of the freedom struggle. The British Indian Government too had introduced extensive economic controls in the wake of shortages and scarcities of essential commodities and accommodation in the World War Two and the post-War situations. Thus Indepedent India started with a legacy of numerous regulations. These were thereafter continuously extended and tightened. The Directive Principles, the Industrial Policy Resolution, the consequent expansion of the public and co-operative sectors, the theory of State control over the commanding heights of economy,—all contributed to it. Land reforms legislation which had already been initiated by the popular ministries under the 1935 Act was carried several steps forward,—the abolition of intermediaries, the imposition of ceiling on land holdings, the consolidation of holdings, the distribution of surplus land among the landless. It was thus inevitable that various regulatory or near-confiscatory measures should come to be challenged in courts under the new writ jurisdiction conferred on them by Articles 32 and 226.

Fundamental rights—(in particular, the express provision in Article 19 and the implied requirements in Article 14 that the reasonableness of the restrictions or of the classification prescribed shall be judicially review-

able),—fortified by the express provision in Article 13 that any Act or rule or order inconsistent therewith shall to the extent of such inconsistency be void, thus came to be the nightmare of popular governments and legislatures. Land reforms and economic regulations in the first two decades after Independence did not always satisfy the tests applied by Judge, who were thereupon criticised as backward-looking and living in an ivory tower and out of tune with the aspirations and expectations of the people. Not only by politicians but even by some of their own successors. To overrule them Article 31 was repeatedly amended. Also over-ridden by non-obstante Articles 31-A, 31-B, 31-C. Property became a dirty word, and even Judges in *Kesavananda Bharati*[9] came to be apologetic about it. And ultimately that right was virtually thrown over the board from Articles 19 and 31, though retained for minority educational institutions (Article 30) and farmers (Article 31-A) and also, outside Part III, as a non-fundamental but constitutional rights—(Article 300-A)—whatever that may mean. Ironically, though, it was this fundamental right to property conferred by Article 31 that came to the rescue of even "workmen" in the L. I. C. case, namely, *Madan Mohan Pathak*[10].

Of late, however, so far as economic measures are concerned, the courts have come to show greater defence to legislative judgment (*Bearer Bonds*[11], *Prag Ice Mills*[12], *Welcome Hotel*[13], *Hoechst Pharmaceuticals*[14]). They have, however, extended their powers of Judicial review over newer fields and on newer grounds. In the beginning the Courts were inclined to claim only a limited jurisdiction. An Act could be struck down if it violated any fundamental right or was in breach of any other constitutional provision or for want of legislative competency. A rule was void if it was in breach of the Constitution or of the Act under which it was made. An order was void if it violated the Constitution or the Act or rule from which it purported to derive its authority. Presumption of constitutionality attached to a legislative act[15] and presumption of validity to every official act[16]. The wisdom of a legislative or executive decision could not be questioned.[17] The principles of natural justice did not apply to adminis-

---

9. *Kesavananda Bharati* v. *State of Kerala* (1973) 4 SCC 225.
10. *Madan Mohan Pathak* v. *Union of India*, (1978) 2 SCC 50.
11. *R. K. Garg* v. *Union of India*, (1981) 4 SCC 675.
12. *Prag Ice & Oil Mills* v. *Union of India*, (1978) 3 SCC 459.
13. *Welcom Hotel* v. *State of A. P.*, (1983) 4 SCC 575.
14. *Hoechst Pharmaceuticals* v. *State of Bihar*, (1983) 4 SCC 45.
15. *V. M. Syed Mohammed & Co.* v. *State of Andhra*, AIR 1954 SC 314.
16. *See* illustration (*e*) to Sec. 114, Evidence Act.
17. *F. N. Balsara* v. *State of Bombay*, AIR 1951 SC 318.

trative acts.[18] The American concept of due process of law was foreign to Article 21 of our Constitution.[19] The Court could not pry into the Secretariat files or inquire into the advice given by ministers.[20] No right could be claimed on the basis of a mere executive order[21] or assurance. Termination of Service according to contract[22] or rules[23] could not be questioned. Service regulations of even statutory corporations were not law.[24] Locus standi was necessary before a court could be approached.[25] Gradually, however, all this changed. *Dhingra*[26] established that even termination, compulsory retirement or reversion would attract Aticle 311 if it was accompanied by stigma or by deprivation of earned benefits. *Delhi Laws*[27] case established that the Legislature could not be permitted to make excessive delegation of legislative powers to the executive. *K. P. Joseph*[28] established that a legal right could be founded even on a G. O. Justice Frankfurter's view that "an executive agency must be rigorously held to the standards by which it professes its actions to be judged" has also now found repeated acceptance by our Supreme Court (*Amarjit Singh Ahluwalia*[29], *Shetty*[30], etc.). *Kraipak*[31] established that even for an administrative decision the rules of fair play, if not all the rules of natural justice, could be imported. *Sukhdeo v. Bhagatram*[32] held service regulations of statutory corporations also to have force of law. *Indo Afghan Agencies*[33], *Royappa*[34], *Maneka Gandhi*[35], *Mohinder Singh Gil*[36], *Bellappa*[37], *R. D. Shetty*[30], *Ajai*

---

18. *Province of Bombay* v. *Khushaldas*, AIR 1950 SC 222.
19. *A. K. Gopalan* v. *State*, AIR 1950 SC 27.
20. *See* Decisions on Articles 163(2) and 74)2) of the Constitution and Sections 123 and 124 of the Evidence Act.
21. *G. F. Fernadez* v. *State of Mysore*, AIR 1967 SC 1753.
22. *Satish Chand Anand* v. *Union of India*, AIR 1953 SC 250.
23. *H. P. Singh* v. *U. P. Government*, AIR 1957 SC 886.
24. *Indian Airlines* v. *Sukhdeo Rae*, (1971) 2 SCC 192.
25. *Hans Muller* v. *Supdt., Presidency Jail*, AIR 1955 SC 367.
26. *P. L. Dhingra* v. *Union of India*, AIR 1958 SC 36.
27. *In re Delhi Laws Act*, AIR 1951 SC 332.
28. *K. P. Joseph* v. *Union of India*, (1973) 1 SCC 194.
29. *Amarjit Singh* v. *State of Punjab*, (1975) 3 SCC 503.
30. *R. D Shetty* v. *International Airport Authority*, (1979) 3 SCC 489.
31. *A. K. Kraipak* v. *Union of India*,(1969) 2 SCC 262.
32. *Sukhdeo* v. *Bhagat Ram*, (1975) 1 SCC 421.
33. *Union of India* v. *Indo Afghan Agencies*, AIR 1968 SC 718.
34. *E P. Royappa* v. *State of T.N.*, (1974) 4 SCC 3.
35. *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248.
36. *Mohinder Singh* v. *C.E.C.*,(1978) 1 SCC 405.
37. *Manager Govt. Branch Press* v. *Bellappa*, (1979) 1 SCC 477.

Hasia,[38] *Bharat Petroleum*[39], *People's Union for Democratic Rights*[40], the *Judges' case*[41], *Nargesh Meerza*[42], all have likewise made inroads into the old concepts. The Courts are now examining the reasonableness of all laws, rules and executive acts, even apart from Article 19. All public powers are a trust[43]. They must be exercised in the public interest.[44] What is public interest should be demonstrable before a Court. No nonsense about secrecy or privilege[45] to block a judicial probe into the question. Unreasonableness involves arbitrariness. Arbitrariness involves discrimination and inequality. The onus is now on State to prove reasonableness.[45] Even a Government company[39] or Government-sponsored society[38] can be an instrumentality of State and as such treated as an "authority". Public interest litigation[40], despite all the controversy surrounding it and notwithstanding the want of unanimity among judges about all its implications—and despite also the Matthew Commission's questionnaire[46],—seems to have come to stay,—cutting the Gordian knot of standing.

All this implies that the High Courts and the Supreme Court in our country exercise the widest jurisdiction anywhere in the world. With innumerable laws, in particular, provisions respecting licences, permits and quotas, and the proliferation of State activities through Corporations, Companies, Co-operative Societies, the complex labour laws, rent and eviction control laws, ceiling laws, consolidation of holdings, the ever expanding numbers of public servants and quasi-public servants, the occasions for exercise of that jurisdiction are also the most numerous. In England the civil servants cannot approach the Courts, though their lower rungs are now allowed to approach the industrial tribunals, and industrial tribunals there cannot grant reinstatement but only compensation for wrongful dismissal. In U.S.A. no one cares for government employment. In contrast, with the massive unemployment in our country Government service is the most desired thing. The civil service as well as the political

---

38. *Ajai Hasia v. Khalid*, (1981) 1 SCC 722.
39. *Som Prakash Rekhi v. Union of India*, (1981) 1 SCC 449.
40. *P.U.D.R. v Union of India*, (1982) 3 SCC 235.
41. *S.P. Gupta v. Union of India*, (1981) Supp SCC 87.
42. *Air India v. Nargesh Meerza*, (1981) 4 SCC 335.
43. *Mohinder Singh Gill, supra*. [Para 3 of (1978) 1 SCC 405].
44. *Kasturi Lal v. State of J & K*, (1980) 4 SCC 1, 10.
45. *D.S. Nakara v. Union of India*, (1983) 1 SCC 305, Para 16; *R.D. Shetty v. Union of India*, (1979) 3 SCC 489, para 12.
46. Recent questionnaire issued by the Law Commission of India headed by Mr. Justice K.K. Matthew, (1982) 1 SCC (J) 27.

executive in U. K. enjoy a measure of public confidence unknown in India. The result is that the total number of writ petitions in the Queen's Bench of England does not perhaps exceed a hundred in a year. Our own Federal Court was required to sit only for a few weeks in a year. But today the Indian courts are flooded with a hundred thousand writ petitions in a year. Our population explosion is being out-matched only by this litigation explosion. The result is that while writ petitions were supposed to be the speedier remedy they now very often take longer to decide than even a civil suit. An undesirable fall-out of this phenomenon is that the emphasis of lawyers and litigants has shifted to interim relief, the grant or denial of which has a perpetuative tendency. Thus Judges with little time for cool arguments or cool study or reflection are required to dispense instant justice at the admission stage and not only to pronounce on the wisdom, reasonableness and constitutionality of major policy decisions taken by Cabinets and Legislatures but also to probe into the most minute details of civil administration and of the working of universities, colleges, schools, statutory corporations, companies, co-operative societies, and so on.

Where do we go from here ?

Judicial vacancies are chronic, but will we be able to tackle the situation even if they are all filled ? Could we do with less controls, less laws ? Should the powers of courts be curtailed ? Are administrative tribunals the remedy ? In that event, should these tribunals not themselves be subject to the superintendence of High Courts or at least of the Supreme Court ? Should a separate Constitutional Court be created ? If so, which of the matters that are now allowed to go to court should be within its purview ? And what about the rest ? Should oral arguments be eliminated except in a few cases selected by the Judges on the basis of their own private study of the written briefs submitted to them, as in the U.S. Supreme Court ? Or need nothing drastic be done about it,—beyond a little tinkering here and there, and, hopefully, we may just muddle through ?

———

encounter all sorts of difficulties in frequent transfers,—the more so in these days of ever-soaring inflation. They do not always get the co-operation of their subordinates. They may have their own domestic difficulties,—or difficulties with their collegues. So an added responsibility lies on the local bar to treat the presiding officers as their guests in the district and to make their short stay pleasant so that they may carry sweet memories of the place throughout their life. Likewise a fair and gentle officer leaves a lasting impression on the district and is fondly remembered by the bar for years after his departure.

What I am saying this afternoon is nothing novel or original. All this has been said a thousand times before in innumerable forums and on various platforms. Nonetheless even the obvious things require occasional reiteration with a view, if nothing else, to self-introspection by all of us.

I have great pleasure in inaugurating the seminar.

———

POWERS OF APPELLATE AND REVISIONAL COURTS (CIVIL)

BY

HON'BLE MR. JUSTICE S. D. AGARWALA

It is not necessary for me to give in detail the various sections of the Acts under which appellate and revisional jurisdiction is exercised by the Courts. I only want to give certain guide-lines to be kept in mind while exercising appellate and revisional powers.

(1) It is necessary to keep in mind the directive principles of State policy enumerated in Part IV of the Constitution of India. Particular reference may be made in regard to the three Articles of the Constitution, namely, Article 38, Article 39 and Article 39-A which are quoted below:—

> "38. State to secure a social order for the promotion of welfare of the people. (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which juctice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

> 39. Certain principles of policy to be followed by the State,— The State shall, in particular, direct its policy towards securing—
>
> (*a*) that the citizens, men and women equally, have the right to an adequate means to livelihood;
>
> (*b*) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good ;
>
> (*c*) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(*d*) that there is equal pay for equal work for both men and women;

(*e*) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(*f*) that children are given opportunities and facilties to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

39A. Equal justice and free legal aid. The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

While delivering judgements whether under the appellate Jurisdiction or under the revisional jurisdiction one should keep in mind the basic principles of social justice which are nothing else but what has been enumerated in Article 39 of the Constitution of India quoted above.

Hypertechnical views which might result in injustice or delay in the administration of justice should be avoided. Procedure prescribed by law is meant to do justice and not to fetter the ultimate aim of delivering justice to the people.

It would be apt for me to quote what the great jurist Shri N. A. Palkhiwala spoke about the late Chief justice M. C. Chagla.

> "To the Romans, Justice was a goddess whose symbols were a throne that tempests could not shake, a pulse that passion could not stir, eyes that were blind to any feeling of favour or ill-will, and the sword that fell on all offenders with equal certainty and with impartial strength. This goddess brooded over the Chief Justice's Court but her stern features had relented into a compassionate smile, and the language of the statute was sometimes subjected to severe strain when one of the parties before the Court was
>
> "the ranker
> the tramp of the road,

The slave with the sack on his shoulders
Pricked on with the goad,
The man with too weighty a burden, too weary a load."

His incredible open-mindeness has passed into a byword. No case was ever lost or won in his Court till the last word was spoken. His first impressions, his tentative views, had but a frail hold on existence; he never allowed them to obstruct the light streaming in from even the humblest and junior-most member of the Bar."

(2) No appeal or revision should as far as possible be decided on a purely technical point. This ultimately results in great injustice as today the pendulum is swinging in favour of delivering justice on merits and not on mere technicalities. A judgement based on technical point is ultimately either set aside by the High Court or the Supreme Court and the matter again comes back to the original Court. The result is delay in dispensation of justice and one party unduly takes advantage of the delay.

(3) An appeal or revision should as far as possible be not dismissed merely on the ground that it is not maintainable but an opportunity should be afforded to the parties to cure any defect in the procedure.

(3-A) First question to be examined is whether a suit itself is maintainable or not.

(4) Substitution applications as far as possible should not be dismissed. The present view of the Supreme Court is that substitution applications should normally be allowed and the appeal or revision be not abated and judgment be delivered as far as possible on merits alone. If the substitution application has been filed beyond the time prescribed then the delay should be condoned and a very liberal view be taken in this regard. In regard to substitution matters particular note should be made in regard to the provisions under Order 22 Rule 4 (4) of C. P. C. which runs as follows:—

"The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place."

If this provision is kept in mind number of difficulties which arises in finalising substitution proceedings can be avoided. Refer Ram Sumiran versus D. D. C. A. I. R. 1985 S. C. 606; Sital Prasad Saxena vs. Union of India, A. I. R. 1985 S. C. 1.

(5) If an appeal or revision is filed beyond time a very strict view of the matter should not be taken. It should not be necessary that each and every day's delay should be explained. An overall view of the facts constituting the delay should be determined and as far as possible delay should be condoned so that the party may have an opportunity of hearing.

(6) Appeals and revisions should not normally be dismissed in default. Even if they are dismissed for non-appearance then too if applications for restoration are made the exparte orders should be set aside without further delay and the party should be heard on merits.

(7) The power of remand should be very rarely exercised as against an order of remand an appeal lies. Normally the orders of remand are set aside by superior courts and the delay caused in all this exercise is so grave that instead of doing justice to a party it results in injustice.

(8) In revisions filed against orders striking out defence relief should always be granted and the orders striking out defence should be set aside so that the parties may be heard on merits.

(9) While exercising revisional jurisdiction the revisional court should not interfere on questions of fact but should act completely within the powers given to the Court under the Act. Refer 1979 A. W. C. 746—Lakshmi Kishore vs. Har Prakash.

(10) Where applications are made for amendment of the pleadings a very strict view is to be taken and they should not be allowed as a matter of course and the case remanded.

(11) Applications for additional evidence have to be very carefully considered as they are mostly made for delaying the disposal of the appeals and revisions—if legal pleas permitted to be taken then undertaking be taken that no oral evidence will be adduced.

(12) Judgments should be precise—no litigant is interested in a long thesis. They want the result. No unnecessary comments against the officers.

(13) Judgments to be delivered without delay—this avoides all controversy.

(14) Matters relating to education should be strictly scrutinised. Decisions of Educational Authorites should be respected particularly when two interpretations are possible of a particular proivosion of law.

SOCIAL JUSTICE AND JUDICIARY

by

MR. JUSTICE S. D. AGARWALA

The Indian Constitution is a document of people's faith and aspirations. It is the people of India that are the authors of the Constitution. There can be no doubt that the people of India have, in exercise of their sovereign will, as expressed in the Preamble, adopted the democratic ideal which assures to the citizen the dignity of the individual and other cherished human values as a means to the full evolution and expression of his personality. In the Preamble, the people of India solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure in particular to all its citizens :

JUSTICE, Social, economic and political.

The word 'Justice' in the above expression is obviously used in a wide sense and not merely in the sense of justice administered by the Court of Law in deciding disputes between litigants and enforcing their mutual rights and obligations. The reason is that the word has been used to express the objective aimed at by the Constitution makers in framing the Constitution,—which is the supreme instrument according to which the country is to be governed and all its Laws are to be framed.

The question which arises is as to what is that social philosophy which has been expressed by the Constitution after Independence for the people of this country.

The social philosophy has been made crystal clear in Part IV of the Constitution which enumerates the Directive Principles of State Policy, which are to be the guiding factors in the governance of the country and every State has been made duty bound to apply these principles in making law. A duty has been cast on the State that it shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

The socialist ideals of the National Movement and the national goals are embodied in Article 39 which runs :—

"THE BAR AND THE BENCH AT THE DISTRICT LEVEL"

BY HON'BLE MR. JUSTICE K. N. GOYAL, JUDGE,

ALLAHABAD HIGH COURT†

The Bench and the Bar are two main organs of our system of administration of justice,—the third being the Court staff whose efficiency, integrity and morale is no less important. Not forgetting the litigant, or the dictum of former Chief Justice Sri K B Asthana, that the Litigant's Interest is Supreme. Well, out of two sets of litigants in any cause, one is bound to lose, and both cannot normally be right, unless both are partially right. And to try to discover who deserves to lose and who to succeed is the function of the Judge. And a most difficult function it is, for obvious reasons. It has been rightly said that the task of the Judge in our subcontinent is far more onerous than in some developed countries. Oral testimony is not unoften unreliable. In far too many cases, both sides exaggerate the facts or come out with versions which are not wholly convincing. Moreover, even truthful witnesses, even when they reluctantly agree to figure as witnesses at all, sometimes make a mess of their testimony. Many truthful witnesses do not get a fair deal, either from Court or from opposing counsel, when they do brace themselves up to appear in Court, which because of commonly unpleasant experience, including experience of frequent sudden adjournments and long hours of waiting in uncomfortable circumstances and uncongenial surroundings is not very frequent. Documentary evidence is often ambivalent or capable of interpretation in different ways. Legal documents are not always drafted with skill, while the true meaning of other documents cannot be discovered except in the context of surrounding circumstances which, again, can be truly comprehended only through appreciation of oral evidence. In criminal cases too there is a lot of pollution at the very sources. Laws and rules are so manifold, fast-changing and complex, and case-law is so prolix and interspersed with gratuitous obiter dicta. The mofussil libraries,—Court libraries—as well as bar libraries, are almost invariably inadequate. The latest amendments in laws are often not promptly published from

---

† Text of the address delivered at the Seminar on Relations between the Bar and the Bench, organised by the Bar Association, Sultanpur on December 3, 1983.

Government Presses. Suffering from these handicaps, only a bold man can claim to be up-to-date. There are then the difficulties of interpretation of statutes, of deed, and of applying and distinguishing, even reconciling seemingly conflicting case-law. Procedure is hyper-technicals. Co-operation from office, from process—servers, from police officials, is not always forthcoming. Working conditions are not ideal. Shortage of staff, of stationery, of forms, and so forth are other recurring headaches.

These then are some of the difficulties which face anyone concerned with the administration of justice, the more so in the district Courts. On top of it there is always the factor of human imperfection. Appreciation of evidence is not a mere intellectual exercise. A man with a sharp brain may not always reach correct conclusions on facts, or even on law. Wisdom, and experience of human affairs, count no less. And even equally sincere, wise, able and experienced men may reach different conclusions. Thus the trial Court's conclusion may be reversed by the lower appellate Court, the lower appellate Court's by the High Court, the High Court's by the Supreme Court. And even in the Supreme Court the Bench concerned may decide by a split vote, or its decision may be overruled, distinguished or ignored by a subsequent Bench. Only God Almighty may be able to dispense perfect justice ; at any rate one may console himself with the prospect of ultimate justice.

Such being the inherent imperfections of the judicial process, which cannot be lightly dismissed as an evil legacy of the colonial rule, it is all the more important that there be as much understanding, harmony and mutual respect between the Bench and the Bar as is humanly possible. Not merely personal respect,—which is, of course, important,—but respect for each other's role, the recognition not only of its desirability but of its absolute necessity. Justice is best administered when the two sides are strongly represented by counsel. A true judge always feels unhappy in deciding a case when one side is unrepresented or poorly represented. He does not feel confident enough. In such cases it becomes the duty of the counsel who represents the other side not to overstate his case and not to conceal or suppress any relevant fact or statutory provision or case-law. Fairness and gentleness on the part of counsel enhance the respect for him in the mind of the Court.

And vice-versa. Fairness and gentleness on the part of the presiding officer enhance the respect for him in the minds of the counsel.

Counsel does not best represent his client by being overbearing or intimidatory towards the opponent's witness or counsel or towards the

presiding officer. Bullying, bluffing and blustering may bring about short-term gains with a weak or incompetent presiding judge here and there but can never secure success in the long run. Competent cross-examination does not mean badgering or hectoring cross-examination. A witness must not be cross-examined unnecessarily. Not unoften gently asking one or two questions or even nil cross-examination proves more effective than a lengthy and purposeless cross-examination, just as a pithy and pointwise argument is often more effective than a lengthy, rambling argument. It is the duty of courts as well as of counsel to encourage and show respect to truthful witnesses. A proper atmosphere has to be created so that the tendency of respectable citizens to shy away from the witness box can be overcome.

By sheer logic of circumstances it is thus imperative both on judges and advocates to put on their best behaviour towards each other. They should not only be fair and reasonable but should also appear to be fair and reasonable. It is as much in the interest of the presiding officer as in that of the advocates that they behave gently towards each other. Any tendency on the part of one to try to overawe the other is likely to boomerang on him.

But life is not all logic or reason. If all were to be guided by reason, then there would be no friction, no crime, no violence, no wars. Friction occur because men,—and that includes women,—are more often swayed by emotions, prejudices, hatred, insecurity, megalomania or greed than by reason. The factors of tact, manner of speech, sanskara also play a part. Some people, both among judges and advocates, are by nature obstreperous or cantankerous and cannot help it. Though it is undoubtedly in the interest of advocates and their clients that they put on their best and most pleasant front towards the presiding officer, and seasoned counsel do usually make it a point to be extra-courteous even to the juniormost presiding officer, this is not always so in actual practice. An unscrupulous advocate may want to make a quick buck, and try by hook or by crook either to win the favour of the presiding officer or pressurise him into passing an order favourable to his client. He has no compunction either in fawning on or, as the tactics of the moment may suit him, in being insufferably rough and overbearing towards the presiding officer. He may also try to blackmail the presiding officer by instilling fear in his mind about false and unfounded complaints to higher-ups, or by creating a scene in the Court room, or by whipping up unjustified agitation among his colleagues and so forth. Likewise, there may be black sheep in the judiciary too, and a presiding officer may be not quite fair, or be

prejudiced in favour of or against a party or his counsel. There are also presiding officers who though quite conscientious and fair are tactless and cause unnecessary offence to a party or counsel by passing uncalled for and unguarded remarks.

It is too much to suggest that an open mouth indicates a closed mind. Any judge trying to apply his mind to the facts or law is bound to take an active part in the proceedings. While a witness is in the box the presiding judge may have to re-phrase a loosely or ambiguously worded or misleading question sought to be put by the cross-examining counsel. Or he may put a "court question" to clarify an answer given by the witness. Particularly in a criminal trial, the judge is not a mere umpire but a duty is cast upon him to try to arrive at the truth, and to see that an innocent person does not get convicted merely due to incompetence of the defence counsel and a guilty man does not get acquitted merely because of the inefficiency or carelessness of the prosecuting counsel. In arguments too, a totally silent judge is not necessarily better than a judge who gives opportunity to counsel to clear his points or allay his doubts. But such interventions must not be excessive, lest an impression, though erroneous, be created in the mind of a party or counsel that the judge is inclined to any pre-determined conclusion. In a case where either the advocate or the judge is needlessly offensive or is guilty of unfair behaviour the task of the other side, that is to say, the task of the judge where counsel is at fault and of the counsel where the judge is at fault becomes difficult. And yet the responsibility of the wronged side becomes all the greater. If the advocate is at fault it is all the more necessary for the judge to be circumspect in his behaviour. He must deal with the offending counsel firmly though gently. He must control his temper but not flinch from passing proper and reasoned orders. But howsoever unpleasant and offensive or undesirable an advocate may be, his client should not be allowed to suffer for that reason, and it is the duty of the judge to do justice and not to pass wrong orders merely out of anger or spite or prejudice towards the counsel. Likewise, if the judge is at fault the advocate must also control his temper, but try to do his best in all legal and proper ways to protect the interest of his client. Where, however, both sides are haughty or irresponsible, then God alone may save the situation. However the responsibility for keeping such people on the right path also falls on their peers or on their seniors or superiors.

One thing more in this context. So far as mofussil courts are concerned the presiding officers often come from far off to serve the people and the system. They are away from their parental homes. They

The State shall, in particular, direct its policy towards securing—

(*a*) that the citizens, men an women equally, have the right to an adequtate means to livelihood;

(*b*) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(*c*) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(*d*) that there is equal pay for equal work for both men and women;

(*e*) that lhe health and strength of the workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enteravocations unsuited to their age of strength; and

(*f*) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

It has been further provided that the State shall—

(*a*) within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of un-employment, old age, sickness and disablement, and in other cases of undeserved want; (Article 41).

(*b*) make provision for securing just and humane conditions of work and for maternity relief; (Article 42).

(*c*) endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, a living wage; (Article 43).

(*d*) take steps, by suitable legislation or in any other way, to secure the participation of worker in the management of undertakings, establishments or other organisations engaged in any industry; (Article 43-A).

(e) endavour to provide, free and compulsory education for all children until they complete the age of fourteen years; (Article 45).

(f) promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation; (Article 46).

(g) regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. (Article 47).

The Twenty Point Programme of the Government is an effective step to implement the social philosophy or social justice contemplated by the Constitution for the weaker sections of the community in order to fulfil the cherished aim of the Constitution makers to establish a welfare State.

The directive principles of State Policy are not enforceable in any Court of law. But, by the Constitution (Forty-Second Amendment) Act, 1976, two important provisions were inserted in the Constitution. One was Article 39-A and the other was Article 31-C. Article 39-A provided that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. By Article 31-C, it has now been specifically provided that a law made in furtherance of the social philosophy laid down by the Constitution shall not be deemed to be void on the ground of violation of Articles 14, 19 and 31 of the Constitution. The effect is that such a law cannot be declared void on the ground of discrimination, the violation of fundamental right to freedoms or on the ground that it affects the right to property of a person.

The important question which now arises is as to how far the social philosophy is reflected in the judgments which have been delivered by the Courts of Law after the independence. As an Administrative Judge, while on inspection tour, I had throughout emphasised to all the members of the Judiciary that while giving judgements, the Judges should keep in

mind the directive principles of State policy, namely, the social philosophy envisaged by the Constitution.

It is, no doubt, true that the Judiciary has to interpret the law according to the words used by the Legislature. But, as pointed out by Justice Holmes : "A word is not a crystal, transparent and unchanged; it is the skein of a living thought". It is for the judiciary to give meaning to what the legislature has said and it is this process of interpretation which constitutes the most creative and thrilling function of the judiciary. The higher Courts have been interpreting the various provisions of the Constitution in a manner to reflect and to give effect to the social philosophy laid down in the Constitution.

Lord Devlin once observed:—

> "The prestige of the judiciary, their reputation for stark impartiality, to be kept up in appearance as well as in fact, is not at the disposal of the Government; it is an asset which belongs to the whole nation."

It has also been remarked that semantic luxuries are out of place in the interpretation of BREAD AND BUTTER STATUTES and welfare statutes must necessarily receive a broad and liberal interpretation.

The Hon'ble Supreme Court with the aid of Article 39-A of the Constitution has, in effect, interpreted the provisions of the Constitution liberally and has enlarged the scope of judicial review in vast dimensions. In the historic judgment given by Hon'ble Bhagwati, J. of the Supreme Court in the case of ASIAD WORKERS (AIR 1982 S. C. 1473), People's Union for Democratic Rights v. Union of India "Public Interest Litigation" has been given a special status. It was held that public interest litigation, which is a strategic arm of the legal aid movement, and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is totally different from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another, as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constiutional or legal rights of large number of people who are poor, ignorant or in a socially or economically dis-advantaged position should not go unnoticed and unredressed.

The Supreme Court further in the Judges' case (A. I. R. 1982 S. C. 149, S. P. Gupta v. President of India) expanded the theory of locus standi and permitted any member of the public to bring a petition before the Courts on behalf of a person or class of persons who by reason of their poverty, disability or other socially or economically dis-advantageous position cannot approach the Courts for judicial redress.

The chains forged by the traditional doctrine of "standing" have been broken and access to justice has been made easily available for the purpose of making basic human rights meaningful for the large masses of people. Since it would not be possible for the petitioner who brings an action for the benefit of the deprived sections of the community to produce relevant material before the court, nor would the poor and weaker sections for whose benefit the petition is brought be able to place before the Court relevant material needed to establish their rights, the Supreme Court of India has evolved the strategy of appointing commissions for the purpose of gathering the necessary facts and data which would enable it to enforce the rights of the poor and the down-trodden. But even those strategies may not be enough and it may be necessary to innovate new strategies for the purpose of reaching socio-economic justice to the vulnerable sections of the community and ensuring them their social and economic entitlements.

Besides the above, in short, I may point out a few instances where the judgments of the Supreme Court reflect the social philosophy laid down in the Constitution.

In *Balaji's case* (AIR 1963 S C 649), Hon'ble Supreme Court gave effect to the social philosophy of promoting the advancement and economic interests of the weaker sections of the people and held that reservation can be made to the extent of 50%. Taking aid of Article 39-A and the principles laid down in MANEKA GANDHI'S case (A. I. R. 1978 S.C. 597) and HOSKOT'S case (A.I.R. 1978 S. C. 1548), the Supreme Court in Hussainare Khatoon's case (A.I.R. 1979 S. C. 1360) expaned the content of Article 21 of the Constitution and held that it is the 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 to be provided a lawyer and other legal aid by the State.

Workers have been given a right to challenge a sale made by an employer whose immediate impact may be conversion of permanent employment into precarious service and eventual exit. This was recognized in Fertilizer Corporation' case (A. I. R. 1981 S.C. 344). In Ajay Hasia's

case (A. I. R. 1981 SC 487), it was held that the allocation of more than 15% of total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid. This case has had a serious impact on public employment and is for the benefit of the poor. In Jalan's case (A. I. R. 1979 S.C. 233), a worker has been held entitled to minimum bonus even if the company has suffered a loss. This right was upheld on the principle of social justice.

The Hon'ble Supreme Court in U. P. S. E. Board's case (A.I.R. 1979 S.C. 65) has issued following mandate for the guidance of the Courts:—

> "Courts are bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy. This command of the Constitution must be ever present in the minds of Judges when interpreting statutes which concern themselves directly or indirectly with matters set out in the directive principles of State policy."

I will close with the famous words of BENJAMIN CARDOZO, the great American Judge, who said:—

> "THE INN THAT SHELTERS FOR THE NIGHT IS NOT THE JOURNEY'S END. THE LAW LIKE THE TRAVELLER MUST BE READY FOR TOMORROW."

———

DOCTRINE OF BIAS WITH REFERENCE TO ADMINISTRATIVE AND JUDICIAL DECISIONS

BY

HON'BLE MR. JUSTICE V. K. MEHROTRA

'Bias' denotes an attitude of mind. Webster's Third New International Dictonary defines it as an inclination of temperament and out-look; such prepossession with some object or point of view that the mind does not respond impartially to anything related to an object; prejudice. In legal parlance bias consists in a departure from objectivity. Inherently it consists in making a decision with prepossession bereft of the impartiality with which it is expected to be made.

Anglo-saxon Jurisprudence has, over the years, expanded the parameters of bias which results in invalidating the decision made. Basically, it treats bias as infraction of the principle of natural justice. "In English and Commonwealth law freedom from bias is one of the two major limbs of the rules of natural justice and is enshrined in the maxim nemo judex in causa sua; in Americcan law a fair hearing before an impartial tribunal is a requirement of due process. The justification for these rules is that impartiality is one of the characteristics of a good administration." (Natural Justice-principles and practical Application (Second Edition) by Geoffrey A Flick). The core of the problem, from the practical point of view, seems to be whether the decision is made by a person, or a body of them, either as a judical authority or as an administrative authority which evokes confidence in the mind of a resonable person as one made impartially or not. The circumstances in which a particular decision is made are, thus, relevant in judging whether the decision can be held to be vitiated by bias or not.

The courts have laid down the broad principles with reference to which the question of bias is to be examined. The best known of these are :

(A) PECUNIARY INTEREST AND PERSONAL INTEREST

A direct pecuniary interest usually disqualifies a person from acting as a Judge in the matter. The existence of pecuniary interest is sufficient to disqualify and an aggrieved party need not go on to prove a real likelihood of bias nor need one prove that the decision was influenced in any way by that interest. English, Commonwealth and American decisions, however,

identify three criteria which serve to place limitation upon the operation of the general rule that a person is not qualified to adjudicate upon a matter with regard to which he stands to gain or lose financially as a direct result of his decision. The first limitation is that a decision maker must stand to gain or lose personally as a result of this decision. The interest should not be to remote or minute, trifling or insignificant. Substantiality of interest thus is another limitation on the general rule. Where the interest is indirect or remote and there is no likelihood of bias because of the pecuniary interest of someone personally connected with the decision maker, American and Commonwealth courts did not treat existence of pecuniary interest as always invalidating the decision.

At one time the judicial thinking was that there should be a "real likelihood of bias" before the decision by a Judge was to be invalidated on that account. This test has been modified by applying the principle whether there was "reasonable suspicion of bias in the mind of a reasonable person" in the circumstances in which the decision came to be made. The distinction in the two tests is that in the case of "real likelihood" test the court, on its appreciation of the facts of a case, may find out whether, in its opinion, there was room for the view that there was likelihood of bias playing a part in the decision reached. In the "reasonable suspicion" test, the circumstances of a case are to be looked upon from the point of view of the aggrieved party as a reasonable man and the impression created on his mind about bias playing a part in arriving at the impugned decision.

In Metropolitan Properties Co. (F G C) Ltd. v. Lannon (1969) 1 Q B 577 Lord Denning MR laid down the test as to the "reasonable suspicion of a real likelihood of bias" by saying that in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the Chairman of the Tribunal, or whoever it may be, who sits in an judicial capacity. He does not look to see if there was a real likelihood that he would or did, in fact, favour one side at the expense of the other. Courts look at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit."

The test aforesaid has generally been applied in this country. In *Manak Lal v. Prem Chand* (A. I. R. 1957 S. C. 425), the Chairman of the Bar Council Tribunal which was inquiring into the alleged misconduct of Manak Lal, an Advocate of the Rajasthan High Court, was a Senior Advocate and one time Advocate General of Rajasthan. The Supreme

Court said that the Chairman had no personal interest in Prem Chand who had made a complaint against Manak Lal though he had represented Prem Chand in a case. There was thus no real likelihood of bias but it took the view that the Chairman was disqualified on the ground that "justice not only be done but must appear to be done to the litigating public." In *A. K. Kraipak v. Union of India* (A. I. R. 1970 S. C. 150) the Supreme Court observed that in deciding the question of bias, one has to take into consideration human probabilities and ordinary course of human conduct. The mere suspicion of bias was not sufficient but what has to be seen is whether there was reasonable ground for believing that the adjudicator (in this case a Member of the Selection Board who was himself one of the persons to be selected) was 'likely to have been biased'.

In *Dr. G. Sarana v. University of Lucknow and others* (A. I. R. 1976 S.C. 2428), after noticing some earlier decisions and the opinion of authors of repute, the Supreme Court said (in paragraph 14) that "what has to be seen is 'whether there is substantial possibility of bias animating the mind of the member against the aggrieved party.'

The test that there should be substantial ground for a reasonable person to believe that there was likelihood of bias or, in other words, "reasonable suspicion" test is applicable both in the case of judicial decisions as well as administrative decisions. In the former case it is founded upon the basic principle that justice should not only be done but also appear to be done. In the latter, upon the premise that the decision maker has to act impartially and objectively. Impartiality and objectivity is to be there in judicial decisions also which is added the requirement of there being the appearance of the decision being so rendered.

In the case of Judge it is settled that a judgment which is the result of bias or want of impartiality on the part of the Judge will be treated as a nullity. The judge is not competent to hear a case in which he is directly or indirectly interested. In *Nand Lal Misra v. Kanhaiya Lal Misra* (A. I. R. 1960 SC 882), the Supreme Court directed proper trial of a case after setting aside an order of the High Court of Allahabad and after accepting the reference made by the Sessions Judge when it felt that the trying Magistrate had shown partiality towards the respondent presumably bacause he was the Advocate General of U.P. and took upon himself the role of a cross-examining counsel on behalf of the respondent in proceedings on an application made by the applicant Nand Lal Misra for maintenance under the Code of Criminal Procedure.

A Judge is expected to be serene and even though his patience may be sorely tried and the time of the court appears to be wasted. He

is not expected to unreasonably obstruct the flow of argument or not allow it to be raised lest it be said that there has been no fair hearing. He is not to sit in an appeal against his own decision. (Vishwanathan v. Abdul Wajid (A. I. R. 1963 SC 1).

Personal views entertained by Judges about the activities of political parties or other bodies or organisations should not be allowed to obtrude in a judicial pronouncement. The Judge should avoid all language which may suggest a bias in favour of, or against, any particular class or section of the people. (*Ramhit v. Emperor* (A. I. R. 1943 Allahabad 776).

A judge is expected to look at things objectively, uninfluenced by considerations of policy or expediency. *(M.P. Industries v. Union of India* (A. I. R. 1966 S.C. 671).

The ultimate decision of a judge must not be influenced by any bias, even subconsciously, and it must always rest on the logical aud dispassionate consideration of the data placed before him. (P. V. Gajendragadkar in his Foreword to the Report of the Bank Award Commission (July 1955).

If a member of a judicial body is subject to bias (whether financial or otherwise) in favour of or against any party to a dispute or is in such a position that bias must be assumed to exist, he ought not to take part in the decision or sit in the trial and any direct pecuniary interest, howsoever small, in the subject matter of enquiry, will disqualify a judge and any interest, though not pecuniary, will have the same effect if it be sufficiently substantial to create a reasonable suspicion of bias. (*G. Nageshwara Rao and others v. Andhra Pradesh Road Transport Corporation* (A. I. R. 1959 S. C. 1376).

If one of the parties has close ties of kinship with the decision maker or has such friendship with him as would provide temptation to the decision maker not to hold the scales of justice clear or even, disqualification will be the result. Thus, whenever there is sufficient nexus between the decision maker and a party to justify the appearance that this nexus may influence the decision reached, the decision maker is disqualified. Likewise, personal animosity between the decision maker and a party or his counsel, an imbalanced verbal attack by the decision maker upon the veracity or integrity of a party or his witnesses and an overactive role suggesting as if the decision maker was holding the brief of one of the parties would disqualify the Presiding Officer from hearing the case.

In the field of administrative decisions a few more grounds of disqualification have been recognised. Like—A factory manager holding enquiry

himself against workmen said to have assaulted him (M. Tea Estate *v.* Workmen 1963 SC 1719); a person sitting on the Selection Board to select persons for a post for which he is himself a candidate though he does not participate in the deliberation when his name is considered *(A. K. Kraipak* 1970 SC 150); Selection Board having the son-in-law of the selected candidate as a member *(S. P. Kapoor v. State of Himachal Pradesh* 1981 SC 2181); Enquiry Officer having animosity with the delinquent officer in disciplinary proceedings againt a civil servant (*S. Parthasarthy v. State of Andhra Pradesh* 1973 SC 2701); cancellation of licence for land lease by a Minister who had political rivalry with the licencese and had filed a criminal complaint against him (*Mineral Development Ltd. v. State of Bihar* 1960 SC 468).

(B) PRE-INVOLVEMENT AND PREJUDGMENT

In the sphere of judicial decisions the rule seems to be that a crystallised point of view about issues of law or awareness of the needs of society for its orderly continuance will not disqualify. What is objectionable is that the Presiding Officer must never appear to have judged the facts or merits of a particular case prior to its hearing, so that a party is confronted with a *fait accompli.*

In administrative decisions the frontiers of disqualification have been extended. They are exemplified by:

(i) *Policy bias:*

An official develops an 'official' bias towards his department or a 'policy' bias in the form of projecting and pursuing the policies of his department. Normally, it does not disqualify him from acting as an adjudicator unless he is "too much personally involved with the formulation and implementation of a policy" so that it could be said that he has a completely closed mind as regards the issues before him. *G. Nageshwara Rao* v. *A. P. State* Road Transport Corporation (1959 SC 308-the *first Nageshwara Rao case*), exemplifies a case where the Secretary of the Department who formulated the scheme of nationalisation of road transport himself heard the objections against it. This rendered it bad. But where some other functionary of the Department, different from the one who formulated the policy, heard the objection, the decision was not vitiated. Examples are to be found in *second Nageshwara Rao* case (1959 S C 1376); *Kondala Rao* v. *A. P. Transport Corporation* (1961 S C 82), *T. G. Madaliar* v. *State of Tamil Nadu* (1973 SC 974); In the State of U. P. objections are to be heard by the Legal Remembrancer.

(ii) *Combination of functions of prosecutor and Judge* in the same department :

When both the functions are discharged by one and the same official the decision will be vitiated unless permitted by the Statute. But usually different officials, though belonging to the same department, may be entrusted with collection of material and initiation of proceedings and the work of departmental adjudication. The decision, then, is not flawed on account of bias. For example, in disciplinary proceedings against employees, departmental officials at different levels deal with the matter. But where, the officer who ultimately passes the order is found to have expressed a strong view, prior to the enquiry, that the delisnquent should be be removed from service, he is disqualified under the doctrine of bias.

An externment order made by the Deputy Commissioner of Police under the Bombay Police Act, 1951 was upheld by the Supreme Court in *Hari* v. *Deputy Commissioner of Police* (1956 S. C. 559), even though externment proceedings were initiated by the police, because evidence was collected and proceedings initiated by officers of lower rank.

English and *American* courts have also upheld decisions where adjudicatory, prosecutorial and investigative functions have been combined except where the same person is the accuser and the judge. Examples can be found in In Re. S (A Barister) (1981) 1 QB 683 (at 688-89) and In re : Murchison (1955) 349 U. S. 133.

(iii) *Partiality or connection with the issues*

Where there is some close and direct connection between the adjudicating authority and the issue in controversy, disqualification arises. In *State of U. P.* v. *Mohd. Nooh* (1958 SC 86) the enquiry officer left the enquiry at one stage to give evidence as a witness, resumed the enquiry and also recorded a decision. In *Kamini Kumar* v. *State of West Bengal* (1972 SC 2060) the Supreme Court said that where the adjudicator acts in several capacities like a Judge and a witness or Judge and the complainant or Judge and the prosecutor he is disqualified. In *Parthasarthi* v. *State of Andhra Pradesh* (1973 S. C. 2701) it was said that a person framing a charge-sheet should not act as the enquiry officer.

Even where a body of persons or a committee takes a decision, the presence in it of a person who can be said to be biased, for any of the aforesaid reasons, will invalidate the decision. The reason is that there is a reasonable likelihood of bias in such a case. An example is furnished by *G. Sarna* v. *Lucknow University* (1976 SC 2428) where (on page 2432) the Supreme Court said—

"……Each member of the group or board is bound to influence the other……His bias is likely to operate in a subtle manner."

Recently, in *Institute of Chartered Accountants* v. *L. K. Ratna and others* (1987 SC 71) the Supreme Court reiterated what it said in *Manak Lal* (1957 SC 425) and said that members of a committee which collects evidence and makes a report to the Council, which is the decision taking authority, will be disqualified from participating in the deliberations of the Council to ensure that justice must not only be done but must also appear to have been done.

(iv) *Acting upon dictates of superiors*

Has also been treated as a facet of bias in the adjudicator, if his decision is quasi-judicial in character as opposed to a purely administrative decision.

A Commercial Tax Officer who was of opinion, on the material on record, that no tax was leviable on assessing sales tax on the advice of the Assistant Commissioner was held to have violated the principles of natural justice as the procedure adopted by him was likely to undermine the confidence of public (*Mahadayal Prem Chandra* v. *Commercial Tax Officer*, 1958 SC 667).

Even general directions, of a compulsive nature, controlling the discretion of a quasi judicial adjudicatory body, vitiate the decision. Some of the decisions of the Supreme Court saying so are those in *Rajagopala Naidu* v. *STA Tribunal* (1964 SC 1573) ; *Ravi Roadways* v. *Asia Bi* (1970 SC 1241) *Inter-state Transport Commissioner* v. *Manju Nath* (1972 SC 2250).

(v) *Abuse of powers*

Exercise of statutory powers by administrative officers for collateral or extraneous purposes robs their decision of its validity. Such exercise of power is an instance of bias.

In *Pratap Singh* v. *State of Punjab* (1964 SC 72) the order of suspension of Pratap Singh was held to be invalid as it was found to be made to wreak vengeance on him for incurring the wrath of the Chief Minister and not because of any misconduct believed to have been committed by him ; in *State of U. P.* v. *Dr. R. S. Gupta* (1975 Allahabad Law Reports 399) the order of compulsory retirement of Dr. Gupta was set aside as it was the outcome of the manipulation by the Director of Medical and Health Services who was ill-disposed against him. In *State of Mysore* v. *P. R. Kulkarni and others* (1973 S. C. C. (L & S) 142) the other of reversion

from officiating posts of Wireless Operator (Police) to the post of Constable was set aside as it was made for the collateral purpose of making the posts of Wireless Operators available to other employees who where juniors to those reverted and less qualified. In *Sakal Deep Sahai Srivastava* v. *Union of India* (1974 SCC (L & S) 158) the order abolishing the post of Office Superintendent with the oblique motive of depriving Srivastava of the fruits of a decree in his favour was held to be invalid. The Supreme Court said that 'even administrative action, to be valid, has to be honest and bona fide.

Exceptions.

(a) The doctrine of bias has some exceptions. One of these is acquiescence or waiver. A party having full knowledge of the disqualification with which the adjudicator suffered may choose to keep silent and participate in the proceedings before him in the hope of getting a favourable decision. Such a party cannot be permitted to turn down and assail the decision on the ground of the adjudicator's bias of the decision goes against him. Basically it is application of estoppel him. This is the view taken by courts not only in India but also in U. S. A.. England and other Commonwealth countries. In *Manak Lal* v. *Prem Chand* (1957 SC 425); *T. P. Lodge* v. *Victoria*, (1963 SC 1144) and *G. Sarana* v. *Lucknow University* (1976 SC 2428), the Supreme Court has said so. A party is expected to take an objection to the disqualification of the adjudicator at the earliest opportunity failing which he is treated to have abandoned his right to object to the hearing by a biased adjudicator.

There is, however, a rider to this. If the party is not aware of the full facts or is precluded from doing so at the appropriate time for lack of proper legal advice or due to a sense of fear of antagonising his superiors, he would not be barred from raising the objection. Eventually, it will depend upon the circumstances of the case where a party can be said to have waived his right to object or not.

(b) Another exception is that the Statute may itself provide for adjudication by a particular authority alone. The plea of bias would substantially be excluded by such statutory provision. For example, the appointment of a government servant as a member of the Regional Transport Authority or the State Transport Authority which is to decide matters in which the State Transport Undertaking, owned by the Government, is a party cannot be assailed on the basis of bias in them in favour of the government.

(c) Yet another exception is the doctrine of necessity. For example, the rule is that the disqualification of an adjudicator will not be permitted to destroy the only Tribunal with power to act. Professional men who are members of the governing body of their profession, have of necessity to hear a complaint of professional misconduct against a member of their own profession. See In re (S. A. Barrister) (1981) 1 QB 683 at 690). Another illustration of this rule of necessity is where all the Judges of a court have to sit for hearing a complaint made against them. Such a situation arose in this Court when all the Judges of the High Court sat to consider the question whether it was open to the Speaker of the State Legislature to issue a warrant of arrest against one of the Judges of this Court for alleged breach of privilege of the House by him. A variation of this may be found in a situation where a subordinate Judge has to examine a Judge of a superior court as a witness and evaluate his evidence. In 1968 the then Chief Justice of India Hon'ble M. Hidayatullah and Mr. Justice A. N. Grover of the Supreme Court appeared as witnesses before an Assistant Sessions Judge at Delhi in a case relating to attack by one Manmohan Das with a knife upon Justice Grover when he was sitting in a Bench with the Chief Justice of India.

The rule of necessity has itself been subjected to some limitations. For example, where the quorum of the sole adjudicating tribunal can be attained after excluding a member disqualified by bias or where there is no emergency justifying an immediate determination and there is time to await induction of another member in place of the biased one, the rule of necessity may not justify consideration of the matter by the body if the biased one is included in the Bench. Another alternative to the latter situation can be that the adjudication is taken up when the disqualification has ceased to exist. This may be illustrated by the case of an adjudicator having pecuniary interest as a share holder in a company ceasing to be such share holder when the matter pertaining to that Company is actually considered by the body of adjudicators of which he is a member.

There is a suggestion by Prof. De Smith in his celebrated book on Administrative Law that whenever rule of necessity is invoked in justification of a decision, particularly, by an administrative authority or quasi judicial tribunal comprising of a member disqualified by bias of any kind, greater care should be taken when the decision is up for judicial review.

POINTS RAISED IN THE DISCUSSION FOLLOWING THE LECTURE

Q. 1—Sometimes a judicial officer has to try a case to which a brother officer is a party. A sort of negative bias works in his mind against that colleague. The presiding officer thinks that a decision in favour of the colleague may be misconstrued as a favour to him. What should be done in such cases ?

A. 1—This type of attitude cannot be defended. We cannot help deciding cases relating to our colleagues. Of course, if we have specially close relations with a particular colleague or other person then we should avoid trying that case, But once we feel satisfied that no embarrassment is involved in trying a particular case then the case must be tried on merits, whether the decision goes in favour of the person known to us or against him. There is no justification for deliberately deciding the case against him if he deserves to win.

Q. 2—Sometimes matters relating to judicial officers are decided at an administrative meeting of the full Court. A judicial officer aggrieved by a decision taken in the meeting may challenge the same in a writ petition. Can those High Court judges who were present at the full Court meeting decide that case ?

A. 2—Yes, there is no objection. Firstly decisions at an administrative meeting of the full Court are taken by consensus. There is no voting. All the judges do not take active part in every decisions. It cannot, therefore, be said that the decision of the full Court is the decision of each judge present at the meeting. Therefore, only those judges should be considered disqualified who take active part in the deliberations leading to the particular decision.

Q. 3—If a judicial officer takes a long time in deciding a case then the High Court suspects his impartiality. Is it justified ? So many decisions at the High Court and the Supreme Court level are also considerably delayed.

A. 3—So far as delay at the level of the Hight Court and Supreme is concerned, there is a difference. Firstly, the decision of that superior Court lays down the law which shall be applicable to all persons in like situations, while a decision of a judge of a subordinate Court affects only the parties to that case. Thus the delay at the former level may be justified. Secondly, the level there is higher. Thirdly,

even the in case of subordinate judiciary, the High Court does not view every instance of delay in delivery of judgement with suspicion. It is only in the case of officers against whom there are other grounds for suspicion that delay in delivery of judgment, considered along with other surrounding circumstances, fortifies that suspicion. At any rate the High Court and the Supreme Court judges do not have to explain the delay to any higher authority but the subordinate judges will have to do the explaining in each such case of delay. So they should be on guard against such delays.

———

MODERN MANAGEMENT TECHNIQUES IN THE COURTS

By

HON'BLE DR. JUSTICE B. N. MISRA,

LL. M. (LONDON), Ph. D. (LONDON), BARRISTER-at-LAW

A judgment, sound in its contents and fair in its impact,—to this end judges have historically proceeded, armed with judicial insight based on education, experience and expertise. While fair and just decisions are vital, administration of a system of justice is no less important and deserves similar care and attention. Fairness of the system is as critical to litigation as a fair resolution of disputes. Judges can not be oblivious of the money a litigant is obliged to invest to achieve a result and the time that he has to spend until a result is reached. Judges must consider the consequences and the impact not only of particular judicial decisions but also of the system in which cases are decided. The responsibility of the judiciary is two-fold : case adjudication and court management. Intellectual exercises by all concerned must concentrate to provide a clean, efficient and economic means of administering justice.

In tracing the "Causes of Popular Dissatisfaction with the Administration of Justice", Roscoef Pound had observed :

> "Justice.....is the ideal compromise between the activities of each and the activities of all in a crowded world".

This compromise has to be worked out with sincere efforts to minimise expense and delay in the judicial system. The prevailing conditions in the system had prompted a French satirist, La Bruyers, to say ; "The duty of judges is to dispense justice; their profession is to delay it. Some of them know their duty, and practise their profession". However, not all the remedies in this regard lie in the hands of the judiciary; but *judges must see their administrative role as an obligation of the office held rather than a distraction from judicial work*. In India the judiciary has inherited the system for administration of justice mainly from the British. The foreigners have left, times have changed, social norms and conditions have changed, we all have changed and therefore we must now expand judicial consciousness to build a more efficient system of justice. In an increasingly litigious society, the case-load and work-load of courts have grown rapidly and substantially. Judges must give greater attention to court

management and innovations. That will improve the efficiency and effectiveness of the administration of justice.

A number of continuing challenges confront the judicial administrators. The most serious problem for judicial administrators to-day is the alarming growth of case-load that confronts each judge. This observation may seem trite to some, but its truth cannot be gainsaid, regardless of how often it is repeated.

First, population growth in our country is a partial explanation. However, even more important, the number of lawyers in the country has increased by leaps and bounds. Interestingly, the nature of legal education is also changing. The recent increased emphasis by the State on providing adequate representation in courts of the indigenous and the poor, has been a welcome development in the system of administration of justice, but at the same time it may well be having the side effect of increasing the case load in the courts.

Second, the laws of the land are becoming less stable and predictable as Parliament and the State legislatures resort to legislation in various new fields of social and economic activities. In turn, clients and their lawyers are today even more willing to bring actions before the courts. Access to the courts is a lot easier to-day. People in general have come to look to the courts as a cure-all for a host of personal and social ills. The court is very often regarded as the defender as well as the protector of the rights of the people. This trend no doubt indicates great faith in the judiciary, but ironically it adds to the case-load of the courts. The solution that has been readily suggested to solve the problem of case-load is the simple expedient of appointment of more judges. True, this step is necessary, yet it provides only a short-term solution. New techniques in court administration are likely to provide immense help, provided they are accepted as an integral part of the administration of justice and the practice of law. From finger prints, thumb impressions, photographs, identity-kits, police dogs, tape recordings, we are now moving into the era of computers. In many countries computers have already been used in courts of law. Computer graphics through television have also made inroads into the court rooms. With regard to acceptance of the latest technology, Justice John Collins of the Bronx Supreme Court had observed ;

> "Every new development is entitled to its first day in court. A computer is not a gimmick and courts should not be shy about its use when proper".

Though in India we are not yet familiar with the latest technology, computers have arrived and they have arrived to stay. It is now for us to train ourselves in this new technology as an aid for dispensation of justice, faster and cheaper. Let us hope in the not too distant future video depositions and testimony, computers for docketing, for survey of precedents in other cases, for storage of useful information and records and for analysis of hairs, finger-nails and fibres find acceptance by the courts. These are only a few examples of the vast range and scope of computer technology. Judges must now be ready to meet the computer.

The third solution of case-load growth may also lie in highlighting the obvious draw-backs in the system. Society should be made more aware of the disadvantages of litigation, and the system of adjudication should be recast to provide more alternative forms of dispute resolution. In the past people generally avoided law suits and litigation, but today the trend seems to have changed from aversion to a mad rush to the courts. This attitude could perhaps be shifted back. The task is no doubt massive, but development of public opinion may help. A change in the emphasis of legal education from confrontation to conciliation should help in the long run. The judicial administrators should accept this as an appropriate goal. Alternative dispute resolution should be expanded as far and as much as possible. Arbitration, cociliation, summary trials, pre litigative resolution of disputes and other methods must be developed and perfected. Unless and until the public attitude turns away from litigation, alternative dispute resolution offers the only real relief for the courts. Judges must accept that formal adjudication is not only means of conflict resolution Chief Justice Burger of the American Supreme Court had once observed :

> "The notion that most people want black robed judges, well dressed lawyers and panelled court rooms for the resolution of disputes is a myth. People with problems, like people with pain, want relief, and they want it as quickly and inexpensively as possible".

While some disputes may be of such nature as to require adjudication by the courts, others may be better handled by nogotiation or concilliation. In fact chances are that the confflict will be solved, not simply resolved. Alternative dispute resolution allows the parties more procedural freedom from time and financial constraints. The emphasis is on compromise, not winning or losing. After all, there is no logical reason why justice must always flow from within the court room and not outside.

The fourth important aspect to note is the recent shift towards more

complex cases. New fields of law reflecting public interest in environmental and consumer affairs have become the basis for controversy. The shift in the attitude of the courts in regard to the employer and employee relationship particularly in the field of industrial law has raised new hopes in the minds of the weaker sections, but this has at the same time also resulted in a very complex mass of case-law. Another cause of complexity in litigation is the changing nature of the practice of law. Lawyers are becoming more and more specialised and this trend towards specialisation often contributes to more complexity and sophistication in litigation. One possible response to this is greater specialisation among judges. The generalist must continue to be the strong arm of the judiciary, but at the same time it must be appreciated that complex cases are not always handled well by judges with no expertise in the particular area of the law involved. It may be worth while to have at the all-India level a panel of judicial experts in specialised branches of law whose services can be requisitioned when necessary in particularly complicated cases.

Another disturbing feature of the judicial system is the increased pursuit of frivolous litigations. Adversarial attempts by lawyers to outwit and out manoeuvre their opponents can be both expensive and time consuming. Courts of law seem to have resigned themselves to this high drama which consumes valuable time and expense. The response to this unhealthy trend should come from the judges provided they exercise tactful control over the proceedings before them. Judges may rightly hesitate to contribute to the tension within the court room created by opposing lawyers, but intervention must be resorted to when necessary so that unacceptable behaviour and mis-conduct do not hamper the dignity and decorum of the court. As for their own conduct, judges may keep in mind that the ideals of a judge are to hear courteously, answer wisely, consider soberly and decide impartialy.

Fifth, judges must train themselves to discharge their managerial responsibilities as properly and as well as they do in the field of adjudication. They must play an active and supervisory role in litigation from the stage of filing to disposal. Sound post-trial management can improve the compliance of litigants with orders issued by the courts. Efficiency of the system must be accepted as a legitimate goal of justice. In this context it is very important that selection of personnel at every level of the system should be made in a proper manner. The judiciary must be manned by persons of the right quality and this in turn will produce a responsible, competent and stable judiciary.

The task of court management involves operations in two areas. One

area is man-management and the other is case-management. The men with whom we are associated in courts are brother-officers and employees working with us, the lawyers and the parties and their witnesses. Proper dealings with the aforesaid groups of persons are our prime responsibility. Smooth administration of justice depends mainly on our relationship with these groups of persons. Sympathetic understanding of the other man's point of view and difficulties should help tiding over many problems. The convenience of litigants and their witnesses should be your first concern, and you should be alert about it even while doing your judicial work. All these people before us do expect and are entitled to the best of treatment from each one of us. In turn our conduct and action should be such as to draw out the best from each one of them. While the meek and the helpless should be cared for, the recalcitrant elements must be dealt with firmly and boldly. So far as case-management is concerned, thorough scrutiny of records and registers are the minimum requirements. Necessary guide-lines have been provided on almost every detail in the General Rules and the Circular Orders issued by the High Court and most problems should not arise if only we were to follow them meticulously, albeit in a commonsense manner. It is for us to ensure timely sittings of court and timely examination of withesses. Those witnesses who are not likely to be examined on a particular day need not be kept waiting the whole day but should be told at the earliest when they should come. It hardly needs to be emphasised that registers and records must be inspected at frequent intervals to ensure compliance with the relevant rules and guidelines and also compliance with your judicial orders. It is necessary that judicial records and administrative files must be properly classified. Many artificial difficulties of office space whould vanish if the records are consigned and weeded on time. In fact consistent supervision and guidance are necessary. Judges should bear in mind that sound knowledge of law, integrity and impartiality are as essential attributes of court-management as they are of adjudication. They must therefore cultivate the reading habit. Law books and journals must be read regularly and reading of general books and periodicals will also broader their vision.

I have indicated in my lecture some trends that challenge our judicial system and I have ventured to make a few suggestions. It is for all of us to make a concerted effort to improve judicial administration in order to provide to the nation a more efficient, effective and just system.

CONSTITUTIONAL LIMITATIONS ON EXECUTIVE AND LEGISLATIVE ACTIONS

By

HON'BLE JUSTICE B. D. AGARWALA (RETD.)

TWO MANDATES

The Constitution of India has issued two broad mandates to the Parliament, the legislatures of the States and to all Institutions of the Government :

(1) not to take away or abridge certain rights described as Fundamental Rights; and (2) to apply certain principles described as Directive Principles of State Policy. The Fundamental Rights are mostly of a peculiarly individual character and are meant primarily to protect the individual against arbitrary State action. They are intended to foster the ideal of a political democracy and are meant to prevent the establishment of authoritarian rule. But, it is apparent that several of these Fundamental Rights are ordinarily capable of enjoyment only by persons who are already free from want and necessity. They are of little practical value and have no meaning to the hungry and the homeless. The Constitution makers realised that mere adherence to an abstract democratic ideal was not enough and that if the Constitution was to survive it was necessary to secure to the people economic and social freedoms in addition to political freedoms and, so the Directive Principles came to be enunciated in the Constitution. To the vast mass of humanity in India there can be no doubt that the Directive Principles of State Policy are far more important than the Fundamental Rights.

UNION AND STATES : LIMITED FEDERALISM

"Our Constitution, though Federal in structure, is modelled on the British Parliamentary System where the Executive is deemed to have a primary responsibility for the formulation of Governmental policy and its resumption into law though the condition precedent to the exercise of this responsibility is itself retaining the confidence of the Legislative branch of the State. The executive function comprises both the formulation of the

policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact, the carrying on or supervision of the general administration of the State.

"Our Constitution has not recognised the doctrine of separation of powers in its absolute rigidity, but the functions of the different parts or branches of the Government have been sufficiently differentiated and, consequently, it can very well be said that our Constitution does not contemplate assumption by any organ or part of the State, all functions that essentially belonged to another".

Thus spoke B. K. Mukherjea, C. J., in *Ram Jawaya Kapoor* v. *State of Punjab* (A. I. R. 1955 S.C. 549). This short introduction provides for an opportunity to peep into the functioning of the Constitution.

A Federal structure is necessarily based on a system of checks and balances. This has been clearly provided in the Constitution so as to keep an organ of a State within the reach of its powers. Any transgression by Executive or Legislature of itslimitations is set right by the Judiciary.

EXECUTIVE POWERS AND THEIR DISTRIBUTION.

"Legal sovereignty of the Indian Union is vested in the people of India, and as stated in the Preamble they solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC for the objects specified therein. The political sovereignty is distributed between the Union of India and the States with greater weightage in favour of the Union. Sovereignty, in executive matters of the Union, is declared by Article 73 of the Constitution, which indicates that subject to the provisions of this Constitution, the executive power of the Union shall extend to the matters with respect to which Parliament may make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement, but its executive power may not, save as expressly provided in the Constitution or in any law made by Parliament, extend in any State to the matters with respect to which the Legislature of the the State has also power to make laws.

"By Article 77, all executive actions of the Government of India have to be expressed to be taken in the name of the President. Executive power of the State is vested by Article 154 in the Governor and is exercisable by him directly or through officers subordinate to him in accordance with the Constitution.

"By Article 162 of the Constitution, subject to the provisions of the Constitution, executive powers of the State extends the matters with respect to which the Legislature of the State has powers to make laws subject to the restrictions that in the matters in the Concurrent List of the Seventh Schedule, exercise of executive powers of the State is also subject to and limited by the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof.

"The executive power of every State has to be so exercised as to ensure compliance with the laws made by the Parliament and any existing law which applies in that State, and not to impede or prejudice the executive power of the Union. The executive power of the Union extends to the giving of such directions to a State as may appear to the Government of India to be necessary for those purposes and as to the construction and maintenance of means of communication declared to be of national or military importance and for protection of railways, the Parliament has powers to declare a highway or waterway to be of national importance, and the Union may execute those powers and also to construct and maintain means of communication as part of its functions with respect to Naval, Military and Air Force works. The President may also, with the consent of the Government of a State, entrust to that Government or to its officers, functions in relation to any matter to which the executive power of the Union extends Article 258 (1) of the Constitution. Again, the Union Parliament may by law in exercise of authority is respcet of matters exclusively within its competence confer powers and duties or authorise the conferment of powers and imposition of duties upon the State or officers or authorities thereof; Article 252.

"Article 365 of the Constitution of India authorises the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution, if the State fails to comply with or to give effect to any directions given in exercise of the executive powers of the Union.

"These are the restrictions on the exercise of the executive powers of the States, in normal times; in times of emergency, power to override the exercise of executive power of the State is entrusted to the Union. Again, power of exercise of legislative powers being co-extensive with the exercise of the legislative powers of the State, the restrictions imposed upon the legislative powers also apply to the exercise of executive powers" (See *State of West Bengal* v. *Union of India* (A. I. R. 1963 S, C. 1241).

Like Article 73, Article 162 provides that the executiue powers of a

State shall extend to the matters with respect to which the Legislature of the State has power to make laws. It, therefore, follows that so long as the State Government does not go against the provisions of the Constitution or any law, the width of its executive powers cannot be circumscribed. (*M/s Bishambhar Dayal Chandra Mohan* v. *State of U. P.* (A. I. R. 1982 S.C. 33) and *Narain Dass Indu Rakhya* v. *State of Madhya Pradesh* (A. I. R. 1974 S.C. 1232).

DISTRIBUTION OF LEGISLATIVE POWERS.

The power of legislation between the Union and the State Legislatures is well demarcated and defined. While doing so, our Constitution has adopted the Australian anh Canadian patterns. The Government of India Act too contains the same legislative Scheme.

Article 245 (1) of the Constitution states that subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of State may make laws for the whole or any part of the State.

Article 245 (2) of the Constitution provides that no law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation. Article 245 sets out the legislative scheme. Clause (1) states that notwithstanding anything in Clauses (2) and (3), the Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (the Union List). Clause (2) further provides that notwithstanding anything in Clause (3), the Parliament, and subject to clause (1), the Legislature of any State, also have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (the Concurrent List). Clause (3) provides that subject to Clause (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (the State List).

Article 248 (1) of the Constitution further invests the Parliament with exclusive power to make any law with respect to any matter not enumerated in the Concurrenl List or State List. Article 248 (2) of the Constitution provides such powers to include the power of making any law imposing a tax not mentioned in either of those Lists.

Article 249 (1) of the Constitution is significant. It provides for legislation, even on topics covered by the State List, by Parliament. It states that notwithstanding anything in the foregoing provisions of this

Chapter, if the Council of States has declared, by resolution supported by not less than two-thirds of the members present and voting, that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force. The life of such resolution under Clause (2) of the aforesaid Article is one year. However, its life can be extended by passing similar resolutions.

Article 250 of the Constitution arms Parliament with special powers/ legislative powers while the Proclamation of Emergency is in operation. It states that the Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List. Such laws, however, under Article 250 (2), cease to have effect on the expiration of a period of six months after the Proclamation of Emergency has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

Then, under Article 252 (1), if it appears to the Legislature of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in Articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House, or, where there are two Houses, by each of the Houses of the Legislature of that State.

Under Article 253 of the Constitution, the Parliament has exclusive power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

Then we come to the most important Article. This is Article 254. This Article seeks to resolve inconsistency between the laws made by Parliament and the Legislature of States. Article 254 (1) of the Constitution of India provides that if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing

law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

Article 254 (2) of the Constitution similarly provides that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State, shall, if it has been reserved for the consideration of the President, and has received his assent, prevail in that State, provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of State.

Under Article 357 of the Constitution, where a Proclamation issued under Clause (1) of Article 356 in relation to any State is enforced, it would be competent for the Parliament to confer on the President the powers of the Legislature of the State to make laws and to authorise the President to delegate, subject to such conditions as he may think to impose, the power so conferred to any other authority to be specified by him in that behalf.

This is largely the Scheme of distribution of the legislative powers between the Union and the State. A bare look at Article 245 of the Constitution, would reveal that exercise of legislative powers is controlled by the Union subject to the provisions of the Constitution. Thus, it is clear that any law enacted by Parliament or State Legislature has to conform to the provisions of the Constitution. Any transgression or violation of the constitutional provisions would render the legislation bad. Further more legislative entrties in the three Lists have to be given widest amplitude. This is clear by the use in Article 246 of the phrase 'with respect to' which is an exclusive and expansive phrase.

These are the following well settled principles of legislation:—

(i) The entries incorporated in the List covered by Schedule Seven are not fountain of power of legislation but wheels of legislation. *Harak Chand* v. *Union of India* (A. I. R. 1970 S.C. 1453), *State of Bihar* v. *Kameshwar Singh* (A. I. R. 1952 S.C. 252).

(ii) The language of entry should be given the widest scope or amplitude. Each entry has been treated to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended : (*Navin Chand* v. *C. I. T.* (A I R 1955 S C 58), *State of Madras* v. *Gannon Dunkerley* (A I R 1958 S C 560).

(iii) An Entry confers powers upon the Legislature to legislate for matters ancillary or incidental, including the provisions for avoiding law As long as the legislation is within the permissible field, in pith and substance, objection would not be entertained merely on the ground that while enacting legislation, provision has been made for a matter which through germane for the perpose for which competent legislation is made, it covers an aspect beyond it. If an enactment substantially falls within the powers expressly conferred by the Constitution upon the Legislature enacting it, it cannot be held to be invalid merely because it incidently trenches upon or encroaches upon the matters assigning to another Legislature. *Subramanyam Chettiar* v. *Mutuswami* (A I R 1941 F C 47), *Prafulla Kumar Mukherjia* v. *Bank of Commerce* (A I R 1947 P C 60), *Kerala State Electricity Board* v. *Indian Aluminium Company* (A I R 1976 S C 1031), *State of Karnataka* v. *Rangnath Reddy* (A I R 1978 S C 215), *Ganga Sugar Company* v. *U. P. State* (A I R 1980 S C 286) and *Ishwari Khetan Sugar Mills* v. *State of U. P.* (A I R 1980 S C 1955), *Prem Chand Jain* v. *R. K. Chawla* (A I R 1974 S C 985), *Indian Tobacco Company Limited* v. *State of Karnataka* (1985 (Suppl.) S C C 476).

This relates to constraints on the legislative competence to enact a law. If a Legislature has no legislative competence, the same is non est. The Legislature cannot re-enact the same by purporting to remove the defect from which it suffered since the Legislature had no competence at all to enact the law. This view is settled by a string of decisions of the Supreme Court as well as other High Courts to which I shall advert later.

There are other constraints operating on the powers of the State Legislatures as well as the Parliament, while enacting laws. They are, firstly, incorporated in Part III of the Constitution which pertain to fundamental rights. A State or the Union cannot make law which is discriminatory (Article 14) or denies the citizens the equal opportunity of seeking employment in public services or denies equal opportunity to the economically and

weaker sections of the Society (Article 15) or takes away, denies or abridges any other rights guaranteed by Article 19 (1) of the Constitution. In this behalf, it is significant to mention here that unlike the American Constitution, Article 19 (1) itself incorporates and contains the limits to it and conditions subject to which the rights can be abridged by the State Legislatures. In America, the same is left to the Courts to interpret under the garb of due processed laws and as envisaged by the 5th and 14th amendment to the American Constitution. It cannot make expost facto legislation or force persons or citizens to incrimination, as provided by Article 20. Articles 21 and 22 together form a gamot of guarantees relating to life and liberty. In *Bandhua Mukti Morcha* v. *Union of India* (1984 (3) S C C 161), Hon. Bhagwati, J. (as he then was) said that right to move with human dignity enshrined under Article 21 derives its life breath from directive principles of State Policy and particularly clauses (e) and (f) of Articles 39, 41 and 42 and at the least, therefore, it must include protection of the health and strength of the workers, man and woman, and of the tender age of the children against the abuse, opportunities, facilities for children to develop in a healthy manner and in convenience of freedom and dignity, educational facilities, just and humane conditions of work and for maternity relief.

In *Olga Tellis* v. *Bombay Municipal Corporation* (A I R 1986 S C 180), it was held that the right of life includes the right to property. The Sweep of the right of life conferred by Article 21 is wide and far-reaching. It does not mean that life cannot be extingiushed or taken away, as for example, by the imposition and execution of the death sentence, except according to the procedures established by law. An equally important and facile of that right is the right to livelihood because no person can live without the means to live, i. e. the means of livelihood. If the right to livelihood is not treated as a part of the Constitutional right to live, the easiest way of depriving a person of his life would be to deprive him of his means of livelihood to the point of abrogation.

In *Union for Democratic Rights* v. *Union of India* (1982 S C 1473), the Supreme Court case assumed the activist role and gave a new content and expounded new horizons in respect to Articles 21 and 22 of the Constitution. Articles 25 to 28 form the curx of Articles relating to right to freedom of religion. This right is subject to public or morality and health. Articles 29 and 30 preserve the collateral and educational rights of the citizens, including minorities. Article 30 has been the subject matter of intense deliberation by the Supreme Court right since the Kerala Education Bill on which the then President sought for the opinion of the Supreme

Court under Article 143 of the Constitution of India (A I R 1958 S C 956). The contours of the Article yet remain undecided, the latest case being the *Frank Anthony Public School Employees Association* v. *Union of India* (A I R 1987 S C 311).

The next Article 31 of the Constitution was deleted by the Constitution (Forty-Fourth Amendment) Act, 1978, following the decision in *Keshwanda Bharti* case (A I R 1973 S C 1461). It relates to the acquisition and requisition of property; under both, i. e. the power of Indian domain and foreign power. However, the aforesaid Article finds place elsewhere as Chapter IV in the form of Article 300-A. It states that no person shall be deprived of his right to property save by authority of law. Article 31-A of the Constitution provides protection umbrella to laws providing for acquisition of estates etc. on the ground that the same is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or 19 of the Constitution. Likewise, Article 31-B of of the Constitution provides complete immunity to a challenge to a legislation on the ground that such Act, Regulation or Provision is inconsistent with or takes away, abridges any of the rights conferred by any provision of this Part III. Similarly, Article 31-C of the Constitution is further immune from challenge to laws giving effect to the Policy of the State towards securing of or any of the principles laid down in the Part IV on the ground that that same is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or Article 15 of the Constitution of India.

Thus, therefore, there is an important and unique provision, i. e. Article 32. Since the aforesaid Article occurs in the Chapter relating to fundamental rights, it itself is an inalienable fundamental right. It is an important and integral part of the basic structure of the Constitution, as expounded in the Keshwanand Bharti case (Supra).

Ever since the Supreme Court has assumed the activist role, the aforesaid Articles have received a more liberal construction so as to ensure the rights of citizens of the country. Earlier, the test of judging the validity of a legislation was and form and objection of pith and substance of a particular legislation. The same was, however, exploaded in the Bank Nationalisation Case *R. C Cooper* v. *Union of India* (A I R 1970 S C 564) where it was held that the aforesaid test was outmoded. It has been replaced by the test of direct and inevitable effect of legislative act on the various fundamental rights. This was adopted and concretised by Bhagwati, J. (as he then was) in *Menka Gandhi* v. *Union of India* (A I R 1978 S C 597) In Menka Gandhi case, making a departure from *A. K. Gopalan* v. *State of Madras* (A I R 1950 S C 27), Hon'ble Mr. Justice Bhagwati (as

he then was) gave a living content to Article 21 of the Constitution and held that the validity of legislation depriving a person of his life or liberty is also to be judged with reference to rights under Articles 14 and 19 of the Constitution of India. While the principle, that legislative entries have to be given the widest amplitude is settled. It cannot be stressed more than necessary. It has been held that if a term has achieved certain connotation or a technical meaning, the legislation has to be judged with reference to that meaning. *Gannon Dunkeyley* v. *State of Madras* (Supra).

It is further well settled that the taxing power is not an ancillary power. In fact, in both the Lists, namely. Lists I and II, there are separate entries for tax and fee. Besides it, Chapter XII contains other constraints on the exercise of legislative powers with reference to taxation. Article 265 of the Constitution interdicts levy or collection of tax except by authority of law. Even the Taxing Statute has to satisfy Part III of the Constitution of India. Article 276 of the Constitution authorises imposition of tax on profession, trades, callings and employments by a State or Municipality, District Board, Local Board or any other local authority. However, the aforesaid tax is not to exceed Rs. 550/- per annum.

Under Article 285 of the Constitution of India, the property of the Union shall, save in so far as Parliament may by law otherwise provide, be excempt from all taxes imposed by a State or by any authority within a State. However, it has been held that State will not include Corporations or any Government Company. See *Western Coalfields Limited* v. *Special Area Development Authority* (A I R 1982 S C 697).

While courts permit much greater latitude to the Legislature in the matter of 'pick and choose' of objects and articles to be taxed and the rate of taxation; nevertheless other constraints which other laws are subject to are not given a go bye. Even a taxing legislation has to accord with the fundamental rights. They cannot be confiscatory or extortionate.

In *K. T. Maopil Nair* v. *State of Kerala* (A I R 1961 S C 552), it was observed that "In order that the law may be valid, the tex proposed to be levied must be within the legislative competance of the Legislature imposing a tax and authorising the collection thereof and second, the tax mus be subject to the conditions laid down in Article 13 of the Constitution."

It was further declared that "A taxing statute is not wholly immune from attack on the ground that it infringes Article 14, though the courts are not concerned with the policy underlying a taxing statute or whether a

particular tax could not have been imposed in a different way or in a way that the court might think more just and equitable."

The tax imposed, in order to have legislative sanction, must be relatable to some entry in List I or II. The Legislature cannot adopt the subterfuge of fee to levy a tax. There is essential distinction between fee and tax. In the Commissioner, *Hindu Religious Endowments* v. *Shri Lakshmindra Thirtha Swamiar* (A I R 1954 S C 282), this distinction in the main consisted in the fact that for fee there should be quid pro quo. Tax is, on the other hand, a compulsory exaction imposed for a public purpose and it is part of a common burden.

The distinction of compulsory exaction and quid pro quo have undergone radical change. The line of distinction is gradually vanishing, as is reflected by the approach of the Supreme Court in *Kewal Krishna* v. *State of Punjab* (A I R 1980 S C 1008), *Southern Pharmaceuticals and Chemicals* v. *State of Kerala* (A I R 1981 S C 1863), *Dehli Municipality* v. *Mohd. Yasin* (A I R 1983 S C 617) and *Srinivasa General Traders* v. *State of A P.* (A I R 1983 S. C. 1246).

It is also well settled that the Legislature has power to legislate prospectively as well as retrospectively. This applies to taxing statutes as well.

No reverting to main theme Article 254 speaks of repugnancy. On the very terms of the Article, the question of repugnancy between the Parliamentary and state legislation may arise only if the two enactments operate in the same field, that is, with regard to one of the matters enumerated in the concurrent list. In *Chaudhri Tika Ramji* v. *State of Uttar Pradesh* (A I R 1956 S C 676), the Supreme Court observed, "The pith and substance argument cannot be imported here for the simple reason that, when both the centre as well as the State Legislatures were operating in the concurrent field, there was no question of any trespass upon the exclusive jurisdiction of the centre under Entry 52 of List I, the only question which survived being whether put in both the pieces of legislation enacted by the Centre and the State Legislature, there was any such repugnancy."

Subba Rao J. speaking for the Court in *Deep Chand* v. *State of U. P.* (A I R 1959 S C 648) interpreted Article 254 thus :

> "Article 254 lays down a general rule. Clause (2) is an exception to that Article and the proviso qualifies the said exception. If there is repugnancy between the law made by the State, and that made by Parliament with respect to one of the matters enumerated in the Concurrent List, the law made by

Parliament shall prevail to the extent of repugnancy and law made by tne State shall, to the extent of such repugnancy, be void."

For more elaborate study, one may read *Zawerbhai Amaidas* v. *State of Bombay* (A I R 1954 S C 752), *M. Karnunandhi* v. *Union of India* (A I R 1979 S C 898), *T. Barai* v. *Henry Ah Hoe* (A I R 1983 S C 150), *Hoechst Pharmaceuticals Ltd.* v. *State of Bihar* (A I R 1983 S C 1019), *Ram Chandra Mewa Lal* v. *State of U. P.* (A I R (Supp) (S C C 28) and *I. T. C. Ltd.* v. *State of Karnataka* (1985 (Supp) & S C C 476).

Another aspect relating to restriction on legislation is as to whether the Legislature can infuse life into our enactment which has been declared void by the Court either as infringing any fundamental right or on account of lack of legislative competence.

Originating from the early fifties in *Kesawan Madhava Menon* v. *The State of Bombay* (A I R 1951 S C 128), *Behraon Khurshed Peshikaka* v. *The State of Bombay* (A I R 1955 S C 123), *Bhikaji Narain Dhakras* v. *State of M. P.* (A I R 1955 S C 781), *M. P. V. Sundraramier & Co.* v. *The State of A. P.* (A I R 1958 S C 468), *Deep Chand* v. *State of U. P.* (A I R 1959 S C 648) and *Mahendra Lal Jainu* v. *State of U. P.* (A I R 1963 S C 1019) it reached its high watermark in the lake seventies in *B Shama Rao* v. *The Union Territory of Pondicharry* (A I R 1967 S C 1480) and the *Northern India Caterers (pvt.) Ltd.* v. *State of U. P.* (A I R 1967 S C 1581) In *Saghir Ahmad* v. *State of U. P.* (A I R 1954 S C 728) Mukherjea J. quoted from Cooley's Constitutional Limitation as follows :—

> "A statute void for unconstitutionality is dead and cannot be vitalised by a subsequent amendment of the Constitution removing the constitutional objection but must be reenacted".

Pharses such as "not est" and "still boon" were used to describe such legislation. However, in *L. Jagannath* v. *Authorised Officer* (A I R 1972 S. C. 425) and *Hari Singh* v. *Military Estate Officer* (A I R 1972 S C 2205) the proposition met its waterloo. It was crystallised and given final shape in *Shri Mills* v. *State of Gujrat* (A I R 1974 S C 300). Mathew J. observed that a statute does not stand effaced from the statute book on being declared void. It continues to exist. It only remains uneforceable against the citizens. It cannot be revived by removal of the offending part. Thus, the theory of eclipse as is contained in Article 13 of the Constitution was provided a new face lift.

There is yet another subsidiary principle, which operates as a check

on legislation. This is the principle of colourable legislation. It may be pointed out that motive of the Legislature in enacting a statute is altogether irrelevant. In *State of Bihar* v. *Kamleshwar Singh* (A I R 1952 S C 252), the principle was lucidly explained thus :—

> "The learned Attorney General has contended that it is beyond the competence of the Court to enter into a question of 'bona fides' or 'mala fides' of the legislature. In a sense this is true. If the legislature is omnipotent, the motives which impel it to enact a particular law, are absolutely irrelevant ; and, on the other hand, if it lacks competence the question of motive does not at all arise. But a when a legislature has a limited or qualified power and has got to act within a sphere circumscribed by the legislature entries, the question whether in purporting to act under these entries. it has, in substance, gone beyond them and has done certain things which cannot be accomplished within the scope of these entries is really a question affecting the competence of the legislature. In such cases, although the legislation purports to have been enacted under a particular entry, if it is really outside it, it would be void."

It was reiterated in *Gajpati Narain Deo* v. *State of Orissa* (A I R 1953 S C 275) and *G. K. Krishnan* v. *State of Tamilnadu* (A I R 1975 S C 583). In *R. S. Joshi* v. *Ajit Mills* (A I R 1977 S C 2279) Krishna Iyer J. succinctly summed up the principle in following manner :—

> "In the jurisprudence of power, colourable exercise of or fraud on legislative power, or, more frightfully, fraud on the Constitution, are expressions which merely mean that the legislature is incompetent to enact a particular law although the label of competency is stuck on it, and then it is colourable legislation."

Can the legislature confer power upon another person or authority to legislate ?

In the U. S. the Congress is treated as a delegate of the people. Therefore, the U. S Supreme Court invoked the maxim delegation non potest delegare. It obviously emanated from the rigid adherence to the doctrine of separation of power. However, with the growing complexities modern and tremendous upsurge in legislative activities with the going off the scene of laisse faire era, the U. S. Supreme Court recognised the need for delegated legislation. In the Hot Oil case (293 U. S. 388) Justice

Cordozo in his inimitable style said "to uphold the delegation there is need to discover in the terms of the Act a standard reasonably clear whereby the discreation must be governed.

In India, the need to apply the doctrine was felt in the early fifties itself. It was recognised that the legislatures, keeping in view the exigencies of the modern Goverament, need to delegate the legislative power if they are able to face the multitudinous problems facing the country, for it is neither feasible nor practicable to expect the legislature to turn out a well chiselled, complete and comprehensive legislation (See In re Dehli Laws Act A I R 1951 S C 332). If the legislature engages itself in such an exercise, the legislation would be prolix, vague and beyond comprehension.

In *Registrar, Cooperative Societies* v. *K. Krenjabmu* (A I R 1980 S C 250) Chinappa Reddy J. observed as follows :—

> "The Parliament and State Legislatures are not bodies of expert or specialists. They are skilled in the art of discovering the aspirations, the expectations and the needs, the limits to the patience and the acquiescence and the articulation of the views of the people whom they represent. They function best when they concern themselves with general principle broad objectives and fundamental issues instead of technical and situational intricacies which are better left to better equipped full time expert executive bodies and specialist public servants. Parliament and State Legislature have neither the time nor the expertise to be involved in detail and circumstances. Nor can Parliament and State Legislatures visualise and provide for new, strange, unforeseen and unpredictable situations arising from the complexity of modern life and the ingenuity of modern man. That is the rai son d'etre for delegated legislation.

In *Hari Shankar Bagla* v. *State of M. P.* (A I R 1954 S C 465), it was observed :—

> ".....The legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The Legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination of the choice of

> legislative policy and of formally enacting that policy into a binding rule of conduct."

Those interested in an in depth study, may refer to *Vasant Lal Maganbhai Sanjanwala* v. *State of Bombay* (A I R 1961 S C 4), *Municipal Corporation of Dehli* v. *Birla Cotton Spinning and Weaving Mills* (A I R 1963 S C 1232), *Sita Ram Bishambhar Dayal* v. *State of U. P.* (A I R 1972 S C 1168), *Gwalior Rayon Mills* v. *Assistant Commissioner, Sales Tax* (A I R 1974 S C 1662), *Kerala State Electricity Board* v. *Indian Aluminium Co.* (A I R 1976 S C 1031), *A. V. Nachane* v. *Union of India* (A I R 1982 S C 1126), *Ajay Kumar* v. *Union of India* (A I R 1984 SC 1130), and *Man Singh* v. *State of Punjab* (A I R 1985 S C 1737).

The test of 'control by legislature, in the shape of power to repeal the enactment propounded by Mathew J. in *Gwalior Rayons* (supra) and *N. K. Papaith* v. *Excise Commissioner*, following the British pattern, has not been accepted by the majority in Gwalior Rayon and Kerala State Electricity Board (supra). It was expressly over-ruled in K. Kunjabmu (supra).

Delegated legislation or excessive legislation of delegated power was hitherto treated as belonging to the branch of administrative law. But in Trustees for the *Improvement of Calcutta* v. *Chaedra Sekhar Mullick* (A I R 1977 S C 2034), Bhagwati J, (as he then was) gave it a new dimension and treated the same to be another facet of, Article 14. He observed thus :—

> "The attack.....on the basis of Article 14 of the Constitution must also fail since the challenge under Article 14 is only another facet of the challenge on the ground of excessive delegation of legislative power."

Where civil consequences ensue, a man should not be condemned unheard. It was observed that "Civil consequences undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that effects a citizen in his civil life inflicts a civil consequence".

These cases form the back-bone of the emerging constitutional jurisprudence. The area of Courts interference has widened to areas which were hitherto treated as hold your hands off. It now extends to grant of bounties, disbursement of privileges etc.....In Ramana Shetty (supra) the Supreme Court observed :

"Today the Government, is a welfare State in the regulator and dispenser of special services and provider of a large number of benefits, including jobs, contracts, licences, quotas, mineral rights etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government may take many forms, but they all share one characterstic. They are steadily taking the place of traditional form of wealth. These valuables which derive from relationship to Government are of many kinds.....All these means growth in the Government largess and with increasing magnitude and raige of governmental functions as we more closer to a welfare state, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account it cannot be said that they do not enjoy any legal protection ?"

The question was answered thus.....the Government is still a Government when it enters into contract or when it is administering largess and it cannot, without adequate reason, exclude any person from dealing with it or take away largess arbitrarily.....when the Government is trading with the public. "The democratic form of the Government demands equality and absence of arbitrariness and discrimination in such transactions. The activities of the Government have a public element and, therefore, there should be fairness and equality."

On the aforesaid exposition of law, the Supreme Court declared void an order blacklisting a contractor (*Erusian Equipments* v. *State of W. B.* A I R 1975 SC 266; *J. Vilangnadan* v. *Executive Engineer* (PWD) Ernakulam, A I R 1978 S C 930), castigated the Government for finalising trial in the chamber of the Chief Minister without informing the highest bidder (*Ram and Shyam Company* v. *State of Haryana* A I R 1985 S C 147). It struck down allotment of resin in favour of allottees, which did not disclose any basis of allotment (A I R 1981 S C 1001). In *State of Haryana* v. *Jaya Ram* (A I R 1983 S C 1207), the action of the Excise authorities in jettisoning the original intention of holding a public action a grant of licence by private negotiations was struck down. In *Harminder Singh* v. *Union of India* (A I R 1986 S C 1527), governmental action accepting lower bid was declared illegal and arbitrary.

So far as the exercise of discretion is concerned in *Sant Rai* v. *O. P. Saigla* (A I R 1985 S C 617), the Supreme Court, besides stating the

conventional view point also formulated a new test. It would be apposite to quote it :

> "Whenever it is said that something has to be done within the discretion of the authority then that something has to be done according to the rules of reason and justice and not according to private opinion, according to law and not humour. It is to be not arbitrary, vague and fanciful but legal and regular and it must be exercised within the limit to which an honest man to the dtscharge of this office ought to find himself. Discretion means second discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary vague and fanciful.

In *Express Newspapers Pvt. Ltd.* v. *Union of India* (A I R 1976 S C 872), it was observed that "fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wrecking vengeance of a Minister."

The Supreme Court has by adopting the activist approach bringing within the net of Article 12 of the Constitution statutory corporations, government companies within the meaning of Section 617 of the Companies Act.

There is closer interaction between the Executive and the peop'e. It is the administrative machinery of the Government which people turn to seek redressal of their every day grievances. The Executive is the most powerful organ of the State. It is trite to quote the dictum of Lord Acton P. "Every power corrupts and absolute power lands to corrupt absolutely". The Supreme Court and the High Courts act as a watchdog to keep to Executive within the bounds of law. Our is a society governed by the Rule of law. Speaking about the rule of law, Mathew WJ in *Smt. Indira Gandhi* v. *Raj Narain* (AIR 1975 SC 2299) spoke as follows :—

> "The rule of law postulates the pervasiveness of the spirit of law throughout the whole range of the Goverament in the sense of excluding arbitrary official action in any sphere. Rule of law

> is an expression to give reality to something which is not readily expressible. That is why Sir Ivor Jennings called it as an unruly horse. Rule of law is based upon the liberty of the individual and has as its, object, the harmonising of the opposing notions of individual liberty and public order. The notion of justice maintains the balance between the two and justice has a variable content"

Culp Davis said, "where the law ends, the discretion begins and the exercise of discretion may mean either beneficence or tyranny, either justice or injustice, either reasonableness or arbitrariness. There has been no Government or legal system in world history which did not involve both rules and discretion. It is impossible to find a Government of laws alone and not of men in the sense of eliminating all discretionary powers. All Governments are Governments of laws and of men."

So, the need for tampering exercise of discretion with reasonableness, fairness and free from arbitrariness. With the observations of Bhagwati J in *E. P. Royappa* v. *State of Tamil Nadu* (A I R 1974 SC 555), Articles 14 and 19 have been given activist dimension. Arbitrariness has been held to be antithesis of equality. It has thus become an integral part of Article 14. Thus, Article 14 has been put up on the same pedestal as the due process clause in the U. S. constitution. It has given greater authority to the Courts to check executive action. Bhagwati J Spoke thus :—

> "Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed", cabrined and confined "within traditional and doctrinnaire limits. From a positivistic point of view, equality is authentic to arbitrariness. In fact, equality and arbitrariness are sworn enemies, one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch, Where an act is arbitrary, *it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article* 14.
>
> .....Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that state action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for state action, as distinguished from the antechamber of the mind, is not relevant but is extraneous and outside the area of permissible considera-

tions, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16, Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice. In fact the latter comperhends the former. Both are inhibited by Articles 14 and 16."

These observations were taken to their glorious height in the *Maneka Gandhi* v. *Union of India* (A I R 1978 SC 597) and *Ramana Dayaram Shetty* v. *The Intearnational Airport Authority of India and others* (A I R 1979 SC 1628). The trinity of cases from the new approach to the constitution given by Bhagwati J.

Now, the touchstone of judging state action is arbitrariness, both in substance and procedure. This permeates the whole gamut of Governmental activities, be it statutory contractual or otherwise. Procedural arbitrariness may arise from denial of hearing or fair play in action or infraction of principle of natural justice. In Maneka Gandhi, Bhagwati J. observed as follows : –

> "The *Audi Alteram Partem* rule is intended to inject injustice with the law and it cannot be applied to defeat the ends of justice, or to make the law 'lifeless, absurd, stultifying, self defeating or plainly contrary to the common sense of the situation'. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the *Audi Alteram Partem* rule, would by the experimental test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exeptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not be ready to escher it in its application to a given case.

Following the decision in *Ridge* v. *Bald*-(1964 AC 40) and in Re. H. K. (an infant) (1967) 2 QB 617 our Supreme Court in *A. K. Kripak* v. *Union of India* (AIR 1970 SC 150) held that the *dividing line between an* admisnitrative power and a quasi-judicial power is quite then and is being gradually obliberateJ."

In Chintappili Agency Talak Sales *Coperative Society Ltd.* v. *A. P. Government* (A I R 1977 S C 2313), it was held that "(the) minimal

requirement (natural justice) can on no amount be dispensed with by relying upon the principles of absence of prejudice or imputation of certain knowledge of the party against whom action is sought for. "This view was reaffirmed in *S. L. Kapoor* v. *Jagmohan* (A I R 1981 S C 136). For final and elaborate exposition of law are may him to *Union of India* v. *Tulsi Ram Patel* (A I R 1985 S C 1416).

Interlinked with it is the requirement to give reasons. Till 1976, the requirement to give reoson was never regarded as partaining to the domain of natural justice. But in sixmens Engineering Co. *Manufacturing Co.* v. *Union of India* (A I R 1976 S C 1785), wherein it was observed :

> "If the courts of law are to be replaced by administrative authorities and tribunals as indeed, in some kinds of cases, with the proliferation of administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the order made by there. Then alone administrative authorities and tribouals exercising quasi judicial functions will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicating process. The rule requiring reasons to be given in support of an order is, like the principle of andi alteram partem a basic principle of natural justice which must inform every quasi judicial process and this rule must be observed in proper spirit and more pretence of compliance with it would not justify the requirement of law."

This was followed in *Mohinder Singh Gill* v. *Union of India* (A I R 1978 S C 851). It was held that.

ROLE OF A JUDGE IN EXPEDITIOUS DISPOSAL OF CASES

BY

JUSTICE O. P. MEHROTRA

Dear Brethren,

You are all aware that the gravest problem before the courts at present is of disposal of an abnormal large number of cases pending before them. A very large number of cases are pending right from the lowest court of Munsif / Magistrate upto the Supreme Court of India and the number is gradually increasing. There are number of reasons for this abnormal increase. Most of them are beyond our control, for example heavy institution, cases under new legislation. Apathy of the Government in appointing sufficient number of Judicial Officers as a result of which several courts remain lying vacant without Presiding Officer and so on. We need not discuss those reasons here. In today's talk I will confine myself with the role of the Judge or Presiding Officer of a Court and will discuss how he can help in expeditious disposal of cases.

The Judge always plays a very important part in the disposal of cases. There are four main agencies who are involved in a case, namely, (1) litigants, (2) lawyers (including their clerks), (3) court officials and (4) Presiding Officer of the Court. It has been found that for obvious reasons the first three do not help in expeditious disposal of cases and on the other hand, often hamper the progress of a case. Perhaps the Presiding Officer is the only independent agency who is interested in quick and correct disposal of the cases. I will, briefly, discuses the role played by each of the above four agencies.

1. LITIGANTS

The litigant is evidently interested in his own welfare. He wants a decision in his favour any how and for that end he is very ofter prepared to stoop low and resort to all sorts of undesirable practices. If one party wants quick disposal, the other party is naturally interested in delaying disposal of the case. There is a constantug of war and both the parties very often resort to wrong pratices to serve their personal interests. For example, the plaintiff will try to get fictitious service effected on the defendent and thus obtain an ex parte decree. Very often the defendant will avoid service and thus delay the disposal of the case. The parties

some-times approach process server and offer him baits to get report from him according to their convenience. Very often exparte decrees have to be set aside, but in doing so disposal of the case is naturally delayed. Even during trial there is constant battle of wits. Party interested in delaying the disposal of the case takes recourse to all sorts of practices such as delaying service of summonses, taking time for filing written statement, applying for amendment of pleadings, obtaining adjournments on various grounds, filing all sorts of applications and preferring revisions and appeals against interlocutary orders, thereby hampering the progress of the case. The party who is interested in delaying disposal of the case resorts to such practices with a view to serve his own interest.

2. LAWYERS

The lawyers and their clerks merely act as agents of their clients. If their client is interested in delaying disposal of the case, the lawyer and his clerk will naturally try to help him. As a matter of fact, on the basis of my experience of about 37 years in the Judicial services in various capacities and as a Judge of the High Court I can say that in most of the cases it is the lawyer who invents various methods to delay the disposal of a case and very often he is paid for the same. Lawyers are expected to perform a sacred duty and they should not do anything unbecoming of their honourable profession. I need not digress to discuss the role of the lawyer. The fact, however, remains that it has been found that lawyers are not generally interested in the quick dispensation of justice if that does not suit their client. This is certainly unfortunate but all the same it is a hard fact, because lawyers care more for the interest of their clients and for their own interest and not to the over all dispensation of justice.

3. COURT OFFICIALS

Court officials are also very often responsible for causing delay in the disposal of the case. Generally they do so with a view to do favour to a party or in order to get some petty gratification for themselves. Some times the delay is caused on account of their negligence in issuing processes, giving information to the counsel, complying with the Court's orders etc. Very often they do not consider it to be their duty to help the court in expeditious disposal of the cases. They are generally indifferent towards this aspect. They are more concerned about their own interest. They are low paid employees and some of them are over worked. Unfortunately the practice of payment of small tips to them has become a standing practice since the time of the British and efforts to eradicate this evil

have not been successful, although there are some officials who are absolutely honest and who also help the court in dispensation of justice. Lately cases ef harassment at their hands, especially in cases of employees working in criminal courts, have been on the increase and must be dealt with a strong hand.

4. JUDGE OR PRESIDING OFFICERS

The only agency which is and should be really interested in the quick and correct disposal of the case is the Presiding Officer or the Judge himself. It is gratifying to note that while corruption has crept in almost everywhere, the Indian Judiciary is by and large independent and has maintained a high sense of honesty and integrity. People have still great faith in courts and whenever there is infringement of their rights by other agencies, they look forward to the courts for redressing their grievances. However, the undue delay caused in the disposal of cases, mainly on account of heavy pendency is gradually changing the attitude of the people towards the courts and they often avoid coming to courts to seek remedy for their legitimate grievances because of the undue delay and harassment caused to them in getting justice from the courts.

The other three agencies referred to above can also do a lot and help in expeditious disposal of the cases but for obvious reasons they are generally I indifferent and are not doing anything substantiality in this regard. In such circumstances still heavier duty is cast on the judges to take effective steps to ensure quick disposal of cases.

WHAT PART CAN A PRESIDING OFFICER PLAY IN EXPEDITIOUS DISPOSAL OF CASES

I will now discuses some of the main factors which contribute to law delays and will briefly deal with the specific steps which a Presiding Officer can take to avoid such delays and to liquidate the arrears and ensure expeditious disposal of cases. We need not discuses the causes for delay which are beyond our control, such as, apathy of the Government in filling up the vacancies at various stages and increase in the institution of cases so that it is not possible for the existing number of Judges to keep pace with the institution. I will confine myself to the point as to what effective measures can be taken by the Presiding Officer of a Court to expedite the disposal of the cases pending before him.

A Judge can ensure expeditious disposal of cases in various ways. He is the Presiding Judge and controls the proceedings. He can, therefore, set at naught, at least to a considerable extent the evil designs and

manoeuverings of the parties and their counsel and the court staff, who place all sorts of hindrances in the way of quick disposal of cases.

1. DELAY DUE TO UNPUNCTUALITY

Importance of punctuality should not be underestimated. Very often Judicial Officers complain that the lawyers do not attend the court in time and hence it is no use, if they come and sit in court at the appointed time. Some officers have also been heard saying that even if they start work slightly late, they compensate by sitting late in the evening. This is not correct. So far as the working of the courts is concerned, punctuality has its own importance. If you are punctual, your staff and the lawyers will also be punctual. If the lawyers know that Presiding Officer will definitely sit and start work at a particular time, they will also attend the court in time and after some time they will develop a habit of coming to court in time. In the beginning there may be some difficulty and resentment but soon a habit will be developed amongst the Presiding Officer as well as the lawyers litigants and the staff. Similar is the position with regard to the sitting on the dias after lunch interval. Very often it has been found that officers over stay the lunch interval and do not come to the dias even upto 2.30 or 2.45 P. M. Lawyers should know when you will come and what type of work you will take up. If you do not have a uniform practice, and you sometimes come to the dias at 2 P. M. and at others at 2.30 or 2 45 P. M., the lawyers will have to wait for you. You should keep in mind that if your time is valuable, and if you want that you have not to waste your time in waiting for the lawyers, you should also ensure that lawyers have not to wait for you. It is correct that sometimes lawyers do not attend the court in time, but it is also correct that very often the lawyers keep waiting for the arrival of the Presiding Officer in the morning or after lunch interval. If you maintain strict punctuality it will be convenient for all. If the lawyers know that you will take up their matter at a particular time, they will ensure that they are in court at the appointed time and are ready with their cases. You should ensure that the lawyers have not to wait for long for their cases to be taken up. This is especially necessary with respect to misc. work and applications for bail, admission of cases and disposal of interlocutory matters. A system should be developed that a particular type of work is taken up and finished at the appointed time so that the lawyers are free to attend to other courts. Unpunctuality even by some courts dislocates the entire work. A good Presiding Officer should, therefore, maintain strict punctuality. It is also not proper to sit in court upto late in the evening. If you do so people may not like you, because lawyers, clients and clerks will have to wait for you and clients coming from distant places may some

times miss their trains or buses. In fact, if you start work in time and work methodically and with speed, there will be no need to sit after court hours.

2. DELAY DUE TO IMPROPER FIXING OF CASES IN THE DIARY :—

An efficient Judge can ensure quick disposal by judiciously fixing dates in his diary. In the first place dates should be fixed by the Presiding Officer himself and this important task should not be entrusted to the Reader. Apart from the fact that it leads to corruption, the Reader is bound to pack up the diary with too many cases on each day, for obvious reasons. A good Presiding Officer should neither fix too many cases, nor too few cases on a particular date. He should fix only so much work which he can conveniently dispose of after making some allowances for unavoidable adjournments, and should make efforts to dispose of the entire work.

Fixation of cases in the court diary is also an art and each P. O. has to adjust his diary according to his speed and manner of working. The cases should be fixed in such a way that the P. O. finds sufficient work to dispose of and he has not to sit idle for want of work, nor he should fix an abnormally large number of cases so that he is able to take up only a few of them and the rest have to be adjourned for want of time. On the basis of my personal experience I can say that it is always better to fix lesser number of cases and doing maximum work in each case, rather than to fix a large number of cases and doing some work in only some of them and adjourning the rest. By doing so, you save a lot of time and expenditure of the clients and also save your own time spent in calling so many cases and in preparing English notes or vernacular order-sheets of so many cases. My personal experience is; "The lesser the number of cases fixed on each day, the higher the disposal of the P. O. of course to a certain limit." To some it may appear to be paradoxical, but this is a hard fact. The reason is obvious-you save a lot of time spent in calling so many cases, giving dates and recording English notes or order-sheets.

At a particular station, I found a Reader whose P. O. had perhaps entrusted the job of fixing dates to him, fixing 40 to 50 cases per day, out of which 4 or 5 used to be taken up while the remaining 35 or 40 cases had to adjourned. Evidently the Reader was minting money. Besides, harassment to the litigants, it also hampers your disposal. Some body sent a complaint to the High Court against the Reader. The Reader escaped by saying that the cases were fixed by the P. O. The P. O. could not legally blame the Reader because under the rules it is the duty of the

P. O. to give dates. You must not, therefore, entrust this important work to your Reader.

3. DELAY DUE TO UNMETHODICAL WORK GRANT OF FREQUENT ADJOURNMENTS WITH LAWYERS :—

A Judicial Officer should work methodically and avoid frequent and unnecessary adjournments. He should avoid giving to many dates and try to dispose of maximum work on each date. He should ensure that the litigants have not to appear on so many infructuous dates on which no work or very little work is done. He should be particular regarding disposal of miscellaneous applications and interlocutory matters, which often consume considerable time. As I told you earlier, try to do maximum work in a case fixed for the day. Very often officers dont' take up a case fixed for framing of issues, or recording of evidence or arguments, as soon as it is found that an application for amendment of pleadings or framing additional issues or substitution etc is received, and give a date in the routine manner for filing objections etc. Some of these applications may be formal or uncontested and it may be possible to dispose them of then and there on the same date and proceed further with the case. For example, if a case is fixed for F. H. and an application for amendment of pleadings or substitution of heirs of a deceased party is received, it is not always necessary that a routine order asking for filing of objections should be passed. You should call the parties and their counsel and find out whether the application can be disposed of and you can proceed further with the case.

During the course of inspection of lower court's, records I have come across numerous cases where the courts have fixed a large number of dates for disposing of minor matters and petty applications. In one case which was fixed for recording of evidence and in which plaintiff was ready with his evidence the defendent filed an application for amendment of his W. S. mentioning certain facts which he had omitted, or raising certain plea. The court, without carring to see what the amendment was, and without calling the parties and asking the plaintiff whether he would like to file objections, passed, a routine order giving a date for filing objections. On the next date, the order-sheet recorded "objections filed" or "objections not filed" and a date was fixed for their disposal. On one or two dates the case could not be taken up for want of time. Then on one date the application was allowed on payment of costs, and again a date was given for payment of costs. Even this was not done on one or two dates. Ultimately when costs were paid, a date was fixed for carrying out or incorporating the amendment. If this was amendment of plaint, then a

date for filing additional W. S. was given, and then another date for framing of additional issues. In this process several months were wasted, and ultimately it was found that it was a trivial amendment which could be allowed on the same day and after framing additional issues, if any, the court could have proceeded with the recording of evidece. I have found that even where both the parties are ready with the case, delay is caused on account of unmethodical working of the court. In a case fixed for final hearing, the plaintiff died and his son, who was his sole heir, was present in court and ready with his evidence. The defendant had also no objection to the substitution. If the P. O. had called the parties, the plaintiff's son would have applied for substitution at once and the same could have been allowed and got incorporated then and there, and the court could have proceeded with the final hearing. He could have asked the defendant, and recorded his statement that he had no objection to substitution. Instead of doing that, the court in a routine manner recorded the statement of plaintiffs counsel that the plaintiff was dead and allowed him time for filing application for substitution after the application was received he allowed time to the defendant to file objections, and ultimatley when objections were received, he allowed the application for substitution and granted time for incorporating the same, and only then, after wasting several months to dispose of an uncontested substitution, a date for final hearing could again be fixed.

In particular I have noticed that undue delay is caused in the disposal of restoration application, even though they are not seriously contested or are opposed only for costs. Even when such applications are allowed on payment of costs, time is allowed for making the payment. After the costs are paid, the office puts up the order sheet to the P. O. who then fixes a date and the office has to inform the parties counsel about that date. I will request you to develop a practice under which costs are paid then and there and there is no need to allow time or give separate date for payment of costs. By doing so, you will save considerable time and avoid 2 or 3 dates. This is not at all difficult. I have actually done so. When I allowed an application on payment of costs, I used to say in lighter mood in Hindi :

"Costs
अभी दे रहे हैं या समय ले रहे हैं। मैं खुद तगड़ा लगाता हूं। नकद दोगे तो 20/–में काम बन जावेगा, वरना उधार में 60/–पड़ेंगे फिर अभी दोगे तो फौरन तारीख मिल जावेगी, वरना एक तारीख देने की पड़ेगी, तब मुकदमें में जो तारीख पड़ेगी उसकी इत्तला वकील साहब देवें।"

Almost invariably the client at once paid the costs and obtained the next

date, or if possible, proceeded further with the case on the same day. By adopting this method you can avoid calling the parties to court on some dates.

It is not necessary to give separate dates for each small matter. More than one matter can be disposed of on the same date. For example, after-allowing an application for restoration or amendment or pleadings or substitution of heirs, you can proceed further with framing of issues or addl. issues or hearing of interlocutory, matters such as, disposal of applications for ad interim injunction, attachment before judgment or appointment of Receivers. After framing issues, if you feel that it will be necessary to issue a commission, you can pass suitable orders on the same date, after or without obtaining an application for the same instead of leaving the plaintiff to apply for the same at a later date.

Your main aim should be to avoid unnecessary harassment of parties by requiring them to come to court on minimum number of dates. In the beginning there may be some opposition from the side of lawyers especially in the eastern districts where system of payment to lawyers on daily basis is prevalent. Gradually however, they will understand you and adjust with you. In particular, the clients will like you and appreciate your method of working and will cooperate with you. You have not to look to the interest of the lawyers or their clerks or your own staff. It is the interest of the litigant which is supreme-you should always keep this in mind. I can assure you on the basis of my experience of working in the eastern districts of Ghazipur, Azamgarh, Vanarasi and Deoria that you will have no difficulty. By and large, lawyers like and appreciate methodical workers. Soon they will understand you and will adjust and cooperate with you.

The Presiding Officer should endeavour that a party interested in delaying disposal does not succeed in his designs. A counsel may join hands with his client and may try to help him by trying to seek adjournments, which are not justified, by the P. O. is there to foil such attempts and refuse adjournments. The practice of seeking adjournments on personal grounds of lawyers should also be deprecated, except in very exceptional and unavoidable circumstances. They should be politely told that such adjournments will not be allowed. If the counsels know that the court will not grant easy adjournmeats they will come prepared with their cases and will not seek adjournments on flimsy grounds. When the parties will see that the P. O. is strict and methodical, and that even if they get an adjournment, it will be a very short one, they will gradually, realise the futility of seeking such adjournments and will probably abandon this practice.

4. Delay due to unpreparedness of the Presiding Judge—His inability to control proceedings, especially cross-examination—Delay due to lengthy & irrelevant cross-examination.

It has been noticed that some P. Os. are not fully conservant with the facts of the case when they are recording evidence, as a consequence thereof they are not able to control cross examination and too much time is taken in arguments. You can control cross-examination only if you are fully familiar with the facts of the case. It has been found that some P.Os. start recording of evidence without knowing much about the case. The case is called and when the parties and their counsels have arrived the counsel is asked to give his list of witnesses and when the witness arrives recording of his examination in chief and then the cross-examination starts. The counsels go on putting all sorts of relevant & irrelevant questions, thus prolonging the statement and wasting valuable time of the court. The rules provide for opening of the case. Unfortunately in the most cases this has been rendered an empty formality.

I would suggest that before starting recording the evidence of the first witness the P. O. should first ask the plaintiff's counsel and then the defendant's counsel as to what their respective casts are, what are the points at dispute, what issues have been framed. what witnesses they would examine and what statement each witness was expected to make. In fact the preparedness of the P. O. should be such that he should be able to record the statements of the witnesses even without the help of their counsels and with some instructions he may also be able to cross-examine them Only then he can effectively control the cross-examination. Side by side he should also start making up his mind regarding the various points involved in the case, although it will only be tentative or provisional making of mind, the final view being taken after hearing counsel for both the sides. He should constantly keep in mind the points at dispute and keep on judging the statements of the witnesses as to what statements they are making, how far they are truthful, whether they could be believed and what should be the findings on the points involved. Whenever any doubt arises in your mind, you can always put questions to the witness, not with a view to prejudice the case of either party, but with a view to remove the doubt and clarify the statement. By the time the parties close their evidence you would have arrived at your tentative findings, and you will take very little time in hearing arguments, most of which will only be covering legal aspects.

5. Delay due to fixing separate date for arguments leading to lengthy arguments :

The parctice of fixing separate date for arguments in civil suits,

original crl. cases and sessions trials should also be discouraged. You should try to establish a practice that as soon as evidence is concluded, the parties counsel start addressing arguments. This will save a lot of time, because as you have just concluded recording of evidence, the facts of the case are fresh in the mind, and you also remember the evidence adduced by the parties and even the demasenour of the witnesses, so that the lawyers will not have to tell you what the facts of the case are, and they can outright start addressing you on the points involved in the case. In case, however, you give a separate date. You are likely to forget the facts, and on the date of arguments the lawyers will have to open the entire case afresh by narrating the case of both the parties and may also take considerable time in referring to the evidence adduced by the parties. On the other hand, I have personal experience that when I started hearing arguments immediately after close of evidence, some of the counsels merely submitted very brief arguments, saying that oral evidence had been recorded by me and I remembered the same. They merely submitted salient points and legal points, if any, taking very little time.

A separate date for arguments may be given only in cases where the evidence has been recorded piecemeal on several dates and the facts are complicated or some legal points are involved. Even in such cases, arguments should be heard on the next day or within 2 or 3 days. If arguments do not conclude till close of court hours, they must continue on the next day. If there is a longer gap, you will again take some time in knowing the facts, and there will also be some repetition in the submissions made by the counsels.

The lawyers often want a separate date for arguments. However, you should not have much difficulty in establishing rapport and understanding between you and the lawyers. When they know that it is your way of working to start hearing arguments immediately after close of evidence, they will come prepared with their arguments and much of the court's time will be saved.

6. Control over office and process serving staff :—

The Presiding Officer should also exercise proper control over his office and the process serving staff. You should act firmly againt corrupt, lethargic or negligent officials and ensure timely compliance of your orders. Action should be taken against those process servers who submit incomplete or evasive reports, or who are found at fault.

7. Sound knowledge of law and procedure & Devotion to Duty and Vigilance on the part of P. O.

A good judicial officer must have sound knowlege of law and procedure. Unless he is conversant with the different aspects of law, and has knowledge of correct procedure and is sincere and devoted to his duty, it is not possible for him to decide cases correctly and expeditiously. For this you should develop a habit of studying law books and journals regularly and also prepare a digest of cases of your own. You should have a balanced, independent and unbiased mind, which is always open to conviction You should be sincere and honest in taking decisions, otherwise your entire knowledge of law and procedure is of no use. You should be able to dispense justice without fear or favour on considerations of merit and merit alone. You should have a high sense of duty and devotion. You should have a desire to do justice even at your own inconvenience. Instead of taking your judicial work as a burden, and always feel over burdened by work, you should develop a habit to work hard and take pleasure in your work and always try to keep your work up to date. Above all, vigilance on the part of the P. O. is very helpful in quick disposal of cases.

LAGISLATIVE DRAFTING

HON'BLE MR. JUSTICE G. B. SINGH

Legislative drafting is a high and splendid branch of the art of using language. The simplest language is the best for legislation. To construct Acts is a difficult task and the draftsman must know that in his case virtue is its own reward. For all the pains that have been bestowed on the preparation of the Bill, he must be prepared to tolerate the adverse criticism against it by those who never drew an Act themselves and sitting the back benches denounce it as a crude and undigested piece of legislation.

Legislative drafting though a difficult task can be done successfully if one keeps certain guiding principles in mind. To become proficient in legislative drafting one should study a few examples carefully, go through the provisions of the General Clauses Act and have good command over the language in which the draft is to be prepared.

Legislative draftsman unlike a lawyer who has a case in Court of law does not deal with a particular controversy but foresees all reasonably possible situations of the subject and is concerned with people in general. Legislative drafting skill cannot be passed off as a mere general writing skill that can be learned in school or college. Such a drafting requires a lot of practice, a high degree of precision and accuracy and a careful attention to architectural details which is otherwise unknown in ordinary writing. Success in legislative drafting depends largely or one's own interest and determination to improve even if he has received formal training in legisiative drafting which can simply give him an initial push in the right direction as the long run momentum must be his own.

In legislative drafting one prefers to concentrate upon the substance ; another believes that vigilant attention to small matters of form is of paramount importance, but both of them deserve equal attention. If the details are drawn in correct form, the substance also is likely to be correct. Similarly, if details regarding substance are incomplete, the form can never reach perfection.

There are three basic steps regarding substance of the legislative drafting. The first step is to find out what the administration wants. It

should be ascertained first what the Government wants to accomplish and what specific problem it involves. The problem should be analysed well on the basis of the details furnished. The draftsman at this stage points out substantive inconsistencies if any and constitutional problems that may occur to him. The administrative and other pratical problems likely to arise are also pointed out by the draftsman. After receiving the detailed instructions the next step is exploring the framework. A competent architect would not dream of remodelling a house without first taking a close look at it. Similarly the draftsman should closely examine all relevant existing enactments on the subject to see what to amend, what to repeat and what to supplement. Failure to do this results in implied repeals, overlaps and inconsistencies, in a word-confusion. It should also be examined at this stage, if legislation is actually required or whether it might not be possible to attain the desired end by framing rules under an existing Act. The third step is to prepare outline of the Bill. At this stage the draftsman selects the right concepts and develops a concrete plan. The concepts should cover the intended areas and should leave no gaps. They should not duplicate each other or overlap and should not contradict each other.

After having the substance of draft well in hand, the draftsman gradually moves into the field of form and style. There are three separate steps in establishing the final form of a legal instrument. First the draftsman prepares an initial draft paying general attention to the accepted rules of form, checking doubtful questions of substance and handling new problems as they arise by asking questions or by doing individual research. The draftsman should keep each section on a separate sheet until the final draft. The draft should be double spaced or triple spaced. Second the draftsman should revise his work as many times as necessary to produce the deserved result. It is no disgrace to revise a draft a dozen times. He should keep on revising until he feels that the draft has reached near perfection. In revision paper waste and unnecessary handling should be avoided. More than one draft should be avoided unless special circumstances making it advisable. Each draft should be dated and initialled. All drafts should be retained for internal consistency. The last step in this connection is checking of and applying polish to the final draft. The definition and cross references should be thoroughly checked. The draft should then be checked by atleast one fellow expert draftsman and if possible his comments may be obtained. After all this polish should be applied to the draft to obtain the desired clarity and simplicity. The draftsman should polish the language to make the draft as easy to read and understand as possible.

A proposed legislative enactment is called a "Bill" and its sub-division are called "clauses" and "sub-clauses". When it has been enacted it is called an "Act" and its sub-divisions are called "sections" or "sub-sections".

The general frame of Bill consists of following :—

1. Long title
2. Preamble
3. Enacting formula
4. Short title
5. Date of coming into operation
6. Definitions
7. Principal provisions
8. Administrative provisions
9. Miscellaneous clauses
10. Penal provisions
11. Rule making clauses
12. Repeal and saving clauses
13. Temporary and transitory clauses
14. Schedules

1. Long Title

Every Act has a long title which indicates general purpose of the Act and may be referred to for the purpose of ascertaining its general scope. It forms part of the Act.

For example –

An Act to provide for the regulation of mines and the development of minerals under the control of the Union.

An Act to provide for fixing minimum rates of wages in certain employments.

2. Preamble

It is only in exceptional cases that a preamble is now used to explain the

object of the Act. The preamble cannot restrict or extend the enacting part when the language and scope of the Act is quite clear.

For example—

Whereas it is expedient to provide for fixing minimum rates of wages in certain employments :

It is hereby enacted as follows—

3. Enacting Formula

The enacting formula depends upon the constitution. It can be as given below :

Be it enacted by Parliament in the Tenth Year of the Republic of India as follows :

It is hereby enacted in the fifteenth year of the Republic of India as follows :—

4. Short Title

Every Act has a short title. It forms part of first section of the Act. It should be simple and short and describe the main object of the Act. The following examples may be given in this connection :—

1. This Act may be called the Minimum Wages Act, 1948.
2. This Act may be called the Mines Act, 1952.

5. Date of coming into operation

The commencement of the Act is also given in its first Section. In can be in following forms :—

(a) It shall come into force at once.

(b) It shall come into operation on such date or dates as the Central Government may by notification in the official gazette appoint.

6 Definition Section

This Section defines the meaning that certain words or expressions are to bear in the Act. Definitions keep the draft concise and clear. The expressions already defined in the General Clauses Act need not be defined. The provisions of the General Clauses Act apply unless the contrary intention appears in the Act itself. If it is intended to vary any difinition or

rule of construction of the General Clauses Act, it must be done in express terms. Words and phrases defined in the Act should be used in the same sense throughout the Act and the rules framed thereunder. Definition section should be used for interpreting words which are ambiguous or equivocal and not so as to disturb the meaning of the such words as are plain. A word should not be defined to include something which it would not ordinarily include.

7. Principal provisions

The draftsman after considering and ascertaining the main principle of the Bill, the subject matter should be stated with clearness and brevity in the principal provisions of the Bill. Here no section which depends on another section should come before the Section on which it depends.

8. Administrative provisions

In this part the authority by which the law embodied in the Bill is to be administered should be stated. Suitable provisions for the staff by which the Act is to be carried into effect should also be made.

9. Miscellaneous clauses

This part of the Bill contains various provisions which are connected with the main subject matter but cover different topics. They can be kept together in a Bill.

10. Penal provisions

Penal provisions must always be clearly expressed since they are always construed strictly and in favour of the person who is charged with having broken them. These provisions may provide for maximum and minimum penalty, the penalty may be imprisonment—simple or rigorous or fine or both. These provisions may also provide for mode of recovery of the fine, appeal, applicability of principle of natural justice and law of Limitation etc.

11. Rule making clauses

The legislature has not time to cope with all the matters in the Act itself and accordingly legislative powers are given to certain authorities under the Act to frame rules and regulations having the force of law.

12. Repeal and Saving Clauses

The draftsman should take every opportunity to clearing the Statute Book of obsolate Acts by a definite repeal. The Acts which are repealed

and their provisions if any saved the rights and proceedings which remain unaffected by such a repeal are mentioned in these clauses. In drafting a repeal clause the provisions of General Clauses Act must be carefully borne in mind.

13. Temporary and Transitory clauses

If some provisions are temporary or applicable to transitory period, they are mentioned in this part of the Bill.

14. Schedules

Where several Acts or parts of several Acts are repealed they may conveniently be stated in a schedule. Agreements and plans or forms of notices, licenses etc. may be placed in a schedule. The schedules must be carefully drafted because they are very often referred to in construing an Act. The draftsman should make it clear whether the forms in the schedule are given as models which may be varied according to the circumstances or whether they are imperative and to be followed exactly.

There are some guiding principles for the legislative draftsman.

The draftsman must make himself familiar with the privisions of the constitution of India specially those relating to fundamental rights and constitutional rights and the subjects on which the central legislature or the State legislature or both can legislate. Apart from this he should also know what are the provisions of the General Clauses Act. If he does not know all this, he will find himself in difficulty when constitutionality of the Act is challenged or when it is pointed out that he has made unnecessary provision because it is already provided in the General Clauses Act.

When the draftsman has received instructions for the preparation of the legislation, he must first obtain a clear undestanding of the law as it stands. When the legislation in regard to the matter already exists it must be carefully studied. After this he should ascertain whether there have been judicial decisions dealing with the matter under consideration. He should make a list of all these cases with a short note on the points decided in these cases. The draftsman should then consider whether it is desirable to make provisions in the Bill on the points already provided in the previous legislation and the points decided.

Different matters should not be dealt with in one Bill e. g. Transport Act should not deal with railways and motor vechicles. Separate Acts should deal with separate matters. No clause should be inserted in or annexed to an Act which is foreign to the title of such an Act. The Bill

should not be so brief or short as it may be imcomplete. The administration sometimes demands a Bill as an urgent measures in a time inadequate for its preparation. In such a circumstance the draftsman should decline to make the attempt. If pressure is brought upon him, he should briefly and quietly record the circumstances.

The simplest language is best for legislation. Sentences should be short and long words should be avoided. If he uses complicated expressions and long words there is every likelihood of being misunderstood. He should, therefore, reconsider the form of the Section and use simple and plain words as far as possible. However, if the Act is of a technical kind, he may use technical expressions as it will only affect readers who are qualified to understand them. To convey a particular sense, same expression should be adhered to throughout the Act. Different words should not be used to describe the same thing in the Act. For example the draftsman should not describe a thing, as a 'ship' when he has previously described it as 'vessel'. The spelling of the same word should not be varied in the drafts. The same word should not be used to describe different things.

JUDICIAL TRAINING AND RESEARCH INSTITUTE, U. P. LUCKNOW.

1st Refresher Course of Senior Judges

Talk : BY SRI K. L. SHARMA SECRETARY, JUDICIAL AND ADDITIONAL LEGAL REMEMBRANCER, U. P. LUCKNOW.

Subject : Role of district judges—Relation interse judicial officers, court, officials and member of the bench and the bar.

Dear brothers,

This is really an occasion of great pleasure to me to have a heart to heart talk with my colleagues on a subject which has assumed greater importance in the present day times. Not only in the Judiciary but also in the administrative organisations, it has become a great problem for the head of the office to deal with the people who are concerned with him in day to day working. To-day I would confine myself to the great problem faced by our district judges in the discharge of their functions—judicial and administrative. The role of the district judge is, greatly responsible for the smooth and efficient functioning of the courts at the district level. As you know the reputation of the district judge now a days largely depends upon his role in dealing with his judicial officers subordinate staff of the courts and members of the Bar. I would, therefore, dwelve upon the role of the district judge with reference to the judicial officers working under his charge.

A. District Judge vis-a-vis Judicial officers

True, the district judge is the head of the judicial administration in the district but he alone does not carry on the entire administration of justice in the district. He functions in his own court as District Sessions Judge and looks after the general administration of his judgeship. There are several courts besides the court of district and sessions Judge and those courts are manned by judicial officers of different ranks i. e. right from munsif magistrate upto the level of additional district and sessions judges. Every court has its own office. Therefore the interaction between the district judge and the judicial officers is very important for the smooth functioning of the district level, Judiciary.

To my mind, the district judge is not only the head of the district judiciary but he is the great father of the big family of the judicial officers posted in the district. The district judge cannot separate himself from other judicial officers in the matters of common interest happiness or agony of each other. Similarly judicial officers cannot isolate district judge in any of such matters. If this happens it would not only create an atmosphere of mutual harmony, mutual respect and mutual concern giving rise to the solid team spirit. The result would not be confined so far but it would extend in its effect on the subordinates as well as the members of the bar and litigants. Briefly speaking, united we stand, divided we fall.

The district judge should make it a point to meet every judicial officer at least once a month and to know the problems of judicial officers and help them, so far as his capacity is there. No judicial officer should make any secret of any thing concerning the administration of justice to the district judge. I would, however, like to say that no judicial officer should ever criticize any senior including the district judge and should not talk ill even of his junior officers. There may be occasions when there is difference of opinion in a matter between the senior officer and the junior officer but the discipline requires that view of the senior should be accepted graciously because the junior of to-day is the senior of to-morrow. If this principle is followed I do not think there would ever be any conflict between the district judge and judicial officers or judicial officers interese in regard to the matters of the common interest.

The district judge should on his own presume that every judicial officer is good, efficient and humane and kind hearted unless and until by concrete facts and material it is proved to the contrary. If the contrary is shown the district judge should give a fair opportunity to the officer concerned for improvement and betterment. If sufficient opportunity is given and it goes waste, the district judge should not have any hesitation to take such appropriate action as may be called for under the rules and the situation of the case. Because if he fails in the discharge of his basic duties, he would not be able to tone up the administration of justice in the district and it would bring a bad name not only to the judicial officer concerned but to the district judge being the head of the district judiciary.

The district judge should never be hesitant to accept a reasonable request of his officers and be prompt to extend all the sympathies and help to the officers, if and when demanded. This would have an effect on the judicial officers to feel that the district judge is like a Karta and he has a pious obligation to discipline himself and respect the district judge.

The district judge should be quiet, very fair, just and proper in all the administrative matters while dealing with judicial officers. He should not depend on the notings and the views of the Sadar Munsarim or the Central Nazir or the Ahalmad but he should discuss it with the judicial officer who has referred the matter to the district judge. If this procedure is adopted, even though the district judge is unable to accede to the request of the officer, the latter will feel satisfied and will have no occasion for brickering against the district judge.

The district judge should formulate sound and fair principles for allotment of residential houses, allotment of court building and allotment of the staff to the judicial officers from time to time, because these are very sensitive matters which give rise to uncomfortable situations and sources of dissatisfaction.

The district judge should not only remain satisfied with his good relations with the judicial officers working under him but he should be more concerned that the relations intere se judicial officers are equally good and there is no groupism amongst them. As you are aware, even though there is a common outcry for national integration and unity of the country, many disruptive tendencies have imperceptibly grown up and the things which were totally unknown in the judicial administration have come to the upper surface. Personal grouses and prejudices of officers have divided them into various groups either based on caste or any other interest. True, birds of the same feather flock together but why they forget it that their fraternity is only one and their motto of the profession is one to impart justice in fair and just manner. Probably the officers who form groups within the same family of the district judiciary, do greater harm to themselves than the one done to the district judge or the public. The district judge however falls in great difficulties when he overlooks such groupism. To my mind the district judge who does not allow his family to be divided into groups is successful one.

I would now switch over to the necessity of the cordial relations between the district judge and the staff. The mechanism of the district judiciary not only consists of the district judge, other judges and magistrates but largely consists of the staff attached with each court and posted in the administrative sections. They all are like tools and parts of the mechanism. Now you can very well understand that if any part even the tinest, goes out of order, the whole mechanism shall be set at naught. Therefore, the district judge has to see every day that all the parts of the mechanism are in order and at proper place. Of course the district judge alone cannot physically do it, but I am sure his team consisting of

many judicial officers will assist him in checking up the mechanism. Good relations are not created by one sided actions. They are reciprocal. The parts also require care and attention : that is why greasing becomes important ingredient to prevent mechanism from getting out of order. What I mean to say and convey is that the district judge should ensure through the judicial officers that no employee is maltreated in public or openly before others because even we would not like to be treated like this by any one superior. If an employee is at fault, he should be politely told about his fault in the chamber and he should be given proper opportunity and reasonable time to improve and remove his defect and be careful in future. True, that there may be some incorrigible officials but the district judge cannot shun his paramount duty to punish such erratic and delinquent officials in order to create an example atleast to deter other employees from repeating their faults to the annoyance of the judicial officers and the public. Such instances would be very rare and if the district judge is otherwise fair, just and humane with all employees of his judgeship, no body can raise even little finger towards him and he would command respect for his discipline and boldness.

The district judge should not refuse any reasonable and just request of any employee and should be considerate to accommodate them in the hours of their trouble and agony. He should ensure that all the matters relating to efficiency bar, promotion, confirmation and payment of dues and advances is timely done and no hardship is caused on this account to any one.

I would not duell on the most delicate role which is to be played by the district judge while dealing with the members of the bar. As you know, the times of today are not those golden days when the members of the Bar adorned the judges and magistrates and ignored all their blemishes and even acts of misbehaviour, they felt honoured if the judicial officer was kind and courtious towards them. The association between the members of the Bar on one hand and the judicial officers on the other hand in any function was never made the point of criticism and all the deference was showered on the judicial officers and utmost discipline and etiquette used to be observed while addressing and talking about the judicial officers not only inside the court but outside also. The judicial officers also responded well to the disciplined, courtious and polite behaviour of the members of the bar. The judicial officers never gave preference to a lawyer over other lawyer while dealing with them in the court ; never discouraged or condemned the young lawyers and never showed any partiality towards the senior lawyers. They did not talk loose with any

lawyer either in the court room or else where. There was no confrontation between the judicial officers and the members of the Bar. So obviously, the district judge had no problem on this account and he had no role to play in this regard.

But now during these 37 years of independence and increasing consciousness of own rights, status and prestige the golden traditions of the past seem to have disappeared altogether. I am now reminded of the frank statement made by Sri V. C. Misra, the then chairman of the Bar Council of India, at the function of the State Lawyers Forum, presided over by the Chief Justice of the Allahabad High Court and attended by the Union Law Minister and State Minister for Law and Justice. Sri V. C. Misra said "there was no cause for conflict between the judges and magistrates and the lawyers except this that the judicial officers thought that they were superior to the lawyers and the lawyers thought that they were superior to the judicial officers." Prima facie, it shows that concepts have altogether changed.

We all understand that we all are government servants and the lawyers are free masters. If they do not appear in the court, they do not loose any thing instead the judicial officer is nicknamed for doing this or that wrong. They can boycott the court flinging abuses, raise slogans and take out processions. But the judicial officers cannot retaliate or pay in the same coin because it would harm them and humiliate them to the point of tendering apologies or face transfer. The district judge will be held responsible for this jeopardy in the working of the court and for failing to resolve the dispute giving rise to such thing. The district judge being the head of the district courts must be wary of all the situations. He has to watch closely the conduct of the judicial officers not only inside the court but out side also. He should ensure that no judicial officer talks loose with any lawyer inside or outside the court. He should ensure that the cases are properly conducted by the judicial officers. He should see that no judicial officer becomes friendly with any lawyer or associate with lawyer in any manner. If the district judge receives such complaint he must make all his efforts to correct the judicial officer before un ugly situation may arise. Of course he will have to be careful in correcting the judicial officer because every judicial officer may not behave properly with the district judge. The district judge should intervene and pacify the agitated judicial officer or the agitated lawyer or the respresentative of the Bar Association. I would further suggest that the district judge should not take any step by which the position of the judicial officer is downgraded. The district judge should persuade his judicial officers not to talk

loose or show temper or use aggressive words or show jestures with any lawyer young or senior, so that no such event may take place. The judicial officers should also be impressed upon to understand currents of the changing times and should not place himself in a position where he may be compelled either to apologise or to seek his transfer. It would be better for the judicial officer to pocket the insult in an unconcerned manner than to apologise publicly and downgrade the prestige not only of himself but also of the district judge and the district judiciary in general.

I am now reminded of the great philosopher Herbart Spencer who found the key to the happiness of the human life. What is that ? If one can adjust oneself to the situation in which one is placed one can deserve the maximum happiness in life, and if one does not one will be deprived total happiness in life.

As you know, the day to day problems arising in the districts have different facets, the district judge alone cannot overcome these problems unless he seeks the cooperation of the judicial officers as well as members of the staff and members of the Bar. It would be necessary for the district judge to decide as and when the occasion arises, where and in what manner the common objective will be attained. He shall also guide his officers as to how they can smoothly function in their courts. He shall also consult the President and office bearers of the Bar Association on such matters as may be sensitive to the members of the Bar. Today it is not possible to do even a good thing if its consequences and effects are not prej dged. Therefore, district judge will have to use his foresight and vast experience in taking decisions in such matters in which the members of the Bar, members of the judiciary and the members of the staff are involved.

Though the subject of today's talk does not include the relations vis a vis litigant public, I would briefly say a few words because even the litigant public is not what it used to be. The litigant of today has become vocal, critic and watchman. If judicial officer is found in any manner any association or even possibility of association with any other litigant or his relation, he doesn't spare any judicial officer how so high he may be. He comes to spread all sorts of rumour, of course for his own selfish motive. He spoils the climate against the judicial officer and when the lawyer fights with the judicial officer, he carries with him such litigants with full annoyance, so I would advise that the district judge have to be very careful that the public litigants are also properly dealt with. If they bring any complaint against the judicial officer or member of the staff to his notice, he must tactfully deal with the complaint.

I am sorry that due to paucity of time, I have not been able to express my full views on the subject and elucidate the matter on the subject. I do hope and I am sure that you will kindly appreciate my limitations.

K. L.SHARMA

PRIVILEGES OF THE LEGISLATURE WITH SPECIAL REFERENCES TO JUDICIARY

BY

SRI N. K. NARANG

JOINT LEGAL REMEMBRANCER AND JOINT SECRETARY, PARLIAMENTARY AFFAIRS

Meaning of Parliamentary Privileges

In Parliamentary Language the term privilege applies to certain rights and immunities enjoyed by each House of Parliament and Committees of each House collectively, and by members of each House individually. In India there is no difference between the privileges enjoyed by Parliament and State Legislatures and, therefore, whenever I refer to privileges of Parliament its Committees and members, it should be taken that it applies also to the State Legislatures, there Committees and members. Erskine May in his book 'Parlimentary Practice' 20th Edition Page 70 defines parliamentary privileges as follows :—

> "The sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals."

The Need for Parliamentary Privileges

Parliamentary Privileges have been given to the members of the Parliament and State Legislatures so that they can have freedom of speech etc. in the House. Privileges are necessary for the proper exercise of the functions entrusted to them by the Constitution. The object of Parliamentary Privileges is to safeguard the freedom, and dignity of Parliament. Parliamentary privilege is an essential incident to the high and multifarious functions which the Legislature is called upon to perform. According to May, the distinictive mark of a privilege is its "ancillary character" a necessary means to fulfilment of functions. Privileges are enjoyed by individual members because the House cannot perform its functions

without unimpeded use of the services of its members; and by each House for the protection of its members and the vindication of its own authority and dignity" (May's Parliamentary Practice 20th Edition Page 71).

Difference between Breach of Privilege and Contempt

SOURCE OF PRIVILEGES

Some of the privileges of Parliament and its members are specified in the Constitution, certain statutes and rules of procedure of the House while others continue to be based on precedents of the British House of Commons and on conventions which have grown in this country.

THE CONSTITUTION

There are several provisions in the Constitution which expressly provide such privileges with the extent thereof e. g.

(*i*) Freedom of speech in Parliament (Article 105 (1) and in State Legislature (Article 194 (1)) ;

(*ii*) Immunity in respect of anything said or any vote given in the House or committee thereof (Article 105 (2) and Article 194(2)) ;

(*iii*) Immunity to a person from proceedings in any Court in respect of any publication of reports, papers, votes or proceedings of the House published by or under the authority of the House (Article 105 (2) and Article 194(1)) :

(*iv*) Article 105 (3) and 194 (3).

(*v*) Bar of the juridiction of courts to enquire into the proceedings of the House on the ground of irregularity (Article 122 (1) in respect of Parliament and Article 212 (1) in respect of State Legislatures) ;

(*vi*) Bar of jurisdiction of courts over officers or members of Parliament exercising constitutional powers for regulating procedure, business or order in Parliament (Article 122 (2) and Article 212 (2)) ;

(*vii*) Immunity in respect of publications of proceedings of a House in a newspaper or by wireless telegraphy as part of any service provided by broadcasting station (Article 361 (A)).

Privileges specified in statutes

(*i*) Freedom from arrest of members of civil cases during the continuance of the session of the House for 40 days before its commencement and 40 days after its conclusion (Section 135-A C. P. C.);

(*ii*) Immunity to a person from any proceedings civil or criminal in any court in respect of the publication in newspaper of a substantially true report of any proceedings of either House of Parliament or State Legislatures unless the publication is proved to have been made with malice Parliamentary proceedings (Protection of Publication) Act, 1977.

Privilege specified in the rules of procedure and conduct of Business of the House.

(*i*) Right of the House to receive immediate information of arrest, detention, conviction, imprisonment and release of a member (Rules 80-82 of the Rules of Business of the U. P. Assembly);

(*ii*) Exemption of a member from service of legal process (Rule 84) and arrest (Rule 83) within the precincts of the House;

(*iii*) Prohibition or disclosure of the proceedings of the sessions of a secret sitting of the House.

Privileges based upon Precedents

(*i*) Members or officers of the House cannot be compelled to give evidence or produce documents in court of law relating to the proceedings of the House without the permission of the House;

(*ii*) Members or officers of the House cannot be compelled to attend as witness before the other House of Parliament or committee thereof or before a House of State Legislature or committee thereof without permission of the House and without the consent of the member whose attendance is required.

Consequential powers

In addition to the above mentioned privileges and immunities each House also enjoys certain consequential powers necessary for the protection of its privileges and immunities. These powers are :—

(*i*) to commit persons whether they are members or not for breach of privilege or contempt of the House;

(*ii*) to compel the attendance of witnesses and to send papers or records ;

(*iii*) to regulate the procedure and the conduct of its business ;

(*iv*) to prohibit the publication of its debate and proceedings and to exclude strangers.

Constitutional provisions

Article 105 of the Constitution specifies the powers and privileges etc. of the Houses of Parliament and of the members and committees thereof. Similarly, Article 194 which is an exact reproduction of Article 105 deals with the State Legislature and members and committees thereof.

Before discussing these articles it will be convenient to read Article 105, which is as under ;

Article 105—

In defining parliamentary privileges this article adopts the following method :—

Two Privileges, e. g. freedom of speech and freedom of publication of proceedings are specifically mentioned in clauses (1) and (2). With respect to other privileges of each House, clause (3) lays down that the powers and immunities shall be those of the House of Commons of the United Kingdom at the commencement of the Constitution until they are defined by an Act of Parliament or the State Legislature as the case may be.

We shall first of all examine the scope of the two privileges specifically mentioned in Article 105 (1) and (2) and then examine the privileges which can be claimed under clause (3). As already stated Article 194 is exactly similar to Article 105. As such when I deal with Article 105, you can take it that the discuss applies with regard to Article 194 also.

The scope of clause (1) is to confer freedom of speech on Legislatures independently of, and uncontrolled by anything in Article 19 (1) (a). This freedom is however subject to (1) Those provisions of the Constitution which relate to procedure of the House e. g. Article 118 and 121 (in respect of Parliament) and Articles 208 and 211 in respect of State Legislatures.

It will be noted that clause (1) of Article 105 is made "subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament". It has been held by the Supreme Court

in *M. S. S. Sharma* v. *Sri Krishna Sinha*, A I R 1959 S. C. page 395 and in the Special Reference under Article 143 of the Constitution reported in A I R 1965 page 745 that the words "regulating the procedure of Parliament" occurring in clause (1) should be read as covering both "the provisions of the Constitution" and "the rules and standing orders." So read the freedom of speech in Parliament becomes subject to the provisions of the Constitution relating to the procedure of Parliament i. e. subject to the Articles relating to procedure in part V of the Constitution including Article 118 and 121 (or 208 and 211 in respect of State Legislature). Thus for example freedom of speech in Parliament could not permit a member to discuss the conduct of any judge of the Supreme Court or of a High Court. Likewise the freedom of Speech is subject to rules of procedure of a House such as use of unparliamentary language or unparliamentary conduct etc.

While Article 105 (1) confess freedom of speech on the Legislatures, Article 105 (2) shows that the freedom is intended to be absolute and unfettered. Article 105 (2) is not 'subject to provisions of the Constitution' with the result that these Articles give complete immunity to a member for anything said or vote given the House. The member cannot be punished for his speech in the House. No civil or criminal proceedings can be taken against him. The speeches are no doubt subject to Article 211 which forbids him from discussing the conduct of a judge of the High Court or the Supreme Court and is also subject to the rules and standing orders of the House. But the question is—Can a member who has in his speech violated Article 211 can be punished for violation of that Article or the relevant rule. The answer to this question has been given in the aforesaid decision in Sharma's Case where the Supreme Court has held that if a member violates the said provisions he is subject only to the discipline of the House and action can be taken by the Speaker and no action for defamation or otherwise lies before the Court. It has been held that the words "anything said or any vote given by him" in clause (2) clearly show that a member is not liable in any Court for any thing said or vote given in the House. These words are of the widest amplitude. In *Taj Kishan Jain* v. *Sanjeeva Reddy*, A. I. R. 1970 Supreme Court page 1573, it was argued that the immunity granted by Article 105 (2) related to what was relevant to the business of Parliament and not to something which was utterly irrelevant. The Supreme Court rejected this argument and held :—

> "The article confers immunity inter alia in respect of 'anything said.....in Parliament, the word 'anything' is of the widest import and is equivalent to 'everything'. The only limitation

arises from the words 'in Parliament' which means during the sitting of Parliament and in the course of business of Parliament. Once it is proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any Court. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The Courts have no say in the matter and should really have none."

In that case, Jagat Guru Shankaracharya, while making as peech at Puri had said that untouchability was in accordance with the Hindu Religion and no law could obstruct this practice. It is also reported that Shankaracharya left the meeting while National Anthem was being sung. His action was criticised by the Members of Parliament on a Calling Attention Motion. Disciple of Shankaracharyn filed a suit for recovery of Rs. 26,000 as damages on the ground that the members had used defamatory words against Shankaracharya whom they held in high esteem.

Thus there is complete freedom of speech to the members and a member within the four walls of the House can say whatever he likes. Even if he maliciously says something or says defamatory or obscene words, he will not be liable for any proceedings in the Court.

The Karnataka High Court has in *Subbatha* v. *Karnataka Legislative Council* A. I. R. 1979 Karnataka page 24 held that the words "Proceeding" is wide enough to include proceedings under Article 226 of the Constitution.

However the Supreme Court has held the words 'anything said in Parliament' in Article 105 (2) refer to matters said in the course of or as part of the proceedings of the House. Thus immunity does not extend to portions of the proceedings expunged and if any person, published those portions, he is not protcreted (H. S. Sharma's Case). Similarly questions which are disallowed never form part of the proceedings and are not protected. If therefore any person publishes them, he will be liable for any defamatory words used (*Jagdish* v. *Harshdhan* A. I. R. 1961 S. C. page 613).

The words 'anything said or a vote given' also make it clear that immunity does not extend to any criminal act committed within the walls of the House.

Publication under the authority of the House

This part of clause (2) of Article 105, which protects publication outside the House of any report, paper, votes or proceedings published by the authority of the House is based on the English Parliamentary Privileges Act, 1840.

The immunity under clause (2) is confined to publication by order or under the authority of the House and it extends only to reports, papers, etc. A newspaper is not published under the autuority of the House and therefore is not privileged under this clause unless authorised by the House.

Immunity to Publications under Article 361-A.

However by the Constitution 44th Amendment, a new Article 361-A has been added in the Constitution which gives immunity to publication in a newspaper of proceedings of the House in certain circumstances. The condition under which this immunity applies are as follows :

(*i*) The publication must be a report which is substantially true,

(*ii*) It must be a report of the proceedings of either House of Legislature not being of a secret sitting.

(*iii*) The publication must not be actuated by malice.

It will be noticed that this is a constitutional provision which applies to reporting of proceedings of both the Parliament and State Legislatures. It makes no distinction between civil and criminal proceedings in granting absolute immunity. Being a constitutional provision, it over-rides the statutory provisions of Section 499 I. P. C. and no action for defamation will lie if the publication is covered under Article 361-A i. e. it is a substantially true report of the proceedings of the House and is not actuated by malice. Thus if these conditions are satisfied, the newspaper will have immunity even if no authorisation is given by the Legislature for publication. However, as already stated expunged portions of the proceedings are not immune and even the provisions of Article 361-A do not save publications which contain expunged portion of proceedings and are defamatory in character.

Privileges under Article 105 (3)

We have discussed clauses (1) and (2) of Article 105. Let us now examine clause (3)

(*a*) Amendments made in clause (3) by the Constitution 42nd and 44th Amendments and their effect :—

This clause consists of two parts. The first part empowers the Legislatures to make law providing for their powers, privileges and immunites. The second part provides that until such law is made, the Legislatures in question shall enjoy the powers, privileges and immunities enjoyed by the British House of Commons at the commencement of the Constitution that is on 26th January, 1950. No law codifying the privileges of the Legislature has been made. The result is that the privileges which were possessed by the House of Commons at the commencement of the Constitution, i. e. 26-1-1950 will be available to the Legislatures in India. No new privilege can be claimed.

(*b*) Codification advantages and disadvantages—

May in his Parliamentary, Practice 20th Edition has stated the privileges of the House of Commons. Some of these privileges are summarised as under ;

(1) Freedom from arrest

In India Section 135-A C. P. C. provides that members of Legislature shall not be liable to be arrested and detained in prison under a civil process during a session of Legislature and 40 days before and after the session. In England as well as in India this immunity does not apply to arrest on a criminal charge (The reference Case A. I. R. 1965 page 745) and under preventive detention (*Anahdan* v. *Chief Secretary* A. I. R. 1966 S. C. page 657).

(2) Right to exclude strangers

This right may be regarded as corollary to the freedom of speech. It was used in the 18th century mainly to prevent reports being made to outsiders. Specially to the King of speeches made in the House. In modern times, it is exercised in exceptional cases. The Supreme Court in (M. S. Sharma's case search light case) held that the freedom of speech claimed by the House of Commons is ensured by the secrecy of the debate, which in turn is protected by prohibiting publications of debates and proceedings as well as by exclusion of strangers. In the Uttar Pradesh, Rule 305 of the U.P. Assembly Rules relates to admission of strangers while Rule 306 empowers the Speaker to order withdrawal and Rule 307 regarding expulsion of strangers.

(3) Right to prohibit publications of debates etc.

The House of Commons has the right to prohibit the publication of reports, debates or other proceedings. In India, the rules of procedure of the Hous: gives the Speaker the power to order the withdrawal of strangers from any part from the House and when the House sits and secret session, no stranger is permitted to be present in the Chamber, lobby or gallery.

(4) Right of the House to regulate its own Constitution

Under this head, there are 4 connected rights :

Besides the above there are certain privileges which cannot be claimed in India. For example, the privileges of freedom of access to the Sovereign at all times through the Speaker. Similarly a General warrant of arrest issued by Parliament in India cannot claim immunity from scrutiny by Courts as in India, as the Parliament does not exercise any judicial function (The reference Case A. I. R. 1965 S. C. page 745).

I have stated above the privileges of the House of Commons and have also referred briefly to the position in India. It may be useful to examine the position in India of some of the important privileges enjoyed by the Legislatures in India. This can be described under the following heads :—

(a) Right of each House to be sole judge of the Lawfulness of its proceedings.

(b) Right of the House to punish its Members for their conduct in Parliament.

(c) Evidence in Courts Regarding Proceedings in Parliament.

(d) House to be informed of the Arrest, Detention, Conviction and Release of Members.

(e) Communications from a member in custody to the Speaker or the Chairman of a Parliamentary Committee not to be withheld.

(f) Extension of Privilege of Freedom from Arrest and Molestation to Witnesses, Petitioners, etc.

Power of the House to punish for Breach of Privilege or Contempt and Commit to Custody and Prison.

I have already discussed the privileges of the House and its members

and committees. It may now be proper to examine the Breach of Privileges or contempts of the House and the effect thereof.

The term "Breach of Privilege" means a disregard of any rights, privileges and immunities either of Members of Parliament, individually or of the House in its collective capacity. There are detailed rules in most of the Legislatures for taking cognizance of Breach of Privilege or contempt. A Breach of Privilege is punished after due enquiry in the same way as Courts of law punish for contempt. Though the term "Breach of Privilege" is different from contempt but in practice it is applied to the case of contempt also. Contempt of the House has been described by May as any act or omission which obstructs or impedes either Houses of Parliament in the performance of its functions or which obstructs or impedes any member or officer of such. House in the discharge of his duties or which has a tendency directly or indirectly to produce such results may be treated as contempt even though there is no precedent for the offence. Thus whereas all the breaches of privileges are contempts of the House whose privileges are violated, a person may be guilty of contempt of the House even though he does not violate any of the privileges of the House for example when he disobeys an order to appear before the House for evidence. The power of the House to punish for contempt or breach of privilege is described as the key stone of parliamentary privilege. This power is just like the power possessed by the Court of Law to punish for contempt.

Privileges and the Judiciary

We have examined the privileges and also the breach of privileges of the Legislature it will now be proper to examine the privileges of the Legislature vis a vis the Judiciary because the subject for today's discussion, is the privileges of the Legislatures with special reference to the Judiciary.

In England after a series of conflicts between the House of Commons and the courts the controversy appears to have been resolved to some extent and the following proportions have emerged :—

(*i*) Each Houses of Parliament is sole judge of the question whether any of its privileges has been infringed but whether a House does in fact possess particular privilege is a question for the Courts to decide.

(*ii*) Neither House alone is competent to declare the extent of its privilege and this is subject to judicial determination. However it does not effect the power of parliament to legislate on the subject of parliamentary privileges.

(*iii*) If an exercise of its power to punish a person for contempt, it commits, a person for contempt or privilege which is not specified in the warrant i. e. unspeaking warrant, the Courts cannot examine its legality. If a House issues a special warrant, (speaking warrant) it would be open to the Court to consider whether the reasons set out in the warrant amount to contempt or not.

(*iv*) While mere pronouncement by the House of Commons that it has a certain privilege will not be accepted by the Court as conclusive but once it is established that a matter is within the privilege of the House, the Court will not interfere with its exercise.

I have stated above the position obtaining in England, I have also pointed out that under clause (3) of Article 105, the privileges of the English House of Commons at the commencement of the Constitution are available to Legislatures in India except that because of the Special provisions of the Constitution, some of the privileges available to the House of Commons are not available in India. I have also pointed out that there have been a series of conflicts between the Legislatures and Courts in England. The History of Privileges in England shows that the Commons had to fight for their privileges against the crown, the House of Lords and the Courts. In fact May at page 70 of his Parliamentary Practice 20th Edition has defined particular Privileges of the Commons as—

> "The sum of fundamental rights of the House and of its individual members as against the prerogatives of the crown, the authority of ordinary Courts of Law and the special rights of the House of Lords".

In India we have a written Constitution with the role of each wing of the State well defined. The Legislatures in India did not have to struggle for their privileges the Constitution itself takes care of them. Prior to the Constitution, the Government of India Act, 1935 made provision therefor. As such there should be no scope for controversy between the Courts and the Legislatures. However conflicts and controversies have arisen in the past and may be they arise in future also. You as Judges should know that as Judiciary has to act in its allotted sphere, similarly the Legislature as a body under the Constitution has to act in their alloted Jurisdiction. As such every effort should be made by the Courts to avoid conflict with the Legislatures. Most of the Legislature in their Rules of Business provide that matters which are sub-judice cannot be discussed in the House. As

pointed out earlier Article 211 provide that the conduct of the Judge of a High Court cannot be discussed in the House. There are other restrictions also. These Rules are respected by the Legislatures. In fact as stated earlier there is hardly any scope for conflict once we are clear about the privileges of the Legislature and the extent thereof and the powers of the Courts. Although I have dealt with this point, it may be useful to note that :—

(*a*) Each House is the sole Judge of the question whether any of its privileges have been violated and the Courts have no Jurisdiction to interfere with the decision on the point. (*Haredra* v. *Dev Kant Barua* A. I. R. 1958 Assam page 160 *M. S. M. Sharma* v. *Sri Krishna Sinha* A. I. R. 1959 S. C. page 395).

(*b*) Each House has the power to punish for breach of its privileges or contempt.

(*c*) Courts of Law have no jurisdiction to interfere with a process issued by the House or by its Presiding Officer on the ground that the process issued by the House is one which a Court could not have issued, for example a general warrant or that the matter for which the House is proceeding for contempt is too stale for taking action (*A. M. Paul Raj* v. *Speaker, Tamilnadu Assembly, Madras)*, A. I. R. 1958 Madras page 248 and Sharma's case) This question is for the House itself to decide on the ground that :—

(*d*) The rules of procedure of the House have not been complied with. For example, that the Speaker has issued summons without a resolution of the House or without placing it before the Privilege Committee. There is no thing to prevent the Speaker to issue summons to the offender and then to move the machinery of the House or motion for taking a proper action. (A. M. Paul Raj, and Sharmas Cases) At best it would be an irregularity of procedure. Besides the above Article 122 and 212 provide that the validity of proceeding in Parliament and State Legislatures cannot be called in question on the ground of irregularity of Procedure. In this regard see a Paul Raj's Case *Raj Narain* v. *Atma Govind Kher* A. I. R. 1954 Allahabad 319. I have already referred in detail to Article 105 (2) which provides community from legal action for anything said or vote given in the House.

(e) On the other hand, no House of the Legislature has the power to create for itself any new privilege not known to the Law and the Courts possess the power to determine whether the House in fact possess a particular privilege. This is the position in England and also in India.

(f) The Courts can interfere where the act complained of goes to the roots of the Jurisdiction of the House or Officer under the Constitution.

(g) By reason of the Special provisions of our Constitution, the Supreme Court under Article 32 and High Courts under Article 226 has the jurisdiction to enquire whether the fundamental rights of a citizen under clause 21 have been violated where he has been arrested and detained under the warrant of the Speaker for contempt of the House for some thing said or done outside the walls of the House by a general or special warrant by the exercise of such jurisdiction, no contempt is committed.

It may be useful here to refer to the land mark case of Keshav Singh reported in A. I. R. S. C. 1965 Page 745. Keshav Singh who was not a member of the House was committed to prison for 7 days by the Speaker of U. P. Assembly for contempt of the House. His advocate Mr. Soliman moved a petition under Article 226 of the Constitution for writ of a Habeas Corpus for the release of Keshav Singh on the ground that the sentence of imprisonment was illegal because it had been made for the same offence for which an order of reprimand had been made against him earlier by the Speaker. The Lucknow Bench of the Allahabad High Court released Keshav Singh on bail. When this order was communicated to the Assembly it passed a resolution to the effect that not only Keshav Singh and his advocate had committed contempt of the Assembly but the two Judges who had interfered with the order had also committed contempt. It also directed that all these persons should be brought before the House. The two Judges filed a petition under Article 226 pleading that the resolution was without jurisdiction in view of Article 211 because they had exercised their constitutional jurisdiction under Article 226. The advocate also filed a petition. The full bench consisting of 28 Judges passed an order restraining the Speaker and the Marshal from implementing the order of the Assembly. Therefore, the Assembly passed another resolution withdrawing the warrant and directing the Judges to appear before the House to show cause why they should not be punished for contempt. At this stage

the President of India referred the matter to the Supreme Court under Article 143 (1) of the Constitution for its opinion.

The Supreme Courts exhaustively dealt with the question raised. It examined the position in England in detail quoting extensively from May's Parliamentary Practice and on the facts of the case by a majority of 4 : 1 opined as follows :—

(*i*) it was competent for the High Court to entertain the petition under Article 226 challenging the legality of the sentence imposed by the Assembly upon Keshav Singh and to pass orders releasing Keshav Singh on bail pending disposal of the petition.

(*ii*) Neither the two Judges nor the Advocate had committed contempt of the Assembly by moving the petition under Article 226.

(*iii*) It was not competent for the Assembly to direct the production of the two Judges or the advocate before the Assembly or to call for their explanation.

(*iv*) A Judge who deals with a petition challenging the decision of a Legislature or any penalty imposed by it upon a non member for a contempt alleged to have been committed outside the four walls of the House does not commit contempt of the Legislature.

The main reasons given by the Supreme Court in support of their opinion are summarised below :—

(1) The Sovereignty which can be claimed by Parliament in England can not be claimed by Legislatures in India in the literal sense because we have a written Constitution which limits the powers of our Legislatures.

(2) The powers of High Court under Article 226 and Supreme Court under Article 32 are very wide. In view of difinition of 'State' under Article 12, the powers under Article 226 can in a given case be exercised against the Legislature also If an application is made to the High Court for the issue of a writ of Habeas Corpus, the House cannot raise a parliamentary objection that the High Court has no Jurisdiction to entertain the petition because the detention order has been made by the

Legislature. Article 32 puts the matter on a still higher pedestal.

(3) If a law is made under the first part of Article 194 (3) it will not be in exercise of the Constitutent power. It will be a law made under Article 246 read with entry 39 of list II of the Seventh Schedule to the Constitution and will be treated as a law under Article 13 and subject to fundamental right.

(4) Under Article 211 conduct of a Judge in the discharge of his duties cannot be discussed in the House. If it is discussed even though no remedy lies in a Court of law but such conduct cannot be made the subject matter of any proceedings under Article 194 (3) for Breach of Privilege or Contempt.

(5) The right of the House of Commons not to have its general warrants examined by Courts in Habeas Corpus proceedings was because of its position as a Superior Court of record. In India no such right exists.

Whether Privileges under Article 105 and 194 are subject to Fundamental Right

While dealing with Article 105(1), I have pointed out that according to the Supreme Court, Article 105 (1) is not controlled by Article 19 (1)a.

As regards the question whether privileges under Article 194(3) are subject to the Fundamental rights, in M. S. M. Sharma's case, it was also contended by the petititioner that the privileges of the House under Article 194 (3) are subject to the provisions of Part III of the Constitution. In support of his contention the petitioner relied on the Supreme Court decision in *Gunupati Keshavum Reddi* v. *Nafisul Hasan.* In that case Homi Mistry was arrested at his Bombay residence under a warrant issued by the speaker of the U. P. Assembly for contempt of the House and was flown to Lucknow and kept in a hotel in the Speaker's custody. On his applying for a writ of habeas corpus the Supreme Court directed his release as the had not been produced before a magistrate within 24 hours of his arrest as provided in Article 22 (2). This decision, therefore, indicated that Article 194 (or Article 105) was subject to the articles of Part III of the Constitution.

In the Sharma's case the majority judgment did not follow the decision in Gunupati case and held that the privileges under Article 194 would not be subject to the Fundamental Rights declared in Part III of the Constitution.

However the Supreme Court held that the preposition laid down in Sharma's case did not mean that in all cases, the privileges shall over-ride the fundamental rights. The majority opinion said :

> "We do not think it would be right to read the majorty decision as laying down a general proposition that whenever there is a conflict between the provisions of the latter part of Article 194(3) and any of the provisions of the fundamental rights guaranteed by Part III, the latter must always yield to the former. The majority decision, therefore, be taken to have settled only that Article 19 (1) (a) would not apply and Article 21 would."

The Court therefore did not agree with the view that the decision in Gunupati's Case was not a considered decision.

It will therefore appear that the Supreme Court's View is that Article 21 and 22 apply and Article 19 does not apply. As regards other Fundamental Right the views seems to be that it will depend on facts of each case. While interpreting Sharma's Case and the Reference case, the Madras High Court in *A. M. Paul Raj* v. *The Speaker Tamil Nadu Assembly* A. I. R. 1986 (Madras) Page 248 held that if committal to Prison for Breach of Privilege is challenged on the ground of violation of Article 21, the petition cannot be thrown out on the threshold. The Kerela High Court in *State of Kerela* v. *Sudarsan Babu* A. I. R. 1984 (Karela) Page 1 has while summarising the principles laid down in the Reference Case held that Article 21 applies.

In the end by way of guidance I would like to refer you to the penultimate para of the majority opinon of Supreme Court in the aforesaid reference case : —

> :"Before we part with this topic, we would like to refer to one aspect of the question relating to the exercise of power to punish for contempt. So far as the Courts are concerned, Judges always keep in mind the warning addressed to them by Lord Atkin in *Andre Paul* v. *Attorney General of Trinidad* Said Lord Atkin :
>
> "Justice is not a cloistered virtue ; she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men".

We ought never forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the Court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct. We venture to think that what is true of the Judicature is equally true of the Legislature."

———

जिला न्यायाधीश द्वारा प्रशासनिक नियन्त्रण
ADMINISTRATIVE CONTROL OF A JUDGESHIP

(Talk addressed to Senior Addl. District Judges. by-Justice O. P. Mehrotra)

प्रिय बन्धुओं,

आप सब उ०प्र० उच्चतर न्यायिक सेवा के अधिकारी हैं जिन्हें न्यायिक सेवा में कई वर्षों का अनुभव प्राप्त है। कालान्तर में आपको विभिन्न जनपदों में जनपद न्यायाधीश के पद का कार्यभार ग्रहण करना होगा। उस हैसियत से आपको जनपद के गुरुतर प्रशासनिक उत्तरदायित्वों का निर्वहन करना होगा, जिसके लिये आपको अभी से तैयारी प्रारम्भ कर देनी चाहिए। आज की इस वार्ता में मैं यह प्रयास करूंगा कि आपको इस बारे में बताऊं कि जिला न्यायाधीश को विशेष रूप से कौन-कौन से प्रशासनिक कार्य करने होते हैं, और उन्हें किस प्रकार अन्जाम दिया जाये ताकि जिला-जजी का प्रशासन सुचारु रूप से व उत्तम ढंग से चले और सर्वत्र स्पष्टरूप से सुधार दृष्टिगोचर हो।

एक जिला जज को न्यायिक कार्यों के अलावा अनेकों प्रकार के प्रशासनिक कार्य करने होते हैं, जिन्हें वह अधीनस्थ अधिकारियों व कर्मचारियों की सहायता से पूरा करता है। पिछले कुछ वर्षों में जिला न्यायाधीश के प्रशासनिक उत्तरदायित्व कई गुना अधिक बढ़ गए हैं। पहले एक औसत जिले में 4-5 न्यायिक अधिकारी होते थे और केवल बड़े, जिलों में न्यायिक अधिकारियों की संख्या 10-12 से अधिक होती थी। कुछ तो जनसंख्या बढ़ने के साथ-साथ वादों की संख्या बढ़ी है; परन्तु मुख्यतः फौजदारी का काम जिला न्यायाधीश के प्रशासनिक अधिकार क्षेत्र में आ जाने के कारण, तथा नये कानूनों के अन्तर्गत बहुत सा नये प्रकार का कार्य आ जाने के कारण जैसे Urban & Rural Ceiling, Consolidation of Holdings, Land Acquisition, Motor Accident Claims, Prevention of food Adultaration Act आदि वादों तथा न्यायिक अधिकारियों की संख्या भी कई गुना बढ़ गई है। जमाने के परिवर्तन के साथ-साथ व जीवन के प्रत्येक क्षेत्र में व्याप्त अशान्ति, असन्तोष व बढ़ती हुई अनुशासन-हीनता के कारण जिला जजों को भी नये-नये प्रकार की अनुशासन सम्बन्धी समस्याओं का सामना करना पड़ रहा है।

इस सबसे घबराने या परेशान होने की आवश्यकता नहीं है। मुख्य बात यह है कि आपको इस बात की जानकारी होनी चाहिए कि जनपद न्यायाधीश को कौन-कौन से प्रशासन सम्बन्धी कार्य करने होते हैं, और उन्हें किस प्रकार करना श्रेयस्कर है। मेरा विश्वास है कि थोड़ा परिश्रम करने पर और सतर्कता बरतने पर आप अपने प्रशासन सम्बन्धी सभी उत्तर-दायित्व भलीभांति निभा सकेंगे। इस वार्ता में मैं प्रशासन सम्बन्धी कुछ महत्वपूर्ण विषयों पर चर्चा करूंगा। कुछ मामले बाहर से साधारण से लगेंगे, पर उनका अपना अलग महत्व है।

1. **जनपद के विषय में जानकारी**—Know your judgeship–Full facts & figures : सबसे महत्वपूर्ण बात है अपने जिले यानी जजी (जजशिप) के बारे में पूर्ण जानकारी।

जब आप किसी नये जिले में पहुंचें तो सर्वप्रथम अपने जजी के बारे में पूर्ण जानकारी प्राप्त करें—जैसे, आपके अधीन कितने न्यायालय स्वीकृत (सैंक्शण्ड) Sanctioned हैं—उनमें कितने कार्य कर रहे हैं व कितने और कब से रिक्त पड़े हैं क्या वादों की संख्या व इन्स्टीट्यूशन को देखते हुए किसी न्यायालय को भरने के लिए, या नया न्यायालय स्थापित करने के लिए हाईकोर्ट को लिखना आवश्यक है, वर्ग 3 व 4 के कर्मचारियों की संख्या व स्थायी और अस्थायी स्वीकृत पद, क्या कोई पद रिक्त पड़ा है, यदि हां, तो कब से व क्यों, और क्या उसे भरने के लिए कदम उठाना है, कर्मचारियों की सेंक्शन लिस्ट व उनकी नियुक्ति के स्थान, व वे कब से उस स्थान पर कार्यरत हैं, कर्मचारियों की सेवा निवृत्ति तिथि, और रिक्ति को भरने के लिए क्या करना है, क्या कोई प्रतीक्षा-सूची (वेटिंग लिस्ट) है, यदि नहीं, तो चयन के लिए क्या कार्यवाही करनी है, क्या कुछ कर्मचारी बिना चयन तदर्थ (एडहाक) ad hoc रूप से कार्य कर रहे हैं, यदि हां, तो उनके लिए क्या करना है, प्रत्येक न्यायालय में किस किस प्रकार के कितने-कितने वाद लम्बित है, और वादों की संख्या व नये वादों के दायरे (इन्स्टीट्यूशन) institution को दृष्टिगत रखते हुए क्या कुछ एडजस्टमेंट करना आवश्यक है; किस-किस मद में कितना रुपया (ग्रान्ट) प्राप्त हुआ है, उसमें से कितना खर्च हो गया है, कितना शेष बचा है और उसे किस प्रकार समुचित ढंग से व्यय करना है, और किस कार्य विशेष के लिए कितना रुपया और मांगना है, कौन सा अफसर व कर्मचारी किस पद पर कब से कार्यरत है, उसका कार्य व आचरण कैसा है, तथा उसमें कोई परिवर्तन अभीष्ट अथवा वांछनीय है; किस-किस के विरुद्ध अनुशासनात्मक कार्यवाही (डिसिप्लीनरी प्रोसीडिंग्स) desciplinary proceedings चल रही है, वह किसके पास है और कब से लम्बित है; अधिकारियों, कर्मचारियों व अधिवक्ताओं के आपस में संबंध कैसे हैं, क्या कुछ समस्यायें (प्राब्लम्स) हैं और उनका निराकरण किस प्रकार करना उचित होगा, आदि-आदि। इस प्रकार की सम्पूर्ण जानकारी प्राप्त करके आपको विचार करना होगा कि आप को किस प्रकार क्या-क्या कदम उठाना है।

2. **परिश्रम व सतर्कता**—Hard Work & Vigilance on your Part :

कड़ी मेहनत व सतर्कता के बिना आप सफल जिला जज नहीं हो सकते। अब आपका प्रशासनिक उत्तरदायित्व इतना बढ़ गया है कि आपको प्रारम्भ से ही विशेष परिश्रम करना होगा। आजकल समय ऐसा है कि आप अपने अधीनस्थ अधिकारियों व कर्मचारियों पर विश्वास करके पूर्णरूपेण निर्भर नहीं रह सकते—आपको हर ओर से सतर्क रहने की विशेष आवश्यकता है। मेरा यह आशय नहीं है कि आप उन पर विश्वास न करें अथवा उनकी सहायता, या उनसे काम न लें। मैं केवल यह कहना चाहूंगा कि आप प्रति पग पर सतर्क रहते हुए, परिश्रमपूर्वक कार्य करते हुए स्वयं हर वस्तु को देख समझकर, स्वयं अपने विवेक से निर्णय लें। थोड़े समय में ही आप यह जान जायेंगे कि कौन सा अधिकारी या कर्मचारी किस योग्य है, उस पर आप कितना विश्वास कर सकते है कौन सा कार्य किसे सौंप सकते हैं, किससे कितनी सहायता ले सकते हैं व किस पर किस सीमा तक निर्भर रह सकते हैं। आप की सतर्कता इस प्रकार की हो कि आपकी दृष्टि हर व्यक्ति व हर मामले पर हो। प्रशासन में किसी प्रकार का ढीलापन न हो, प्रशासन की ओर से आंख मूंद कर हर चीज

अपने स्टाफ मुंसरिम, नाजिर आदि पर न छोड़ें, और न कागजात पर बिना उन्हें पढ़े या समझे रूटीन (routine) तौर पर दस्तखत करें। आपके अधीनस्थ कर्मचारियों को यह जानना चाहिए कि आपकी नजर हर ओर है और आप पूरी तरह सतर्क हैं और वे आपको बिना बताए किसी कागज पर गलत या मनचाहा आदेश प्राप्त नहीं कर सकते।

3. **अधीनस्थ अधिकारियों एवं कर्मचारियों के साथ व्यवहार व उन पर नियन्त्रण**—Treatment with Subordinate Officers & Staff & Control over them :—

जिले में आपकी सफलता बहुत कुछ इस पर निर्भर करती है कि आपका अपने अधीनस्थ अधिकारियों एवं कर्मचारियों के साथ कैसा व्यवहार है और उन पर कैसा नियंत्रण है। प्रशासन में सख्ती होनी चाहिए, परन्तु अनावश्यक रूप से सख्त होना भी उचित नहीं। सख्ती ऐसी हो कि अधीनस्थ कर्मचारी गलत व ढीलेपन से कार्य करने से डरें। उन्हें हमेशा यह आभास रहे कि जिला जज साहब की हमारे हर कार्य पर नजर है, यदि हमने कोई गलत काम किया या किसी कार्य के करने में ढुलमटोल की या ढीलापन दिखाया तो हमारी खैर नहीं—उसके लिए हमें सजा मिल सकती है। बाहरी तौर पर सख्ती के साथ-साथ आपका उनके प्रति रवैया स्नेहपूर्ण, सौहार्दमय व कोमलता का हो। आप उनके दुःख दर्द को समझें, उनकी परेशानियों को दूर करने का प्रयत्न करें, उनसे सहानुभूति रखें व उनकी समस्याओं को सुलझाने का प्रयास करें। आपकी स्थिति संयुक्त हिन्दू परिवार के कर्ता की भांति हो, तथा अपने स्टाफ को परिवार के अन्य सदस्यों की भांति मानें। जैसे पिता पुत्र की गलती पर सजा दे, डांटे या पीटे, पर कभी उसका अहित नहीं चाहता, उससे स्नेह करता है, उसकी हर प्रकार से सहायता करता है। सजा भी उसे उसके भले के लिए ही देता है। ताकि उस प्रकार की गलती या लापरवाही वह आगे न करे। यदि अपने स्टाफ के साथ आपका व्यवहार इस प्रकार का होगा तो आपको उनका पूरा सहयोग प्राप्त होगा, वे आपके प्रति वफादार होंगे, जैसे आप चाहेंगे उसी प्रकार कार्य करेंगे, और आपके इशारे पर वक्त-बे-वक्त मेहनत से कार्य करने को प्रस्तुत रहेंगे। यह मैं आपको अपने निजी अनुभव के आधार पर कह रहा हूं—आप भी ऐसा करके देख सकते हैं।

अधीनस्थ अधिकारी के रूप में भी आपको कुछ प्रशासनिक दायित्वों का अनुभव होगा—कभी आई/सी (Incharge) नजारत कभी आई/सी रिकार्डरूम, नकल विभाग आदि के रूप में। परन्तु जिला न्यायाधीश के प्रशासन संबंधी उत्तरदायित्व बहुत अधिक होते हैं। यदि मैं गिनती करूं कि जिला जज को कौन-कौन से एडमिनिस्ट्रेटिव फंक्शंस (administrative functions) करने होते हैं, तो एक लम्बी सूची बन जाएगी, जिसे देखकर आश्चर्य होगा कि इतने कामों को कब और कैसे किया जा सकेगा। परन्तु एक योग्य और तरीके से काम करने वाला इफीशिएन्ट एण्ड मेथाडिकल (efficient and methodical) जिला जज इन सब दायित्वों को निबाहने के लिए समय निकाल लेता है। अपने अधीनस्थ अधिकारियों व कर्मचारियों को परखने के बाद उन्हें जिम्मेदारी के काम सौंपिए और उन्हें इस योग्य बनाइए कि वह उन कार्यों को अच्छी तरह व समय पर पूरा करें। आपको भी परिश्रम करना होगा, हर ओर दृष्टि रखनी होगी और सतर्क रहना होगा—तभी आप एक सफल जिला जज के रूप

में ख्याति अर्जित कर सकते है। ध्यान रहे, पूरी जजी की जिम्मेदारी आप पर होगी, यदि कहीं कोई चूक, गलती या गड़बड़ी होती है तो जिम्मेदारी आपकी है, चाहे उस मामले से आपका कोई सीधा संबंध न भी हो।

स्टाफ के साथ व्यवहार में एक बात परमावश्यक है – वह है समदृष्टि व समान व्यवहार You should be fair and impartial. Do'nt discriminate them on grounds of caste, religion etc. You should be strict, but that does not mean that you should be cruel or harsh towards them–जब तक आप उनकी जरूरतों व समस्याओं को समझकर उन्हें सहानुभूतिपूर्वक सुलझाने का प्रयत्न नहीं करेंगे, आपको उनका पूरा सहयोग नहीं प्राप्त होगा। मैंने पाया कि कुछ जिला जज अनावश्यक रूप से सख्त होते हैं–छोटी-मोटी गलतियों पर सस्पेन्ड (suspend) कर देते हैं। जरूरत होने पर भी छुट्टी नहीं देते या एडवान्स सेन्क्शन (sanction) नहीं करते, हालांकि उसे पाने के वे हकदार होते है। यदि आपका उनके प्रति व्यवहार अच्छा होगा तो वे आपका हृदय से आदर करेंगे आपके प्रति वफादार होंगे, आप पर जान देंगे और आप उनसे जब चाहे जितना भी काम करा सकेंगे। यह भी प्रयास करें कि स्टाफ में पार्टीबन्दी न हो पाये।

अब मैं कुछ विशेष प्रशासनिक उत्तरदायित्वों की चर्चा करूंगा।

4. **डाक व पत्राचार का निस्तारण**–How to deal with Dak & Correspondence :

मैंने यह पाया कि कुछ स्थानों पर डाक दफ्तर में खोली जाती है और उसका निस्तारण सदर मुंसरिम व बड़े बाबू (II क्लर्क) पर छोड़ दिया जाता है। दफ्तर कागजात को अपनी सहूलियत के अनुसार, कभी-कभी कई दिनों के बाद, जिला जज के सामने रखता है। कभी-कभी 'पुट अप विथ फाइल' (put up with file) या 'कम्पलाई एटवन्स' (comply atonce) के आदेश होने पर भी दफ्तर लम्बे समय तक कागज पेश नहीं करता, व आदेश का पालन नहीं करता। जिला जज के लिए भी यह सम्भव नहीं होता कि वह याद रख सके कि क्या पत्र आया था और उसका निस्तारण हुआ या नहीं। मैं आपको एक उदाहरण दूं जिसने मेरी जिला जजी के प्रारम्भ में ही मुझे सतर्क कर दिया। मेरे जिला जज होने के कुछ ही दिन पश्चात् रजिस्ट्रार का मेरे नाम एक अर्ध शासकीय पत्र आया–जो 'बारहवां' अनुस्मारक'–या ट्वल्थ रिमाइन्डर 'Twelfth Reminder' था, और जिसमें व्यक्तिगतरूप से ध्यान देकर शीघ्र रिपोर्ट देने को कहा गया था। वह एक वरिष्ठ कर्मचारी के विरुद्ध एक शिकायत के सम्बन्ध में था। मुझे बड़ा आश्चर्य हुआ कि इसके पूर्व आये 11 पत्रों का कोई उत्तर नहीं गया। अतः मैंने कठोर तरीके से उस पर 'पुट अप विथ फाइल विथइन 3 डेज' या 'कम्पलाई ऐटवन्स' जैसा आदेश न करके उस पत्र को अपने ही पास रख कर सदर मुंसरिम से कहा कि सम्बन्धित फाइल फौरन लाये। फाइल में ग्यारहों पत्र मौजूद थे और सब पर मुंसरिम के हाथ का अंकित व जिला जज द्वारा हस्ताक्षरित आदेश था "कम्पलाई ऐटवन्स" पर दफ्तर ने कभी उस आदेश का पालन नहीं किया–कारण स्पष्ट था।

ऐसी स्थिति के निराकरण के लिए मैंने एक उपाय निकाला। आप भी अपने विवेक से

कोई ऐसा तरीका अपना सकते हैं। मैंने डाक को अपने चेम्बर में ही खुलवाना प्रारम्भ किया—शीघ्रता से उसे देखकर मुंसरिम व बड़े बाबू को साधारण कागजात के निस्तारण के लिए आदेश दिए, व महत्वपूर्ण पत्रों व जिनमें स्वयं ध्यान देना था उन्हें एक या दो फाइलों में रखा तथा उनमें सम्बन्धित फाइल को फौरन या लंच इन्टरवल में या 4 बजे के बाद पेश करने का आदेश दिया। फाइलें आने पर स्वयं अथवा स्टाफ द्वारा इनका निस्तारण कराया। परन्तु जब तक निस्तारण नहीं हुआ तब तक संबंधित पत्र या कागजात मेरी टेबिल पर फाइल में ही रहते थे, जिन्हें मैं नित्य ही देखता रहता था कि किन-किन मामलों का निस्तारण शेष है। ऐसा करने से दफ्तर को कागजात दबाने या उनके निस्तारण में ढीलापन दिखाने का मौका नहीं मिलता था। जब आफिस को यह पता रहता था कि जज साहब यह जानते हैं कि कौन से कागजात अनिस्तारित पड़े हैं, तो उनकी हिम्मत उन्हें दबाने की या देर से पेश करने की नहीं पड़ती थी। इस प्रकार पत्रों का निस्तारण बिना किसी विलम्ब के हो जाता था। आप भी ऐसा ही कोई तरीका अपनाकर पत्रों का शीघ्र निस्तारण सुनिश्चित कर सकते हैं।

5. **नियुक्तियां, स्थानान्तरण, स्टाफ की पोस्टिंग, उनके कन्फरमेशन्स, प्रोन्नति, दक्षता रोक पार करना, अनिवार्य सेवा निवृत्ति, अवकाश की स्वीकृति और अग्रिम एडवान्सेस आदि**—Appointments, Transfer, Posting of Staff–their Confirmations, Promotion, Crossing of E.B., Compulsory Retirement, Grant or Leave, Loans, Advances etc. :

यह देखा गया है कि कुछ जिला जज स्टाफ के ट्रांसफर पोस्टिंग के महत्वपूर्ण मामले को सदर मुंसरिम के हाथ में छोड़ देते हैं। जब कोई रिक्ति किसी कर्मचारी की सेवा निवृत्ति, इस्तीफे या अन्य किसी कारण से होती है, या स्टाफ के रूटीन ट्रांसफर (rutine transfer) करने होते हैं तो बहुधा मुंसरिम प्रस्ताव बनाकर रखता है और जिला जज उस पर अप्रूव्ड (approved) का आदेश पारित कर देता है। मैंने पाया कि इससे भ्रष्टाचार को बढ़ावा मिलता है। मुंसरिम पैसा लेकर या पक्षपातपूर्ण ढंग से अपने आदमियों को कुछ अच्छे समझे जाने वाले स्थानों पर नियुक्त करता है तथा कई-कई वर्ष तक उन्हें उन्हीं स्थानों पर बने रहने देता है, और जिनसे पैसा या अन्य सामग्री प्राप्त नहीं होती, या जो उसकी पार्टी या बिरादरी के नहीं होते, उन्हें बराबर खराब स्थानों पर रखा जाता है व अन्य प्रकार से परेशान किया जाता है। मेरे विचार से यह महत्वपूर्ण कार्य जिला जज को स्वयं अपने विवेक से करना चाहिए। उसे हर कर्मचारी के कार्य, योग्यता, क्षमता व आचरण पर बराबर दृष्टि रखनी चाहिए। इस बारे में अधीनस्थ अधिकारियों व मुंसरिम, नाजिर आदि ज्येष्ठ कर्मचारियों पर अविश्वास न करें—उनसे विचार विमर्श अवश्य करें, परन्तु आदेश स्वयं अपने विवेक से करें। अपने पास पूरी स्टाफ की सूची तथा कौन कब से किस पद पर तैनात है इसकी पूरी सूचना रखें, और तब कर्मचारी की योग्यता व क्षमता तथा पद विशेष के लिए उसकी उपयुक्तता को दृष्टि में रखते हुए अपने विवेक से उनकी नियुक्ति, स्थानान्तरण आदि करें। आरम्भ में कुछ लोगों को शायद बुरा लगे, परन्तु शीघ्र ही आप पायेंगे कि स्टाफ आपकी इस बात को पसन्द करेगा और आपको उनका सहयोग भी प्राप्त होगा, क्योंकि वह

यह अनुभव करेंगे कि इन मामलों में उन्हें मुंसरिम आदि को खुश नहीं करना है, और यदि आप समान भाव से, भेदभाव रहित होकर स्टाफ से व्यवहार रखेंगे तो उनमें आपके प्रति आस्था व विश्वास जागृत होगा कि उन्हें आपसे सदैव न्याय प्राप्त होगा।

एक स्थान पर मुझे एक आदेश के द्वारा तीन वरिष्ठ कर्मचारियों को, जिसमें सदर मुंसरिम व सेन्ट्रल नाजिर भी शामिल थे, अनिवार्य रूप से सेवा निवृत्त करना पड़ा क्योंकि वे बिल्कुल अयोग्य व निकम्मे थे, काम एरियर्स (arrears) में पड़ा था, महत्वपूर्ण कागजातों पर कोई आदेश प्राप्त नहीं किये गए थे पैसा लेकर अच्छी पोस्टिंग नीलाम की जाती थी आदि। क्या आप-विश्वास करेंगे, कि इसका विरोध होना तो दूर, अफसरों अधिवक्ताओं व कर्मचारियों ने मेरे इस कदम को बहुत सराहा, और उस स्टेशन पर मेरा शेष समय बिना किसी परेशानी के बीता और मुझे स्टाफ का पूर्ण सहयोग प्राप्त होता रहा क्योंकि मैंने जो कुछ किया था जनहित में सुधार करने की दृष्टि से किया था न कि दुर्भावनावश अथवा नाराजगी से।

6. **वादों का स्थानान्तरण**—Transfer of Cases to other Courts :

अपीलें, रिवीजन, सत्र परीक्षण जिला जज के यहां दायर किये जाते हैं और समय समय पर अतिरिक्त जिला न्यायाधीशों व अतिरिक्त सत्र न्यायाधीशों के यहां स्थानान्तरित होते रहते हैं। इसी प्रकार जब किसी स्थाई मुन्सिफ या मजिस्ट्रेट के न्यायालय में लम्बित वादों की संख्या अधिक हो जाती है तो जिला जज के आदेश से बहुत से वाद अतिरिक्त मुंसिफों व मजिस्ट्रेटों के यहां स्थानान्तरित किये जाते हैं। अक्सर देखा गया है कि ऐसा करने में वादकारी अथवा उनके वकील जिला जज के अपील लिपिक व सत्रलिपिक के द्वारा वादों को अपने मनचाहे न्यायालय में स्थानान्तरित कराने का प्रयत्न करते हैं और बहुधा अपील व सत्र लिपिक पैसा लेकर वादों को उनके मनचाहे न्यायालय में जिला जज से आदेश कराकर स्थानान्तरित करवा देते हैं। आपको चाहिए कि अपने स्टाफ को इस प्रकार की छूट न दें और वादों का स्थानान्तरण अपने विवेक से करें। आपको चाहिए कि अपने स्टाफ को ऐसा आदेश न दें कि अमुक न्यायालय को स्थानान्तरित करने के लिए इतने वादों की लिस्ट बनालावें, इसके बजाय अच्छा यह होगा कि आप सबसे पुराने लम्बित वादों की लिस्ट बनाकर उस पर बिना किसी क्रम के (ऐट्रेन्डम) at random आदेश कर दें कि अमुक मुकदमें प्रथम अतिरिक्त सत्र न्यायाधीश, अमुक मुकदमें द्वितीय अतिरिक्त सत्र न्यायाधीश और इसी प्रकार अन्य न्यायाधीशों को स्थानान्तरित किये जायें। इस प्रकार के किसी भी मामले को अपने अधीनस्थ लिपिकों के हाथ में छोड़ देना उचित न होगा। आपको ऐसा तरीका अपनाना चाहिए कि आपके अधीनस्थ कोई लिपिक आपसे मनमाना आदेश प्राप्त न कर सके। सभी आदेश आपको अपने विवेकानुसार पारित करना चाहिए।

7. **वार्षिक बजट की तैयारी व जांच और विविध ग्रान्टों का सदुपयोग**—Preparation and Scrutiny of Budget, and Utilization of various grants :

अक्सर यह पाया गया है कि जिला जज वार्षिक बजट के बनाने में अपने विवेक से कार्य

नही करते और इस कार्य को दफ्तर के ऊपर छोड़ देते है। बजट बनाना अथवा उसकी जांच कोई कठिन कार्य नही है। जब आप किसी जिले में जिला जज के रूप में जायें तो पिछले 2-3 साल के बजट, भिन्न भिन्न मदों में प्राप्त धनराशियों का एक तुलनात्मक चार्ट (कम्परेटिव टेबिल) Comparative Table बनवा लें जिससे आपको एक नजर में ही पता चल सके कि पिछले सालों में किस किस मद में कितना कितना रुपया प्राप्त हुआ था और उसमें से कितना खर्च हुआ और कितना बचा या अधिक खर्च हुआ। आप अपने मुंसरिम बड़े बाबू व नाजिर से विचार विमर्श करके यह पता कर सकते है कि इस वर्ष विभिन्न मदो में कितना रुपया खर्च होने की आशा है और उसी के हिसाब से अपना बजट तैयार करायें। आप विचार विमर्श के उपरान्त व अपनी आवश्यकता को दृष्टि में रखते हुए इसका भी निर्णय कर सकते है कि हमें किस किस कार्य के लिए हाईकोर्ट से रुपया मांगना है और जब इसके बारे में हाईकोर्ट को पत्र लिखे तो अधिक रुपया मांगने का पूरा औचित्य भी बतायें ताकि हाईकोर्ट को आपको रुपया देने में झिझक न हो और अनावश्यक पत्राचार में समय बरबाद न हो। आपको न तो किसी मद में अनावश्यक रूप से अधिक रुपया मांगना चाहिए और न इतना कम ही कि आपका काम ही न चले। यदि आप स्वयं बजट की जांच कर लेंगें और पूर्ण औचित्य देते हुये, धनराशि मांगेंगे तो हाईकोर्ट को रुपया एलाट करने में बड़ी आसानी होगी। वित्तीय वर्ष की समाप्ति के दो महीने पहले एक बार फिर बजट की जांच करें और यदि आप पाते है कि किसी मद में रुपया बचेगा तो जितना रुपया बचने की आशा है उसे समय से सरेण्डर कर दें, और जिस मद में रुपया कम पड़ रहा है उसके लिए पूर्ण औचित्य देते हुये रुपयों की मांग करें। अक्सर यह पाया गया है कि जिला जज या उनका स्टाफ इस ओर ध्यान नहीं देता जिसके कारण कई मदों में बहुत सा रुपया बिना काम आये पड़ा रहता है और जहां उसकी जरूरत होती है वहां उसका उपयोग नही हो पाता।

8. **जिला जज की व्यक्तिगत डायरी**—Personal Diary to be Maintained by District Judge :

अपने व्यक्तिगत अनुभव के आधार पर मैं कहूंगा कि जिला जज को अपने पास एक डायरी रखनी चाहिए, जिसमें वह अपनी जजी से सम्बन्धित आवश्यक आंकड़े (फैक्ट्स एण्ड फिगर्स) Facts and Figures नोट करता रहे। वह डायरी में यह नोट कर सकता है कि कितने कोर्ट सेन्क्शन्ड है कितने खाली है किस-किस कोर्ट में कितने वाद लम्बित है। इस डायरी में स्टाफ की कोटि क्रम सूची (प्रेडेशन लिस्ट) व कौन लिपिक किस किस पद पर कब से नियुक्त है इसका भी नोट रखा जा सकता है। इसमें बजट के आकड़े भी नोट किये जा सकते है। मेरे विचार से यह भी उचित होगा कि इस डायरी में हर अधिकारी के लिये एक या दो पन्ने निश्चित कर दिये जायें और जब कभी उस अधिकारी की कोई गलती दिखाई पड़े उसे फौरन नोट कर लिया जाय ताकि मासिक मीटिंग के समय उन अधिकारियों को उनकी गलतियों के सम्बन्ध में समझा दिया जाय ताकि वह इस प्रकार की गलतियां आगे न करें। इस प्रकार की जानकारी आपको वर्ष के अन्त में वार्षिक प्रविष्टियां देने के लिए भी सहायक होगी और यदि किसी को

प्रतिकूल प्रविष्टि देनी आवश्यक हो तो उसके लिए आपके पास पर्याप्त सामग्री उपलब्ध होगी। अपने विवेकानुसार जिला जज इस डायरी में अन्य कोई भी बात याददाश्त के तौर पर नोट कर सकता है। मेरे विचार से एक जिला न्यायाधीश के लिए इस प्रकार की डायरी रखना बहुत उपयोगी सिद्ध होगा।

— ओ०प्र० मेहरोत्रा

लोक अदालत योजना—एक संक्षिप्त रूपरेखा

इस योजना का उद्देश्य विधिक विवादों का सुलहकर्ता दल के अनुभवी सदस्यों की सहायता से बातचीत और सुलह द्वारा और समझाकर, सहज बुद्धि और मानवोचित ढंग से निपटारा करना है। इस योजना का लक्ष्य ऐसे विवादों (मुकदमा पूर्व मामलों) का निपटारा करना है जो विधि न्यायालय के समक्ष अभी तक न आये हों और ऐसे विवादों का भी (लम्बित मामले) जो विधि न्यायालय में विचाराधीन हों।

सुलहकर्ता दल में सेवानिवृत्त न्यायाधीश और अन्य न्यायिक अधिकारी, दूसरी सेवाओं के सेवानिवृत्त अधिकारी, बार के सदस्य, शिक्षाविद, गैर राजनीतिक सामाजिक कार्यकर्ता, महिला वकील और महिला सामाजिक कार्यकर्ता होने चाहिए। इस दल में उस विशिष्ट सम्भाग के न्यायालयों में पीठासीन न्यायाधीशों और न्यायिक अधिकारियों से भिन्न, सेवारत न्यायाधीश और न्यायिक अधिकारी भी हो सकते हैं। दल में सम्मिलित व्यक्ति यथा-सम्भव ऐसे होने चाहिए जो सामाजिक परिस्थितियों से अवगत हों और जिनमें निर्धनों के प्रति सहानुभूति हो और लोगों की समस्याओं को होशियारी से और समझा-बुझाकर निपटाने तथा उनका समाधान करने की क्षमता हो।

लोक अदालत लगाने के लिए स्थान का चयन और दिनांक का निर्धारण कम से कम एक मास पूर्व जिला कानूनी सहायता समिति के अध्यक्ष द्वारा या उसके परामर्श से किया जाना चाहिए और जिसके लिए अध्यक्ष द्वारा बार एसोसिएशन के पदाधिकारियों व सदस्यों से परामर्श करके और लोक अदालत की सफलता की सम्भावनाओं पर विचारोपरान्त निर्णय लेना चाहिए।

सामान्यतया लोक अदालत तहसील मुख्यालय या जिला मुख्यालय में रविवार को या अवकाश के दिन, जब छुट्टी हो, लगाई जानी चाहिए।

सेवा भाव रखने वाले एक वकील को या एक से अधिक को (जैसा जिला कानूनी सहायता समिति के अध्यक्ष समीचीन समझें) जिला कानूनी सहायता समिति के अध्यक्ष द्वारा लोक अदालत के संयोजक के रूप में नियुक्त किया जाना चाहिए। संयोजक को सीधे प्रारम्भ से ही लोक अदालत के कार्य का प्रभारी बना दिया जाना चाहिए। उसे लोक अदालत लगाने के लिए स्थान का चयन करने और दिनांक और समय का निर्धारण करने में सम्मिलित किया जाना चाहिए। संयोजक को अध्यक्ष और सदस्य-सचिव, जिला कानूनी सहायता समिति के पूर्ण पर्यवेक्षण और सामान्य मार्ग-निर्देशन में और उसके सहयोग से कार्य करना होगा। संयोजक को लोक अदालत लगाने के लिए परिसर का प्रबंध करना, प्रचार करना, आवेदन पत्र आमंत्रित करना और उन्हें ग्रहण करना और लोक अदालत के समक्ष रखे जाने वाले विषयों का संक्षिप्त विवरण तैयार करना होगा तथा गैर-राजनीतिक सामाजिक संगठनों से जिनमें रोटरी तथा लायन्स क्लब भी शामिल हैं यह अभिनिश्चित करने के लिए सम्पर्क करना होगा कि क्या वे इस अवसर पर कार्यकर्ताओं, निर्णायक मण्डल के

सदस्यों आदि को निःशुल्क खाद्य पैकेटों का वितरण करने के लिए प्रबंध कर सकते हैं। संयोजक से लोक अदालत का कार्य समाप्त होने तक उसके संचालन का प्रभारी रहने की अपेक्षा की जावेगी।

लोक अदालत लगाने के लिए जिला न्यायालय भवन या तहसील न्यायालयों के निकट कोई विद्यालय या महाविद्यालय, यदि कोई हो, आदर्श स्थान होगा।

लोक अदालत लगाने के लिए समय, दिनांक और स्थान का व्यापक प्रचार निम्नलिखित रीति से किया जाना चाहिए :-

(1) पत्रकार सम्मेलनों का आयोजन करके और पत्रकारों को इस अनुरोध के साथ प्रेस नोट देकर कि वे इसका व्यापक प्रचार करें और जनमत पैदा करें जिससे कि अधिक से अधिक लोग आकृष्ट हों और लोक अदालत के पास आवें,

(2) रेडियो और टेलीविजन के माध्यम से प्रचार करके,

(3) पर्चे और पैम्फलेट तैयार करके और उन्हें लोक अदालत के स्थान के आस पास के ग्रामों में वितरित करके,

(4) राजस्व अधिकारियों, समाज कल्याण अधिकारियों, प्रौढ़ शिक्षा अधिकारियों, सरपंचों और प्रधानों से सम्पर्क करके और यह अनुरोध करके कि वे लोक अदालत लगाने में सहयोग दें और उसका व्यापक प्रचार करें,

(5) बैठक बुला कर जिसमें ग्रामवासियों को अपने मामले लोक अदालत में ले जाने के लिए कहा जावे,

(6) निकट के स्थान में बोर्ड और प्लेकार्डों को सम्प्रदर्शित करके जिनमें यह दिया गया हो कि लोक अदालत का गठन करने का क्या उद्देश्य है।

आवेदन पत्रों के फार्म काफी पहले से मुद्रित/साइक्लोस्टाइल करा लेने चाहिए और पक्षकारों को निःशुल्क उपलब्ध कराना चाहिए। यह बता दिया जाना चाहिए कि आवेदन-पत्र लोक अदालत लगने से कम से कम दस दिन पूर्व प्राप्त हो जाने चाहिए। आवेदन पत्र का एक नमूना निदर्श संलग्न है, जिसे ऐसे समुचित परिवर्तनों के साथ अंगीकार किया जा सकता है जो स्थानीय परिस्थिति के लिए उपयुक्त हों।

आवेदकों से संक्षेप में अपने विवाद का प्रकार और अन्य पक्षकारों का पूरा नाम और पता देने की अपेक्षा की जावेगी। संयोजक से यह भी अपेक्षित है कि वह अपने पास आने वाले पक्षकारों से सुसंगत दस्तावेजों की प्रतियां प्राप्त करे। यदि दोनों पक्षकार संयोजक के पास आते हैं तो उनसे यह कहा जाये कि वे निर्धारित दिनांक को लोक अदालत में उपस्थित हों।

यदि केवल एक पक्षकार आता है तो संयोजक को चाहिए कि वह विरोधी पक्षकार को एक अनुरोध-पत्र लिखे जिसमें शिकायत करने वाले पक्षकार का नाम और विवाद का प्रकार उल्लिखित किया जावेगा और उसको सलाह देगा कि वह सुसंगत दस्तावेजों के साथ सौहार्दपूर्ण समझौते के लिए लोक अदालत में आये।

मामले का सारांश तैयार करने के लिए संयोजक ऐसे सेवारत पदधारियों के अतिरिक्त जिन्हें जिला न्यायाधीश और जिला मजिस्ट्रेट द्वारा उपलब्ध कराया जा सके, स्थानीय रूप से आवासित न्यायालयों के सेवानिवृत्त पदधारियों, कनिष्ठ अधिवक्ताओं तथा विधि के छात्रों को नियोजित कर सकता है।

सुलहकर्ताओं की सहायतार्थ भी लिपिक वर्गीय कर्मचारियों की व्यवस्था करने के लिए, संयोजक स्थानीय रूप से आवासित न्यायालयों के सेवानिवृत्त पदधारियों, कनिष्ठ अधिवक्ताओं, विधि के छात्रों और उपर्युक्त के अनुसार अन्य सेवारत पदधारियों को नियोजित कर सकते हैं।

संयोजक वादों में आवाज लगाने के लिए सेवानिवृत्त या सेवारत चपरासियों की सेवाओं की भी मांग कर सकते हैं।

लोक अदालत में कार्य करने वाले चपरासियों और लिपिक वर्गीय कर्मचारियों को मानदेय के रूप में एक निश्चित् सूक्ष्म धनराशि दी जा सकती है।

कनिष्ठ अधिवक्ताओं, विधि के छात्रों और अन्य व्यक्तियों को प्रशंसापत्र दिये जा सकते हैं।

विचाराधीन मामलों में संयोजक से यह भी अपेक्षा है कि वह पक्षकारों से उनके अधिवक्ताओं के नाम प्राप्त कर लें। उससे यह भी अपेक्षित है कि वह अधिवक्ताओं से वाद पत्र और लिखित बयान और ऐसे अन्य दस्तावेजों की प्रतियों को जो विवाद के निपटारे के लिए आवश्यक हो, प्राप्त कर लें।

संयोजक से विचाराधीन मामलों की एक सूची तैयार करने की अपेक्षा की जावेगी और उक्त सूची, यथास्थिति, जिला न्यायाधीश या जिला मजिस्ट्रेट को भेजी जानी चाहिए जो संबंधित न्यायालय को निर्देश दे सकते हैं कि वे उन मामलों को छांट कर लोक अदालत के लिए पृथक रख लें।

लोक अदालत के प्रवेश द्वार पर एक पूछताछ पटल की स्थापना करने की अपेक्षा की जावेगी।

लोक अदालत को पृथक-पृथक इकाइयों में विभाजित किया जावेगा। प्रत्येक इकाई एक विशिष्ट विषय जैसे दीवानी, फौजदारी, वैवाहिक, मोटर दुर्घटना, प्रतिकर, श्रम और राजस्व के मामलों का निपटारा करेगी। इन मामलों में जिनमें केवल कानूनी सलाह या

मार्ग-दर्शन की मांग की जाये, सलाह देने के लिए एक पृथक इकाई बनाई जानी चाहिए।

प्रत्येक इकाई को लगभग बीस मामले निपटाने के लिए सौंपे जायेंगे। प्रत्येक इकाई की पहचान बोर्ड लगा कर और इसके द्वारा निपटाये जाने वाले मामलों की सूची प्रदर्शित करके की जायेगी।

प्रत्येक लोक अदालत में तीन से पांच तक सुलहकर्ता होंगे जिनमें से एक विधिवेत्ता, एक शिक्षाविद् और एक सामाजिक कार्यकर्ता होना चाहिए।

सुलहकर्ताओं के दल को जो मामले सौंपे जाते हैं उनके बारे में उनसे संबंधित पक्षकारों के साथ लोक अदालत में विचार-विमर्श करने की अपेक्षा की जायेगी।

योजनाका मुख्य लक्ष्य समस्या के मूल कारण को समझना है और पक्षकारों को इन समस्याओं को बिना किसी कटुता के सुलझाने के लिए प्रेरित करते हुए राजी करना है। कुछ समय तक दोनों पक्षकारों की सुनवाई करने के पश्चात् सुलहकर्ता ऐसे सूत्र का सुझाव देंगे जिससे समस्या का न्यायसंगत निपटारा हो। थोड़ा समझा-बुझाकर सहजबुद्धि का प्रयोग करके एक समझौते का सूत्र तैयार किया जाता है जिसका लक्ष्य समस्या का व्यवहारिक हल निकालना है और इससे दोनों पक्षकारों के सौहार्दपूर्ण समझौते से विवाद समाप्त हो जाता है। पक्षकारों को अपने मनभेदों को समाप्त करने, पिछली वैमनस्यता भूलने और एक ऐसी स्थिति उत्पन्न करने के लिए समझाया जाता है जिससे वह लोक अदालत से, अपने मन में किसी कटुता के बिना, और "बीती ताहि बिसार दे" की भावना के साथ बाहर जाते हैं। जब इस प्रकार कोई मामला निपटाया जाता है, तब समझौते के कागज-पत्र प्रस्तुत करने के पूर्व पक्षकारों को एक स्नेहपूर्ण वातावरण में एक दूसरे को गले लगाने हाथ मिलाने के लिए प्रेरित किया जाता है।

लोक अदालत का कार्य सामान्यतया पूर्वाह्न 9.30बजे प्रारम्भ हो जाना चाहिए। मध्याह्न 1.00 बजे एक घण्टे का अल्पावकाश होगा और लोक अदालत सभी मामलों का निपटारा हो जाने पर या अपराह्न 5 या 5.30 बजे के लगभग बन्द की जानी चाहिए। प्रारम्भ में उद्घाटन भाषण आदि पर समय कम से कम व्यय किया जाना चाहिए क्योंकि उसका प्रयोजन केवल वादकारियों आदि को इस योजना के लाभ और प्रक्रिया संबंधी विषय की जानकारी कराना ही होता है। दोपहर के अल्पावकाश के बजाय यह व्यवस्था अधिक लाभदायक सिद्ध हुई है कि कार्य निरन्तर चलता रहे और 1 व 2 बजे के बीच निर्णायक मण्डल के सदस्य व स्टाफ के लोग व कार्यकर्ता बारी-बारी से पास के कमरे में जाकर भोजन या जलपान कर आवें जिसके लिए लंच-पैकेट बहुत उपयोगी रहते हैं। इससे काम में व्यवधान नहीं आता अन्यथा लंच के बाद काम दुबारा से शुरू कराने में बहुत कठिनाई होती है।

लोक अदालत का पर्यवेक्षण जिला न्यायाधीश के द्वारा किया जायेगा जिसकी सहायता के लिए अन्य ऐसे न्यायिक अधिकारी भी होंगे जो आसानी से साथ लिए जा सकें। न्यायालयों में विचाराधीन मामलों के अभिलेखों को मूल रूप में लोक अदालत के समक्ष प्रस्तुत करने की

आवश्यकता नहीं होती पर यदि सुलहकर्ता मूल पत्रादि को देखना आवश्यक समझे तो जिला न्यायाधीश तथा जिलामजिस्ट्रेट के माध्यम से उनको-उपलब्ध कराया जा सकता है जिसके लिए न्यायालयों के स्टाफ के लोग उन्हें अपने पास उपलब्ध रखते हैं और उसे सुलहकर्ताओं को दिखा सकते हैं। सामान्यतया यह तभी सम्भव है जब लोक अदालत उसी तहसील या जिला मुख्यालय पर लगी हो जहां संबंधित न्यायालय हों।

जो मामले न्यायालय में लम्बित नहीं हैं यदि उनमें समझौता लोक अदालत में होता है तो समझौते का दस्तावेज तैयार किया जा सकता है और पक्षकारों के बीच उसका आदान प्रदान किया जा सकता है। जिन मामलों में रजिस्ट्रीकरण की आवश्यकता हो उनमें पक्षकारों को कानूनी सहायता समिति के माध्यम से रजिस्ट्रीकरण कराने की सलाह दी जानी चाहिए।

न्यायालयों में विचाराधीन मामलों में पक्षकारों से समझौते को लिखित रूप देने और उस पर हस्ताक्षर करने की अपेक्षा की जायेगी और तत्पश्चात् पक्षकारों को विधि के अनुसार समझौते को दाखिल करने के लिए संबंधित न्यायालयों के पीठासीन अधिकारियों के सामने ले जाया जायेगा। जिन मामलों में समझौता हो जाय उनमें न्यायिक अधिकारियों से अपने न्यायालयों या चैम्बरों में या यथास्थिति लोक-अदालत के पास ही किसी कक्ष में उपस्थित रहने का अनुरोध किया जायेगा जिससे समझौता उसी दिन दाखिल और अभिलिखित किया जा सके। यदि लोक अदालत जिला मुख्यालय के बाहर लगाई जाये और किसी कारण समझौते का सत्यापन उसी दिन नहीं हो पाता तो उसे अगले दिन दाखिल और सत्यापित किया जा सकता है।

जिन मामलों में मुकदमा अभी दायर न किया गया हो, उनमें सुलहकर्ता द्वारा संबंधित पक्षकारों के साथ विवाद के विषय में विचार-विमर्श किया जायेगा और इस प्रकार विवाद का यथासम्भव निपटारा करा दिया जायेगा।

जिन मामलों में मुकदमा दायर न किया गया हो उनके सम्बन्ध में जिला कानूनी सहायता समिति के अध्यक्ष, संयोजक के माध्यम से, यह जानने का प्रयास कर सकते हैं कि कोई पक्षकार समझौते से पीछे तो नहीं हट गया है और यदि उनकी जानकारी में ऐसा कोई मामला आये तो वे संयोजक के सहयोग से उसमें अनुवर्ती कार्यवाही कर सकते हैं।

न्यायालय में विचाराधीन मामलों में भी जिला कानूनी सहायता समिति के अध्यक्ष प्रत्येक न्यायालय से लिखित सूचना प्राप्त कर सकते हैं जिसमें यह भी इंगित होगा कि क्या समझौते के आधार पर कोई डिक्री या आदेश पारित किया गया या कोई पक्षकार समझौते से पीछे हट गया है। उनमें भी यथासम्भव अनुवर्ती कार्यवाही जिला कानूनी सहायता समिति तथा संयोजक के माध्यम से की जा सकती है।

मोटर दुर्घटना सम्बन्धी प्रतिकर के मामले

कुछ समय से मोटर दुर्घटनाओं में मृत व्यक्तियों के आश्रितों और घायल हुए व्यक्तियों के प्रतिकर संबंधी मामले भी लोक अदालत के माध्यम से निस्तारित किये जा रहे हैं और

इस कार्य में बहुत सफलता प्राप्त हुई है। इसके लिए आवश्यक दिशा निर्देश अलग से जिला जजों/कानूनी सहायता समितियों के सभापतियों को भेजे गये है। लोक अदालत की तिथि से लगभग छः सप्ताह पूर्व इन मामलों की एक सूची कोर्ट द्वारा निर्धारित प्रपत्र में तैयार की जाती है जो सभी संबंधित बीमा कम्पनियों के मण्डलीय अधिकारियों तथा उ0 प्र0 राज्य सड़क परिवहन निगम के विधि अधिकारी को भेज दी जाती है। संबंधित पत्रावली में उपलब्ध सूचना के आधार पर अधिक से अधिक सूचना निर्धारित प्रपत्र में भेजी जाती है और विशेषकर पालिसी नम्बर तथा मृत व्यक्ति की आयु, उसकी आमदनी, उसके आश्रितों आदि के नाम, घटना की तिथि व स्थान भेजना आवश्यक है। संबंधित बीमा कम्पनियों के अधिकारियों से जिला जज या किन्हीं अपर जिला जज के विधाम कक्ष अथवा सभा कक्ष में किसी कार्य दिवस को अपराह्न विचार विमर्श किया जाता है जिसमें आवेदक या उसके वकील तथा बीमा कम्पनी के संबंधित अधिकारी और उनके वकील उपस्थित रहते है और जो अतिरिक्त जानकारी बीमा कम्पनियां प्राप्त करना चाहती है वह या तो तभी या लगभग एक सप्ताह में उन्हें उपलब्ध करा दी जाती है जिससे प्रतिकर की अनुमानित धनराशि विधाम कक्ष में ही निर्धारित हो जाती है और उसे अन्तिम रूप लोकअदालत में दिया जा सकता है।

कभी-कभी आवेदक या उसके अधिवक्ता अपेक्षित जानकारी तुरन्त नहीं दे पाते है। इसके लिए कनिष्ठ अधिवक्ताओं में से या कोई अराजनैतिक सामाजिक कार्यकर्ता उपलब्ध हों तो उनमें से प्रेरक (मोटी वेटसे) नियुक्त कर दिये जाते है जिन्हें यात्रा व्यय दिया जा सकता है। वह आवश्यक सूचना पुलिस थाने से जहां दुर्घटना की रिपोर्ट लिखाई गई हो तथा अस्पताल से जहां मृतक या घायलों का डाक्टरी परीक्षण किया गया हो प्राप्त कर सकते है। जैसे पोस्ट मार्टम परीक्षण रिपोर्ट या चोटों की परीक्षण रिपोर्ट या मृत्यु प्रमाण पत्र अस्पताल से प्राप्त किया जा सकता है। इसी प्रकार दुर्घटना से संबंधित वाहन के मालिक, ड्राइवर आदि का नाम और किस जिले या कार्यालय में वाहन पंजीकृत है या ड्राईवर द्वारा लाईसेन्स प्राप्त किया गया है, इस प्रकार की सूचना थाने से प्राप्त की जा सकती है। कभी-कभी दुर्घटना के बारे में ड्राइवर आदि के ऊपर फौजदारी का मुकदमा भी धारा 304-ए आदि का चल चुका होता है और संबंधित कागजात उस पत्रावली में जो रेकार्डरूम से प्राप्त हो सकती है मिल जाते है। यह कार्य प्रेरक (मोटी-वेटसे) के माध्यम से या अन्यथा कराया जा सकता है। बीमा कम्पनियों के सभी डिवीजनल मैनेजरों को रू0 40,000/-तक प्रतिकर देने के अधिकार प्राप्त है और सीनियर डिवीजनल मैनेजरों को रू0 75, 000/-तक प्रतिकर देने के अधिकार प्राप्त हैं। जोनल मैनेजरों को इससे अधिक की धनराशि के अधिकार होते है। जिन मामलों में प्रतिकर की धन राशि इससे अधिक होना तय पाया जाता है उनके बारे में बीमा कम्पनियों के उपस्थित अधिकारियों से अपेक्षा की जानी चाहिए कि वह अपने से ऊपर के अधिकरियों से स्वयं लिख कर अधिक धनराशि निर्धारित करने की अनुमति प्राप्त कर लें यद्यपि ऐसे मामले थोड़े ही होते है। लोक अदालत के दिन इन मामलों में विवाद थोड़ा ही रह जाता है चूंकि विधाम कक्ष में हुई प्रारम्भिक बैठकों में अधिकांश मसले तय हो चुके होते है।

———

प्रेषक,

डी०सी०वर्मा,
सदस्य सचिव,
उ०प्र० कानूनी सहायता और परामर्श बोर्ड,
510, जवाहर भवन, लखनऊ

सेवा में,

समस्त जनपद न्यायाधीश/सभापति,
जिला कानूनी सहायता और परामर्श समिति,
उत्तर प्रदेश

सूचक 6/कसपब-16/86 दिनांक: मार्च 6, 1986

महोदय,

बोर्ड को जानकारी में यह बात आई है कि मोटर एक्सीडेन्ट क्लेम्स से संबंधित मृतक के आश्रितों तथा घायल व्यक्तियों द्वारा प्रतिकर की मांग करते समय या उस बारे में जिला कानूनी सहायता एवं परामर्श समिति से सहायता प्राप्त करने के लिए आवेदन पत्र देते समय अथवा लोक अदालत या शिविर में ऐसे मामले प्रस्तुत किये जाते समय समिति शासनादेश संख्या-2791 प/तीस-3-13 डब्लू /81, दिनांक 25 जुलाई, 1981 के अनुसार प्रतिकर (अधिकतम रु० 20,000/-) दिलाने के बारे में कार्यवाही नहीं करती है। अतः उक्त शासनादेश की एक प्रतिलिपि आपके सूचनार्थ संलग्न करते हुए यह आशा की जाती है कि प्रतिकर के मामलों का निस्तारण करते समय शासनादेश में दिये गये निर्देशों के अनुसार भी कार्यवाही की जाया करे।

भवदीय

संलग्नक-यथोक्त

(डी०सी०वर्मा)
सदस्य सचिव

प्रेषक,

श्री विनोद कुमार सेठ
संयुक्त सचिव
उत्तर प्रदेश शासन

सेवा में,

(1) समस्त जिलाधिकारी (नाम से)

(2) परिवहन आयुक्त, उ०प्र०, लखनऊ

परिवहन अनुभाग-7

लखनऊ, दिनांक 25 जुलाई, 1981

विषय :-दुर्घटना ग्रस्त यात्रियों तथा दुर्घटना ग्रस्त बस से हुए घायल एंव मृत यात्रियों के आश्रितों को आर्थिक सहायता ।

महोदय,

उपर्युक्त विषय पर मुझे यह कहने का निर्देश हुआ है कि शासनादेश संख्या 5731 प/तीस -7-30 कृ./75, दिनांक 3 दिसम्बर, 1976 में शासन द्वारा दि ओरियेन्टल फायर एण्ड जनरल इन्श्योरेन्स कम्पनी के माध्यम से बस यात्री बीमा योजना लागू की गई थी । अब शासन द्वारा यह निर्णय लिया गया है कि दिनांक 1.4.81 से उपरोक्त योजना के स्थान पर दुर्घटना ग्रस्त बस के मृत यात्रियों व आश्रितों तथा घायल यात्रियों और अन्य घायल व्यक्तियों/उनके आश्रितों की जिनकी यात्री बस दुर्घटना में मृत्यु हो जाय या जो घायल हो जायें (जैसी भी स्थिति हो) आर्थिक सहायता देने का कार्य जिलाधिकारियों के माध्यम से कराया जाये । इस नई योजना के कार्यान्वयन के लिए उत्तर प्रदेश मोटर गाड़ी (यात्रीकर) (संशोधन) अध्यादेश 1981 द्वारा उत्तर प्रदेश मोटर गाड़ी (यात्रीकर) अधिनियम, 1962 में वांछित संशोधन कर दिया गया है । उक्त नई योजना के अन्तर्गत प्रदेश में चलने वाली सभी यात्री बसों, जिनसे उक्त अधिनियम के अन्तर्गत यात्रीकर की वसूली की जाती है, मार्गयात्रा करने वाले यात्रियों एंव सम्बंधित दुर्घटना ग्रस्त अन्य व्यक्तियों की मृत्यु या घायल हो जाने की स्थिति में आर्थिक सहायता दी जावेगी । जिसकी दरें निम्नलिखित होंगी:-

(क) प्रति मृत व्यक्ति के वारिस को रु० 20,000/-(रु० बीस हजार)

(ख) प्रति मृत अन्य व्यक्ति के वारिस को- 5,000/-(रु० पांच हजार)

(ग) यदि बस दुर्घटना में मृत/घायल यात्री की आयु 12 वर्ष से कम हो तो उक्त "क" तथा "ख" पर उल्लिखित दरों की आधी दर से आर्थिक सहायता दी जायेगी।

(घ) इस दुर्घटना में विकलांग व्यक्तियों को संलग्नक में दी गई दरों पर आर्थिक सहायता दी जाएगी।

स्पष्टीकरण:-

(1) अन्य घायल अथवा मृत व्यक्तियों का तात्पर्य उन व्यक्तियों से है जो उक्त दुर्घटनाग्रस्त बस में यात्रा न कर रहे हों परन्तु बस दुर्घटना से ग्रस्त हुए हों।

(2) वारिस/आश्रित का तात्पर्य निम्नलिखित से है :-

1 – पत्नी /पति (जैसी दशा में हों)
2 – पुत्र या अविवाहित पुत्री/पुत्रियां
3 – भाई या अविवाहित बहिनें
4 – पिता व माता
5 – सम्बंधित व्यक्तियों के पर्सनल ला के अनुसार वारिस।

2 – किसी एक बस दुर्घटना में मैदानी क्षेत्रों में मृत और घायल व्यक्तियों की आर्थिक सहायता बांटने की अधिकतम सीमा रु० 7, 20,000/-और पहाड़ी क्षेत्रों में रु० 4,00,000/-1 यदि किसी एक बस दुर्घटना में बांटी जाने वाली आर्थिक सहायता की धनराशि उपरोक्त दरों के अनुसार स्पष्ट रु० 7, 20,000/-और रु० 4, 00,000/- से अधिक होती है तो बांटी जाने वाली प्रति व्यक्ति धनराशि में समानुपातिक कमी इस प्रकार की जायेगी कि बांटी गई धनराशि उक्त अधिकतम सीमा से अधिक न होने पाये।

3 – प्रत्येक बस दुर्घटना के सम्बंध में संबंधित जिलाधिकारी द्वारा स्वयं या उनके द्वारा प्राधिकृत अधिकारी जो परगनाधिकारी से निम्न स्तर का न हो तीन दिन के अन्दर जांच तथा नियमानुसार अन्य कार्यवाही कर ली जायेगी और जांच रिपोर्ट तथा आर्थिक सहायता की धनराशि की संस्तुति परिवहन आयुक्त उत्तर प्रदेश को भी भेजी जायेगी। परिवहन आयुक्त द्वारा वांछित धनराशि संबंधित मृत अथवा घायल व्यक्तियों/उनके आश्रितों को आर्थिक सहायता के रूप में बांटने के लिए तत्काल जिलाधिकारी को उपलब्ध करा दी जायेगी। किसी भी दशा में आर्थिक सहायता बांटने के कार्य में 15 दिन से अधिक का समय न लिया जायेगा। परिवहन आयुक्त द्वारा उपरोक्त अवमुक्त धनराशि में से आर्थिक सहायता बांटने का कार्य तत्परता से निर्धारित समय अवधि में पूरा करने वाला अधिकारियों/कर्मचारियों को जिलाधिकारी स्व-विवेकानुसार रु० 200/-(दो सौ केवल) तक मानदेय स्वीकृत कर सकते है, बशर्ते संबंधित बस दुर्घटना में मृत तथा घायल व्यक्तियों की संख्या

25 से अधिक हो। संबंधित जिलाधिकारियों द्वारा आर्थिक सहायता के रूप में बांटी गई धनराशि कार्य विवरण प्रतिमास संलग्नक– 2 के अनुसार परिवहन आयुक्त, उत्तर प्रदेश को भेजा जावेगा और परिवहन आयुक्त समस्त विवरणों को संकलन करके शासन को एक मासिक विवरण भेजेंगे।

4 – उपरोक्त व्यवस्था फिलहाल तदर्थ आधार पर है। इस नई योजना के चलाने के लिए निधि स्थापित की जायेगी, और इस प्रयोजन हेतु नियमावली भी बनाई जावेगी। निधि की स्थापना हो जाने तथा इस योजना को चलाने के लिए नियमावली के बन जाने पर नियमावली के अनुसार ही आर्थिक सहायता देय होगी।

5 – इस योजना के लिए चालू वित्तीय वर्ष के बजट में कोई प्राविधान नहीं है। योजना का कार्यान्वयन दिनांक 1 अप्रैल, 1981 से अत्यावश्यक एवं अपरिहार्य है। अतः राज्यपाल महोदय उक्त दिनांक 3 नवम्बर, 1976 के शासनादेश को निरस्त करने तथा नई योजना के दिनांक 1 अप्रैल, 1981 से आरम्भ करने के लिए राज्य आकस्मिकता निधि से 10, 00,00/-(दस लाख रुपये मात्र) का अग्रिम आहरित करने की स्वीकृति भी प्रदान करते हैं। अग्रिम की प्रतिपूर्ति आगामी अनुपूरक माँग द्वारा कर ली जावेगी। इस संबंध में होने वाला व्यय अन्ततः आय व्ययक के लेखा शीर्षक 288– सामाजिक सुरक्षा एवं कल्याण– आयोजनेतर–ड–अन्य सामाजिक सुरक्षा एवं कल्याण–4-अन्य कार्यक्रम "के अन्तर्गत बसों में यात्रा करने वाले यात्रियों को बस के दुर्घटना ग्रस्त हो जाने की दशा में आर्थिक सहायता नामक एक नया उप शीर्षक खोलकर उसके नामें डाला जायेगा।

भवदीय,

ह०–
(विनोद कुमार सेठ)
संयुक्त सचिव

वित्त विभाग

संख्या- 2791 (1)प/सीस-3-13 डब्लू/81 रा०अ०निधि०र०स० तद्दिनांक

प्रतिलिपि एक अतिरिक्त प्रति सहित महालेखाकार-1 उत्तर प्रदेश रिपोर्ट ब्रांच इलाहाबाद को सूचनार्थ प्रेषित।

आज्ञा से,
ह०/-
(पी० उमा शंकर)
उप सचिव

संख्या- 2791(2) प/सीस-3-13 डब्लू/81 तद्दिनांक

प्रतिलिपि निम्नलिखित को सूचनार्थ एंव आवश्यक कार्यवाही हेतु प्रेषित:

1 - समस्त मण्डलायुक्त, उ०प्र०

2 - प्रधान प्रबंधक, उ०प्र० राज्य सड़क परिवहन निगम, लखनऊ

3 - सचिवालय के समस्त अनुभाग/सूचना विभाग, उ०प्र० लखनऊ/कोषाधिकारी लखनऊ

आज्ञा से
ह०/-
(विनोद कुमार सेठ)
संयुक्त सचिव

संलग्नक-I

		Percentage payable of capital sum
1.	Permanent total disablement prevention from attendance to employment occupation or business of any kind whatsoever	100
2.	Loss of two limbs	100
3.	Total loss of sight of both eyes	100
4.	Loss of one leg above ankle	50
5.	Loss of toes all	
	Great, both phalanges	20
	Great, one phalange	5
	Other than great	2
	If more than one toe lost	1
6.	Loss of one eye each	50
7.	Loss of hearing both ears	50
8.	Loss of one ear	15
9.	Loss of one arm at or above wrist	50
10.	Loss of four fingers and thumb of one hand	42
11.	Loss of thumb both phalanges one planx	10
12.	Loss of four fingers	35
13.	Loss of index fingers three phalanges	10
	Two phalanges	8
	One phalange	4
14.	Loss of middle fingers—Three phalanges	6
	Two phalanges	4
	One phalanges	2
15.	Loss of ring fingers—Three phalanges	5
	Two phalanges	4
	One phalanges	2
16.	Loss of little finger three phalanges	4
	Two phalanges	3
	One phalanges	2
17.	Loss of matacarpals first or second (additional) third, fourth of fifth (additional)	2

प्रेषक,

डी० सी० वर्मा,
सदस्य सचिव,
उ० प्र० कानूनी सहायता और परामर्श बोर्ड,
510 जवाहर भवन, लखनऊ

सेवा में,

समस्त जनपद न्यायाधीश एवं सभापति,
जिला कानूनी सहायता एवं परामर्श समिति,
उत्तर प्रदेश

वृत्तांक संख्या- 17/कसपब-35/86 दिनांक: जून 23, 1986

विषय: मोटर दुर्घटनाओं से सम्बन्धित प्रतिकर के वादों का लोक अदालतों में निस्तारण।

———

महोदय,

विगत कुछ मासों से विभिन्न कानूनी सहायता और परामर्श समितियों द्वारा अपने अपने जनपदों में आयोजित लोक अदालतों में मोटर दुर्घटनाओं से सम्बन्धित प्रतिकर के मामलों को भी सुलह समझौतों के आधार पर निस्तारित किये जाने के प्रयत्न किये गये।

2- इस सम्बन्ध में कतिपय जिला समितियों का कथन है कि बीमा कम्पनियों/परिवहन निगम के अधिकारियों द्वारा अपेक्षित सहयोग नहीं दिया गया वहीं बीमा कम्पनियों परिवहन निगम के अधिकारियों का कथन है कि उन्हें लोक अदालत लगाये जाने की सूचना काफी कम समय पहले दी जाती है और लोक अदालत में लगाये जाने वाले वादों से सम्बन्धित समस्त जानकारियां उन्हें नहीं दी जाती है जिस कारण वह अपनी विभागीय पत्रावलियों का निरीक्षण यथासमय नहीं कर पाते है और लोक अदालत में उन्हें प्रतिकर की धनराशि निश्चित करने में अत्याधिक असुविधा होती है।

3- उक्त सम्बन्ध में बीमा कम्पनियों/परिवहन निगम के अधिकारियों का कहना है कि यदि उन्हें लोक अदालत में लिये जाने वाले समस्त मामलों की सूचनायें तथा उनसे सम्बन्धित जानकारियां उन्हें लोक अदालत के दिनांक से एक या डेढ़ माह पूर्व प्राप्त हो जायें तो वह अपने विभाग की पत्रावलियों का अवलोकन कर एवं अभिलेखों को जांच कर प्रतिकर की धनराशि निश्चित कर सकते है जिससे लोक अदालत में वह सक्षम अधिकारी को सुलह सफाई हेतु भेज सकें तो काफी अधिक संख्या में मामले निपट सकते है।

4– उक्त सन्दर्भ में मुझे आपसे यह अनुरोध करने का निदेश हुआ है कि आप अपने जनपद में लगाई जाने वाली लोक अदालत की तिथि, स्थान एवं समय की सूचना से सभी सम्बन्धित बीमा कम्पनियों के अधिकारियों तथा परिवहन निगम के अधिकारियों को लोक अदालत हेतु सुनिश्चित की गई तिथि से एक या डेढ़ माह पूर्व ही अवगत कराने का कष्ट करें तथा प्रत्येक बीमा कम्पनी/परिवहन निगम से सम्बन्धित मामलों की अलग-अलग सूची संलग्न प्रारूप "ख" पर सभी सम्बन्धित सूचनाओं सहित उन्हें प्रेषित करवा दें ताकि वह अपनी विभागीय पत्रावलियों का निरीक्षण करा लें जिससे कि बाद में उनके द्वारा अधिकतम दी जा सकने वाली प्रतिकर की धनराशि को निश्चित कर वह सक्षम अधिकारियों को लोक अदालत में सुलह हेतु भेज सकें। यहां पर यह भी उल्लेख करना है कि यदि दुर्घटना दो वाहनों के मध्य हुई हो तो ऐसे मामलों में दोनों ही वाहनों के बीमा कम्पनी/परिवहन निगम को भेजी जाने वाली सूचियों में इंगित करवा दें। सम्बन्धित कम्पनियों से यह भी अनुरोध कर दिया जावे कि वह उक्त सम्बन्ध में न्यायालय की पत्रावलियों का निरीक्षण भी पूर्व में नियमानुसार कर लें।

5– उक्त सम्बन्ध में मुझे आप से यह भी अनुरोध करने का निदेश हुआ है कि लोक अदालत में लिये जाने वाले प्रतिकर के मामलों के प्रतिवादियों को संलग्न प्रारूप "क" में नोटिस भी भेज दें तथा उक्त प्रारूप में अंकित अभिलेखों में से जो पत्रावली में उपलब्ध हो उन्हें काट दें तथा जो उपलब्ध न हो उनको लेकर लोक अदालत में उपस्थित होने का अनुरोध कर दें यह भी अनुरोध कर दें कि वह उन अभिलेखों (संलग्न प्रारूप "क" में इंगित अभिलेखों पर सही (✓) का चिन्ह लगाते हुए की प्रतियां भी समिति के सदस्य सचिव को लोक अदालत के आयोजन से दस दिन पूर्व ही उपलब्ध करवा दें और उनसे प्राप्त अभिलेखों को सम्बन्धित कम्पनियों को लोक अदालतों में अथवा उससे पूर्व दिलवा दें ताकि वह मामलें में सुलह करने की स्थिति में हो जावें।

भवदीय,
(डी० सी० वर्मा)
सदस्य सचिव

प्रारूप-क

कार्यालय जिला कानूनी सहायता और परामर्श समिति, ...

सेवा में,

... ...

... ...

पत्र सं० दिनांक ... ...

विषय:— मोटर एक्सीडेन्ट क्लेम पिटीशन संख्या वर्ष

महोदय,

जिला कानूनी सहायता और परामर्श समिति ... ... के तत्वाधान में दिनांक ... ...को ... ... (स्थान का नाम) ... ... पर प्रातः ... ... बजे से एक लोक अदालत का आयोजन किया जा रहा है जिसमें आप के उक्त क्लेम पिटीशन को भी सुलह समझौतों के आधार पर निस्तारित करवाये जाने के प्रयास किये जावेंगे।

2. अतः उक्त सन्दर्भ में आप से अनुरोध है कि कृपया आप दिनांक ... ... को प्रातः ... ... बजे उक्त निश्चित स्थान पर निम्नलिखित अभिलेखों सहित जिन पर आपका मामला आधारित हो, उपस्थित होने का कष्ट करें।

(अ) घातक दुर्घटना के सम्बन्ध में :

(1) पोस्ट मार्टम रिपोर्ट तथा मृत्यु प्रमाण पत्र जो मृत्यु के कारणों को दर्शाता हो।

(2) मृतक के नियोजकों से (यदि किसी सेवा में था) मृतक के वेतन का प्रमाण पत्र अन्यथा सभी स्रोतों से आय का प्रमाण पत्र,

(3) मृतक की आयु का प्रमाण पत्र,

(4) मृतक के कानूनी वारिसों के नाम, पता, रिश्ता व आयु,

(5) प्रथम सूचना रिपोर्ट और यदि उपलब्ध हो तो पंचनामे की सत्य प्रतिलिपि,

(6) मृतक की चिकित्सा तथा अन्तिम संस्कार पर किये गये व्ययों का विवरण यदि कोई हो,

(7) वाहन जिससे दुर्घटना हुई हो उस वाहन का इन्श्योरेन्स करने वाली इन्श्योरेन्स कम्पनी/शाखा का नाम व इन्श्योरेन्स पालिसी संख्या

(ख) व्यक्तिगत चोटों के सम्बन्ध में :

(1) चिकित्सा के अभिलेख या/अथवा डाक्टरी परीक्षा की रिपोर्ट जो दुर्घटना में आई चोटों की प्रकृति को दर्शाती हो एवं चिकित्सालय में भर्ती तथा डिस्चार्ज होने की तिथि,

(2) घायल व्यक्ति के सेवायोजकों से (यदि किसी सेवा में हो) घायल व्यक्ति का वेतन प्रमाण पत्र अन्यथा सभी स्त्रोतों से आय का विवरण तथा प्रमाण,

(3) स्थाई/अस्थाई विकलांगता का प्रमाण पत्र,

(4) प्रथम सूचना रिपोर्ट की सत्य प्रतिलिपि,

(5) चिकित्सा सम्बन्धी व्यय का विवरण, यदि कोई हो, कागजी सबूतों सहित,

3- कृपया उक्त अभिलेखों का एक सेट भी लोक अदालत के दिनांक से दस दिन पूर्व अधोहस्ताक्षरी को उपलब्ध कराने का कष्ट करें ताकि उसे सम्बन्धित इन्श्योरेन्स कम्पनी/परिवहन निगम के अधिकारियों को भेज कर तुरन्त प्रतिकर की राशि निर्धारित करने की कार्यवाही की जा सके।

भवदीय,

(सदस्य सचिव)
जिला कानूनी सहायता और परामर्श समिति,
जिला— — — — — — — — —

क्र०सं०	न्यायालय का नाम जहां वाद लम्बित है	वाद सं० व वर्ष	वादी/वादियों का नाम व पता	प्रतिवादी/प्रतिवादियों का नाम व पता
1	2	3	4	5

मांगे गये प्रतिकर की धनराशि	वाहन को इन्श्योरेन्स करने वाली इन्श्योरेन्स कम्पनी तथा शाखा का नाम व इन्श्योरेन्स पालिसी संख्या	वाद की वर्तमान स्थिति	दुर्घटना से सम्बन्धित वाहन का प्रकार व उसकी पंजीकरण संख्या
6	7	8	9

दुर्घटना की तिथि समय एवं स्थान	यदि प्रथम सूचना रिपोर्ट पत्रावली, पर हो तो प्रथम सूचना की तिथि समय एवं थाने का नाम	क्या पोस्ट मार्टम रिपोर्ट तथा मृत्यु प्रमाणपत्र पत्रावली पर उपलब्ध है
10	11	12

क्या मृतक/घायल व्यक्ति के विषय में चिकित्सालय का प्रमाणपत्र पत्रावली पर उपलब्ध है कि वह कब चिकित्सालय में भर्ती हुआ, उसकी मृत्यु कब हुई अथवा उसे कब डिस्चार्ज किया गया	क्या घायल व्यक्ति के विषय में डाक्टरी रिपोर्ट पत्रावली पर उपलब्ध है जो यह दर्शाती हो कि चोटों की प्रकृति क्या है वे स्थायी हैं अथवा अस्थाई। यदि अस्थाई है तो कब तक ठीक होने की संभावना है
13	14

मृतक/घायल व्यक्ति का नाम पता व उम्र (क्या मृतक की आयु प्रमाण पत्र पत्रावली पर उपलब्ध है	क्या मृतक अथवा घायल व्यक्ति का वेतन अथवा अन्य आय का प्रमाण पत्र पत्रावली पर उपलब्ध है। यदि हां तो मासिक आय क्या थी।
15	16

क्या मृतक के चिकित्सा व अंतिम संस्कार व्यय तथा घायल व्यक्ति के चिकित्सा व्ययों का विवरण पत्रावली पर उपलब्ध है। यदि हां तो उसकी कुल धनराशि	मृतक के आश्रितों के नाम, पते या आयु
17	18

प्रेषक

डी० सी० वर्मा,
सदस्य सचिव,
उ०प्र० कानूनी सहायता और परामर्श बोर्ड,
510, जवाहर भवन, लखनऊ

सेवा में,

समस्त जनपद न्यायाधीश एवं सभापति,
जिला कानूनी सहायता और परामर्श समिति,
उत्तर प्रदेश

वृतांक पत्र संख्या- 18/कसपब-35/86 दिनांक: जुलाई 5, 1986

विषय :-मोटर दुर्घटनाओं से संबंधित प्रतिकर के मामलों के संबंध में।

महोदय,

उपरोक्त विषय बोर्ड के वृतांक पत्र संख्या-17/कसपब -35/86, दिनांक 23.6.1986 के साथ भेजे गये प्रपत्र "क" व "ख" के संबंध में मुझे यह सूचित करने का निदेश हुआ है कि कुछ जनपदों से, जहां निकट भविष्य में लोक अदालतें आयोजित हो रही है, उपरोक्त प्रपत्र "ख" में सूचनायें प्राप्त हुई है किन्तु वह पूर्ण नहीं है। उक्त प्रपत्र "ख" के कोष्ट संख्या -7 जिसमें "वाहन का बीमा करने वाली कम्पनी की शाखा का नाम व बीमा पालिसी संख्या" अंकित करनी है, में सम्पूर्ण पालिसी संख्या अंकित नहीं की गई है जिसके कारण बीमा कम्पनियों को यह ज्ञान नहीं हो पाता है कि वाहन किस प्रदेश तथा जिले में बीमाकृत (इनश्योरड) किया गया है अतः सम्पूर्ण पालिसी संख्या के अंकों को इस कोष्ट में अंकित किया जाना अति आवश्यक है।

2 -उदाहरणार्थ पालिसी संख्या-22311/308/00000/30/84/00555 है तो इसमें संख्या - 22311 शाखा का कोड नम्बर है, 308 निरीक्षक का कोड नम्बर है ?
00000 यह प्रकट करता है कि यह पालिसी किसी अभिकर्ता (ऐजेन्ट) द्वारा प्राप्त की गई या सीधे प्राप्त की गई थी यदि किसी ऐजेन्ट द्वारा प्राप्त की गई हो तो उस स्थान पर ऐजेन्ट का नम्बर अंकित होगा। 30 यह दर्शाता है कि यह पालिसी वाहन की है, 84 बीमा किये जाने का वर्ष दर्शाता है तथा 00555 पालिसी संख्या है। इस प्रकार सम्पूर्ण नम्बर से पालिसी से संबंधित समस्त सूचनायें प्राप्त हो सकती है।

3 -अतः उक्त संबंध में आपसे यह अनुरोध है कि प्रारूप "ख" के कोष्ट संख्या 7 में पूर्ण बीमा पालिसी संख्या अंकित कराने का कष्ट करें।

भवदीय,
(डी०सी०वर्मा)
सदस्य सचिव

प्रेषक,

डी०सी०वर्मा,
सदस्य सचिव,
उ०प्र० कानूनी सहायता और परामर्श बोर्ड
510 जवाहर भवन, लखनऊ

सेवा में,

समस्त जनपद न्यायाधीश
उत्तर प्रदेश

वृतांक पत्र सं0- 21/कसपब-35/86 दिनांक : अगस्त 21, 1986

विषय: मोटर दुर्घटनाओं से सम्बन्धित पत्रावलियों के निरीक्षण के सम्बंध में सुविधा।

महोदय,

जैसा कि आपको विदित है कि विभिन्न कानूनी सहायता और परामर्श समितियों द्वारा लोक अदालतों में मोटर दुर्घटनाओं से सम्बन्धित प्रतिकर के वादों को सुलह और समझौतों के आधार पर निस्तारित करवाने के अथक प्रयास किये जा रहे हैं।

2 –उक्त सन्दर्भ में इस कार्यालय के वृतांक पत्र सं0–17/कसपब– 35/86, दिनांक 23.6.1986 तथा वृतांक पत्र स0–18/कसपब–35/86 दिनांक 5–7–1986 द्वारा आपसे अनुरोध किया गया था कि आप अपने जनपद में आयोजित की जाने वाली लोक अदालतों में मोटर दुर्घटनाओं से सम्बन्धित सुलह समझौतों के आधार पर निस्तारण हेतु लिये जाने वाले मामलों के सम्बंध में प्रत्येक इन्शोरेन्स कम्पनी तथा परिवहन निगम को उनसे सम्बन्धित वादों की सूचियां अन्य विवरणों सहित पूर्व में ही प्रेषित कर दें ताकि वह अपनी विभागीय पत्रावलियों की जांच कर सुलह करने की स्थिति में आ सकें।

3 –उक्त सम्बन्ध में इन्श्योरेन्स कम्पनियों ने अनुरोध किया है कि उनके अधिकारियों तथा उनसे सम्बन्धित अधिवक्ताओं को न्यायालयों की पत्रावलियों का निरीक्षण करने की सुविधा प्रदान कर दी जाये ताकि वह लोक अदालत में सुलह करने की स्थिति में हो सकें।

4 –उक्त सन्दर्भ में बोर्ड के माननीय प्रशासनिक अध्यक्ष महोदय के निर्देशानुसार मुझे आपसे यह अनुरोध करने का निर्देश हुआ है कि आप लोक अदालत में लिये जाने वाले उक्त वादों में सम्बन्धित इन्श्योरेन्स कम्पनियों तथा परिवहन निगम के अधिकारियों एंव उनके अधिवक्ताओं को, अभिलेखों की सुरक्षा को ध्यान में रखते हुए किन्तु परिहार्य तकनीकी आपत्तियों (Technical objection) को त्यागते हुये अपने विवेक से निरीक्षण की सुविधा जब भी आवश्यक हो, प्रदान कर दें।

5 –कृपया तदनुसार आवश्यकद् कार्यवाही सुनिश्चित करने का कष्ट करें।

भवदीय,
(डी०सी०वर्मा)
सदस्य सचिव

वृतांक अर्थ सा० प० स०-24/वैस/कसपब-35/86

न्यायमूर्ति आर० सी० देव शर्मा, (अ०प्रा०)
प्रशासनिक अध्यक्ष

उ०प्र० कानूनी सहायता एंव परामर्श बोर्ड
510, जवाहर भवन,
लखनऊ

दिनांक: सितम्बर 18, 1986

प्रिय महोदय,

आपको विदित होगा कि बोर्ड ने हाल ही में उच्च स्तर पर यह निर्णय लिया है कि सभी लोक अदालतों में अन्य मामलों के साथ-साथ मोटर दुर्घटनाओं से संबंधित प्रतिकर के मामलों के निस्तारण पर विशेष रूप से बल दिया जाये।

इस संबंध में बोर्ड के परिपत्र संख्या-6/कसपब-16/86, दिनांक 6.3.86, 17/कसपब 35/86, दिनांक 23.6.86, 18/कसपब-35/86, दिनांक 5.7.86 एंव परिपत्र संख्या- 21/कसपब-35/86, दिनांक 21.8.86 द्वारा विस्तार से दिशा निर्देश जारी किये जा चुके है। आपको यह जान कर प्रसन्नता होगी कि उसके बाद से कानपुर तथा मथुरा में जो लोक अदालतें लगाई गई हैं उनमें अन्य मामलों के साथ साथ मोटर दुर्घटनाओं से संबंधित मामले भी बड़ी संख्या में निस्तारित किए गए है और लगभग 47 लाख रुपया प्रतिकर के रूप में दुर्घटना में मृत व्यक्तियों के आश्रितों तथा अन्य घायल व्यक्तियों को दिलाया गया है। आप सहमत होंगे कि इस प्रकार शीघ्र मामलों के निस्तारण से इन पीड़ित व्यक्तियों को कितनी राहत मिली है। साथ ही वह मामले जो अन्यथा न्यायालयों में वर्षों लम्बित रहते सुलह समझौते के आधार पर शीघ्र ही निस्तारित हो गए। सभी समाचार पत्रों में इन लोक अदालतों की प्रशंसा की गई है। साधारण बीमा निगम और संबंधित बीमा कम्पनियों के अधिकारियों को इस बात के स्पष्ट आदेश निगम द्वारा दिए जा चुके है कि वह इन लोक अदालतों में अपना पूरा सहयोग प्रदान करें और उसके फलस्वरूप उपरोक्त दोनों लोक अदालतों में बीमा कम्पनियों के अधिकारियों ने विशेष कर क्षेत्रीय अधिकारियों ने अपना पूर्ण योगदान दिया।

2- जैसा उपरोक्त परिपत्रों में स्पष्ट किया गया है इस कार्य के लिए लगभग छः सप्ताह पूर्व सभी संबंधित बीमा कम्पनियों तथा बोर्ड को उन मामलों की सूची भेज दी जानी चाहिए जो लोक अदालत में लाए जाने हों। बार के युवा अधिवक्तागण, विधि के वरिष्ठ विद्यार्थियों तथा ऐसे युवा सामाजिक कार्यकर्ताओं को जो राजनीति से प्रेरित न हों मोटीवेटर्स नियुक्त किया जाना चाहिए जो मोटर दुर्घटना के दावों में आवेदकों से सम्पर्क करके वे आवश्यक सूचनायें प्राप्त कर सकें जो इन मामलों के निस्तारण के लिए आवश्यक होती है। साथ ही उन्हें सुलह समझौते के आधार पर मामलों को निपटाने के लिए प्रेरित किया जाना चाहिए। ऐसे मामलों में यह लाभदायक पाया गया है कि शनिवार को या किसी अन्य कार्य दिवस को अपराह्न में आवेदकों तथा बीमा कम्पनियों के वरिष्ठ अधिकारियों को आवश्यक कागजात व प्रमाणों के साथ बुलाकर मोटीवेटर्स व अन्य अधिकारियों के माध्यम से मामले को

निपटाने के लिए प्रेरित किया जाए। इस प्रकार लोक अदालत की तिथि से पहले ही वह धनराशि निर्धारित हो जाती है जो आवेदकों को देनी होती है और जो मोटीवेटर्स और सुलह-कर्ताओं के प्रयास से आपकी तथा अन्य अधिकारियों की देखरेख में तय कर दी जाती है। इसका यह परिणाम देखा गया है कि लोक अदालत के दिन और कभी कभी इससे पहले ही पक्षकार लिखित रूप में समझौता प्रस्तुत कर देते हैं और बीमा कम्पनियां लोक अदालत के दिन प्रतिकर की धनराशियों के चेक वादकारियों या संबंधित न्यायालयों के नाम तैयार करके प्रस्तुत कर देते हैं जो आवेदकों की पहचान की कार्यवाही पूरी किए जाने पर या तो उन्हें दे दिए जाते हैं या जो चेक न्यायालयों के नाम होते हैं उन पर यथा समय नियमानुसार कार्यवाही करके उनकी धनराशि उन्हें बाउचर द्वारा दे दी जाती है।

3- इसमें कोई आपत्ति नहीं है यदि लोक अदालत के दिन मुंसिफ मजिस्ट्रेटों के न्यायालय उन छोटे-छोटे मामलों का निस्तारण भी अलग से करते हैं जो स्वीकारोक्ति या सुलह समझौते के आधार पर तय किए जा सकते हैं जैसा कि अभी तक लोक अदालतों में तथा शिविरों में किया जाता रहा है। इस संबंध में यदि आप की कोई और जिज्ञासा हो या अन्य सूचना की आवश्यकता हो अथवा आप कुछ सुझाव देना चाहते हों तो कृपया निःसंकोच मुझे या सदस्य सचिव श्री डी० सी० वर्मा को लिखने का कष्ट करें।

4- यह भी देखा गया है कि कुछ जिलों में ऐसे अवसरों पर स्मारिका प्रकाशित करने की इच्छा प्रकट की जाती है। इस बारे में बोर्ड एक निश्चित नीति अपना चुका है। प्रथम तो कोई स्मारिका प्रकाशित ही न की जाए और यदि कुछ विशेष कारणवश ऐसा किया भी जाता है तो उसमें कोई भी विज्ञापन निजी व्यापारियों या दुकानदारों के न हों। जो भी विज्ञापन उसमें हों वह केवल शासन के विभागों अथवा शासकीय कम्पनियों, निगमों अथवा स्थानीय प्राधिकारियों के जैसे नगर पालिका या भूमि विकास बैंक आदि के ही हों और यह सब जिला सूचना अधिकारी के माध्यम से प्राप्त किए जाएं। आशय यह है कि समिति या बोर्ड का कोई भी पद स्मारिका के प्रकाशन पर न लगाया जाए और विज्ञापन प्राप्त करने के लिए सीधे या परोक्ष रूप में किसी भी प्रकार निजी व्यापारियों आदि से सम्पर्क न किया जाए चूंकि ऐसा करने से न्यायपालिका के अधिकारियों की स्थिति कभी कभी असमंजसपूर्ण हो जाती है। फिर भी यदि किन्हीं विशेष कारणों से स्मारिका छपाने का निर्णय आप के द्वारा लिया जाता है तो उसके लिए धन प्राप्ति के प्रस्तावित स्रोतों का उल्लेख करते हुए बोर्ड की पूर्व स्वीकृति अवश्य प्राप्त कर लें।

5- बोर्ड के द्वारा शिविरों तथा लोक अदालतों के लिए और अधिवक्ताओं की फीस तथा अन्य विविध व्यय को वहन करने के लिए जो धनराशि आपकी समिति को आवंटित की गई थी उसका पूर्ण उपयोग वित्तीय वर्ष के अन्त तक कर लिया जाना चाहिए और यदि वह धनराशि कम पड़ती हो तो आप कृपया बोर्ड को तुरन्त अतिरिक्त धनराशि आवंटित करने के लिए लिखें। आशय यह है कि धनाभाव के कारण आप लोक अदालतों का आयोजन करने से वंचित न रह जाएं। वित्तीय वर्ष के अन्त तक आप जितनी भी अधिक से अधिक लोक अदालतें लगा सकें अवश्य लगाएं। इन आयोजनों के लिए यह आवश्यक नहीं है कि

किसी विशिष्ट अतिथि को आवश्यक रूप से आमंत्रित किया ही जाए, फिर भी यदि आप आवश्यक समझते हों तो अपने जिले से संबंधित माननीय प्रशासनिक न्यायाधीश को अथवा न्याय राज्य मंत्री श्री को आमंत्रित कर सकते हैं। केवल बहुत ही विशेष परिस्थितियों में और यदि आयोजन बड़ा और विशेष प्रकार का हो जिसमें उपलब्धियां बहुत अच्छी होने की आशा हो तो केन्द्रीय कानूनी सहायता स्कीम कार्यान्वयन समिति के प्रशासनिक अध्यक्ष माननीय न्यायमूर्ति श्री रंग नाथ मिश्रा को आमंत्रित करने की कार्यवाही कर सकते हैं। चूंकि विशिष्ट व्यक्तियों के लिए सदैव ही समय न होगा कि वह प्रत्येक लोक अदालत में आयें, अतः आप इनका आयोजन अपने स्तर पर कर लें तथा मण्डलायुक्त अथवा कोई सेवा निवृत्त जिला न्यायाधीश या उच्च न्यायालय के न्यायाधीश उपलब्ध हों तो उन्हें विशेष अतिथि के रूप में आमंत्रित कर सकते हैं।

सद्भावनाओं सहित

भवदीय,

(आर० सी० देव शर्मा)

जनपद न्यायाधीश एंव सभापति,
जिला कानूनी सहायता और परामर्श समिति,

अपराध एवं विज्ञान

रण बहादुर सिंह
एम.एस.सी., पी.एच.डी.,
एफ.आई.सी., एफ.ए.एफ.एस.सी.,
निदेशक, विधि विज्ञान प्रयोगशाला, उ०प्र०
महानगर, लखनऊ-226006

मानव समाज में सभ्यता के साथ ही अपराधों का भी प्रादुर्भाव हुआ। वन में विचरण करते स्वछन्द समाज में न तो कोई अपराध थे न ही दण्ड का प्राविधान था। सामाजिक व्यवस्था में विकास के साथ ही सामाजिक नियन्त्रण भी परम आवश्यक बनता गया। सामाजिक नियन्त्रण की उपेक्षा से समाजिक व्यवस्था में घटित व्यवधान के कारण ही समाज ने निषेधक नियम बनाए एवं नियमों के उल्लघन के लिए दण्ड का प्राविधान किया। जैसे-जैसे सभ्यता विकसित होती गई सामाजिक नियंत्रणों की आवश्यकताएं बढ़ती गई, नियम बढ़ते गए, उनके उल्लघन करने वालों की संख्या बढ़ती गई और बढ़ते गए समाज में अनियन्त्रित अपराध।

सामाजिक विवादों में न्याय के लिए विज्ञान का प्रयोग भी सामान्य ज्ञान या विशेष ज्ञान के रूप में प्राचीन काल से ही होता आ रहा है। एक बार कुछ सिक्कों को लेकर एक धोबी एवं एक तेल के व्यापारी में विवाद पैदा हो गया। धोबी का कहना था कि सिक्के उसके है, जबकि तेल का व्यापारी स्वयं को सिक्कों का मालिक बताता था। विवाद जब राजदरबार में पहुंचा तो मन्त्री ने अपने अनुभव पोषित सामान्य ज्ञान के अनुसार एक छोटा सा प्रयोग किया। पानी के एक गिलास में उन सिक्कों को डाल दिया गया। पानी के ऊपर कुछ तेल की बूंदें तैरने लगी और यह निर्णय लिया गया कि सिक्के तेल के व्यापारी के है। विज्ञान के क्षेत्र में प्रसिद्ध वैज्ञानिक आर्कमडीज द्वारा एक बहुमूल्य खोज राजदरबार में एक विवादास्पद मामले को सुलझाने के संबंध में ही की गई थी। इस प्रकार न्याय और विज्ञान का सम्बन्ध बहुत ही पुराना एवं गहरा है। विज्ञान का उपयोग अपराध करने वाले भी कर सकते है एवं अपराधों की विवेचना करने वाले भी। इस समय अपराधों की जांच में विज्ञान की उपयोगिता ही चर्चा का विषय है। न्यायालय में विवादस्पद मसलों को स्पष्ट करने के लिए प्रयुक्त विज्ञान को विधि विज्ञान या "फोरेन्सिक साइन्स" कहा जाता है। फोरेन्सिक शब्द की उत्पत्ति लैटिन शब्द "फोरम" से हुई है।

सभ्यता के विकास के साथ समाजिक मान्यताओं में हुए परिवर्तन के फलस्वरूप न्याय के लिए वैज्ञानिक उपायों की मांग बढ़ती गई। यहां पर यदि हम सिक्कों वाली उपरोक्त कहानी को वर्तमान समाजिक परिप्रेक्ष्य में देखें तो कदाचित न्याय उतना सरल न होगा जितना प्राचीन समाजिक व्यवस्था में था। पानी के ऊपर तेल की कुछ बूंदों के परिलक्षित होने के साथ ही अब धोबी को एक ऐसा गवाह मिल जाएगा जो शपथ इस बात की स्वीकार करेगा कि वह तेल का व्यापारी है और उसने ही सिक्कों को धोबी को दिया था। ऐसी

स्थिति में न्याय विज्ञान से यह अपेक्षा करता है कि कुछ ऐसे प्रयोग किए जांय जिससे प्रस्तुत व्यापारियों के तेलों में भिन्नता का पता लग सके और यह कार्य तेल की केवल कुछ बूंदों से ही सम्पन्न करना होगा क्योंकि सिक्कों को निचोड़ने से भी और अधिक तेल नहीं निकल सकता। इस प्रकार हम देखते हैं कि आज हमें न्याय के लिए ऐसे वैज्ञानिक साधनों की आवश्यकता है जो बहुत ही संवेदनशील हों, एक्यूरेट हो एवं जिनमें परीक्षण के लिए बहुत ही कम मात्रा में सैम्पुल की आवश्यकता हो।

आज के वैज्ञानिक एवं तकनीकी युग में अपराधियों को भी वे सभी साधन एवं सुविधाएं उपलब्ध हैं जो एक अच्छे नागरिक को हैं। अतः अपराध दिन-प्रतिदिन अत्यन्त जटिल होते जा रहे हैं। प्रायः ऐसे भी अपराध होते हैं जिनमें कोई भी प्रत्यक्ष साक्षी उपलब्ध नहीं होते और जांच अधिकारी का अपराधी तक पहुंचना सम्भव नहीं हो पाता : कदाचित इन्हीं कारणोंवश जहां तहां देशेवर चश्मदीद गवाह भी पैदा होने लगें जो शायद अपने क्षेत्र में घटित सभी घटनाओं के घटनास्थलों पर, नारद मुनि की तरह, पहले ही पहुंच जाते हैं। ऐसे परिस्थितियों में पुलिस की छवि धूमिल होना स्वाभाविक है।

यदि किसी घटना का प्रत्यक्ष साक्षी न हो तो घटनास्थल से प्राप्त प्रदर्शों एवं संदिग्ध व्यक्ति, वाहन, हथियार आदि से प्राप्त सम्बंधित प्रदर्शों का वैज्ञानिक विश्लेषण कर अपराध के बारे में ऐसी बहुमूल्य जानकारी प्राप्त की जा सकती है जो जांचकर्ता को अपराधी तक पहुंचने में सहायक हो। वैज्ञानिक उपायों के प्रयोग से अपराध अनुसंधान की दिशा में भी आमूल परिवर्तन हो गया है। जांच पहले स्वीकारोक्ति से विवेचना की तरफ बढ़ती थी, जबकि अब यह विवेचना से स्वीकारोक्ति की तरफ आती है। पहले स्वीकारोक्ति के लिए बल प्रयोग की भी आवश्यकता पड़ती थी। अपराधों की वैज्ञानिक जांच से ऐसे तथ्य भी उभर सकते हैं जिनसे अपराधियों का मनोबल स्वयं टूट जाय। तस्करी के एक मामले में पार्सल पर अंकित धूमिल एवं अस्पष्ट पते को वैज्ञानिक तरीकों से रेस्टोर करने के बाद जब यह स्पष्ट हो गया कि वह पार्सल विदेश से अनियमित तरीके से लाया गया है तो सम्बन्धित व्यक्ति ने अपना अपराध स्वीकार कर लिया।

यह विनिमय का सामान्य नियम है कि जब कभी भी दो वस्तुएं, सजीव या निर्जीव सम्पर्क में आती हैं तो एक दूसरे से कुछ न कुछ आदान प्रदान अवश्य घटित होता है। इस प्रकार घटनास्थल पर बहुत सी ऐसी वस्तुयें, भले ही अत्यन्त सूक्ष्म मात्रा में क्यों न हो, मिल सकती हैं जिनका सम्बन्ध संदिग्ध व्यक्ति, वाहन या हथियार आदि से भी ऐसी वस्तुयें प्राप्त हो सकती हैं जिनका सम्बन्ध घटनास्थल या विक्टिम से हो ऐसे "फिजीकल एवीडेन्स" या भौतिक साक्ष्य के वैज्ञानिक परीक्षण से अपराध एवं अपराधी का सम्बन्ध सिद्ध किया जा सकता है एवं अपराध के समय घटित घटनाओं का रिकन्स्ट्रक्शन भी काफी हद तक किया जा सकता है। प्रदर्शों का वैज्ञानिक परीक्षण मुख्यतया दो दृष्टिकोण से किया जा सकता है। पदार्थों की पहचान के लिए (आइडेन्टीफिकेशन आफ सैम्पुल्स) एवं दो या अधिक प्रदर्शों का तुलनात्मक अध्ययन कर उनके श्रोत निर्धारण के लिए (कम्पैरीजन फार सोर्स

करेस्पान्डेन्स) । इस प्रकार के परीक्षण प्राकृतिक तथ्यों में सदा एकरूपता तथा किसी पदार्थ के दो या अधिक हिस्सों की तुलनीयता के मूलभूत वैज्ञानिक सिद्धान्तों पर आधारित होते हैं। प्रदर्शों के परीक्षण के लिए उनकी प्रकृति के आधार पर कई पैरामीटर्स चुने जाते हैं जिनका सिस्टमेटिक अध्ययन कर राय बनाई जाती है।

अपराधों की वैज्ञानिक जांच के लिए प्रयोगशाला में प्राप्त होने वाले प्रदर्शों की प्रकृति एवं मात्रा में अत्यन्त विभिन्नता होती है। कोई भी वस्तु किसी भी मात्रा में कभी भी प्रदर्शों के रूप में प्राप्त हो सकती है। अतः परीक्षण के लिए प्रयोगशालाओं में आधुनिक वैज्ञानिक उपकरणों एवं विभिन्न विषयों के विशेषज्ञों का उपलब्ध होना अति आवश्यक है। यों तो इस प्रकार के कार्य में विज्ञान के किसी भी क्षेत्र के विशेषज्ञ की आवश्यकता पड़ सकती है, लेकिन सामान्यतया प्रयोगशाला का कार्य मुख्यतः निम्नलिखित अनुभागों में विभक्त होता है।

भौतिक विज्ञान अनुभाग : टूटी हुई खिड़कियों की कांच की पहचान, मिलान एवं तोड़ने के लिए प्रयुक्त बल या फायरिंग की दिशा का पता लगाना, अन्य प्रकार के कांच टुकड़ों का परीक्षण, पेन्ट के टुकड़े, पाउडर, दाग इत्यादि का परीक्षण, टूल मार्क, कट मार्क्स, नकली सिक्कों आदि का परीक्षण, एक वस्तु के दो या अधिक टुकड़ों का कन्टूर मैचिंग, इरेज्ड आइडेन्टीफिकेशन मार्क का रेस्टोरेशन आदि विभिन्न प्रकार का परीक्षण भौतिक विज्ञान अनुभाग में किया जाता है। एक सड़क दुर्घटना में तेजी से आती हुई ट्रक, एक दूसरी स्थिर ट्रक से लड़ गई एवं एक साइकिल सवार को कुचलते हुए चली गयी। घटनास्थल के निरीक्षण के समय कुछ पेन्ट के टुकड़े पाए गए एवं वहां खड़ी ट्रक पर भी पेन्ट के दाग पाए गए। भागी हुई ट्रक से गिरी हुई मिट्टी एवं टूटे हुए कांच के टुकड़े भी पाए गए। बाद में संदिग्ध ट्रक से, लिए गए पेन्ट, मिट्टी एवं कांच के टुकड़ों का मिलान घटना-स्थल से प्राप्त प्रदर्शों से किया गया और प्रयोगशाला में किए गए परीक्षण के आधार पर यह निश्चित किया जा सका कि उसी ट्रक से यह दुर्घटना हुई थी।

रसायन विज्ञान अनुभाग :—इस अनुभाग में अफीम, गांजा, भांग, चरस, पेट्रोल, डीजल, किरोसीन, मोबिल आयल, देशी एवं विदेशी शराब, आसवनीय पदार्थ, अल्कोहलिक मेडीसिन, डाई, स्टेन आदि विभिन्न प्रकार के रसायनिक पदार्थों का परीक्षण किया जाता है। एक राष्ट्रीयकृत बैंक द्वारा किसी फर्म को काफी बड़ी रकम उधार दी गई थी। फर्म ने अपने बहुमूल्य रसायनों के गोदाम को उधार लेने के लिए बंधक रखा था। बाद में किसी कारणवश जब फर्म की दुर्भावना का पता लगा तो गोदाम से सैकड़ों सैम्पुल्स प्रयोगशाला में परीक्षण के लिए भेजे गए। परीक्षण के उपरांत यह पाया गया कि बहुत से तथाकथित बहुमूल्य रसायन विभिन्न प्रकार की राख, धूल इत्यादि थे।

विष विज्ञान अनुभाग :— इस अनुभाग में बिसरा, रक्त, कै, मूत्र, खाद्य-पदार्थ, हड्डियों के टुकड़े, संदिग्ध विष, ड्रग्स इत्यादि का परीक्षण विषों का पता लगाने के लिए किया जाता है। एक बार दो मित्र कहीं बाहर गए। रास्ते में एक की मृत्यु हो गई। मृत्यु का कारण

लू लगना बताया गया एवं मृतक को दफना दिया गया। बाद में किसी कारणवश इस मामले में कुछ संदेह होने पर मुर्दे को बाहर निकाला गया एवं पोस्टमार्टम कराकर उसका विसरा परीक्षण के लिए प्रयोगशाला में भेजा गया। विसरा में काफी मात्रा में धतूरा पाया गया।

जीव विज्ञान अनुभाग :— इस अनुभाग में बाल, हड्डी, नाखून, मलमूत्र, वीर्य, स्किन मसल्स, वनस्पति के रेशों, ऊन सिन्थेटिक रेशों, लकड़ी, पोलेन, डाई ऐटम, पेपर फाइबर्स, बीज, पत्ती, लकड़ी आदि वस्तुओं का परीक्षण किया जाता है। हत्या के एक मामले में मृतक के मुट्ठी में बालों का गुच्छा पाया गया तथा घटनास्थल पर कपड़े का एक टुकड़ा भी पाया गया। संदिग्ध व्यक्ति के बालों एवं उसकी फटी हुई कमीज का मिलान मृतक की मुट्ठी में पाये गये बालों एवं घटनास्थल पर पड़े कपड़े के टुकड़े से किया गया। इसके आधार पर संदिग्ध व्यक्ति का हत्या से सम्बन्ध जोड़ा जा सका।

सिरम विज्ञान अनुभाग :— इस अनुभाग में रक्त, वीर्य, थूक आदि बायोलोजिकल प्रदर्शों का परीक्षण ओरिजिन एवं ग्रुपिंग के लिए किया जाता है। एक स्त्री के साथ बलात्कार एवं हत्या के मामले में मृतिका के नाखून में रक्त रंजित स्किन के टुकड़े फंसे पाए गए। संदिग्ध व्यक्ति के चेहरे पर खरोंचे भी थीं। मृतिका के नाखून से लिए गए प्रदर्शों का ब्लड ग्रुप निकाला गया। संदिग्ध व्यक्ति का ब्लड ग्रुप भी वही पाया गया जो मृतिका के नाखून से लिए गए प्रदर्शों का था। इस प्रकार संदिग्ध व्यक्ति से उस घटना का सम्बन्ध जोड़ना सम्भव हो सका।

आग्नेयास्त्र अनुभाग :— इस अनुभाग में आर्म्स एक्ट की परिधि में आने वाले आग्नेयास्त्रों का परीक्षण, आग्नेयास्त्रों की कार्यशील दशा, अपराधों में प्रयुक्त आग्नेयास्त्रों की किस्म, फायरिंग की दूरी, घटनास्थल से या मृतक/घायल के शरीर से प्राप्त कारतूस/बुलेट/शाट्स संदिग्ध आग्नेयास्त्र से चलाए गए अथवा नहीं आदि मामलों का परीक्षण किया जाता है। एक तथाकथित सड़क दुर्घटना में एक जीप तथा दो लाशें खड्ड में पाई गईं। घटनास्थल के परीक्षण के उपरान्त तीन बुलेट्स एवं खोखे पाए गए तथा मृतक के कपड़े में छेद पाया गया, जिससे यह स्पष्ट था कि मामला सड़क दुर्घटना का नहीं बल्कि हत्या का है। प्रारंभिक जांच के बाद संदिग्ध व्यक्ति का रिवाल्वर जब्त कर लिया गया। घटनास्थल से प्राप्त प्रदर्शों का परीक्षण तथा संदिग्ध व्यक्ति की रिवाल्वर से फायर की गई बुलेट आदि का परीक्षण करके यह सिद्ध किया जा सका कि हत्या संदिग्ध व्यक्ति की रिवाल्वर से ही की गई थी।

हस्तलेख अनुभाग :— इस अनुभाग में हस्तलेख एवं हस्ताक्षरों का परीक्षण, जाली हस्ताक्षरों का परीक्षण, कैमिकल इरेजर, फिजिकल इरेजर, इन्डेडेडराइटिंग ओवर राइटिंग कागज, स्याही, पोस्टेज एवं रेवेन्यू स्टैम्प आदि का किया जाता है। किसी पोस्ट आफिस के पोस्टमैन एवं उसके दो सहयोगियों द्वारा किए गए धोखाधड़ी के एक मामले में कई मनी-आर्डर फार्म परीक्षण के लिए प्रयोगशाला में प्राप्त हुए। परीक्षण के उपरान्त यह पता

चला कि मनीआर्डर पाने वाले का वास्तविक नाम, पता एवं धनराशि मिटाकर अन्य किसी व्यक्ति का नाम, पता एवं धनराशि दुबारा लिखी गई थी। इस प्रकार बहुत दिनों से सक्रिय गिरोह का भण्डाफोड़ हो सका।

अपराधों की वैज्ञानिक जांच में फिंगर प्रिंट एवं फुट प्रिंट का भी अपना विशिष्ट महत्व है। आमतौर पर फिंगर प्रिंट ब्यूरो एक अलग संस्था के रूप में स्थापित होता है जिसमें मुख्यतया दो प्रकार के कार्य होते हैं। अपराधियों के फिंगर प्रिंट का वर्गीकरण कर उनका सुरक्षित रखरखाव तथा संदर्भित फिंगर प्रिंट्स का परीक्षण कर उनमें समता अथवा भिन्नता के बारे में राय देना। किसी-किसी विधि विज्ञान प्रयोगशाला में भी फिंगर प्रिंट्स के मिलान का कार्य किया जाता है। यह व्यवस्था दिन प्रतिदिन आवश्यक होती जा रही है क्योंकि घटनास्थलों पर अन्य प्रदर्शों के साथ फिंगर प्रिंट भी उठाये जा हैं और यदि घटनास्थल से प्राप्त सभी प्रदर्श, फिंगर प्रिंट आदि, का एक ही जगह परीक्षण हो तो अपराधों की वैज्ञानिक जांच की पद्धति में सुगमता होगी।

उत्तर प्रदेश में विधि विज्ञान प्रयोगशाला की स्थापना का प्रस्ताव सर्वप्रथम वर्ष 1945 में रखा गया था, जिसमें यह कहा गया था कि तत्कालीन अपराध अनुसंधान विभाग के वैज्ञानिक शाखा एवं रसायनिक परीक्षक प्रयोगशाला को मिलाकर विधि विज्ञान प्रयोगशाला की स्थापना की जाये। तभी से राज्य में विधि विज्ञान प्रयोगशाला की स्थापना का प्रयास किया जाता रहा। अन्ततोगत्वा वर्ष 1969 में शासन द्वारा लखनऊ में विधि विज्ञान प्रयोगशाला की स्थापना के आदेश निर्गत किये गये। राज्य पुलिस बल के सुदृढ़ीकरण एवं आधुनिकीकरण के लिये गठित द्वितीय पुलिस आयोग की विधि विज्ञान प्रयोगशाला के बारे में की गई संस्तुतियों के कार्यान्वयन के लिये उत्तर प्रदेश शासन द्वारा वर्ष 1975 में एक समिति का गठन किया गया जिसकी संस्तुतियों के अनुसार लखनऊ, आगरा एवं वाराणसी में तीन सर्वांगपूर्ण विधि विज्ञान प्रयोगशालाओं की स्थापना करने का निर्णय शासन द्वारा वर्ष 1979 में लिया गया। इस समय प्रयोगशाला की एक इकाई आगरा में तथा दूसरी इकाई लखनऊ में स्थापित है। इनका विकास एवं आधुनिकीकरण किया जा रहा है। निकट भविष्य में वाराणसी में प्रयोगशाला की तीसरी इकाई की स्थापना किये जाने की सम्भावना है। इस समय प्रयोगशाला में अनेकों मामलों से सम्बंधित प्रदर्शों का परीक्षण लम्बित पड़ा है। वाराणसी इकाई की स्थापना एवं विकास के पश्चात् प्रदेश में अपराधों की वैज्ञानिक जांच के लिये सुविधा सरलता से उपलब्ध हो सकेगी एवं प्रयोगशालाओं में शोध एवं विकास कार्य भी किया जा सकेगा।

घटनास्थलों से सुसंगत भौतिक साक्ष्य को एकत्र करना प्रयोगशालाओं में उनके परीक्षण से कम महत्वपूर्ण नहीं है। यदि घटनास्थल पर कोई प्रदर्श छूट जाता है तो उसे परीक्षण के लिये पुनः प्राप्त करना असम्भव है। इस बात को दृष्टिगत रखते हुये घटनास्थलों से प्रदर्शों को एकत्र करने में जांचकर्ता की सहायता के लिये विधि विज्ञान प्रयोगशाला की क्षेत्रीय इकाईयां स्थापित की गई है। इस समय ग्यारह क्षेत्रीय इकाईयां कार्य कर रही है।

आधुनिकीकरण योजना में प्रदेश के सभी जनपदों में प्रयोगशाला की क्षेत्रीय इकाईयों के लिये वाहनों का क्रय किया जा चुका है जिनका उपयोग घटना स्थल पर वैज्ञानिकों एवं उपकरणों को ले जाने के लिये किया जा सकेगा।

इन इकाईयों के लिये आवश्यक स्टाफ की स्वीकृति शासन से शीघ्र अपेक्षित है एवं आशा की जाती है कि निकट भविष्य में सभी जनपदों में प्रयोगशाला की क्षेत्रीय इकाइयां सुचारु रूप से कार्य करने लगेंगी।

गत वर्षों में प्रदेश की वर्तमान प्रयोगशालाओं में अपराधों की वैज्ञानिक जांच हेतु आवश्यक सुविधा उपलब्ध कराने की दिशा में उल्लेखनीय प्रगति हुई है। निकट विगत में कम्पैरीजन माइक्रोस्कोप, विडियो-स्पेक्ट्रल कम्परेटर, गैस लिक्विड क्रोमेटोग्राफ, प्रोजेक्टिना यूनिवर्सल प्रोजेक्टर आदि कई आधुनिक उपकरणों के आयात की व्यवस्था की जा रही है। प्रयोगशालाओं के विकास की वर्तमान योजनाओं के सकल कार्यान्वयन के उपरान्त निकट भविष्य में प्रदेश में अपराधों की वैज्ञानिक जांच की सुविधा दूर-दूर तक सरलतापूर्वक उपलब्ध हो सकेगी।

———

निर्णय लेखन

न्यायमूर्ति श्री कमलेश्वर नाथ

न्यायिक अधिकारी की योग्यता निर्णय लेखन में पराकाष्ठा को पहुंचती है अतः उचित ढंग से निर्णय देना अनिवार्य है।

2. न्यायालय के निर्णय दो प्रकार के होते हैं : (1) अन्तर्वर्ती आदेश (interlocutory orders) एंव (2) सम्पूर्ण निर्णय (judgements) यह दोनों प्रकार सिविल तथा दाण्डिक प्रकरणों में मिलते हैं।

सिविल निर्णय

3. जैसा सर्वविदित है सिविल वाद, सिविल प्रक्रिया संहिता के आदेश 7 के अंतर्गत वादी द्वारा दिए गए वाद पत्र से उपस्थित होता है। उसका उक्त प्रतिवादी द्वारा आदेश 8 के अन्तर्गत प्रतिवाद-पत्र से दिया जाता है। यदि आवश्यक हो तो न्यायालय वादी से प्रत्युत्तर पत्र (Rejoinder) प्राप्त कर सकता है। उन अभिवचनों (pleadings) के आधार पर, तथा आदेश 10 के अंतर्गत न्यायालय द्वारा ज्ञात किए गए अभिवचनों के आधार पर न्यायालय आदेश 14 के अन्तर्गत विवाद्यकों (issues) को स्थिर करता है। इन्हीं विवाद्यकों से परिसीमित पक्षकार अपनी लिखित अथवा मौखिक साक्ष्य आदेश 13 एवं 18 के अंतर्गत देते हैं। इस सामग्री पर पक्षकार के तर्क सुन कर न्यायालय निर्णय देता है।

4. यह स्पष्ट है कि उपरोक्त समस्त सामग्री को बिना समझे न तो निर्णय लिखा जा सकता है न उचित है, क्योंकि ऐसा करने से निर्णय में स्पष्टता (clarity) के बजाय भ्रमदोष (conjusion) हो जाएगा। आवश्यक यह है कि निर्णय संक्षिप्त (concise) एवं यथार्थता (precise) से सुशोभित हो। साथ ही साथ निर्णय की भाषा सुधिकर हो, तथ्यों का चित्रण इतना स्पष्ट एवं धारा प्रवाह हो जिससे पाठक को चित्र खिंचता सा दिखाई पड़े।

5. निर्णय के प्रथम प्रस्तर में वाद की प्रकृति का संक्षिप्त उल्लेख करना चाहिए जिससे आरम्भ से ही यह स्पष्ट हो जाएगा कि किस प्रकार के विवाद का निर्णय है। दूसरे प्रस्तर में वाद पत्र में उल्लिखित सुसंगत सामग्री (relevant material) का संक्षिप्त उल्लेख होना चाहिए, जैसे वादी का अधिकार-हक (Title) एवं आधिपत्य-कब्जा (possession), तथा प्रतिवादी द्वारा क्षति अथवा आघात कारित करने का तरीका। प्रत्येक स्वतंत्र सामग्री को नए प्रस्तर में लिखा जाय। वाद कथन का अंत मांगे गए अनुतोष से समाप्त करना चाहिए।

6. उपरोक्तानुसार वाद पत्र का उल्लेख करने के पश्चात् नए प्रस्तर में प्रतिवाद पत्र के सुसंगत सामग्री का उल्लेख उसी प्रकार करना चाहिए जैसा वाद पत्र का किया गया हो। विशेष रूप से वाद पत्र के अभिवचनों के स्वीकारात्मक अथवा नकारात्मक उत्तर का उल्लेख

अवश्य करना चाहिए। तदोपरान्त यदि प्रति उत्तर पत्र दाखिल हो तो उसका संक्षिप्त विवरण करना चाहिए।

7. कभी कभी ऐसा भी होता है कि अभिवचनों में उल्लिखित परस्पर विरोधी तथ्यों को उभय पक्षकार आदेश 10 के अपने कथनों में स्वीकार कर लेते हैं। ऐसे स्वीकृत तथ्यों को ही निर्णय में लिखना चाहिए, पूर्व में कहे गए परस्पर विरोधी तथ्यों को लिखना आवश्यक नहीं है। यदि ऐसे तथ्य उठाए गए मुख्य प्रश्नों से संबंधित हो तो उन्हें वाद पत्र के उल्लेख के पूर्व ही लिखना अच्छा रहता है। क्योंकि पक्षकार के अभिवचनों को और संक्षिप्त किया जा सकता है।

8. इस स्तर पर विवाद्यक का उल्लेख करना चाहिए। प्रत्येक विवाद्यक पर अलग-अलग निर्णय लेना उचित है, कभी-कभी कुछ विवाद्यक एक दूसरे से ऐसे संबंधित होते हैं कि एक ही साक्ष्य उन सब में सुसंगत होती है ऐसे विवाद्यक पर एक साथ निर्णय देना उचित है।

9. साक्ष्य का परिशीलन अथवा विश्लेषण करने के लिए यह आवश्यक नहीं है कि प्रत्येक साक्षी द्वारा कहा गया प्रत्येक तथ्य अथवा प्रत्येक दस्तावेज के सभी तथ्य निर्णय में लिखे जाय। केवल सुसंगत तथ्यों का उल्लेख पर्याप्त है। इस संदर्भ में आदेश 20 नियम 4 (2) तथा नियम (5) पर विशेष ध्यान रखना आवश्यक है।

10. हमारे लोकतंत्र शासन के सिद्धांतों में संविधान की मर्यादा यह है कि प्रत्येक न्यायिक कार्य अथवा विधि शासन में आदेशों एवं निर्णयों के समुचित कारणों का उल्लेख किया जाय। **श्री मती स्वर्ण लता घोष बनाम एच० के० बनर्जी तथा अन्य (1969) (1) सुप्रीम कोर्ट केसेज (709)** में उच्चतम् न्यायालय ने व्यवस्था दी थी कि न्यायिक प्रक्रिया का उद्देश्य यह है कि विवादों का न्यायिक निर्णय विधिवत् एवं निर्धारित प्रक्रिया के अनुसार न्यायालय को करना चाहिए उभय पक्षकार को तथ्यों एवं सम्बधित विधि पर अपने अभिवचन एवं तर्क रखने का अवसर, साक्ष्य के माध्यम से तथ्यों को सुनिश्चित करना तथा तथ्यों एवं विधि के अनुसार तर्कपूर्ण विवेक किया द्वारा निर्णय देना न्यायिक प्रक्रिया के लिए अनिवार्य है। उच्चतम् न्यायालय ने कहा कि न्यायाधीश को केवल निष्कर्ष पर पहुंचना पर्याप्त नहीं है बल्कि यह भी आवश्यक है कि जिस मनोवियोग अथवा बुद्धि प्रयोग से निष्कर्ष एवं निर्णय पर पहुंचे उसका भी उल्लेख करें। उच्चतम् न्यायालय का यह निर्णय बराबर मान्य चला आ रहा है।

11. किन्हीं मामलों में वाद का निस्तारण कुछ ही बिन्दुओं पर हो सकता है जिसके कारण अन्य बिन्दुओं पर निर्णय न देने की बात उठाई जाती है। वादकारियों के हित एवं व्यवहार को ध्यान में रखते हुए यह उचित होगा कि सभी बिन्दुओं पर निर्णय दिया जाय जिससे कि यदि अपीलीय न्यायालय का मूल बिन्दुओं पर निर्णय भिन्न हो तो मामले को प्रतिप्रेषित करना न पड़े। ऐसी ही व्यवस्था उच्चतम् न्यायालय ने **(सेतर्स कोमेन्टो रिजार्टस एण्ड होटेलस लिमिटेड बनाम मुस्ताक्रों राजा तो दाकुज विन्दो एण्ड अदर्स (1985 सुप्रीम कोर्ट**

736) में दिया है, अतः न्यायिक अधिकारियों के लिए यह उचित होगा कि वे सभी विवादकों एवं बिन्दुओं पर अपना निर्णय दें।

12. निर्णय की भाषा गम्भीर, संतुलित एवं गरिमा सम्पन्न होनी चाहिए, कोषयुक्त एवं तीक्ष्ण नहीं होनी चाहिए जैसा कि हमारे न्यायालय ने **नवाबजादा मोहम्मद इशाक खां बनाम दि डल्ही आयरन एण्ड स्टील कं० लि०** (1979 इलाहाबाद 366) में कहा है।

13. कभी-कभी साक्ष्य एवं परिस्थितियों को देखते हुए साक्षियों अथवा किसी व्यक्ति के विरुद्ध अवक्षेप (strictures) करने पड़ते हैं परन्तु उनके सम्बन्ध में भी न्यायालय को अत्यन्त सावधानी एवं कारणों के साथ निर्णय लेना है। इस सम्बन्ध में उच्चतम न्यायालय द्वारा **एस. के विश्वम्बरन बनाम ई. कोयाकुन्जू एण्ड अदर्स** (1987 सुप्रीम कोर्ट 1436) का अवलोकन लाभप्रद होगा।

14. विवाद से सम्बन्धित अधिनियम एवं व्यवस्थाओं का भली प्रकार विचारोपरांत उल्लेख करना चाहिए। इसके लिए न्यायिक अधिकारियों को अपना सार-संग्रह (digest) बनाना चाहिए। जिसमें पुरानी मुख्य एवं मौलिक व्यवस्थाओं तथा समय-समय पर आती हुई वर्तमान व्यवस्थाओं के संक्षिप्त नोट रखने चाहिए। केवल पक्षकारों के अधिवक्ताओं पर ही निर्भर न रहकर स्वाध्याय से अधिकारियों को स्वयं व्यवस्थाओं का पठन-पाठन करके निर्णयों में प्रयुक्त करना चाहिए।

15. समस्त विवादकों पर निष्कर्ष निकालने के उपरान्त अनुतोष के मामले पर गम्भीरता से विचार करने की आवश्यकता है। अनुतोष स्पष्ट भाषा में देना चाहिए। यह ध्यान रखना चाहिए कि दिया गया अनुतोष निष्पादन योग्य है। यदि किसी भूमि अथवा सम्पत्ति पर अभ्यर्पण की डिक्री प्रस्तावित हो तथा वाद की कार्यवाही में विवादित सम्पत्ति का नक्शा भी बनाया गया हो तो यह उचित होगा कि जिस सम्पत्ति का अनुतोष दिया जाय उसको नक्शे में स्पष्ट रूप से दर्शाकर नक्शे को डिक्री का भाग बना दिया जाय। यदि विवादित निर्माण को तोड़वा डालने की डिक्री हो तो निर्माण के स्पष्ट उल्लेख के अतिरिक्त निर्माण के गिराए जाने की अवधि निश्चित कर देनी चाहिए तथा यह भी उल्लेख करना चाहिए कि यदि उक्त अवधि में निर्माण को गिरा नहीं दिया गया तो उसे न्यायालय में निष्पादन की प्रक्रिया द्वारा गिरवा दिया जायेगा।

16. अन्तर्वर्ती आदेशों में पक्षकार के अभिकथनों एवं तर्कों को उतने विस्तार से लिखने की आवश्यकता नहीं है जैसा पूर्ण निर्णयों में आवश्यक है। सिविल प्रक्रिया संहिता में सम्बन्धित प्राविधानों का सूक्ष्म रूप से उल्लेख करना आवश्यक है।

दाण्डिक निर्णय

17. निर्णय लेखन की जो सामान्य प्रक्रिया सिविल निर्णयों में रहती है मूलतः वैसी ही प्रक्रिया दाण्डिक निर्णयों में भी होती है, मूल अन्तर यह है कि अभियोजन कथन को पूर्णतः

सिद्ध करने का भार अभियोजन पक्ष पर है, उसे खंडित करने का भार अभियुक्त पक्ष पर नहीं है।

18. अभियुक्तगण की न्यायालय में उपस्थिति के उपरान्त मजिस्ट्रेट द्वारा चार्ज लगाये जाने पर अभियुक्त का अभिवचन लेकर अंकित करना आवश्यक है। तत्पश्चात् अभियोजन पक्ष की साक्ष्य लेनी होगी। अभियोजन की साक्ष्य के बाद अभियुक्त का धारा 313 दण्ड प्रक्रिया संहिता के अन्तर्गत कथन लेना होगा। तत्पश्चात् अभियुक्त की साक्ष्य, यदि कोई हो, अंकित करनी होगी। उसके बाद उभय पक्षकारों के तर्कों को सुनकर धारा 354 दण्ड प्रक्रिया संहिता के अनुसार निर्णय लिखना होगा।

19. इस निर्णय के प्रथम प्रस्तर के अपराध की धाराओं का उल्लेख करना चाहिए। उसके बाद अभियोजन कथन के मुख्य तथ्यों का उल्लेख होना चाहिए। अभियुक्त का कथन अंकित करके यह उल्लेख करना चाहिए कि अपराध एवं साक्ष्य में उठाए गए कौन-कौन से बिन्दु है।

20. प्रत्येक बिन्दु पर सम्बन्धित साक्ष्य का उल्लेख एवं विश्लेषण करते हुए उन पर स्पष्ट निर्णय का उल्लेख किया जाता है। निर्णय पर पहुंचने के लिए, साक्ष्य की सुसंगत, साक्षियों की विश्वसनीयता तथा अपराध की परिस्थितियों का स्पष्ट उल्लेख करना आवश्यक है। उन बिन्दुओं एवं प्रश्नों पर दाण्डिक प्राविधान एवं अधिनियम की धाराओं का स्पष्ट उल्लेख करना अनिवार्य है।

21. सभी बिन्दुओं पर निष्कर्ष पर पहुंचने के पश्चात् निर्णय करना होगा कि अपराध सिद्ध है अथवा नहीं। यदि अपराध सिद्ध नहीं है तो अभियुक्त को दोषमुक्त घोषित करके उसकी जमानत और मुचलके उन्मोचित करने के आदेश करने चाहिए। यदि अपराध सिद्ध है तो दाण्डिक विधि की स्पष्ट धारा का उल्लेख करते हुए दोषी घोषित करना चाहिए तथा विधि अनुकूल दण्ड देना चाहिए। यदि अभियुक्त पहले से ही कारागार में है तो दण्ड भुगतने के लिए कारागार में रखे जाने का आदेश होना चाहिए; यदि अभियुक्त जमानत पर है तो उसकी जमानत और मुचलके निरस्त करने का आदेश देना आवश्यक है तथा साथ ही साथ उसको बन्दी बनाने का आदेश देकर गिरफ्तार करवाकर सम्बन्धित कारागार के अधीक्षक को भेज देना चाहिए। इस सम्बन्ध में न्यायालय द्वारा आवश्यक वारण्ट भी जारी करना आवश्यक है।

22. यदि अभियुक्त की आयु 16 वर्ष से कम हो तो (यू० पी० चिल्ड्रेन्स एक्ट), 1951 के प्राविधानों पर ध्यान देकर आवश्यक आदेश देना चाहिए। अभियुक्त को कारागार में सजा भुगतने का आदेश नहीं हो सकता परन्तु उसे अभिभावक की संरक्षकता में रखा जा सकता है जिस पर प्रोबेशन आफिसर का नियंत्रण हो।

23. यदि अभियुक्त को कारागार में दण्ड भुगतने का आदेश दिया गया होतो दण्ड प्रक्रिया, संहिता की धारा 363 के अन्तर्गत उसे तुरन्त निर्णय की प्रतिलिपि मुफ्त में दीजाएगी।

24. सिविल निर्णयों का संशोधन त्रुटियों को सुधारने के लिए धारा 152 सिविल प्रक्रिया संहिता के अनुसार हो सकता है और इसी प्रकार लेखन तथा हिसाब की त्रुटियों को सुधारने के लिए दाण्डिक निर्णयों में धारा 362 दण्ड प्रक्रिया संहिता के अनुसार संशोधन हो सकता है। सिविल निर्णयों का आदेश 47 के अन्तर्गत पुनर्वलोकन हो सकता है, परन्तु दाण्डिक निर्णयों का पुनर्वलोकन, दण्ड प्रक्रिया संहिता की धारा 362 के परिप्रेक्ष्य में, कदापि नहीं हो सकता।

———

MANAGEMENT OF JUDICIAL SYSTEM

(SRI J. K. MATHUR, DISTRICT JUDGE)

There is a general feeling in the public today that Indian Judicial System is dilatory, costly and harassing and no attempt is being made to rectify it. While piecemeal suggestions like increasing the number of judges have often been made but no serious efforts have been made to find out as to what actually ails the judicial system. Even the judicial procedure, especially in the trial courts, has never been studied to find its defects with a view to improving the system. The higher courts are out of reach of a common man and the subordinate courts constitute the only redressal mechanism available to him. If the working of these courts is made more efficient and effective it will solve the problem of the common man.

Only an objective examination of the system can disclose the actual inherent defects in the process. An analysis alone will reveal the factors which are dilatory or harassing or such as result in miscarriage of justice. Unfortunately this simple principle has somehow eluded the managers of the judicial system. Consequently, they are always looking for remedies without trying to find out the casual defects.

In recent years, tools of analysis have been devised and used in various fields, including public administration, to study the working of institutions and processes. New techniques have been evolved and designed to improve operational efficiency. The Indian legal system has, however, not taken advantage of either of these developments and it continues to function in the traditional manner, oblivious of its own defects and innocent of modern methods to improve its efficiency and streamline its working.

The object of this paper is to suggest a mechanism to scientifically identify the factors responsible for the defects in the administration of justice and an approach to rectification and improvement.

DIAGNOSTIC ANALSIS

The first step is to find out how the system is working by actual data collection and to locate the weakness in its working.

There should be a purpose-oriented collection of data from the courts. Too many statements are collected by every High Court every year but the material is not used for any constructive purpose. This material should be

collected and analysed for locating the causes of delay and harassment to litigants and other contact groups. A study should be made of the technical rules or their implementation, from the point of view of their negating the delivery of substantial justice and lowering its quality. Feedback should also be obtained from the judicial officers and the contact groups—the litigants, witnesses, prosecutors and lawyers—to find out the consumer reaction to the system. This should be specific. This data should be analysed to locate the causes of the defects in the system with a view to rectify them.

The purpose of the judicial process is to get at the truth and the quality is justice is inversely proportional to its distance from truth. Official figures for 1977 show that throughout the country for every one hundred cases under Indian Penal Code reported to police, charge-sheet was submitted in 52 cases and only 28 cases ended in conviction by the trial courts. Though actual figures are not available yet in not more than 20 cases the conviction would have been maintained by appellate courts.

This raises the questions : are so many cases falsely reported ? Or does something happen in the mill of legal process which results in miscarriage of justice ? An attempt should be made to find answers to these questions. Judiciary is the only system which does not test the quality of its product. If the factors responsible for miscarriage of justice can be identified, it will help in taking steps to rectify them. The method used for preparing case studies in Public Administration or Management can be used for this purpose by research scholars.

The criminal process—offence to punishment/acquittal chain of events, can be collected after serious and systematic field work. The details of actual incidents, the report sought to be lodged, the report actually written with details of time, etc., the investigation as it actually proceeded, and the charge-sheet, have to be collected. Subsequent events can be gathered from the file of the trial. When the facts and the assertions are laid side by side, the distortions will stand out and so also the causes leading to distortions. This analysis leading to improvements in the effectiveness of the system is very important as otherwise even after the delays, expenses and harassment if a man does not get real justice, the very justification for this huge apparatus vanishes.

As a result of the analysis, the defects found may be attributable to :

(*a*) Faults in the system

(*b*) Defects in operation

(*c*) Inefficient office procedures

(*d*) Extra system influences

Faults in the System

The defects in the legal provisions may either be in the legislated laws or in the delegated legislated rules. The findings of analysis relating to these defects, based on empirical data, should be communicated to the relevant authorities with suggestions for their improvement, replacement or deletion.

In civil cases-the most time-consuming litigation-the details of procedure are spelt out by the rules contained in the first Schedule of the Code of Civil Procedure. They can be altered by the High Courts and do not have to undergo lengthy legislative processes. Easy changeability is one of the main justifications of delegated legislation, and this can be used to alter or abrogate the dilatory or defective rules.

While examining the effectiveness of the procedures, some modern management techniques can be used. These techniques, though initially developed for use in commercial organisations, are now no longer restricted to these establishments. Peter Drucker need not be confined to sales counters or shop floors alone. His presence is now felt in public offices also. There is no reason to bar his entry into the courts. Management techniques have been applied by the Administrative Reforms Department of the Central Government to streamline procedure in many government offices and these management techniques could as well be used in the courts to improve the system.

In studying the procedure of the courts, aid can be had of the modern management techniques. The course of a litigation in courts comprises a number of activities. In sequencing activities involved in a project to optimise efficiency and to minimise time and cost, a modern manager will use network analysis. This technique can be used to itemise the sequence of events and to improve the court procedures to minimise time and costs in the disposal of cases as illustrated below :

With a suit an application for interim relief is also frequently moved, claiming injunction, stay, attachment, etc. The courts usually proceed to decide them before taking active steps to decide the regular suit. Without going into the technical

details of preparation of a network, if it is done it will disclose that the activities leading to the disposal of these proceedings do not in any way contribute to the disposal of the suit and they can be run simultaneously with the proceedings in the suit. These proceedings should be separated from the main suit, and run parallel to the proceedings in the suit, would be a management man's advice.

If man is run over by a motor vehicle and injured, an information is given to the police. FIR is recorded and investigation starts. After collecting evidence, the police files a charge-sheet. The driver is summoned to stand his trial for rash and negligent driving. In the court the evidence is received and the court decides whether the driver was rash and negligent. If the Magistrate finds him guilty of rashness and negligence he is convicted and sentenced. The injured man, during or after this prosecution moves the Claims Tribunal for compensation from the driver, owner and insurer, for the injuries caused to him. The driver is again summoned with the other two and asked against to answer the allegations of rash and negligent driving. Usually, the same witnesses are again called and evidence recorded. The Tribunal now determines if the driver was rash or negligent in driving to find whether the injured man should get any damages.

In a majority of cases. The driver is found not guilty of rashness or negligence by the Magistrate, or in appeal by the Sessions Judge, and acquitted. Only a small percentage of the persons prosecuted are ultimately convicted. On the other hand, an equally small percerntage of drivers are found not to be rash and negligent and not required to pay compensation while a majority of them are found liable in cases before the Tribunal. This patent dichotomy of judicial findings in respect of the same issues brings out the failure of the system to find the truth and its ineffectivenss as a justice delivery system.

A network analysis will disclose duplicate proceedings in the above case aimed at the same result running simultaneously resulting in loss of time and money and causing harassment to parties and witnesses. These proceedings can be combined into a single set of proceedings with the owner and insurer present to safeguard their interests. As a consequence of the same proceedings it can be found if the extent of negligence warrants incarceration and payment of compensation or if merely payment of compensation would sufficiently stabilise the scales of justice, or if he was not negligent at all. Amalgamation of proceedings will reduce the time taken in both the proceedings substantially. It will also reduce the number

of cases unburdening the courts of the arrears, to some extent. The justice seeking citizen will be relieved of the second proceeding involving huge expenditure in fees of the state and the lawyers, other expenses and inherent harassment. The witnesses, even the driver, will not be dragged to the courts again and the accused will also be bearing expenses of a single defence. Another latent advantage would be the enhanced credibility of the system inculcating more faith in it, as there will not be contradictory findings.

The jurists are, however, likely to react to this suggested change by saying that standard of proof required in the criminal case is much higher than the one required in the civil proceedings. But this duplicity is not conducive to administration of justice. The patent object of any judicial process is to find the truth and truth has no variable standards. Even acting on the present principles, the common proceeding can still satisfy these differing standards of proof. Evidence has to be recorded in both civil and criminal cases in the same manner. After consideration of evidence, the court can sentence the driver if the proof stands the test set by criminal jurisprudence. If it falls short of it but proves his civil liability, damages alone may be awarded. He may be absolved if no case by either standard is made out.

This amalgamation would also be a move towards indigenisation of the judicial system. In the Indian system of Administration of Justice there never were any distinct civil and criminal jurisdictions. The same court tried all the cases and awarded requisite redressal by way of punishment or a civil remedy or even both in appropriate cases. A thief was also required to restore the property and a debtor was also fined if the denial of debt was false. Chapter 8 of Manusmriti does not in any way separate civil and criminal processes. Verses 4 to 7 mention eighteen kinds of cases, which include both the civil and criminal actions. Similarly, Book 20 of Hedaya empowers a Quazi to try and decide cases of all kinds without any rigid discriminatory procedure Similar analysis of the entire process will disclose some patent defects prevailing in the system. Steps can be taken to rectify them.

As pointed out above when the process in a suit or trial is split up into various component activities, they may be examined for their utility and effectiveness. Something like cost benefit analysis will expose the utility or redundance of these requirements. For example, a man has to file a copy of a decree or a formal order to institute an appeal or a revision. On one hand, it requires efforts and time in terms of a formal order to be drawn up, a copy to be applied for, prepared and given ; on the other hand,

money is required to be spent to get a copy and affix court fees thereon. As against these efforts and expenditure, the real benefit is almost nil as this formal order is never referred to or needed either for admission or for hearing. The copy of the judgment or orders contains the material needed for appeal or revision, excepting the reliefs in detail. These type of studies will disclose the redundant, time consuming, duplicatory and harassing provisions. They can then be rectified suitably to make the system more efficient and effective.

Defects in Operation

The second set of defects likely to be found is the inefficient handling of cases. The operator is as important in the working of a system as the mechanism and the best of mechanisms may produce defective results if the operator is inefficient. The factors having a bearing on the efficiency of human operators consist of requisite knowledge, skills and attitudes. The defects resulting from inept handling of the system have to be analysed to find the gaps in knowledge, skill or attitudes in the judicial officers. To fill these gaps, the most important requirement is to provide training to them in all these respects.

After a Judge enters the court room at the start of his career, he gets hardly any chance to update his knowledge. With the legislatures churning out laws at enormous speed, and the ever changing case law, it is almost impossible for a judicial officer to keep abreast of these. There is need for induction as well as periodical in service training. Training should not be confined merely to legal subjects. Knowledge of various non-legal subjects is also essential for effective conflict resolution.

Justicing requires a number of skills. Handling cases, litigants and witnesses, admitting or calling for evidence, sifting evidence, hearing arguments effectively and decision—making, are the skills necessary for a Judge. However, no law school imparts them. Training is essential in order to equip the Judge with these skills, the lack of which delays and may distort the administration of justice. These skills can be imparted by case studies, exercises, simulation and a number of other modern pedagogical tools. In addition, effective listening and time management techniques which are now well developed can be taught to them to improve the quality and quantity of their decisions.

Attitudes are the most important determinants of human efficiency. A Judge deals with human beings, and with their problems. To humanise the system and to make it really effective, it is necessary that he is respon-

sive to their feelings and problems. He should solve problems rather than dispose of cases.

For this equipment he has to have attitudinal training. Attitudinal training does not consist of drilling in any particular value system. It ts not indoctrination or brain washing. It is merely a process to make a person realise the nature of his own behaviour and the reaction of men to various behavioural stimuli. It sensitises him to the feelings and problems of men so that he can condition his behaviour and actions to understand others' problems and minimise irritation. A great deal of knowledge and numerous methods are available to bring about his change. Transactional analysis simulation, role plays, role reversals and other techniques of sensitivity training can be used to this end. A Judge sensitised to the socio-economic ethos of the litigants and witnesses will be able to understand and resolve their problems much better and more effectively. This will make all the difference in the implementation of socio-economic laws.

Working out details of the training content and method is a big exercise. These are only some of the obvious areas needing correction by training so as to make the system of justicing more effective.

Inefficient Office Procedures

The working of the offices of the courts in terms of accepting applications, issuing copies, accepting deposits of moneys and performing a lot of other functions connected with the court procedure, may also be discovered to be contributing to harassment and delays. To study this, the office procedures will have to be analysed and the delinquent rules or practices isolated for being rectified. The 'work study' method can be of immense use for making this sub-system efficient. In addition, judicial officers should also be trained in the art of office management.

Extra-System Influences

The extra system delay factors caused by lawyers, police, etc. have also to be identified and appropriate steps taken to control their delay-potential and irritative effect in the judicial process.

To sum up, the diagnostic sub-system would thus consist of data retrieval and analysis and, following from these, rectification measures could be taken. This has to be a continuous process for vitalising the judicial system and keeping it healthy.

MODERNISATION

Additionally, new ideas have to be tried and, if found effective, used

to provide fresh air to the system, in order to prevent its asphyxiation. It should become a dynamic system capable of adapting itself to the changing needs of the times. To this end, some modern techniques are suggested for being injected into the system.

In subordinate courts, officers are required to decide a minimum number of cases on a working day. These targets are fixed by the High Courts. But there is no clearly spelt out organisational strategy for taking up cases. The priorities may go on changing. In grass-root operations, this results in newer and simpler cases being decided and the more complicated ones being postponed, to fulfil the disposal targets. Both earn equal disposal. The trial Judge is a non-party and his problems are non-determinants in calibrating the decisions to quantify his work. He has no sense of commitment to the system as a consequence. When he finds it difficult to reach the prescribed level, he feels frustrated, especially when he is trying to decide older and more complicated cases. He reacts against the system. In most of the states the disposal figures travel to the annual assessment, short-circuiting head and heart.

'Management by Objectives' is a modern technique which can be effectively used, with necessary adaptation to tackle this problem. Clarifying the organisational objectives and fixing the targets after down-the-line consultation, taking into account the problems at various levels, will evoke more commitment to the target performance. The trial Judge, having participated in its being so fixed, will feel more responsible to achieve it.

In other aspects also the personnel administration in judicial service is far too archaic and needs to be improved. The placements, performance appraisals, absence of inhouse grievance redressal mechanism, and many more aspects need to be looked into. Can a set of people who believe, rightly or unjustifiably, that they themselves are not being treated justly administer justice well ?

INSTITUTIONAL SYSTEM

The strategy outline in the above paragraphs can be made operative by having an Institute of Judicial Administration, together with data collection and analysis cells in the High Courts. The Institute should engage itself in pathological data analysis to isolate the diseased parts of the judicial mechanism and weak operational techniques. It should, on this basis, suggest remedies to cure the defects. Knowledge about the defects in operation and their remedies should be transferred to the trainee judicial officers, to be carried to the system by them. For diagnosing and prescribing remedial action, seminars may be held in specific areas.

Judicial Officers with appropriate aptitudes should be engaged in research. There should be a research cell where the management techiques and innovative approaches should be examined to determine if they would help improve the administration of justice.

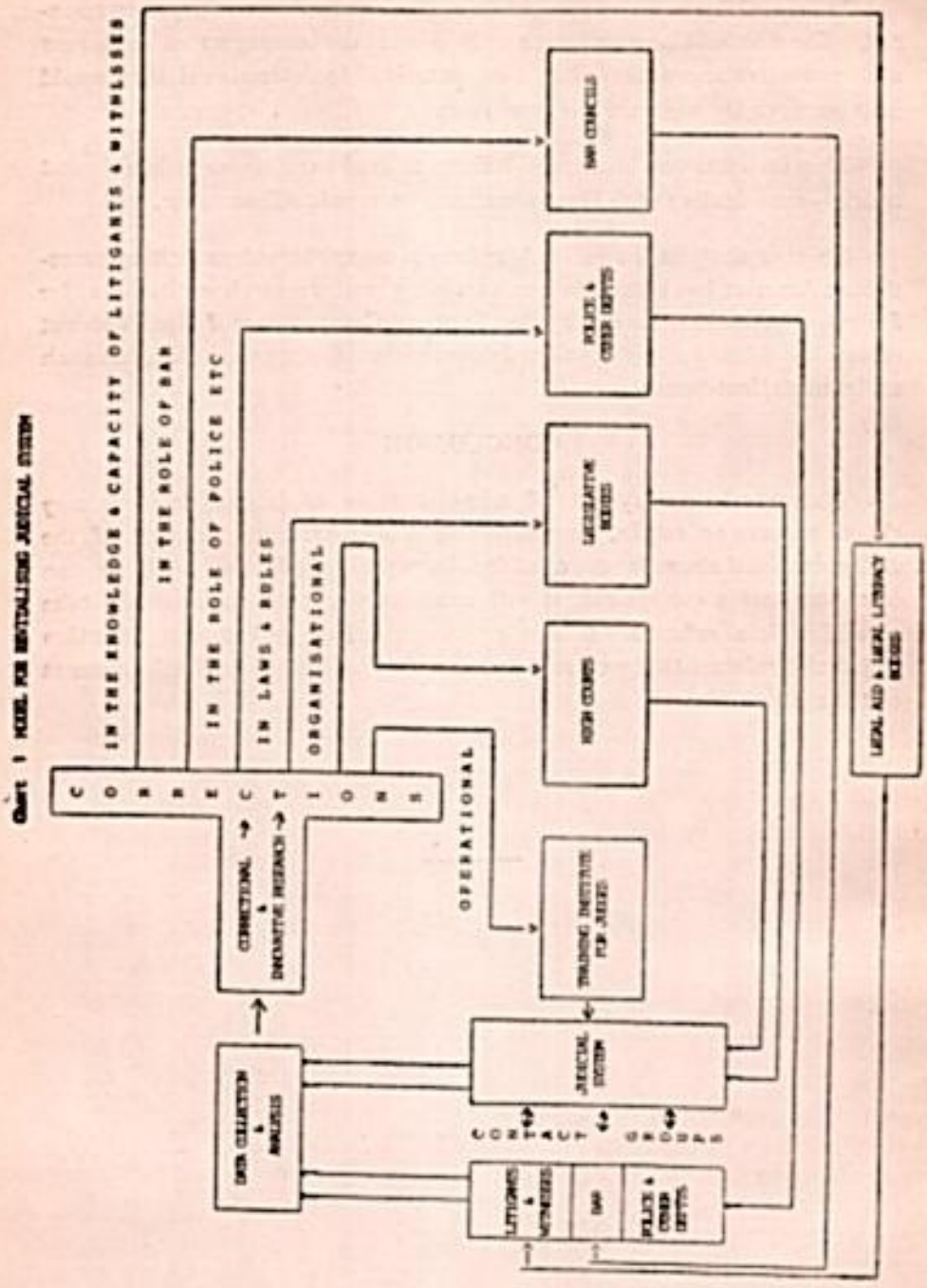
This Institute can also train officers to man specialised tribunals and courts—ones dealing with family matters, economic offences, etc.

No arguments in the judicial system is complete without citing precedents : America has three State-run training and research institutions for Judges. Japan has one run by the Supreme Court, where Judges conduct research. Almost every developed country, socialist or capitalist, has such an Institute/Institutes.

CONCLUSION

Whatever be the system of administration of justice that we may choose to have or retain, a monitoring and correctional device of the design outlined above is essential for its working effectively. If we can introduce such a sub-system, it will substantially and continuously take care of judicial reforms. It is only through serious and urgent attention to judicial reforms that we could restore the credibility and effectiveness of the system.

———



- Courtesy , Indian Institute of Public Administration.

DELEGATED LEGISLATION

By

SRI A. K. SRIVASTAVA

(JOINT LEGAL REMEBRANCER, U. P. GOVERNMENT)

What is delegated legislation.—Though the power to legislate vests in the supreme or sovereign authority but it may, on matters specified by it in an enactment, delegate this power to any other authority, such as, the executive, the judiciary, the local body etc. When, in such delegation of power, the said authorities are empowered to make rules, regulations, bye-laws, schemes etc. and to issue notification and orders such making of rules, regulations etc. is called delegated legislation. It is also known as sub-ordinate legislation because it is subordinate to the supreme legislation and for its continued existence it is dependent on the supreme authority.

The need of delegated legislations.—Various reasons have contributed to the growth of delegated legislation. Consequent to the emergence of welfare State almost every field of activity is being regulated by legislation. Since the legislature has little time to discuss and enact bills in details it resorts to the practice of laying down the legislative policy and leave to the subordinate authority to provide the administrative details. Where the subject matter of legislation is of technical nature it is considered proper to leave it to the discretion of the administrative authorities. Further it is difficult for the legislature to contemplate and provide for all contingencies. Moreover, there is a definite advantage of delegated legislation as it permits a certain amount of flexibility and elasticity because amendments in rules and regulations etc. are much easier than the amendments in the provisions of an Act.

Constitutional validity of delegated legislation.—In India a controvercy arose over the Constitutional validity of delegated legislation. A pertinent question was raised whether the legislature could delegate its legislative power, if so, to what extent? This controvercy has been set rest by the decisions in the Delhi laws Act case and in several other subsequent cases. It is now will settled that though our Constitution does not prohibit delega-tion of legislative power, but the legislature cannot delegate its essential functions of determination of the legislative policy and its formulation as a rule of conduct. In other words, the legislature cannot delegate to another

agency the exercise of its judgment on the question as to what the law should be. If the legislature delegates its essential functions it will be an excessive delegation.

What may not be delegated.—The following are some of the powers which cannot be delegated :—

(1) the power to repeal a law or to make it inoperative.

(2) the power to modify an Act so as to involve a change of policy.

(3) the power to grant exemption from the operation of the probisions of the Act without providing any guidelines for the same.

(4) prescribing an offence an its punishment.

(5) prescribing a special procedure for the trial of a statutory offence.

(6) to impose and assess a tax.

What may be delegated.—Delegated legislation is permissible to the extent it is ancillary to the Statute and is an aid to the exercise of the law making power of the legislature. The following are some of the powers which can be delegated :

(1) making of rules to carry out the purpose of the Act.

(2) making of rules to lay down conditions of licences, the authorities to grant licences and the fee to be charged.

(3) making of rules or regulations to lay down the conditions of service of the officers and servants of the authorities created under the Act.

(4) issuing orders of notifications framing minimum rates of wages of the workmen.

(5) making of rules to lay down the qualifications and remuneration to be paid to the members of various committees constituted under the Act.

(6) making of rules to prescribe some procedure for service of notices filing of appeal against the orders passed under the Act.

(7) making of rules to prescribe standard forms of applications which may be required to be moved under the provisions of the Act.

(8) fixing rate of tax after formulation of policy of taxation is made in the Act itself.

Grounds on which validity of the delegated legislation may be challenged.—The following or some of the grounds on which validity of the delegated legislation may be challenged :—

(1) the Act under the authority of which the delegated legislation has been made is itself void on the grounds that it is contrary to or inconsistent with the provisions of the Constitution or it is beyond the legislative competence or in the case of State Legislation it is repugnant with the central legislation on the subject and President's assent has not been obtained.

(2) it is an excessive delegation i. e. an essential function of the legislature has been delegated.

(3) the Act under which it has been made has not delegated this power.

(4) its provisions are contrary to or inconsistent with the provisions of the Act under which it has been made.

(5) it violates the fundamental rights guaranteed under the Constitution. Definition of the term "Law" given an Article 13 includes rules, bye-laws orders notification etc.

(6) it affects the powers given under the Constitution to the High Courts, Supreme Court, Election Commission, Public Service Commission or Comptroller and Auditor General.

(7) it operated retrospectively without power to make it with retrospective effect.

(8) it is a piece of sub-delegation without specific powers of sub-delegation under the Act.

About delegated legislation.—Delegated legislation has statutory force. But the legislature is not denuded of its power after it had delegated a function. It retains its power to withdraw the delegated power or to exercise the power itself so as to override either prospectively or retrospec-

tively the act done by the delegate in execrise of the delegated power. Likewise if a delegated legislation is ultra vires (as distinguished from unconstitutional) the powers conferred by the Statute, it is competent for the legislature to validate such delegated legislation even with retrospective effect.

Delegated legislation may be unconditional, conditional or contingent. It is prospective unless the Statute permits it to be made retrospectively. Unless a future date of commencement is given it comes into force from the date of its publication in the Official Gazette. So far as rules are concerned Section 23-A of the U. P. General Clauses Act makes a specific provision that they shall take effect from the date of publication in the Gazette. In accordance with the provisions of Article 348 (3) of the Constitution if any order, rule, regulation or bye-laws issued under the Constitution or under any enactment is in any language other than the English language an authoritative text thereof in the English language shall be published in the official Gazette. Sometimes, a condition of previous publication is laid down. In that case previous publication of the proposed rules, regulations or bye-laws becomes necessary. Rules for previous publication in case of rules and bye-laws are laid down in Section 23 of the U. P. General Clauses Act. Sub-delegation is not permitted unless there is specific provision in the Act permitting sub-delegation. But the sub delegate cannot exercise the function unless the delegate has sub-delegated the function specifically and in terms of the statute which authorises the sub-delegation. A word defined in the Act shall have the same meaning in any rule, regulation, order, bye-laws or notification made under that Act. A different meaning of that word is not permissible.

Procedure for delegated legislation.—The question, 'how the delegated power should be exercised' is of great importance, because it is through the prescription of procedure that the enacting bodies can control the abuse of delegated legislation. No uniform procedure is prescribed. Each Statute provides its own procedure. For example conditions of—after previous publication, after previous approval of the Government, after consultation with expent hodies, after previous consultation with Public Service Commission, Speaker of the Lower House or Chairman of the Upper House, Supreme Court or High Court etc., or after approval or confirmation of the Government, may be laid down.

Criticism of delegated legislation.—Abuse of delegated powers has provoked considerable criticism of the delegated legislation. The criticism is not against the delegation of legislative power but is against the manner in which the power is exercised by the subordinate authority. It is said

that the enacting bodies legislate in a skeleton form laying down the legislative policy and the Government departments are given a wide discretion in framing of rules, regulations etc. Delegation is also made to give directions for the removal of doubts or difficulty, to grant exemptions from the operation of certain specified sections or from the whole of the Act or to add or omit a matter from the schedule to the Act. Sometimes, subordinate legislation is permitted to amend the provisions of the Act. All this may effect the society adversely.

Checks and Controls on delegated Legislation—In order to have effective check and control on delegated legislation the legislature takes steps by providing for laying of rules or regulations on the table of both the houses and by appointing Delegated Legislation Committees. The requirement of laying of rules or regulations may be in the following different forms :—

(1) laying with no further directions ;

(2) laying with provision that if within a specified period of time a resolution is passed by the legislature for annulling or modifying, the rules or regulations shall be annulled or modified, as the case may be ;

(3) laying with provision that the rules or regulations shall not operate until approved by a resolution of the legislature ;

(4) laying in draft for a certain number of days.

In Uttar Pradesh a provision for laying of rules before each House of the State Legislature for a total period of not less than thirty days while it is in session has been made in Section 23 A of the U. P. General Clauses Act, 1904 with effect from 21-10-1975. According to it rules have to be so laid and they shall take effect subject to such modifications or annulments as the two Houses of the Legislature may, during the said period, agree to make.

Delegated Legislation Committees are appointed to scru inize and report to the Legislature whether the powers to make regulations, rules, bye-laws etc. delegated by the legislature are being properly exercised within such delegation.

In Uttar Pradesh such Committee has been appointed under Rule 244 of the Rules of Procedure and Conduct of Business of Uttar Pradesh Legislative Assembly.

———

AN INDEPENDENT JUDICIARY—PRESSURES & PROBLEMS IN THE LAWASIA REGION*

Two great concepts : supermacy of law and the establishment of a judiciary to administer it originated in the United Kingdom-it was nurtured and cherished in the Americas (Canada and the United States)—it took root in the former penal settlement of Australia, and later in New Zealand. It came to British India first in the form of the East India Company's Courts and later as the Courts of the British Crown. It was also introduced in what was the Colony, and later the Dominion, of Ceylon, and in the Peninsula of Malaya (which then included Singapur). After the Second World War, these concepts were incorporated into Constitutions of the newly emerging independent countries in the continent of Asia.

Those who decry everything 'British' have searched in the *Shastras* and have hearkened back to the times of the Emperor Ashoka to look for the roots of judicial independence in our ancient heritage. They look in vain. It could not be otherwise. Indian history, ancient and medieval, with a few exceptions is a history of a succession of monarchs and conquerors, not of institutions. There could not possibly be a tradition of judicial independence in a country different parts of which were ruled by different potentates exercising absolute powers over their subjects. The judiciary in Indian States for instance (the States of the Princes—the Nizam, the Maharajas, and Rajahs) were in a sense independent. In these Indian States there were judges of integrity who decided cases as between citizens impartially—but they could afford no redress against the excesses of the king.

2. A couple of years ago at a seminar held in Bombay under the joint auspices of the International Bar Association and LAWASIA—a seminar whose theme was the Administration of Justice in 2000 AD—the President of India graphically described the conditions under which judges functioned in the erstwhile Indian States. The ardent, young Zail Singh who was a keen nationalist was put in jail on innumerable occasions by the Ruler of one of the princely Patiala States. On one occasion, in his

---

*This paper is based on an address by Mr. F. S. Nariman, President of LAWASIA to the Advocates Association Bangalore (Endowment Lecture, 1985).

youthful exuberance, he protested to the judge against his fresh detention on the evidence of a tutored witness who had deposed to his allegedly illegal activities on each of the previous occasions when he had been imprisoned ; he demanded that he should be permitted to cross-examine this procured witness and for that purpose to bring a lawyer from British India. The judge (who was a kindly man) adjourned the Court and asked the young Zail Singh to see him in his Chamber. In chambers, the Judge asked him why he was so impetuous and when informed that it had become intolerable to be detained, times out of number, on the false testimony of the same person, the Judge said :

> "How naive you are Zail Singh ! What's all this talk about cross-examination of the witness produced by the Police ? They have only acted because the Maharaja has asked them to. Don't you know ?—if he asks me to acquit you, I will acquit you. If he asks me to convict you I will convict you. So, let's have less talk about lawyers from British India—and get on with the case".

The tradition of judicial independence in British India (and now in Independent India) is historically an English tradition. It started in England of course with Magna Carta (1215 AD) which the bad King John was made to sign at Runnymede. Everyone knows this. But it did not end there. The independence of the judges in England was not secured till many centuries later. Throughout the Stuart period of English history (the reigns of James I, Charles I and II, James II) judges were dismissed when they defied the King—too often they were servile creatures of the monarch. The reason was that they occupied their office *durante beneplacinto*—during the King's pleasure. After the Revolution of 1689, King William III's judges were commissioned *quamdiu se bene gesserint*—during good behaviour. But the King refused to give his assent to a bill making this a matter of law. It was only by the Act of Settlement passed in year 1700 that judges could no longer be removed except upon an address of both Houses of Parliament. It was in the 18th century then (not in the 13th century, the century of Magna Carta) that the independence of the judges became a part of the constitutional law of England. And it took a long line of brave judges to achieve this.

The first great name in English law is Henry Bracton, Bracton was only a boy when Magna Carta was sealed in 1215 AD, and he was a judge for twenty years in the reign of Henry III. But he is chiefly remembered for his treatise on the Laws of England. In it he wrote :

> "The King is below no man but he is below God and the law ; the law makes him king ; the king is bound to obey the law, though if he breaks it his punishment must be left to God".

Bracton died in the year 1268.

But the inexorable logic of these words was made famous only many centuries later—by England first Chief Justice, Edward Coke. He saved his head by remembering and recalling Bracton. James I (like all the Stauarts) regarded judges as the King's servants. "They were lions" as Bacon put it, "but lions under the throne". The stories of Coke's brushes with his King are well known but they warrant being retold. I repeat two of them because the first story emphasises the sense in which the word 'independent' is used when we speak of the independeace of judges, and stresses the importance of the rule of law ; the second story illustrates what one fearless judge amongst many 'lions under the throne" can do in a crisis.

In 1605, the Archbishop of Canterbury complained to the King of the interference of the common law courts with ecclesiastical tribunals—common law courts frequently issued writs in the King's name forbiding the Courts of the Church from entertaining cases within the jurisdiction of the lay courts. The King took the side of the Church : he sent for the judges, told them they were his delegates, and that it was for him to decide to which court the cases should go. Then (this is Coke's account) "the King said : that he thought that the Law was founded upon reason and that he and others had reason as well as the judges." Coke's celebrated answer (a masterpiece of courage and circumlocution) was this :

> "True it is God hath endowed Your Majesty with excellent science, and great endowments of nature ; but Your Majesty is not learned in the laws of your realm in England, and causes which concern the life, or inheritance, or goods, or fortunes of your subjects are not decided by natural reason but by artificial reason and judgment of law which law is an act which requires long study and experience before a man can attain to the cognizance of it : that the law is the golden met-wand and measure to try the causes of subjects and protect Your Majesty in safety and peace".

With these words the King was greatly offended—

"Then I am to be under the Law" (he said) : it is treason to affirm it".

Coke had to be careful. His head was at stake. He replied, taking refuge in precedent. He remembered and quoted Bracton. He said :

"Bracton hath said : The King is under to Man, but under God and the Law—for it is the Law that makes him King"

To affirm this was treason. But no quote the dead Bracton was not !

The second story comes fifteen years later, in the year 1616.

The Bishop of Lincoln has received two benefices (or offices) from the King—to be held in commendam, i. e. together with the office of bishop ; and an action was brought by two men who contested the legality of the royal grant. Chief Justice Coke and his colleagues received orders not to proceed with the hearing of the action in which the King's prerogative was questioned. They answered that they were bound by their oath not to regard such commands. The King was furious. He sent for them. It is recorded that they all went, and all—all but Coke—humbled themselves and asked forgiveness. Not Coke. He said that if such a command came he would do what an honest and just judge ought to do. The Chief Justice who held office only during the King's pleasure—was then summarily dismissed. He later went into Parliament and till his death continued the struggle of the common law against the King.

It is now more than thirty years since each of the former colonies of one or other of the great powers in this region became independent. But the pattern of Government has changed—most of them started with a parliamentary system which still prevails in India. The independence of the judiciary has been secured by a constitutionally guarnteed tenure for members of the higher judiciary. In many parts of South and South East Asia, there has been a shift from a parliamentary system to a Presidential form of Government which is, of course, in theory, democratic since the Presidential Office is an elected one ; too often, however, the Presidential form of Government (in one part of the world—the developing world) lapses into a civilian dictatorship. The temptation of absolutism is great and the task of an Independent Judiciary is a trying one. There is always the charisma of the National Leader trying his best to relieve the poverty-stricken masses, only to be thwarted (so it is said) by a Bench of non-elected judge who cannot gauge the real aspirations of the people. Often Presidential forms of Government in this region have yielded to Martial Law regimes—where there is law and order (or an outward semblance of it) but no rule of law : Judges are required to take an oath not to a Constitution but to a Martial Law Order : to a *firman*.

How does a judiciary relate to an autocratic non-elected regime, if you are going through a period of revolution which has succeeded and a Writ is filed, What do you do ?—Resign ? Fly in the face of the Martial Law Administrator ? Or do you continue on and modify your decisions to face constitutional facts as they emerge ? Is it important for the Judiciary to continue to function at any cost ?—Even at the cost of its independence ?

Lawyers around the world have tried to set down principles conducive to an Independent Judiciary—the International Commission of Jurists, the International Bar Association, the Law Association for Asia and the Pacific (LAWASIA) have each attempted their own formulations*; they all proceed on the basis that there is a yardstick of minimum standards which can be applied to all functioning Judicial bodies, to all Courts in every country. Their efforts were deliberated upon at the World Conference on the Independence of Justice held in Montreal in June 1983. It was attended by representatives of many organisations around the world, as also by the President and Justices of the International Court of Justice. They reached unanimous conclusions (See Annexure). It is hoped their conclusions will form the basis of a declaration by the United Nations on the Independence of Justice. But at the pace at which the international forums function, we are unlikely to see the formulation of any such universally accepted Declaration before the next century.

Meanwhile, even the *sine qua non* of an Independent Judiciary, a guaranteed tonure of office, is denied in Martial Law Regimes. The reason is the reluctance to govern by an objective set of laws, the tendency to frame rules to suit the whims of those in charge of the governmental machine. I remember the charming story related at a seminar of the Indian Branch of the International Law Association a few years ago—by a sitting Judge of the Supreme Court of a neighbouring country. He was a fearless Judge and internationally recognised as such : it was he who was nominated to accept the Nobel Peace Prize on behalf of Amnesty International when it was awarded to that Organization. He was very friendly with the man who later became the President of his country and its Chief Martial Law Administrator—that President is no more and so one can relate the incident without causing offence. The President turned to his friend the Judge and asked him to draft a Constitution for the country, the administration of which he had just taken over. The Judge said :

> "When I was a young boy at Calcutta there was a famous playwright and two famous actors—each having a different theatrical style. Whenever the playwright was commissioned to write a scenario, he would ask for which one of the two actors it

*See Annexure

was intended, so that the play would suit the talent and ability of that actor. Do you want me to write a Constitution like the playwright wrote his plays ?"

The President saw the point. He asked someone else to do the drafting. It was only the smouldering memories of a past friendship that saved the Judge's life !

Tailor-made Constitutions imposed by force of arms are an impediment in the search for norms for an independent judiciary.

Bangladesh is an instance in point. When it came into being, it was provided by the Provisional Constitutional Order of 11th January 1972, that there would be a High Court of Bangladesh consisting of a Chief Justice and other Judges appointed from time to time. The Constitution of Bangladesh which came into force on 16th December 1972 provided for a unitary form of Government. Fundmental righs were guaranteed and made enforceable through the superior Courts. There was no provision made for a declaration of Emergency, and hence, no fundamental rights could be suspended. The power of suspension was only acquired later by the Constitution Fourth Amendment Act, 1975—and was twice invoked. The High Court had superintendence and control over all Tribunals and Courts—but after the Fourth Amendment (1975), superintendence was restricted only to the Courts subordinate to the High Courts. The tenure of Judges was guaranteed and extended until the age of 62 years, their independence was secured by providing that they should not be removed except by the President pursuant to a resolution of Parliament passed by majority of not less than two-thirds of the total number of members of Parliament on grounds only of proved misbehaviour or incapacity (Article 94(2). By a subsequent Amendment, the Impeachment procedure was substituted by a provision for removal on a reference by the President to the Supreme Judicial Council composed of the Chief Justice and the next two senior Judges. This safeguard against removal of Judges continued to be available notwithstanding the promulgation of Martial Law in 1975.

The situation changed after the Proclamation of Martial Law on 24th March 1982. Although under that Proclamation, Judges continued to function, all writ proceedings were declared to have abated. A few days later (on 11th April 1982), the Proclamation First Amendment Order of 1982 provided that a Judge of the High Court (i. e.,) the High Court and Appellate Court divisions of the Supreme Court) could be removed by the Chief Martial Law Administrator. Paragraph 10(4) reads :

"A person holding any office mentioned in paragraph 3 (Judges)

and paragraphs 6, 7 and 9 may be removed from office by the Chief Martial Administrator without assigning any reason".

In the past few years, several Judges of the High Court of Bangladesh have been removed from office under paragraph 10(4) by the Chief Martial Law Administrator—that is without assigning any reason.

Under the Proclamation First Amendment Order of 1982 (11th April 1982), the Chief Justice of Bangladesh, whether appointed before or after the Proclamation, was obliged to retire from office if he had held office for a term of three years—even if he had not attained the retirement age of 62 years (proviso to Paragraph 10 (1) of the Order of 1982).

The result was that Chief Justice Kamaluddin Hoosein who had been the Chief Justice for more than three years, in April 1982, automatically demitted office. The way he went does little credit to the system. On 12th April 1982, the Chief Justice was hearing a batch of cases in which several Advocates were engaged; the Chief Justice was not impressed by the merits of the cases and was not inclined to grant relief to the clients of these Advocates. The same would have been the fate of another client whose case was not in the batch, but was listed and reached later that day. The Advocate engaged in the case raised a new plea—the plea of **Coram non Judice**. He said that it was reported in the newspapers that morning that the Chief Justice could not hold office for more than three years. The Chief Justice then sent for the Attorney General (since the gazetted copy of the Proclamation of Sunday, April 11, 1982, was not available) and asked him whether there was such a provision and whether it applied only prospectively or included the present Chief Justice. The Attorney General came to Court and enlightened the Chief Justice that he had demitted office by reason of the Proclamation Order No. 1 of 1982. The Chief Justice rose, went to his Chamber, took off his judicial robes for the last time, and bade farewell to the Advocates in the Bar Library.

The example of Pakistan is also worth noting. In October 1958 the Supreme Court of Pakistan—in **Dosso's Case** (PLD 1958 SC 533)—gave legal recognition to the Bhutto regime which had abrogated the Constitution of Pakistan. The Judges, with rare intellectual attainments, performed (what one writer, Dieter Conrad, has described as) the paradoxical task of delineating from first principles "Constitutional Contours of extra-constitutional action". In short, they rationalised Martial Law, they legitimised tyranny. They were never given a second chance. The Judge who delivered the main judgment was the Chief Justice of Pakistan. His

successor Justice Yakub Ali publicly praised his President just before his constitutional term of office was to end. He was rewarded. The retiring age for the Chief Justice was extended (by presidential order) beyond 65 years—and Justice Yakub Ali stayed on. But some years later, when the political situation changed, he displeased his new masters when granting interim orders on Mrs. Bhutto's petition regarding the detention of her husband. The result was another presidential order by the then President of Pakistan (the new Martial Law Administrator) reducing the retirement age for a Chief Justice and restoring it to 65 ! Another Judge Chief Justice Murshid—whose name is still highly regarded—struck down the Removal of Difficulties Order promulgated by Field Marshal Ayub Khan. But he could not serve out his term as judge—he was retired compulsorily !

Dosso's case was over-ruled—many years later, in the year 1972. In **Asma Jilani** (PLD 1972 SC 139) the Supreme Court of Pakistan ruled that martial law was illegal and President Yahya Khan was a usurper. But it was too late. Constitutional transgressions long recognised or ligitimised by pliant judges had become part of the legal culture of that country. It has still not recovered from it.

The basic problem in military regimes is the absence of any continuous constitutional tradition. During the period of twenty-five years before liberation, when what is now Bangladesh was East Pakistan, the longest period during which a democratic Constitution with entrenched rights and supervisory jurisdiction of superior courts functioned was a little over two years—from March 1956 to October 7, 1958 ; the only other period in this long history was when President Ayub's Constitution of 1962 with entrenched rights operated from 10th January 1964 till September 1965, when Emergency was declared !

We in India (and in some other countries in the LAWASIA region) have been fortunate. We, in India, have had an unbroken constitutional tradition for nearly forty years. My reason for drawing attention to other areas of this sub-continent (and elsewhere) is that **we should count our blessings—and help preserve a constitutional climate and a democratic set-up ; not discredit our institutions as some people are wont to do.**

We must take stock.

The last ten years in the world have not been very propitious for an independent judiciary. There have been a spate of events that have occurred. Let me mention some of them—the attempt to wind up the judiciary in Malta, the prescription of an oath of personal loyalty for the Judges of the highest Court in a neighbouring country (Pakistan) which resulted in

the mass resignation of at least twenty judges, the abduction and murder of three judges in Ghana in Africa ; the sentencing of the former Prime Minister of a country in Asia Minor to two months' imprisonment for issuing a press statement commenting on political affairs.

In one of the recent issues of the Bulletin for the Centre for Independence of Judges and Lawyers of the International Commission of Jurists (to which I have the honour to belong), the President of the Bar Association of one of the countries in South America described the plight of his own country Paraguay, which has been under a State of Emergency for over thirty years.

"To what degree is the judiciary independent ?" One of its judges was asked. The judge was too afraid to answer—so he replied with an anecdote : of a judge appointed in a neighbouring country during the trubulent 19th century : On assuming office that judge said : "I will do everything I can to help our friends. I will decide against our enemies, and I will do justice to the rest."

"Unfortunately", says the President of the Bar Association of Paraguay, (commenting on this quip) "nearly everyone in my country is a friend or an enemy!"

Then there has been the abolition of the lawyers' profession in Libya, and recently in another Muslim country. As for the last, England must accept partial responsibility ; it was an Englishman,—one of the most renowned—William Shakespeare who in one of his plays made a character to say ;

> "First of all let's kill all the lawyers".

The problem in some areas of the world is that Governments are taking Shakespeare too seriously. In Libya, the "killing" was by dispensing with the entire legal profession. But you can also "kill" by other means.

Last year a petition was filed by 60 lawyers in Istanbul protesting against the repression of the legal profession in Turkey. It is a brave document. In it they say that it is a part of the lawyer's duty to defend the rule of law, to protect human rights and the democratic order of Society. I quote :

> "It is to no-one's advantage, not least Society's, to put lawyers in a position in which they confront wrongdoing of the administration.

"Particularly in states of exception, lawyers have the added burden of defending in political trials.

If lawyers are prevented from exercising their rights derived from the constitution, laws and jurisprudence, or if lawyers are wary of pressing for the fullest implementation of the rights of their clients, then what the lawyer is practising can hardly be called the exercise of his profession.

The importance and the sensitivity of the functions of the lawyers will be better understood if it is assumed that it is always possible that those who wield political power today could end up as defendants and would no doubt require the benefits derived from a fully evolved mechanism of defence rights."

The news filtering through now and then about the repression of lawyers in our neighbouring countries, of lawyers being prevented from criticising the established government, has been most disturbing. Even where the government is an elected one, every citizen has a right to criticize its working and if Courts cannot enforce this right what good is it to have an independent judiciary.

Sometimes the law itself inhibits the freedom of the legal profession and seriously prejudices its independence-this in turn necessarily affects the Judiciary. Take the law of sedition, not as understood in this country but in a neighbouring one.

At the end of 1985 a distinguished lawyer in Malaysia, the Vice-President of its Bar Council was prosecuted for Sedition under the Sedition Act 1948. His offence ? : In an open appeal to the Pardons Board (a body which advises the Malaysian Head of State on petitions for clemency) he asked them to reconsider the petition of one Sim Kai Chou for commutation of his death sentence. Sim, a poor man, had been charged for possession of a firearm. He had no licence for his gun but he had not used it—he had not killed or injured anyone. He was not a terrorist nor was he involved in any subversive activities. He was tried under the Internal Security Act and being guilty of possessing a gun had to be awarded the mandatory sentence of death. Sim approached the Pardons Board for clemency but his plea was rejected. The Vice-President of the Bar Council of Malaysia contrasted the refusal of the Pardons Board to accept Sim's plea for clemency with the case of Mokhtar Hashim (who was an important person). This man was found guilty of discharging a firearm and killing another. He was charged and tried under the Security Cases Regulation, given a light sentence, which on a representation to the

Pardons Board was commuted. In the course of contrasting the case of Sim with that of Hashim, the Vice-President of the Bar Council said :

> "What is disturbing and will be a source of concern to the people is the manner in which the Pardons Board exercises its prerogative.....On records before the Courts Sim's case certainly was less serious than Mukhtar Hashim's case: yet the latter's sentence was commuted. The people should not be made to feel that in our society today the severity of the law is meant only for the poor, the meek, and the unfortunate, whereas the rich and powerful and the influential can somehow seek to avoid the same severity."

These words were alleged to be seditious and punishable under the (Malaysian) Sedition Act, 1948. Whether they are is not the point. The lawyer had to stand trial though fortunately, he was acquitted. What is alarming is that a person, who is in the position of the Vice-President of the Bar Council of a country, cannot freely express his opinion on a question of public importance. The case is an example of enacted law (inappropriately enforced) tending to suppress a free and frank expression of views. It is also an example of what an independent judiciary can do to foster freedom.

Without a free, fearless and independent Bar, the Judiciary would soon cease to be independent. A free legal profession and an independent judiciary go hand in hand. Laws which suppress the freedom of lawyers (and other citizens) to freely criticize their government—or even tend to do so—are a grave threat to the independence of the legal profession. And since in many countries it is the Bar which supplies the judges, necessarily a threat to the independence of the judiciary. At times, however, lawyers are also a danger to an independent Judiciary—more so some of the politically motivated ones. It was they who advised (I believe wrongly) the issue of the Proclamation of Emergency in June 1975 which led for a while to a curtailment of civil liberties and threats to an independent judiciary—and it is to me a matter of deep regret that it was a Lawyer-President who appeared to be in such a hurry to sign that Proclamation.

In the developing countries of Asia where State action dominates almost every field of activity and the levels of tolerance are always at danger levels, there is a feeling amongst those who govern that an independent Judiciary—that is a Judiciary which adjudicates without fear or favour between citizen and State—is an unnecessary evil. This feeling is engendered even in those countries with a written Constitution and with virtually unlimited judicial review—like India.

In this country a couple of years ago, two Cabinet Ministers, stepping outside their portfolios, levelled broadsides at the Supreme Court.

One of them reportedly said that the Judiciary seemed to be no longer aware of its true role, that it was vital that the Judiciary and Parliament functioned harmoniously, that "present trends were very, very serious", and if these continued, no one could say what the ultimate result would be. He wondered why the Supreme Court was "unnecessarily inviting conflict" and that public opinion would have to be created on this issue.

"Who knows the minds of the people", he then rhetorically asked, "seventeen wisemen or Parliament?" The other Cabinet Minister said that the Judges express different views at different times, and they are fallible—how then can they pronounce on the validity of Constitutional Amendments made by Parliament?

These were serious threats. When voiced by Cabinet Ministers, they were ominous. They needed a reply. I wrote a letter to the **Times of India.** And this is what I said—

> "...These great institutions of our democracy—Parliament and the Judiciary—cannot survive if those who man them shake its foundations. Courts do not sit in judgment, over "the minds of the people"—the higher judiciary is set up under the Constitution to adjudicate on the laws passed by the elected representatives of the people and to pronounce on the legality of the action of the executive branch of Government. That Judges, even those in the highest Court, are mortals and hence fallible, is no original observation. Fallibility of the individual Justices must not be confused, however, with the finality of the decision of the Court. The first is a human infirmity, the second a constitutional mandate. The question "Which is Supreme under our Constitution—Parliament or the Supreme Court" is a mischievous one. The answer is, neither, It is the Constitution and the law that is supreme. And it is the Constitution (our Constitution) that declares that the final interpreter of the law is the Supreme Court.

The two Ministers were unable to understand the distinction between the unexceptionable principle that political power is best entrusted to the majority, from the unacceptable claim that what the majority does with that power is beyond scrutiny or criticism. There is no disharmony between Parliament and the Judiciary and no individual member of Government should claim to speak for that great parliamentary institution. Disharmony

between the Government and the Courts is a different matter. If there were complete harmony between **them,** this country would not be worth living in. It is the duty of the Judges to interpret the Constitution and the laws, and if this creates a clamour and controversy, well, it is the price we have to pay for living in a democracy : It was that great democrat Edmund Burke who said that—

> "the fire-alarm that rings at midnight may disturb your sleep, but it keeps you from being burned at night."

The moment politicians, whether acting as Ministers or as Members of the Legislature, set themselves up above the people whose interests they are there to represent, democracy (at least as we have come to understand it) ceases to exist. The outward mask of democracy is universal suffrage, but its content is political pluralism and a theory of limited Government—that means the theory which prescribes that a Government may not overstep the bounds set to it by a body of moral values, and if these bounds are to be effective, there must be a strong Judiciary able to call a halt to the acts of politicians whether they claim to be acting as the elected executives or as the Legislative body. In developing countries like India, there have been increasing demands on the legal system. The responses of the Court have been encouraging as witnessed by a spate of decisions in public interest litigation and in the field of human rights where happily our Supreme Court —especially since 1977—has shown that though lodged in a splendid building plush with teakwood panelling, its doors are wide open to the needy, the humble and the poor. All varieties of social problems which were ignored at governmental levels are now being subjected to a variety of legal remedies and enforced through Courts. We are proud (I am proud) of the Supreme Court of the eighties. In facts its pronouncements are irksome to those in authority. The reactions in the corridors of power to some of the Court's recent decisions are reminiscent of Laski's famous quip (though uttered in a somewhat different context) "it is not injustice that worries me, it is Justice that hurts". Very often it is Justice that hurts those who exercise executive power in this vast sub-continent of States which we call India.

There are, and always will be pressures on the Judiciary, even in stable democracies.

Give an Administrator a chance to dismiss a Judge and he will. In a recent book (Judgment in Berlin by Herbert Stern), the author (a retired Federal District Judge from New Jersey) recalls his days as a Judge in the United States Court for Berlin ; the United States as an occupying power,

convened the United States Court for Berlin, a body that had existed only on paper since 1955 ; its Judge is appointed by and serves at the pleasure of the U. S. Ambassdor to West Germany Mr. Herbert Stern, a Federal District Judge from New Jersey was selected in 1978. A group of Berlin residents objected to a scheme for construction of Military Housing in a park-like area previously used for recreation. They sued the U. S. Government in the United States Court for Berlin. Such a case could only be heard if the occupying authorities consented, and since that consent had not been given, it was a virtual certainty that Judge Stern would have dismissed the Complaint for lack of jurisdiction ; But not content to rely on its obviously strong position, the U. S. Ambassdor Mr Walter Stossel wrote informing Mr Stern that his Court did not have the jurisdiction. This implied that he had no choice but to accede to the Ambassdor's request. The issue of Judicial Independence was needlessly—but squarely —raised. The Judge attempted to persuade his Government to withdraw the letter. When this proved unsuccessful, he concluded that a ruling in favour of the U. S. Government's Motion to dismiss the Civil Case would be perceived as a surrender to outside pressure. As a result, he declared that he would not rule to dismiss as long as the letter was in the Court. Early next morning, another letter came to his Hotel Room informing him that he had been dismissed. Lacking tenure in Berlin, although retaining life tenure as a Federal Judge at home, Stern's concern was ensuring the independence of his Court. Before leaving the Court, he addressed the Government's lawyers in the case before him and said :

> "Imagine if I sat here and was not an Article III (Life Tenure) Judge in another life ? Imagine if my salary depended on the Ambassador ?..... .Suppsse my children's education depended on the goodwill of the Ambassdor ? **Is that the kind of Judge you want, the kind of Judge that can be told how to decide cases, even for you ?"**

Judges do often get angry at lawyers, but it is rare for their anger to be kindled by concerns as fundamental as those encountered by Judge Stern in Berlin.

Different countries have different ways of dealing with pressures on the Judiciary—a former colleague of mine on the Human Rights Committee of LAWASIA recalled the Japanese way at a seminar in Tokyo in July, 1982 ; About 90 years ago, an Imperial Russian Prince Nicholas Alexandrovitch travelled in Japan. In the City of Ote (near Kyoto), he was assaulted by a Japanese Policemen with his sword. Fortunately, his life was saved. The policemen (Sanzo Suda) was arrested and was tried for attempted murder—

Article 116 of the Japanese Criminal Code, under which the maximum sentence was life imprisonment. But the Japanese Criminal Code also provided in another Article (Article 292) that anyone who assaulted "the Emperor, Empress or a Prince" would be punished by death. This was really intended for the protection of the Imperial Family of Japan—though that was not expressly stated. Imperial Russia was at the time very strong, militarily and politically, and the relations between Russia and Japan had soured. (The incident took place only 10 years before the Russo-Japanese War). The Japanese Cabinet fearing reprisals from Russia, sent a message to the Court to punish the accused under Article 292—that is to sentence the policeman to death and not life imprisonment. But Mr Kozima (the newly appointed) Chief Justice of the Supreme Court of Japan strongly resented this political intervention. He asked the Magistrate to decide the case according to law. The Magistrate taking no notice of government pressure, convicted the policeman under Article 116, i. e. to imprisonment for life. The Government appealed. Chief Justice Kozima rejected the appeal holding that the special provision of Article 292 applied only to the Imperial Family of Japan. We are told that after this case—famous in Japanese Judicial History—there has been no interference by the Government of Japan with the Judiciary.

In times of stress, a brave judge though sometimes in a minority of one could change the course of his country's judicial history.

So too the dissentient Judge—the one who speaks for the brooding conscience of future generations. Let me remind you of **Liversidge v. Anderson.**

It is now forty years since the decision was given, and the majority view has been buried by the House of Lords (in 1980.) Lord Atkin's dissent has been finally vindicated. When it was delievered, however, the papular view was the majority view. And it is necessary to recall the context in which the House of Lords heard the case. The argument took place in September 1941 and the speeches were delivered on 3rd November. It was a low point in the war. The Balkans and Crete had been over-run ; the invasion of Russia had carried the Germans close to Leningrad and Moscow ; the British summer offensive in the Western Desert had failed ; the Japanese menaced the Malayan Peninsula in Singapore ; Pearl Harbour was to follow in the next month and the United States were not yet in the war. Lord Wright's speech (the majority view) reflected the atmosphere.

"All the circumstances of national safety to which this House adverted in **Rex v. Halliday** are present in this war, only with vastly increased

urgency and gravity, because German methods for effecting the prisoners infiltration among British or allied subjects of their purpose and schemes have been immensely more subtle and ingenious than in the last war. Even a Judge may be allowed to take notice of the import of words like Fifth Columnists and Quislings and the like."

But Lord Atkin would not take notice. Instead, he reminded his colleagues in that oft-quoted purple passage, that in England "amid the clash of arms, the laws are not silent; they may be changed, but they speak the same language in war as in peace." Brave words, heroic words. But not at that time. Lord Atkin suffered, his colleagues refused to speak to him as in his dissent, Atkin had hit hard.

> "I view with apprehension the attitude of Judges who on a mere question of construction when face to face with claims involving the liberty of the subject show themselves more executive minded than the executive...In this case I have listened to arguments which might have been addressed acceptably to the Court of King's Bench in the time of Charles I."

He knew the consequences. On 2nd November 1941, he wrote to his daughter Gaven :

> "I am giving of my dissenting judgment in the Home Security Cases tomorrow; and haven't spared the others. I hope I shall be on speaking terms with them afterwards "

He was not. He was criticized by his senior colleague, Lord Maugham, in an unprecedented open letter to the Times. He was requested by the Lord Chancellor (Lord Simon) to delete his scornful reference to the Humpty-Dumpty attitude of his colleagues on matters of statutory construction. He was upbraided, almost branded a traitor. But Atkin remained tight-lipped. He refused to be drawn into controversy over his dissent. He refused to go to the Press. He was amply rewarded—first in private; much leter by posterity.

Dr. C. K. Allen the author of "Law and Orders" which contained a forceful account of the administration of Emergency Regulation 18B, and who was always a vehement champion of the individual against the encroachments of executive power, wrote three days after the Judgement to Lord Atkin :

Rhodes House
Oxford
5. xi. 41.

Dear Lord Atkin,

I expect that this is a very improper letter to be written even by a non-practicising member of the Bar, but I cannot refrain from saying that it will be remembered as not the least distinction in your great judicial work that you alone among other judges have raised your voice against a gross abuse of power. Such cries in the wilderness have strong and long echoes. There is no real answer to the simple point of language on which you took your stand.

This whole business is another warning against bureaucratic 'discretion' When the facts are known, it will be realised that this terrible power has been used neither wisely nor justly, and that thumping lies have been told about it in Parliament. You were not concerned with that, but what you have said will not be without its effect.

Your sincerely,
C. K. Allen."

So much for his reward in private. And posterity? In 1980, Lord Diplock spoke for posterity. "For my part" he said in his speech in the House of Lords (in the Rossminister Case): "I think the time has come to acknowledge openly that the majority of this House in **Liversidge v. Anderson** were expediently and at that time perhaps excusably wrong and the dissenting speech of Lord Atkin was right."

The cries in the wilderness **do** have "strong and **long echoes.**"

Judicial independence is a byword in every democracy. In British India with the establishment of the High Courts from the middle of the 19th century the concept of an independent juciciary took root. But till 1947, one-third of the area of this subcontinent was being administered by what came to be known as the Princely States : the judges in those States, often described as the Jee Huzoor Judges, were required to function in the time-honoured tradition of judicial subservience, so characteristic of Moghul and pre-Moghul times. When we framed our Constitution, we chose the British model, not the other one. It is this model, though originally Western, that we must cherish and preserve. It is preserved more by example than by words. There will be assaults from without on the Independence of the Judiciary. But always remember : the citadel never falls except from within. It is up to us—lawyers, judges, citizens—to help maintain the Independence of this citadel.

ANNEXURE I

INDEPENDENCE OF THE JUDICIARY IN THE LAWASIA REGION

Principles and Conclusion

A Report of a Seminar held in Tokyo on 17—18th July 1982

On 17th-18th July, 1982, the LAWASIA Human Rights Standing Committee met in Tokyo, Japan for the purpose of discussing the application of the principle of the Independence of the Judiciary in the context of the history and culture of Asian countries. The meeting of the Standing Committee was held in private.

The Committee was honoured by the presence at its meeting of Chief Justice Chandrachud of India, Chief Justice Fernando of the Philippines, Chief Justice Samarakoon of Sri Lanka, and President Suchiva of the Supreme Court of Thailand. It was also honoured by the distinguished presence of the Former President of the Supreme Court of Japan, former judge Ekizo Jujibayashi, former Supreme Court Judge, former Judge Sakamoto and former Judge Takeda, and the former Chief Justice of the Nagoya High Court, and former Judge Yorihiro Natio. The meeting was also attended by eminent Japanese lawyers and professors, including the former Dean of the Law Faculty of Tokyo University, Professor Mikazuki.

Having had the benefit of the experience and wisdom of these eminent jurists and the advantages of their insight into the functioning of different judicial systems and drawing upon the collective experience of members of LAWASIA in the region, the LAWASIA Human Rights Standing Committee at its subsequent meeting in Tokyo formulated the following principles and conclusions.

1. The judiciary is an institution which has, and is seen to be of the highest value in the societies in the countries of the LAWASIA region ;

2. The maintenance of the independence of the judiciary is essential to the attainment of its objectives and the proper performance of its high function ;

3. It is the duty of the judiciary to respect and observe the proper objectives and functions of the other institutions of government ; it is the duty of those institutions to respect and observe the proper objectives and functions of the judiciary ;

4. The objectives and functions of the judiciary in these countries include the following :

(*a*) to ensure that all peoples are able to live securely under the rule of law ;

(*b*) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights within its own society ;

(*c*) to administer the law impartially between citizen and citizen and between citizen and state.

5. To enable the judiciary to achieve its objectives and perform its functions, it is essential that those appointed as judges be chosen with due regard to their independence, competence, and integrity.

6. It is fundamental to the preservation of the independence of the judiciary that it be freed from threats and pressures from any quarter.

7. It is also essential that the judges be provided with the facilities necessary to enable them to perform their functions.

8. It is the duty of the institutions of government to ensure that the judiciary occupies, and is seen to occupy, the position in its society which will enable it to maintain its proper dignity and standing in that society and to achieve its objectives and perform its functions.

9. It is equally the duty of each member of the judiciary to conduct himself/herself in all things in such a way as is consistent with the dignity and standing of his/her office and as will promote the achievement of the objectives and the performance of the functions of the judiciary to which he/she belongs.

10. *Appointment of Judges :*

(*a*) There is no single mode of appointment of judges which is essential to their proper appointment. However, the mode adopted should be such as will best promote the appointment of proper persons to the office of a judge, will provide a safeguard against appointments being influenced by inappropriate factors, and will be seen to be directed to the appointment of judges of independence, capacity and integrity.

(*b*) The structure of the legal profession, and the source from which judges are taken within the legal profession, differ in different societies within the LAWASIA region. In some societies, the judiciary is a career service, in others, judges are chosen from the practising profession. Therefore, it is accepted that in different societies, different procedures and safeguards may be seen as of assistance in ensuring the proper appointment of judges.

(*c*) The Committee has observed that, in some societies, the appointment of judges, by, with the consent of, or after consultation with a Judicial Service Commission has been seen as a means of ensuring that those chosen as judges are appropriate for the purpose.

(*d*) The Committee recommends that the appointment of a Judicial Service Commission, or the adoption of a procedure of consultation with the organised associations of lawyers should be adopted as a means of safeguarding the proper appointment of judges.

Where a Judicial Service Commission is adopted for these purposes, it should be representative of the higher judiciary, and of all concerned in the administration of justice, to an extent that will ensure that its independence and integrity are safegaurded, and are seen to be safeguarded.

11. *Tenure :*

(*a*) The independence of the judiciary must be secured by security of tenure.

(*b*) The Committee recognises that, in some countries, the tenure of judges is subject to confirmation from time to time by an electorate or otherwise.

(*c*) However, the Committee recommends that all judges should be appointed for a period related to the attainment of a particular age and that the period should be applicable to all judges exercising the same jurisdiction.

(*d*) Judges should be subject to removal from office only for proved incapacity, serious criminal default or serious misconduct, such as, in each case, makes the judges unfit to be a judge.

(*i*) The Committee recognises that, by reasons of differences in history and culture, the procedures appropriate for the removal of judges may differ in different societies. It recognises, in particular, that removal by parliamentary procedures have traditionally be adopted in some countries. However, the Committee believes that in some areas of the LAWASIA region, that procedure is unsuitable : it is not appropriate for dealing with some grounds for removal ; it is rarely if ever used ; and the use of it other than for the most serious of reasons is apt to lead to its misuse, and to encourage its use where it should not be used. The Committee believes that there is, in some areas of the LAWASIA region, a clear consensus within the legal profession that such procedures should be under the control of the senior judges of the particular society.

(*ii*) Where it is proposed to take steps to secure the removal of a judge, there should, in the first instance, be an examination of the reasons suggested for his/her removal, for the purpose of determining whether the formal proceedings for his/her removal should be commenced. Formal proceedings for that purpose should be commenced only if the preliminary examination indicates that there are adequate reasons for taking them. Such formal proceedings should not take place in public except with the agreement of the Chairman of the body conducting those procedures and of the judge in question.

(*iii*) The abolition of the court of which a judge is a member should not be accepted as a reason or an occasion for the removal of a judge.

12. *Relationship with the Executive :*

(*a*) The committee is aware of instances of threats and pressures made or applied to judges—for example :

(*i*) judges have been transferred from one court to another, or suspended from office for wrong reasons ;

(*ii*) the remuneration or facilities of a judge have been affected because of decisions given by the judge ;

(*iii*) the value of judicial salaries has not been maintained.

(*b*) Powers which may affect judges in their office, their remuneration or their facilities, must not be used so as to threaten or bring pressure upon a particular judge or judges.

(*c*) Inducements or benefits should not be offered to or accepted by judges which affect or are apt to affect the performance of their judicial functions.

(*i*) The Committee has been made aware of instances of inducements or benefits offered to judges. Examples have been given where, during or after the tenure of office of the judge, appointments or emoluments have been offered in circumstances in which the judge may have been or may be reasonably by thought to have been influenced by them.

(*ii*) The judiciary and the other institutions of government should be conscious of the fact that whether what is done in fact induces a judge to act otherwise than he/she should, it is essential that what is done be not such as to be seen to be an inducement or a benefit to a judge for such a purpose.

(*d*) It is at all times the duty of a judge to decide matters coming before him/her on his/her own view of the facts and in accordance with the law. It is the duty of the other institutions of government to ensure that he/she is in a position so to do.

13. *Remuneration and Facilities :*

(*a*) The Committee is aware of instances, in the LAWASIA region, where the facilities which are now provided to judges and to the court system are below what is the minimum acceptable level at which judges and courts can carry out their functions properly.

(*b*) The Committee recognises that there may be economic circumstances in which it is impossible for facilities to be provided to judges and to the court system at what would otherwise be an appropriate level.

(*c*) However, a proper system of courts and the proper performance of the judicial functions are each essential to the maintance of proper values, the rule of law, and the attainment of human

rights within a society. The Committee therefore recommends that the provision of such facilities be seen as having a priority of the highest order in the ordering of each society.

It is the conclusion of the Committee that these represent the minimum standards necessary to be observed in order to maintain the independence of the judiciary and the functioning of an effective judiciary in the LAWASIA region.

———

ANNEXURE

INTERNATIONAL BAR ASSOCIATION COMMITTEE ON THE ADMINISTRATION OF JUSTICE

DELHI MINIMUM STANDARDS OF JUDICIAL INDEPENDENCE

(APPROVED IN PLENARY SESSION FRIDAY, 22ND OCTOBER 1982)
19TH BIENNIAL CONFERENCE NEW DELHI, INDIA
17-23 OCTOBER, 1982

A. Judges and the Executive

1. (*a*) Individual judges should enjoy personal independence and substantive independence.

   (*b*) Personal independence means that the terms and conditions of judicial service are adequately secured so as to ensure that individual judges are not subject to executive control.

   (*c*) Substantive independence means that in the discharge of his judicial function, a judge is subject to nothing but the law and the commands of his conscience.

2. The Judiciary as a whole should enjoy autonomy and collective independence vis-a-vis the Executive.

*3. (*a*) Participation in judicial appointments and promotions by the Executive or Legislature is not inconsistent with judicial independence provided that appointments and promotions of judges are vested in a judicial body in which members of judiciary and the legal profession form a majority.

   *(*b*) Appointments and promotions by a non-judicial body will not be considered inconsistent with judicial independence in countries where, by long historic and democratic tradition, judicial appointments and promotion operate satisfactorily.

4. (*a*) The Executive may participate in the discipline of judges, only in referring complaints against judges, or in the initiation of disciplinary proceedings, but not the adjudication of such matters. The power to discipline or remove a judge must be vested in an institution which is independent of the Executive.

---

*Amendment to Jerusalem Approved Standards (see appendix for former text of same).

(*b*) The power of removal of a judge should perferably by vested in a judicial tribunal.

(*c*) The Legislature may be with the powers of removal of judges perferably upon a recommendation of a judicial commission.

5. The Executive shall not have control over judicial functions.

6. Rules of procedure and practice shall be made by legislation or by the Judiciary in co-operation with the legal profession subject to parliamentary approval.

7. The state shall have a duty to provide for the execution of judgments of the Court. The Judiciary shall exercise supervision over the execution process.

8. Judicial matters are exclusively within the responsibility of the Judiciary both in central judicial administration and in court level judicial administration.

9. The central responsibility for judicial administration shall perferably by vested in the Judiciary or jointly in the Judiciary and the Executive.

10. It is the duty of the state to provide adequate financial resources to allow for the due administration of justice.

11. (*a*) Division of work among judges should ordinarily be done under a predetermined plan, which can be changed in certain clearly defined circumstances.

(*b*) In countries where the power of division of judicial work is vested in the chief justice, it is not considered inconsistent with judicial independence to accord to the chief justice the power to change the predetermined plan for sound reasons, perferably in consultation with the senior judges when practicable.

(*c*) Subject to (a), the exclusive responsibility for case assignment should be vested in a responsible judge, preferably the President of the Court.

12. The power to transfer a judge from one court to another shall be vested in a judicial authority and preferably shall be subject to the judges consent, such consent not to be unreasonably withheld.

13. Court services should be adequately financed by the relevant government.

14. Judicial salaries and pensions shall be adequate and should be regularly adjusted to account for price increase independent of Executive control.

*15. (*a*) The position of the judges, their independence, their security, and their adequate remuneration shall be secured by law.

(*b*) Judicial salaries cannot be decreased during the judges' services except as a coherent part of an overall public economic measure.

16. The Ministers of the government shall not exercise any form of pressure on judges, whether overt or covert, and shall not make statements which adversly affect the independence of individual judges or of the Judiciary as a whole.

17. The power of pardon shall be exercised cautiously so as to avoid its use as interference with judicial decisions.

18. (*a*) The Executive shall refrain from any act or omission which pre-empts the judicial resolution of a dispute or frustrates the proper execution of a court judgment.

(*b*) The Executive shall not have the power to close down or suspend the operation of the court system at any level.

B. Judges and the Legislature

19. The Legislature shall not pass legislation which retro-actively reverses specific court decisions.

20. (*a*) Legislation introducing changes in the terms and conditions of judicial services shall not be applied to judges holding office at the time of passing the legislation unless the changes improve the terms of service.

*(*b*) In case of legislation reorganising courts, judges serving in these courts shall not be affected, except for their transfer to another court of the same status.

21. A citizen shall have the right to be tried by the ordinary courts of law, and shall not be tried before ad hoc tribunals.

C. Terms and Nature of Judicial Appointments

22. (*a*) Judicial appointments should generally be for life, subject to removal for cause and compulsory retirement at an age fixed by law at the date of appointment.

(*b*) Retirement age shall not be reduced for existing judges.

23. (*a*) Judges should not be appointed for probationary periods except for legal systems in which appointments of judges do not depend on having practical experience in the profession as a condition of appointment.

(*b*) The institution of temporary judges should be avoided as far as possible except where there exists a long historic democratic tradition.

24. The number of the members of the highest court should be rigid and should not be subject to change, except by legislation.

25. Part-time judges should be appointed only with proper safeguards.

26. Selection of judges shall be based on merit.

D. Judicial Removal and Discipline

27. The proceedings for discipline and removal of judges should ensure fairness to the judge, and adequate opportunity of hearing.

*28. The procedure for discipline should be held in camera. The judge may however request that the hearing be held in public, subject to final and reasoned disposition of this request by the Disciplinary Tribunal. Judgments in disciplinary proceedings, whether held in camera or in public, may be published.

29. (*a*) The grounds for removal of judges shall be fixed by law and shall be clearly defined.

(*b*) All disciplinary action shall be based upon standards of judicial conduct promulgated by law or in established rules or court.

30. A judge shall not be subject to removal unless, by reason of a criminal act or through gross or repeated neglect or physical or mental incapacity, he has shown himself manifestly unfit to hold the position of judge.

31. In systems where the power to discipline and remove judges is

vested in an institution other than the Legislature, the tribunal for discipline and removal of judges shall be permanent and be composed predominatly of members of the Judiciary.

32. The head of the court may legitimately have supervisory powers to control judges on administrative matters.

E. The press, the Judiciary and the Courts

33. It should be recognized that judicial independence does not render the judges free from public accountability, however, the press and other institutions should be aware of the potential conflict between judicial independence and excessive pressure on judges.

34. Subject to =41, judges may write articles in the press, appear on television and give interviews to the press.

35. The press should show restraint in publications on pending cases where such publication may influence the outcome of the case.

F. Standards of Conduct

36. Judges may not during their term of office serve in Executive functions, such as ministers of the government, nor may they serve as members of the legislature or of municipal councils, unless by long historical traditions these functions are combines.

37. Judges may serve as chairmen of committees of inquiry in cases where the process requires skill of fact-finding and evidence-taking.

38. Judges shall not hold position in political parties.

39. A judge, other than temporary judge, may not practice law during his term of office.

40. A judge should refrain from business activities, except his personal investments, or ownership of property.

41. A judge should always behave in such a manner as to preserve the dignity of his office and the impartiality and independence of the Judiciary.

42. Judges may be organized in associations designed for judges, for furthering their rights and interests as judges.

43. Judges may take collective action to protect their judicial independence and to uphold their position.

G. Securing Impartiality and Independence

*44. A judge shall enjoy immunity from legal actions and the obligation to testify concerning matters arising in the exercise of his official functions.

45. A judge shall not sit in a case where there is a reasonable suspicion of bias or potential bias.

46. A judge shall avoid any course of conduct which might give rise to an appearance of partiality.

H. The Internal Independence of the Judiciary

47. In the decision-making process, a judge must be independent vis-a-vis his judicial colleagues and superiors.

*The above standards are subject to periodic review by the appropriate committee or committees of the International Bar Association and amendment from time to time by the International Bar Association in plenary session as circumstances may warrant or require.

---

*Amendment to Jerusalem Approved Standards (see appendix for former text of same)

JERUSALEM APPROVED STANDARDS

(BEFORE AMENDMENT ADOPTED AT DELHI)

3. (*a*) Judicial appointments and promotions by the Executive are not inconsistent with judicial independence.

(*b*) Except for countries where by long historic and democratic tradition judicial appointments operate satisfactorily, judicial participation in the process of judicial appointments and promotions whether by judicial commission or otherwise is imperative for the maintenance of judicial independence.

15. (*a*) The position of the judges, their independence, and their adequate remuneration shall be secured by law.

20. (*b*) In case of legislation abolishing courts, judges serving in these courts shall not be affected, except for their transfer to another court of the same status.

28. The procedure for discipline should be in camera ; however, judgments in disciplinary proceedings may be published.

44. A judge shall enjoy immunity from legal actions in the exercise of his official functions.

———

ANNEXURE

WORLD CONFERENCE ON THE INDEPENDENCE OF JUSTICE

UNIVERSAL DECLARATION ON THE INDEPENDENCE OF JUSTICE

UNANIMOUSLY ADOPTED AT THE FINAL PLENARY SESSION OF THE CONFERENCE HELD AT MONTREAL (QUEBEC, CANADA) ON JUNE 10, 1983.

Preamble

Whereas justice constitutes one of the essential pillars of liberty;

Whereas the free exercise of fundamental human rights as well as peace between nations can only be secured through respect for the rule of law;

Whereas States have long established courts and other institutions with a view to assuring that justice be duly administered in their respective territories:

Whereas the Charter of the United Nations has established the International Court of Justice as its principal judicial organ in order to promote the peaceful solution of disputes between States, in conformity with the principles of justice and international law;

Whereas The Statute of the International Court of justice provides that the latter shall be composed of a body of independent judges, elected regardless of nationality, which as a whole shall be representative of the main forms of civilisation and of the principal legal system of the world;

Whereas other international courts equally owe exclusieve allegiance to the international legal order and benefit from representation of diverse legal system;

Whereas various Treaties have also established other courts endowed with an international competence:

Whereas the jurisdiction vested in international courts shall be respected

in order to facilitate the interpretation, application and progressive development of international law and the promotion of human rights;

Whereas national and international courts shall, within the sphere of their competence, cooperate in the achievement of the forgoing objectives;

Whereas All those institution, national and international, must, within the scope of their competence, seek to promote the lofty objectives set out in the *Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Optional Protocol to the latter Covenant* and other pertinent international instruments, objectives, which embrace the independence of the administration of the justice;

Whereas Such independence must be guaranteed to international judges, national judges, lawyers, jurors and assessors;

Whereas the foundations of the independence of justice and the conditions of its exercise may benefit from restatement;

The World Conference of the Independence of Justice

Recommends to the United Nations the consideration of the *Declaration.*

II National Judges

I—Objectives and Functions

2.01 : The objectives and functions of the judiciary shall include :

(*a*)—to administer the law impartially between citizen and citizen and between citizen and state.

(*b*)—to promote, within the proper limits of the judicial function, the observance and the attainment of human rights ;

(*c*)—to ensure that all peoples are able to live securely under the rule of law.

II—Independence

2.02 : Judges individually shall be free, and it shall be their duty, to decide matters before them impartially in accordance with their assessment of the facts and their understanding of the law without any restrictions, influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

2.03 : In the decision-making process, judges shall be independent vis-a-vis their judicial colleagues and superiors. Any hierarchical organization of the judiciary and any difference in grade or rank shall in no way interfere with the right of the judge to pronounce his judgment freely.

2.04 : The judiciary shall be independent of the Executive and Legislature.

2.05 : The judiciary shall have jurisdiction, directly or by way of review, over all issues of a judicial nature.

2.06 : (*a*)—No ad hoc tribunals shall be established ;

(*b*)—Everyone shall have the right to be tried expeditiously by the established ordinary courts or tribunals under law subject to review by the courts ;

(*c*)—Some derogations may be admitted in times of grave public emergency which threatens the life of the nation but only under conditions prescribed by law, only to the extent strictly consistent with internationally recognized minimum standards and subject to review by the courts ;

(*d*)—In such times of emergency.

1. civilians charged with criminal offences of any kind shall be tried by ordinary civilian courts expanded where necessary by additional competent civilian judges,

2. detention of persons administratively without charge shall be subject to review by ordinary courts by way of habeas corpus or similar procedures so as to insure that the detention is lawful as well as to inquire into any allegations of ill-treatment ;

(*e*)—The jurisdiction of military tribunals shall be confined to military offences committed by military personnel. There shall be always be right of appeal from such tribunals to a legally qualified appellate court.

2.07 : No power shall be so exercised as to interfere with the judicial process.

2.08 : No legislation or executive decree shall attempt retro-actively to

reverse specific court decisions nor to change the composition of the court to affect its decision-making.

2.09 : Judges may take collective action to protect their judicial independence.

2.10 : Judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary. Subject to this principle, judges shall be entitled to freedom of expression, association and assembly.

III—Qualifications, Selection and Training

2.11 : Candidates for judicial office shall be individuals of intergrity and ability, well-trained in the law. They shall have equality of access to judicial office.

2.12 : In the selection of judges ; there shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status, subject however to citizenship requirements.

2.13 : The process and standards of judicial selection shall give due consideration to ensuring a fair reflection by the judiciary of the society in all its aspects.

2.14 : (*a*)—There is no single proper method of judicial slection provided it safeguards against judicial appointments for improper motives.

(*b*)—Participation in judicial appointments by the Executive or Legislature is consistent with judicial independence so long as appointments of judges are made in consultation with members of the judiciary and the legal profession or by a body in which members of the judiciary and the legal profession participate.

2.15 : Continuing education shall be available to judges.

IV—Posting, Promotion and Transfer

2.16 : The assignment of a judge to a post within the court to which he is appointed is an internal administrative function to be carried out by the judiciary.*

2.17 : Promotion of a judge shall be based on an objective assessment of

the candidate's intergrity and independence of judgment, professional competence, experience, humanity and commitment to uphold the rule of law. Article 2.14 shall apply to promotions.

2.18 : Except pursuant to a system of regular rotation, judges shall not be transferred from one jurisdiction or function to another without their consent, but such consent shall not be unreasonably withheld.*

V—Tenure

2.19 : The term of office of the judges, their independence, security, adequate remuneration and conditions of service shall be secured by law and shall not be altered to their detriment.

2.20 : The appointment of temporary judges and the appointment of judges for probationary period is inconsistent with judicial independence. Where such appointments exist they shall be phased out gradually.*

2.21 : (*a*)—During their terms of office, judges shall receive salaries and after retirement, they shall receive pensions.

(*b*)—The salaries and pensions of judges shall be adequate, commensurate with their status, dignity and responsibility of their office and be regularly adjusted to account fully for price increase.

(*c*)—Judicial salaries shall not be decreased during the judges' term of office, except as a coherent part of an overall public economic measure.

2.22 : Retirement age shall not be altered for judges in office without consent.

2.23 : The executive authorities shall at all times ensure the security and physical protection of their judges and their families.

VI—Immunities and Privileges

2.24 : Judges shall enjoy immunity from suit or harassment for acts and omissions in their official capacity.

---

*See explanatory note at the end of Chapter II

2.25 : (*a*)—Judges shall be bound by professional secrecy in relation to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings.

(*b*)—Judges shall not be required to testify on such matters.

VII—Disqualifications

2.26 : Judges may not serve in an executive or a legislative capacity unless it is clear that these functions are combined without compromising judicial independence.

2.27 : Judges may not serve as chairman or members of committees of inquiry except in cases where judicial skills are required.

2.28 : Judges shall not be active members of nor hold positions in political parties.*

2.29 : Judges may not practice law.*

2.30 : Judges shall refrain from business activities, except as incidental to their personal investments or their ownership of property.

2.31 : A judge shall not sit in case where a reasonable apprehension of bias on his part may arise.

VIII—Discipline and Removal

2.32 : A complaint against a judge shall be processed expeditiously and fairly under an appropriate practice and the judge shall have the opportunity to comment on the complaint at the initial stage. The examination of the complaint at its initial stage shall be kept confidential, unless otherwise requested by the judge.

2.33 : (*a*)—the proceedings for judicial removal or discipline when such are initiated shall be held before a Court or a Board predominantly composed of members of the judiciary and selected by the judiciary.

(*b*)—However, the power of removal may be vested in the Legislature by impeachment or joint address, preferably upon a recommendation of a Court or Board referred to in 2.33(a).*

2.34 : All disciplinary action shall be based upon established standards of judicial conduct.

---

*See explanatory note at the end of Chapter II

2.35 : The proceedings for discipline of judges shall ensure fairness to the judge and the opportunity of a full hearing.

2.36 : With the exception of proceedings before the Legislature, the proceedings for discipline and removal shall be held in camera. The judge may however request that the hearing be held in public, subject to final and reasoned disposition of this request by the disciplinary Tribunal. Judgments in disciplinary proceedings, whether held in camera or in public, may be published.

2.37 : With the exception of proceedings before the Legislature or in connection with them, the decision of a disciplinary Tribunal shall be subject to appeal to a court.

2.38 : A judge shall not be subject to removal except on proved grounds of incapacity or misbehaviour rendering him unfit to continue in office.

2.39 In the event a court is abolished, judges serving on this court shall not be affected, except for their transfer to another court of the same status.

IX—Court Administration

2.40 : The main responsibility for Court administration shall vest in the judiciary.

2.41 : It shall be priority of the highest order for the sate to provide adequate resources to allow for the due administration of justice, including physical facilities appropriate for the maintenance of judicial independence, dignity and effciency ; judicial and administrative personnel ; and operating budgets.

2.42 : The budget of the courts shall be prepared by the competent authority in collaboration with the judiciary. The judiciary shall submit their estimate of the budget requirements to the appropriate authorities.

2.43 : The judiciary shall alone be responsible for assigning cases to individual judges or to sections of a court composed of several judges, in accordance with law or rules of court.

2.44 : The head of the court may exercise supervisory powers over judges on administrative matters.

X—Miscellaneous

2.45 : A judge shall ensure the fair conduct of the trial and inquire fully into any allegation made of a violation of the rights of a party or of a witness, including allegations of illtreatment.

2.46 : Judges shall accord respect to the members of the Bar.

2.47 : The state shall ensure the due and proper execution of orders and judgments of the Courts ; but supervision over the execution of orders and judgments process shall be vested in the judiciary.

2.48 : Judges shall keep themselves informed about international conventions and other instruments establishing human rights norms, and shall seek to implement them as far as feasible, within the limits set by their national constitutions and laws.

2.49 : The provisions of chapter II : *National Judges*, shall apply to all persons exercising judicial functions, including arbitrators and public prosecutors, unless reference to the context necessarily makes them inapplicable or inappropriate.

Explantory Notes to Chapter II.

(The figures refer to the corresponding articles)

2.16 : Unless assignments are made by the court, there is a danger of erosion of judicial independence by outside interference. It is vital that the court not make assignments as a result of any bias or prejudice or in response to external pressures. These comments are not intended to exclude the practice in some countries of requiring that assignments be approved by a Superior Council of the judiciary or similar body.

2.18 : Unless this principle is accepted transfer can be used to punish an independent and courageous judge, and to deter others from following his example. This principle is not intended to interfere with sound administrative practices enumerated in the law. Thus exceptions may be made, for example, where a judge in his early years is transferred from post to post to enrich his judicial experience.

2.20 : This text is not intended to exclude part-time judges. Where such practice exists, proper safeguards shall be laid down to ensure

impartiality and aviod conflict of interest. Nor is this text intended to exclude probationary periods for judges after their initial appointment in countries which have career judiciary such as in civil law countries.

2.28 : This text is not intended to permit membership of judges in political parties in countries where under law or practice such is excluded, but to lay standards limiting the scope of judicial involvement in countries where such membership is permissible.

2.29 : See Note 2.20

2.33 : In countries where the legal profession plays an indispensable role in maintaining the rule of law and judicial independence, it is recommended that members of the legal profession participate in the selection of the members of the Court or Board and be included as members thereof.

III Lawyers

I—Definitions

3. 01 : In this chapter :

(a) "lawyer" means a person qualified and authorized to practice before the courts and to advise and represent his clients in legal matters ;

(*b*) "Bar association" means the recognized professional association to which lawyers within a given jurisdiction belong.

II—General Principles

3.02 : The legal profession is one of the institutions referred to in the preamble to this declaration. Its independence constitutes an essential guarantee for the promotion and protection of human rights.

3.03 : There shall be a fair and equitable system of administration of justice which guarantee the independence of lawyers in the discharge of their professional duties without any restrictions, influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason,

3.04 : All persons shall have effective access to legal services provided by an independent lawyer to protect and establish their economic, social and cultural as well as civil and political rights.

III—Legal Education and Entry Into the Legal Profession

3.05 : Legal education shall be open to all persons with requisite qualifications and no one shall be denied such opportunity by reason of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status.

3.06 : Legal education shall be designed to promote in the public interest, in a addition to technical competence, awareness of the ideals and ethical duties of the lawyer and of human rights of fundamental freedoms recognized by national and international law.

3.07 : Programmes of legal education shall have regard to the social responsibilities of the lawyer, including cooperation in providing legal services to the poor and the promotion and the defence of economic, social and cultural rights in the process of development.

Every person having the necessary integrity, good character qualifications in law shall be entitled to become a lawyer and to continue in practice without discrimination for having been convicted of an offence for exercising his internationally recognized civil or political rights.

IV—Education of the Public Concerning the Law

3.09 : It shall be the responsibility of the lawyers to educate the members of the public about the principles of the rule of law, the importance of the independence of the judiciary and of the legal profession and to inform them about their rights and duties and the relevant and available remedies.

V—Rights and Duties of Lawyers

—advising the client as to his legal rights and obligations ;

—taking legal action to protect him and his interest : and, where required,

—representing him before courts, tribunals or administrative authorities.

3.11 : The lawyer in discharging his duties shall at all times act freely, diligently and fearlessly in accordance with the wishes of his client and subject to the established rules, standards and ethics of his profession without any inhibition or pressure from the authorities or the public.

3.12 : Every person and group of persons is entitled to call upon the assistance of a lawyer to defend his or its interests or cause within the law and it is the duty of the lawyer to do so to the best of his ability. Consequently the lawyer is not to be identified by the authorities or the public with his client or his client's cause, however popular or unpopular it may be.

3.13 : No lawyer shall suffer or be threatened with, penal, civil, administrative, economic or other sanctions by reason of his having advised or represented any client or client's cause.

3.14 : No court or administrative authority shall refuse to recognize the right of a lawyer to appear before it for his client.

3.15 : It is the duty of a lawyer to show proper respect towards the judiciary. He shall have the right to raise an objection to the participation or continued participation of a judge in a particular case, or to the conduct of a trial or hearing.

3.16 : If any proceedings are taken against a lawyer from failing to show proper respect towards a court, no sanction against him shall be imposed by a judge who participated in the proceedings which gave rise to the charge against the lawyer.

3.17 : Save as provided in these principles, a lawyer shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in his professional appearanecs before a court, tribunal or other legal or administrative authority.

3.18 : The independence of lawyers in dealing with persons deprived of their liberty shall be guaranteed so as to ensure that they have free and fair legal assistance. Safeguards shall be built to avoid any possible suggestions of collusion, arrangement or dependence between the lawyer who acts for them and the authorities.

3.19 : Lawyers shall have all such other facilities and privileges as are necessary to fulfil their professional responsibilities effectively, including :

(*a*) absolute confidentiality of the lawyer-client relationship :

(*b*) the right to travel and to consult with their clients freely both within their own country and abroad ;

(*c*) the right freely to seek to receive and, subject to the rules of

their profession, to impart information and ideas relating to their professional work :

(*d*) the right to accept or refuse a client or a file.

3.20 : Lawyers shall enjoy freedom of association, freedom of belief and freedom of expression ; and in particular they shall have the right to :

(*a*) take part in public discussion of matters concerning the law and the administration of justice,

(*b*) join or form freely local, national and international organizations.

(*c*) propose and recommend well considered law reforms in the public interest and inform the public about such matters, and

(*d*) take full and active part in the political, social and cultural life of their country :

3.21 : Rules and regulations governing the fees and remunerations of lawyers shall be designed to ensure that they earn a fair and adequate income, and legal services are made available to the public on reasonable terms.

VI—Legal Services for the Poor

3.22 : It is necessary corollary of the concept of an independent bar that its members shall make their services available to all sectors of society so that no one may be denied justice, and shall promote the cause of justice by protecting the human rights, economic, social and cultural, as well as civil, political, of individuals and groups.

3.23 : Governments shall be responsible for providing sufficient funding for legal service programmes for the poor.

3.24 : Lawyers engaged in legal service programmes and organizations, which are financed wholly or in part from public funds, shall receive adequate remuneration and enjoy full guarantees of their professional independence particularly by :

—the direction of such programmes or organizations being entrusted to an independent board composed mainly or entirely of members of the profession, with full control over its policies, budget and staff ;

—recognition that, in serving the cause of justice, the lawyer's primary duty is towards his client, whom he must advise and represent in conformity with his professional conscience and judgment.

VII—THE BAR ASSOCIATION

3.25 : There shall be established in each jurisdiction one or more independent and self-governing associations of lawyers recognised in law, whose council or other executive body shall be freely elected by all the members without interference of any kind by any other body or person. This shall be without prejudice to their right to form or join in addition other professional associations of lawyers and jurists.

3.26 : In order to enjoy the right of audience before the courts, all lawyers shall be members of the appropriate Bar association.

VIII—FUNCTIONS OF THE BAR ASSOCIATION

3.27 : The functions of a Bar Association in ensuring the independence of the legal profession shall be *inter alia* :

(*a*) to promote and uphold the cause of justice, without fear or favour.

(*b*) to maintain the honour, dignity, integrity, competence, ethics, standards of conduct and discipline of the profession ;

(*c*) to defend the role of lawyers in society and preserve the independence of the profession ;

(*d*) to protect and defend the dignity and independence of the judiciary ;

(*e*) to promote the free and equal access of the public to the system of justice, including the provision of legal aid and advice ;

(*f*) to promote the right of everyone to a fair and public hearing before a competent, independent and impartial tribunal and in accordance with proper procedures in all matters ;

(*g*) to promote and support law reform, and to comment upon and promote public discussion on the substance, interpretation and application of existing and proposed legislation ;

(*h*) to promote a high standard of legal education as pre-requisite for entry into the profession ;

(*i*) to ensure that there is free access to the profession for all persons having the requisite professional competence and good character, without discrimination of any kind, and to give assistance to new entrants into the profession ;

(*j*) to promote the welfare of members of the profession and render assistance to a member of his family in appropriate cases ;

(*k*) to affiliate with and participate in the activities of international organizations of lawyers.

3.28 : Where a person involved in litigation wishes to engage a lawyer from another country to act with a local lawyer, the Bar association shall cooperate in assisting the foreign lawyer to obtain the necessary right of audience.

3.29 : To enable the Bar, association to fulfil its function of preserving the independence of lawyers it shall be informed immediately of the reason and legal basis for the arrest or detention of any lawyer ; and for the same purpose the association shall have prior notice for

(*i*) any search of his person or property

(*ii*) any seizure of documents in his possessions, and

(*iii*) any decision to take proceedings affecting or calling into question the integrity of a lawyer.

In such cases. the Bar association shall be entitled to be represented by its president or nominee to follow the proceedings and in particular to ensure that professional secrecy is safeguarded.

IX—DISCIPLINARY PROCEEDINGS

3.30 : The Bar association shall freely establish and enforce in accordance with the law a code of professioual conduct of lawyers.

3.31 : The Bar association shall have exclusive competence to initiate and conduct disciplinary proceedings against lawyers on its own initiative or at the request of litigant. Although no court or public authority shall itself take disciplinary proceedings against a lawyer,

it may report a case to the Bar associatson with a view to its initiating disciplinary proceedings.

3.32 : Disciplinary proceedings shall be couducted in the first instance by a disciplinary committee established by the Bar association.

3.33 : An appeal shall lie from decision of the disciplinary committee to an appropriate appellate body.

3.34 : Disciplinary proceedings shall be conducted with full observance of the requirements of fair and proper procedure, in the light of the principles expressed in this declaration.

———

PRINCIPLES OF NATURAL JUSTICE

BY

HON'BLE DR. JUSTICE R. R. MISRA

The Preamble to the Constitution of India sets out the goals to be achieved by us. It says that we, the people of India, have solemnly resolved to secure for all the citizens, justice, social, economical and political. For achieving these objectives the decisional process is involved. Principles of natural justice are a part of the same and meant to be observed in day to day decisions of judicial, quasi-judicial and administrative bodies. But the concept of natural justice is not to be confused with the social, economic and political justice as the same is wholly distinct from the aforesaid three varieties of justice.

To ascertain the character of natural justice one has to bear in mind that the principles thereof are based on natural equity as held in the old Calvin's case[1]. Still these principles are not a set of any embodied rules based on pre-conceived notions but they vary and depend on a number of factors like the facts and circumstances of the case, the nature and character of the authority which has to deliver the decision, exigencies of the situation and the statutory rules and regulations under which the said authority is required to discharge its duty.

In a welfare State like India there is an increasing tendency to clothe the Tribunals and the Administrative Authorities to decide disputes arising between the parties as well as between individuals and the State. This is a inevitable because in our democracy we live in a society in which the persons, in their widest term, are regulated and controlled by Rule of Law. When the State works as a welfere State, it is inevitable that the jurisdiction of the administrative bodies should keep on increasing. This has been our experience also in the past. The concept of Rule of Law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely these which facilitates to ensure a just and fair decision. In recent years the concept of

---

1. (1610) 7 Coke 1a

quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.

The Rule of natural justice gains importance in this evolution of modern Administrative Law because it provides a basis for judicial control of the procedure to be followed by such Administrative Authorities. It is apprraent that in a welfere State the administration does enjoy wide powers to interfere with the person and property of the individual. Having regard to the same the right to hearing becomes an important safeguard against any abuse or arbitrary powers exercised by the Administration. It not only enables the authority concerned to apply its mind to all the relevant facts and the issues involved in a given situation. The applicability of the principles of natural justice also enjoins on such authority to give a rational decision after application of mind. In case the authority ignores either some material while arriving at its finding or violates some principles of natural justice the superior courts will take care of the same.

Under the Constitution of India we find that the Supreme Court of India under Article 32 and the High Courts under Articles 226 and 227 have been vested with powers to control the judgments and orders passed by the inferior courts, Tribunals and administrative bodies. To ensure that the principles of natural justice have been followed in a given case these courts have been vested with wide powers to issue various types of writs, including these in the nature of writs of mandamus, certiorari or prohibition. What is the real nature of these remedies which are available to a citizen from the courts. We are well aware that these writs have not been defined either in the Constitution or under any other enactment. For their real import, we are constrained to look to British Judicial System and a study of the same would immediately disclose that among others one of the grounds for the issue of these high prorogative writs is the violation of the principles of natural justice. It will be pertinent here at this stage to mention that the concept of natural justice involves basically two components :—

(a) *Audi alteram partem*, i. e. no person should be condemned unheard on in other words, a persen to be affected by a decision has a right to be heard,

(b) *Nemo judex in re sua*., i. e. no man can be a judge in his own cause or in other words, the authority deciding the matter should be free from bias or prejudice.

Opportunity

In his historic perspective we find that until the leading case of *Ridge* v. *Baldwin*[1] in England, the principles of natural justice were required to be observed only by judicial and quasi-judicial bodies and not by the administrative agencies or authorities. In India also the same pattern has been followed and until the landmark *Kraipak's case*[2], the same distinction between judicial and quasi-judicial bodies on the one hand and administrative bodies on the other was scrupulously maintained. However, in both the systems difficult situations continued to persist since the distinction between a quasi-judicial and an administrative body was not very clearly demarcated. In *case Kraipak's* (*supra*) it was held by the Supreme Court that the aim of the Rules of natural justice was to secure justice and to prevent miscarriage of justice. With the increase of the powers of the administrative bodies, it became necessary to ensure that no new despotism is created. The court held :—

> "The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised."

A further brief review of the Supreme Court cases will illustrate the evolution of the doctrine of natural justice in India. According to certain earlier cases of the Supreme Court there was no duty to act judicially and, therefore, principles of natural justice were not required to be observed. Later however, in *Ram Krishan Dalmia* v. *Justice Tendelkar*[3] a commission of enquiry was appointed by the Central Government to investigate into the wrongs alleged to have been committed by the petitioner. It was held by the Supreme Court that since the Commission was merely to investigate and record its findings and recommendations without having any power to enforce them, the inquiry or report could not be looked upon as a judicial inquiry in the sense of its being an exercise of judicial function properly so called.

---

1. 1964 A. C. 40
2. AIR 1970 SC 150
3. AIR 1958 SC 538

In *Province of Bombay* v. *Khushal Das Advani*[1] the power of the Government of Bombay to requisition any property for a public purpose without affording any opportunity to the affected persons was challenged. The Supreme Court by a majority of 4 : 2 held that the function of Government was not quasi-judicial since its decision was based on its subjective satisfaction or discretion and the decision contained no judicial element in it to make it judicial or quasi—judicial. The decision of the Provincial Government about public purpose was, therefore, an administrative act.

In *Shyam Lal* v. *State of U. P.*[2] it was held that an order of the President of India compulsorily retiring an officer could not be challenged on the ground that the officer had not been afforded full opportunity of showing cause against the action sought to be taken in regard to him.

However in *Board of High School and Intermediate Examination* v. *Ghanshyam Das Gupta*[3] in respect of the examinees using unfair means in examination halls, the Supreme Court held that where no opportunity whatsoever was given to the examinees to give an explanation and present their cases before the Committee, the resolution of the Committee cancelling their results and debarring them from appearing at the next examination was vitiated. The Supreme Court further held that the statute was not likely to provide in so many words that the authority passing the order was required to act judicially but that would also be inferred from the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided, the effect of the decision on the person affected and other Indicia afforded by the statute.

The Supreme Court in the case of *Board of High School and Intermediate Education* v. *Km. Chitra Srivastava*[4] also held that where the Board of High School and Intermediate Examination had cancelled the examination of a candidate, who had been allowed to appear at the examination and had actually answered all the question papers, on the ground that he had been admitted to the exmination inspite of shortage in attendance at lectures, without giving any show cause notice to the candidate, the action of the vitiated by violation of rules of natural justice. The Board in cancelling the examination was exercising quasi-judicial functions and it was incumbent upon it to issue a show cause notice to the candidate before inflicting the penalty of cancellation of examination.

---

1. AIR 1950 SC 222
2. AIR 1954 SC 369
3. AIR 1962 SC 1110
4. AIR 1970 SC 1039

On the other hand, in *Bihar School Examination Board* v. *Subhas Chandra Sinha*[1] the School Examination Board had cancelled the examination as a whole at a particular centre on the basis of report that a vast majority of examinees had adopted unfair means. The Supreme Court held that in such a case opportunity to all the candidates to represent their cases before the Board was not necessary.

In *Jawaharlal Nehru University* v. *B. S. Narwal*[2] the Supreme Court held that the University had power to remove a student from course on the basis of unsatisfactory academic performance. It was held that the instant case was "merely one of assessment of the academic performance of a student which the prescribed authorities of the University are best qualified to judge and the courts perhaps are least qualified to judge." No hearing was necessary when duly qualified and competent academic authorities had examined and assessed the work of a student over a period of time and declared it to be unsatisfactory.

In *Union of India* v. *Jyoti Prakash Mitter*[3] it was held that the President while determining the age of a High Court Judge, discharged judicial and not executive function and as such rules of natural justice had to be followed.

As regard cancellation of trading or business licence, the Supreme Court has uniformly held that the function is essentially a quasi-judicial function. Thus in *Mahabir Prasad* v. *State of U. P.*[4] an order cancelling licence under U. P. Sugar Dealers' Licensing Orders 1962 and depriving the effected persons of their right to carry on business in sugar and flour without even an opportunity to explain the alleged irregularities was held to be a quasi-judicial order and was held vitiated, inter-alia, in the absence of opportunity.

In *Sewpujanrai Indrasanrai Ltd.* v. *Collector of Customs*[5] the Supreme Court expressly held that an order of confiscation or of penalty under the Sea Customs Act 1878 was really a quasi-judicial order and was not merely administrative or executive act and so consequently, the principle of natural justice had to be observed.

---

1. AIR 1970 SC 1269
2. AIR 1980 SC 1666
3. AIR 1971 SC 1093
4. AIR 1970 SC 1302
5. AIR 1958 SC 858

In *K. T. Moopil Nair* v. *State of Kerala*[1] it was held that assessment of a tax on a person or property was at least of a quasi-judicial character and the Act in question, namely, Travancore-Cochin Land Tax Act, 1955 was held to be unconstitutional inter-alia, since the procedure prescribed did not require a notice to be given to the proposed assessee and no duty was cast upon the assessing authority to act judicially in the matter of assessment proceedings.

In *Board of Revenue, U. P. Allahabad* v. *Sardarni Vidyavati*[2] it was held that the Board of Revenue should hear the person affected, i. e. the executant of the instrument before saddling him with large pecuniary liability under the Stamp Act 1899.

Even on the cases on the tax side, in *Dwarka Nath* v. *Income Tax Officer*[3] it was held that the Commissioner of Income Tex while exercising revisional jurisdiction did not function in an administrative capacity and his jurisdiction was prima facie a judicial one. Thus, the opportunity had to be given to the affected parties to put forward their case. The nature of the jurisdiction and rights decided necessarily created with them the duty to act judicially in disposing of the revision.

In *Madan Gopal Agarwal* v. *District Magistrate, Allahabad*[4] it was held that although Section 3 of the Temporary Requistion Act 1947 did not contain an express provision for notice and hearing before making of the requisitioning order but considering the object of the Act, such provision was to be read there by a necessary implication. It was further held that it was difficult to assume that the legislature would have intended to deprive the owner of the possession of his cherished right without notice and hearing.

In *Erusian Equipment & Chemicals Ltd.* v. *State of West Bengal*[5], where the name of a person was placed on the black list of the State Government in respect of grant of government contracts, it was held that he was entitled to be heard before his name was put on black list. It was further held that black-listing had the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for the purpose of gains. The fact that a disability was created by the order of black-listing indicated that relevant authority was to have an objective

1. AIR 1961 SC 552
2. AIR 1962 SC 1217
3. AIR 1966 SC 81
4. AIR 1972 SC 2656
5. AIR 1978 SC 597

satisfaction. Fundamentals of fair play required that the person concerned should be given an opportunity to represent his case before he was put on the black-list.

In the landmark case of *Maneka Gandhi* v. *Union of India*[1] the impounding of the passport of the petitioner was challenged, inter alia, on the ground that the provision in question, namely, Section 10 (3) (c) of the Passports Act 1967 did not provide for a hearing of the holder of the passport and as such the section itself was challenged as unconstitutional. The Supreme Court held that although there were no positive provision in the statute requiring that the party shall be heard yet the justice of the common law would supply the omission of the legislature. It was further held that the power conferred under Section 10(3) (c) of the Passports Act on the passport authority to impound a procedure was quasi-judicial power. The rules of natural justice would, in the circumstances, be applicable in the exercise of the power of impounding a passport.

Speaking on the character and value of natural justice the Supreme Court further held,

> "Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must, always be ; does fairness in action demand that an opportunity to be heard should be given to the person affected ? A very notable feature of this case is that the Supreme Court held that in the exigencies of the situation in a given case, even a post-decisional hearing would meet the requirements of natural justice. This expansion of the principle was made to meet the argument that the opportunity before the contemplated action might itself frustrate the proper exercise of power. The Supreme Court held that a fair opportunity of being heard following immediately upon the order impounding the passport would satisfy the mandate of natural justice and a provision requiring giving such opportunity to the person concerned can and should be read by implication in the Passports Act 1967."

This principle of post-decisional opportunity has also been adopted by a Full Bench of Allahabad High Court consisting of five Judges in *Kailash Nath* v. *State of U. P.*[2]. It was held that in respect of revocation or suspen-

---

1. AIR 1975 SC 266, 2. AIR 1985 Allahabad 291

sion of licence in respect of fire arm, if the licence is sought to be revoked or suspended without notice in view of grave emergency, post-decisional hearing was necessary to be given to person affected by the competent authority. Accordingly it was held that it was incumbent upon the licensing authority to restrain from attaching finality to the order of cancellation until the aggrieved licence holder had been heard by such authority and his objection had beed adjudicated. It followed that in the event of the objection being allowed, the licence as well as the fire arm must be restored to the licence holder.

In *Mohinder Singh Gill* v. *Chief Election Commission New Delhi*[1] the question was whether the Election Commissioner was bound to give opportunity to the affected candidates before cancelling the poll in an entire constituency under Article 324 of the Constitution of India. Replying in the affirmative, the Court held "Fair hearing is a postulate of decision-making cancelling a poll, although fair abridgment of that process is permissible. It can be fair without the rules of evidence or form of trial. It cannot be fair if apprising the affected and appraising the representations is absent. The philosophy behind natural justice is, in one sense, participatory justice in the process of democratic rule of law. The silence of a statute has no exclusionary effect except where it flows from necessary implication. Article 324 vests a wide power and where some direct consequence on candidates emanates from its exercise one must read this functional obligation."

On the question as to whether rule of audi alteram partem was excluded in the matter of taking over of an undertaking without investigation under Section 18 AA of the Industries (Develepment and Regulation) Act 1951, the Supreme Court has in the case of *Swadeshi Cotton Mills* v. *Union of India*[2] held that although the section applied but where immediate action was necessary the principles of natural justice were not excluded at the pre-decisional stage. The Court held as follows :

> "The audi alteram partem rule is a very flexible, melleable and adaptable concept of natural justice. To adjust and harmonise the need for speed and obligation to act fairly, it can be modified and the measure of its application cut short in reasonable proportion to the exigencies of the situation. Thus, in the ultimate analysis, the question (as to what extent and in what measure) this rule of fair hearing will apply at the pre-decisional stage will depend upon the degree of

1. AIR 1978 SC 851
2. AIR 1981 SC 818

urgency, if any, evident from the facts and circumstances of the particular case."

Yet another historic case expanding the horizons of the principles of natural justice is the well known case of *S. L. Kapoor* v. *Jagmohan*[1]. It was held that in the matter of supersession of a Municipal Committee, an opportunity should be given to it before an order is passed by the competent authority. It was further held,

> "The status and office and the rights and responsibilities and the expectation of the Committee to serve its full term of office certainly creates sufficient interest in the Municipal Committee and their loss, if superseded, entails civil consequences so as to justify an insistence upon the observance of the principles of natural justice before an order of supersession is passed."

It may significantly be observed that the breach of the principles of natural justice, without anything more, furnished sufficient cause of action to the affected person. The Court held,

> "The principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced."

Having considered the elementary requirement of audi alteram partem, it is necessary to examine various components of the same. It should be remembered that the hearing to be given to the person affected is not merely a formal hearing or hearing for the sake of record but in law it should be an "effective hearing". For understanding as to what is conveyed by the said word, on an examination of the various cases of the Supreme Court, we find that it is composed of the following elements :—

(*a*) Firstly a proper notice must be issued by the authority concerned to the affected person and the same should give sufficient grounds to enable the party concerned to file a proper reply. The notice should be properly served on the person concerned and should allow him sufficient time to prepare his case. It should be clear, specific, unambiguous and adequate. It

---

1. AIR 1981 SC 136

should further be remembered that if the requirement of notice is prescribed under some particular law, then it will become a jurisdictional fact and as such, the issue of notice would be regarded as mandatory. Thus for example, in *C. A. T. A. Sales Cooperative Society Ltd.* v. *Secretary (Food & Agriculture), Government of Andhra Prabesh*[1], although the Cooperative Society in question had filed some representation in respect of the matter suo motu, yet it was held that the same did not absolve the government of its obligation to issue the notice. The Court held that the requirement of notice could not be by passed by the Government. However, if the issuance of notice is not expressly required under the statute but is required only as part of the principles of natural justice, the filing of representation by the person affected may be regarded as sufficient notice to him ;

(*b*) Secondly in order to ensure fair hearing it is necessary that the adjudicating authority should receive all the relevant materials which the affected person wishes to bring on record. Thus in *Dhakeshwari Cotton Mills Ltd.* v. *Commissioner of Income Tax*[2], the principles of natural justice were held violated on account of the refusal of the Income Tax authorities to take all the materials and account books that the assessee wanted to produce in support of its case ;

(*c*) Thirdly for a fair hearing it is also required that the authority concerned should disclose all the information, material or evidence in its possession on which it wishes to rely against the individual concerned, for the purpose of arriving at its decision. Thus in the aforesaid case, it was also held that the income tax authorities had violated fundamental rules of justice by not disclosing to the assessee the nature of information received by them from the departmental representative. Similarly in *City Corner* v. *Personal Assistant to Collector*[3] the appellant in reply to a show cause notice in respect of cancellation of his licence, asked for copies of various documents on the basis of which the show cause notice had been issued and he also stated that in the absence of the said copies, he was not in a position to submit a detailed explanation.

---

1. AIR 1977 SC 2313
2. AIR 1955 SC 65
3. AIR 1976 SC 143

The Supreme Court held that the order passed by the District Magistrate post-haste immediately he received the appellant's reply without either giving him the copies asked for or at least telling him that the material already furnished was sufficient offended the principles of natural justice. Similarly in *M/s North Bihar Agency* v. *State of Bihar*[1] principles of natural justice were held violated where additional material was brought on record at the appellate stage but the same had not been furnished to the appellants. Thus no information can be supplied to the adjudicating authority behind the back of the person affected ;

(*d*) Fourthly, it is also necessary for the fair hearing that the person concerned should be given an opportunity to contradict such information or material which has been supplied by any person against him to the authority. Normally in such a case, opportunity of filing written representation against the said material is regarded as sufficient. But in cases relating to employment of government servants or disciplinary cases arising out of labour-management relations or against the employees of statutory corporations, right of cross-examination of the person furnishing the information has been usually regarded as an essential content of natural justice. It must always be remembered, as already stated, that basically principles of natural justice have to be applied on case to case basis and no uniform pattern which has a universal application can be laid down.

In the case of Government servants the principles of natural justice are embodied in Article 311 of the Constitution of India whereunder it is expressly stated that in respect of three punishments, viz. dismissal, removal or reduction in rank, reasonable opportunity of being heard must be given to concerned employee. Thus the observance of principles of natural justice has been made a constitutional mandate. Although technical rules of procedure do not apply yet principles of natural justice apply with full force. Thus the employee concerned has to be communicated the specific charges against him and the evidence against him including the names of the witnesses has to be disclosed. The employee concerned has a right of personal hearing and he also has a right to cross-examine the witnesses appearing against him as well as to adduce his own evidence. The inquiry officer cannot proceed on the basis of his private source of information and he must act as an impartial person although it is permissible that he might

1. AIR 1981 SC 1758

be an employee of the concerned department. The inquiry officer himself cannot be a witness or also the proceedings would be vitiated. Moreover, a report of the inquiry officer must also be given to the concerned employee. It may, however, be added that if some inquiry is quashed by some competent court of law on certain technicalities, the department is entitled to conduct a fresh inquiry.

In this connection it is important to submit that before 42nd Amendment of 1976, Article 311 required the Government to give a second opportunity to concerned employee in respect of the proposed action against him. This part of natural justice has been deleted by 42nd Amendment. However, it cannot be said that the same can, in any way, be regarded as violative of the basic structure of the Constitution and so amendment must be regarded as valid. To this extent, there has been a diminution of the principles of natural justice qua government servants.

Since this exclusion of the principles of natural justice is a mandate by the Constitution itself, as such, the employee concerned can have no resistance. However, in a very important case *Union of India* v. *Tulsiram Patel*[1], an argument was made that principles of natural justice should be observed in such a case in accordance with Article 14. The contention was that although, in terms, Article 311 did not require any enquiry, yet the samething could be read under the provisions of Article 14 which spoke of reasonableness and fairness. The Supreme Court, however, rightly negatived the said argument and as such in the three cases covered under the second proviso to Article 311, principles of natural justice stand completely excluded.

Apart from aforesaid situation where principles of natural justice stand excluded by constitutional mandate, there are also exccpations to the said rnle of natural justice. Those situations are as follows :

(i) As already stated above, principles of natural justice can be invoked only in respect of decisional process and not against the exercise of sovereign power of Legislature to make laws because the Parliament or the State Legislatures is fully competent to make any law either way regarding the question of giving any opportunity to any person likely to be affected. Similar will be the position in regard to the exercise of the powers under delegated legislation for framing of rules, regulations, notifications and bye-laws.

---

1. AIR 1985 SC 1416

However, if the legislature itself permits that due opportunity should be given, then that provision has to be complied with accordingly. Thus, for example, under Section 43 of the Motor Vehicles Act 1939, the State Government may fix fares and freights but before a notification to that effect is issued the Statute provides that the Government has to invite objections and to give to the person affected an opportunity of being heard. Similarly, the objections are to be invited under U. P. Kshettra Samities and Zila Parishads Adhiniyam 1961 before imposition of taxes. In such cases, the requisite procedure has got to be followed.

(ii) The principles of natural justice can also be excluded by statute. In other words, if any particular statute either expressly or by necessary implication rules out the application of the principles of natural justice, then to this extent, such principles stand excluded. Thus, for example, in *Union of India* v. *J. N. Sinha*[1] the compulsory retirement of the respondent was challenged on the ground that he had not been given any opportunity and so the order was vitiated for violation of the principles of natural justice. The Supreme Court negatived the argument saying that the principles of natural justice could only operate in areas not covered by any law validly made. The Supreme Court held,

"Rules of natural justice are not embodied rules nor can they be elevated to the position of fundumental rights. Their aim is to secure justice or to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. If a statutory provision can be read consistently with the principles of natural justice, the courts should do so. But if a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the

---

1. AIR 1971 SC 40

express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

However, it appears that in view of the recent judgment of the Supreme Court in the case of Tulsiram Patel[1], the aforesaid case may require reconsideration. In Tulsiram Patel's case, it has been said.

"The principles of natural justice have come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by the Supreme Court to the concept of equality which is the subject-matter of that Article. A violation of a principle of natural justice by a State action is a violation of Article 14. Though the two rules of natural justice, namely, nemo judex in causa sua and audi alteram partem, have now a definite meaning and connotation in law and their content and implication are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. Not only can the principle of natural justice be modified but in exceptional cases they can even be excluded."

(iii) Principles of natural justice can be validly excluded in cases of emergency or in cases of extreme necessity. Thus, for example, no notice would be required in order to demolish buildings to extinguish fire or to destroy contagious plant or animal life or for destruction of unwholesome food or forfeiture of obscene material. In such cases a balance between the competing claims of hurry and hearing have to be struck. In all these cases it is not possible to give a hearing because of the urgency with which administrative action needs to be taken but in several such cases interesting questions of post-decisional hearing would naturally arise.

(iv) In respect of the termination of services of a Government servant, the Supreme Court has already held in an old leading

---

1. AIR 1985 SC 1416

case of *Parshottamlal Dhingra* v. *Union of India*[1] that the principles of natural justice need not be observed in case of a temporary employee, an ad hoc employee or a probationer if the services are sought to be terminated without casting any stigma against him. However, it may be added that even in cases of a temporary employee, if a forfeiture is to be made in respect of pay, allowances or period of service, natural justice might have to be complied with although not under Article 311.

(v) Finally, principles of natural justice do not apply when the matter is covered by the terms of agreement. Thus for example in *M/s Radha Krishna Agarwal* v. *State of Bihar*[2], where a contract was sought to be terminated by the Officers of the State purporting to act under the terms of an agreement between the parties, principles of natural justice stood excluded. The Supreme Court held,

"The limitations imposed by rules of natural justice cannot operate upon powers which are covered by the terms of an agreement exclusively. The only question which normally arises in such cases is whether the action complained of is or is not in consonance with the terms of agreement."

Similarly in *State of Punjab* v. *Ajudhia Nath*[3] it was held that no opportunity of being heard was required to be given to a person when certain demands were made for payment of the amount of still head duty which had become due under the contracts accepted by the licensee himself.

After considering the exceptions to the principles of natural justice, let us now advert to the effects of the breach of the principles of natural justice. It has been held by the Supreme Court in *A. V. Venkateswaran* v. *Ramchandra Sobhraj Wadhwani*[4] that an order passed in violation of princi-

---

1. AIR 1958 SC 36
2. AIR 1977 SC 1496
3. AIR 1981 SC 1374
4. AIR 1961 SC 1506

ples of natural justice has to be treated as void or non est. Such an order is to be regarded as a case of nullity. In fact the Court has gone to the extent of stating that in case of breach of the principles of natural justice even an alternative remedy provided by the statute cannot be regarded as sufficient alternative remedy and the affected person is free to approach the High Court for the redressal of his grievances.

So far we have considered one of the twin principles of natural justice, viz. audi alterm partem. Now let us focus our attention to the other principle, viz. "*nemo judex in re sua*" which, as already stated, means that a person cannot be a judge in his own cause. The basic idea is that justice should not merely be done but should also appear to have been done. An essential element of judicial process is that the judge has to be impartial and neutral and has to be in a position to apply his mind objectively to the disputes before him. It is, however, difficult to prove the state of mind of a person. So the real question is not whether a judge or an adjudicature is biased but what has to be seen is whether there is reasonable ground for believing that he was likely to be biased. In deciding the question of bias, one has to take into consideration human probabilities and ordinary course of human conduct[1]. Now bias is usually of three types:

1. Pecuniary bias

It is settled law that if any judge or adjudicature has any pecuniary interest in the subject-matter of dispute, howsoever, small or insignificant, that will disqualify him from acting as a judge or as an adjudicator. In fact in the important case of *Jeejeebhoy* v. *Assistant Collector Thana*[2] objection was taken that the Chief Justice of India who was a member of the bench should not hear the matter as he had pecuniary or proprietory interest in the subject matter of the litigation—he being a member of the cooperative society for which the land was acquired. The objection was upheld and the Chief Justice re-constituted the bench, removing himself from it. Thus it proved beyond doubt that the requirements of natural justice applied to the most exalted judicial officer like the humblest of persons.

However, it must be emphasised that this principle is subject to the doctrine of necessity. Thus for example, if a contempt is committed of all

---

1. AIR 1970 SC 150 (Kraipak's case)
2. AIR 1965 SC 1096

the judges of a High Court one of such judges hearing the matter has to be a judge in his own cause. Similarly, if any scheme in respect of nationalisation of banks is being challenged in the Supreme Court and all the judges of the Supreme Court have shares in the concerned bank, they cannot refuse to hear the petition and on the ground of necessity, one or more of them have to hear the matter.

2. Personal bias

It is possible that on account of various circumstances, an adjudicator or a judge may be a friend or relation of one of the parties or may have some business or professional relationship with him or may have some personal animosity or hostility against him. Such factors will certainly weigh against such person while deciding the matter and will operate as a disqualification for him to act as an adjudicator. Thus, for example, in *Meenglas Tea Estate* v. *The Workman*[1], an inquiry was conducted by the assaulted officers themselves against the guilty workman. The Supreme Court held that it amounted to travesty of the principles of natural justice and the whole inquiry stood vitiated. Similarly, in *Dr. S. P. Kapoor* v. *State of Himachal Pradesh*[2] the confidential reports submitted by a doctor who was himself one of the competitors for the promotional post, as regards other candidates, were taken into consideration by the Departmental Promotion Committee. It was held that it was not fair for the Departmental Promotion Committee to take into account such reports.

Similarly, in the famous *Kraipak's case* where one member of the Selection Board was himself a candidate for selection, proceedings were held vitiated. Although such a member himself did not take part in deliberations of Board at the time of his own selection but he had taken part throughout while making selections of other candidates including his rival candidates.

Waiver

This principle has an exception. In *Dr. G. Sarana* v. *University of Lucknow*[3] the Supreme Court held that where a candidate for selection

---

1. AIR 1963 SC 1719
2. AIR 1981 SC 2181
3. AIR 1976 SC 2428

knowing fully well the relevant facts about the members of the selection board voluntarily appeared for interview without raising any kind of objection against the constitution of the Selection Board and took a chance of favourable recommendation in his favour, it was not open to him to turn round and question the constitution of the Board when the decision was unfavourable to him.

3. Bias as to subject matter or policy bias

It is inherent in the very nature of things that the administrative adjudicators are trained in a particular way and they are part and parcel of the administrative machinery and it is probable that they may imbibe an official or a policy bias in respect of certain matters. An administrator-adjudicator cannot develop the same kind of neutrality and objectivity to the issues in respect of policies as is possible in the case of a judge. However, if there is a very close and direct connection between the adjudicating authority and the issues in controversy, the authority would stand disqualified. For example, in an important case of *Gulapalli Nageswara* v. *Andhra Pradesh State Road Transport Corporation*[1] the Secretary of the department himself prepared a scheme in respect of certain routes and then invited the objections. The Supreme Court rightly held that it was not possible for the same Secretary to first initiate the scheme and then to consider the objection in respect of the same scheme lodged by others. Similarly, if a matter is decided by a particular official, he cannot decide the same again in a different capacity. For example, as an appellate or revising authority. In other words, an authority cannot re-hear and decide the validity of its own judgment, even though in the meantime the authority might have been upgraded.

Dritation from above

Similarly, it is possible that although a statute confers a power on a particular authority to decide a matter, the discretion of that authority is being controlled by some superior authority. In such a case, if the judgment is delivered under the dictation of a superior authority, it is liable to be held vitiated. Thus for example, in *Mahadayal Prem Chand* v. *Commercial Tax Officer*[2] the Commercial Tax Officer instead of exercising his own

---

1. AIR 1959 SC 308.
2. AIR 1958 SC 667

judgment, sought instructions of the Assistant Commissioner and accordingly decided the matter. The Supreme Court took a very serious view of the situation and observed as follows :—

> "We are realy surprised at the manner in which the first respondent dealt with the matter of the assessment. It is clear that he did not exercise his own judgment in the matter and faithfully followed the instructions conveyed to him by the Assistant Commissioner (C. S.) without giving the appellants an opportunity to meet the points urged against them. The whole procedure was contrary to the principles of natural justice. The procedure adopted was, to say the least, unfair and was calculated to undermine the confidence of the public in the impartial and fair administration of the Sales Tax Department concerned."

Similarly, in *Partabpur Co. Ltd.* v. *Cane Commissioner of Bihar*[1] it was held that if certain powers were conferred on the Cane Commissioner under certain statute, the same could not be usurped by even the Chief Minister, and if the orders were in fact made by the Chief Minister, they would be invalid even though they were issued in the name of the Cane Commissioner. It was further held that it was not proper for the Chief Minister to have interfered with the functions of the Cane Commissioner.

To sum up

Having thus considered the twin principles of natural justice, it can safely be concluded that the Supreme Court has taken a very enlightened attitude towards invoking them in respect of the decisions of the Administrative authorities and bodies. The Supreme Court has suitably tailored them to the facts and circumstances of each case and has rightly held that the principles of natural justice cannot be embodied in any particular set or

---

1. AIR 1970 SC 1896

forms, and they differ from case to case. The Supreme Court has rightly struck a balance between the needs of the Administration and the minimum rights of an individual in so far as the decisions by the Administrative bodies and authorities are concerned. With the growing evolution of administrative law in our country, new situations and areas for the application of the principles of natural justice are likely to arise and it is hoped that the Courts will be able to cope with the same and will continue to apply the same liberally in favour of the common man.

MANNERS AND ETIQUETTE FOR JUDICIAL OFFICER IN COURT

BY

Mr. Justice U. C. Srivastava

Out of three limbs of State governed by the Rule of Law judiciary always occupied an exalted position and rightly so. There can be no State Governed by the Rule of Law which does not aim at Justice to all sentient beings. The supremacy and majesty of law has been maintained by the impartiality, fairness and concentration on justice by those who administer justice and deliver it to all those who knock its doors or come before it.

The majesty and the dignity of law and that of its dispensers has always been recognised in India from times immemorial. In ancient India law was not separate from Dharma and included in it, and the same has been subjected to various changes both from inside and outside. Customs and traditions shaped it, rules of conduct and the dread of the other world moulded it. Foreign invasions and the absorption of invaders who became part of this country had its effect on law and on those who were administering law though not to the same extent on the Panchayat, as it was known then, administering justice in a locality. The Qazi system came, and thereafter codified laws gradually came into existence with the advent of British Rule and Anglo Saxan Laws and the courts established by them were based on that pattern.

In ancient India also the king was and continued to be source of Justice. While administering and delivering justice he too was to follow and abide by a certain Code of Conduct and etiquette. Manu the Great in Manu Smriti has observed, "Having occupied the chair of justice with his body, will, attire and mind composed, the Judge shall salute the guardian deity and then proceed with the trial... either sitting or standing... without ostentation in his dress or ornaments, let him examine the affairs of litigant parties. Let the king prepare a just compensation for good and a just punishment for the bad. The rule of strict justice, let him never transgress". Due to enlargement in the jurisdiction and duties of king it was considered necessary that Judges be appointed for exercising the powers of mind for dispensation of justice and the king reserved supreme power in himself and this is

how the king delegated his powers to the Judges appointed by him. For the Judges so appointed Code of Conduct and etiquette was also prescribed.

Thus Katyayan in his Poorvee Mimansa said-

"A judge should be austere and restrained, impartial, in temperament steadfast, God fearing, assiduous in his duties, free from anger, leading a righteous life"...And so has said Shukra in Shukra Neetisar.—"Judges appointed by the king should be well versed in the procedure, be wise, of good character and temperament, soft in words, impartial to friend or foe, truthful, learned in law, active, free from anger, greed or desire".

Kautilya in his famous Arthshastra laid down that Judges shall settle disputes free from all kinds of circumvention, with mind undaunted, and unchanged in all moods and circumstances, pleasing and affable to all.

Arthashastra enumerates the judicial misconduct and punishment for the same by stating: "When a Judge threatens, browbeats, sends out or unjustly silences any one of the disputants in his court, he shall first of all be punished". This shows that law givers of ancient India were fully conscious of judicial conduct and etiquette and they laid down what gradually came to be established as the society developed. Their dictates are relevant even today and cover practically all the bare requirements.

In medeival period, particularly in Moghul period, the appointment order of Qazi directed him to be just, honest and impartial and to hold trials in presence of parties and court hours. He was forbidden from accepting presents from the people of the place where he was to serve and not to attend entertainments given by any body or everybody.

The manner and etiquette of judicial officers in courts covers a wide field. The confidence of common man in the judiciary and the judicial process, the majesty of law and the respect and awe for it, judicial discipline, behaviour and restraint are all linked with each other. The position of a Judicial Officer, the mode and manner of exercise of his power is different from that of an officer on the Executive side. It is not to be forgotten that the Judicial Officer is to lead the life of a mendicant to some extent, and his life instead of being social is more that of exclusion and seclusion from society. They are to maintain the dignity of the court by their behaviour

and manner and see that the faith and confidence reposed in them by the common man is not lost by their behaviour, manner and ways and mode of working. It can well be said that a civilised society is known more as such because of the respect and honour shown by it towords its judiciary. It is the duty of judiciary to preserve and protect the written and unwritten honour and respect which it commands for judicial officers in the State of Uttar Pradesh. No separate Conduct Rules, apart from U. P. Government Servant Rules, have been prescribed. They are also governed by the General Rules (Civil) and the Circulars issued by the High Court from time to time. The Judicial Officers who are to deliver justice and to interpret law and direct its enforcement, they are to abide by the Rules meant for them regarding their behaviour, manners, and etiquette. Any deviation by these guardians of law may lead to shaking of confidence in them by the general public, giving rise to a feeling that one who can breach the rules and regulations meant for him cannot deliver true and impartial justice.

DRESS

A Judicial Officer must dress properly in accordance with the Rules laid down in General Rules (Civil) which not only enjoin upon him to himself dress properly in the manner prescribed but also to see that legal practitioners appearing before him are properly dressed. Proper dress will include combing of hair and buttoning of coat and shirt and putting on gown over the coat. If he is properly by dressed only then he will be in a position to ask the legal practitioners to dress in accordance with the Rules in order to get them recognised as a legal pratitioner and be heard as such. But this is to be said politely to practitioners. It is not only a legal requirement but also required by the discipline and practice of the Court in this behalf.

Though there is no such prescription, salutation to the Chair of Justice is in accord with the prescription and practice in ancient India which is in vogue in the Supreme Court and the High Court. It is a good tradition, and is also a constant reminder for adherence of judicial ethics throughout the day and evoke still more respect, adoration and confidence both from the Members of Bar and the litigants.

PUNCTUALITY

Judicial Officers are to observe strict punctuality in their sitting in Court and for lunch break which is prescribed. Non-observance to it means

violation of Rules by those who are custodians of law and are not only to enforce the rules and penalties for their violation against all those who break them.They are to give full justice to public time and money. Non-observance of the time schedule prescribed for working in Courts, availing of lunch break more than what is prescribed and thereby reducing the working hours would be sort of doing of justice to public time and money. This will have its impact on unflinching faith and confidence and respect which a common man resposes in Courts of law. General Rules Civil have prescribed the working hours of Subordinate Courts to be between 10-30 a.m. to 4-00 p.m. with a break of half an hour for lunch between 1-30 p.m. to 2.00 p.m. The Circular issued by the High Court also prescribes punishment for late sitting in the morning and after lunch. Presiding Officers are not to work in a manner which may give an idea to the lawyers and litigants that regulation of list and its variation is done or could be done by the staff and not by the Presiding Officer himself.

LANGUAGE

The language used by the lawyers, litigants and court-staff should not be rough and sharp. Rough language may at times evoke a rough reply instead of a polite and courteous reply. But this does not mean that if a member of the Court staff or a litigant goes astray he is not to be reprimanded and put under control. Litigants are also subject to action under Contempt of Courts Act. The Presiding Officer undoubtedly is not to be hypersensitive in such matters or make any such matter a personal issue. If compelled in order to maintain dignity and decorum of the Court it will have to resort to the provisions of the Contempt of Courts Act though reluctantly and also the provisions of section 345 of Criminal Procedure Code read with section 228, I.P.C. if proceedings of Courts are being obstructed. But in such matters Courts are to proceed cautiously and only when it really becomes necessary and other options are either not available and doors for the same are practically closed.

WITNESSES

The position of a witness in the Indian judicial system is not very much firm and it is the duty of the court to protect them and see that they are not unnecessarily harassed and sought to be confused or made to convert truth into falsehood. No one is interested in their convenience even in the matter of fixation of dates in the cases. The Presiding Officer is to see that while

in the witness box a witness is not subjected to unnecessary and irrelevant cross examination by way of harassment. This is to be controlled and regulated but within four corners of law, tactfully for avoiding unnecessary controversy and confrontation. Though the Presiding Officers are to be courteous to witnesses, it does not mean that when they start going astray or try to enter into wordy duel with lawyers or pass remarks on them or on the judicial process, they are not to be reprimanded or reminded of their limitations or warned.

BAR

The study of Bar is very important for the Presiding Officer, just as the Bar also studies a Presiding Officer. Relations of Bench and Bar should be happy and efforts should always be made for the same. There should be mutual respect for each other. Even though the Presiding officer is not to allow himself to be brow-beaten he should with composed and undaunted mind and unchanged in all moods proceed to dispose of the matter before him fairly, justly and impartially without any element of bias, anger or favour. He is not to lose temper or enter into wordy duel with violent lawyers. In case exigencies of situation so warrant, order may be reserved and be pronounced at the fag end of the day before retiring into chambers.

For avoiding unnecessary adjournments, which now is the practice with some of the lawyers, prolonged trial, harassment of witnesses, creation of grounds for transfer of cases,--may it be for delaying its disposal-the same is to be dealt with politely and tactfully without any element of fear. The presiding officers are not to feel themselves in a helpless condition unable to cope with any bullying tactics.

The reputation of a Presiding Officer of being fair, just, impartial, honest, free from any bias, prejudice or interest, detachment and absence of any leaning with one section or group or another or category of litigants and lawyers always helps him in controlling the order and proceedings of the Court. It is his duty to maintain court-room behaviour.

In a court the Presiding Officer should avoid any glib talks or any irrelevant talks which has nothing to do with the case. Whenever necessary a matter can be talked out or solved humorously instead of tensely. Repartees between the Bench and Bar are not uncommon, but repartees could be given only in a manner which may not pinch the other person and may not revoke hostile reaction.

The Presiding Officer should give fair and full hearing in a case and he should not show impatience or try to proceed with the case hurriedly in order to complete his quota, but that does not mean that time should be allowed to be wasted unnecessarily. Restraint and Judicial discipline should be guiding factors for a Judicial Officer who is not to deviate from judicial propriety. It is the judicial discipline and propriety which makes him a successful judicial officer free from all conflict and controversy.

The most controversial scene in a civil court room is when an injunction matter comes before it. Thereafter when jurisdiction, valuation or payment of court-fees matters are challenged before it. Great restraint is to be kept when such matters are argued. Similarly in criminal matters the arguments on a bail application and insistence for its grant, and thereafter its refusal may lead to unwitnessed scenes. The attempt to get a case odjourned by one party or the other, which is a fast developing practice, is yet another matter which requires great attention and caution.

Dated: 21st September, 1987.

SOME ASPECTS OF THE RESPONSIBILITY AND PERSONALITY OF A JUDGE

A talk by Mr. justice V.V. Joshi (Retired High Court Judge, Bombay), before the Trainee Judges at the Maharashtra Judicial Officers Training Institute.

Friends,

(1) I have selected for today's talk the subject: "some aspects of the responsibility and personality of a Judge". I belive this subject is of importance for a beginner in Judicial service, to assist him eventually into blossoming into a right type of Judicial Officer. In the sphere of legal precedents, principles, enactments, and juridical principles, assistance is available for a Judge in such full measure, as indeed to be overwhelmingly confusing. But rarely do Judges get any assistance in matters of proper behaviour, proprieties, in matters of administration, and dealing with the subordinate staff. The general practice is for the Superior Boss to find fault with a Judge when he may go wrong in some of these matters, and then to give him a sermon on the issue. The fault-found Judge is at that time generally not in a mood to patiently and dispassionately listen to such advice. He is at the moment smarting under the reproach, his ego is hurt, and he is in a state of mental turmoil. More often than not, the superior's sermon or advice is apt to be lost on deaf ears. So I have decided to group together these matters in a comprehensive talk that may perhaps prove useful to you in your judicial career. You are thus getting an opportunity to ponder over these issues dispassionately from a third person's point of view, without any personal emotional involvement.

(2) These days usually, a Judge assumes Judicial Office after having put in about 3 to 5 years of practice as a lawyer. When I look back on the commencement of my Judicial career at the raw age of 24 years, certain experiences of mine still stand highlighted. The first few months I had a feeling of overwhelming embarrassment. It was a strange experience to see aged and experienced senior lawyers bowing down and showing their respect to the new boy-Judge. Another embarrassing feeling was generated by my freely passing money decrees of five thousand rupees, when I was myself being paid the paltry sum of Rs. 180/-- after a hard month's labour. Rather than feeling a sense of pride and position, I had a feeling of shameful embarrassment. But within three or four months I got over this

ambarrassment. Of course, all of you are well past that stage. But I am mentioning this aspect only with a view to highlighting the other side of the picture. Imagine what the aged, experienced and senior lawyers might be feeling about the young raw Judge, who, in their view, knows neither law nor procedure ? However, most of the time they suffer in silence. Every Judge has, therefore, to be aware, throughout his judicial career, of his own shortcomings, and he must therefore, assume an attitude of humility rather than one of hauteur. In this respect, I may, merely to emphasize the point, turn to a humourous repartee found in some of the lighter books dealing with the Judge-Lawyer relationship. The senior experienced lawyer was doing his best to convince on certain law point a raw young Judge who clearly was not getting the message, mostly because of his own shortcomings. The Lawyer had begun to vividly show signs of exasperation. In curious annoyance the Judge asked the Lawyer, "well Mr....., are you trying to show your contempt of the court to me?" The ingenious lawyer, bowing down in deep respect, answered "My Lord, on the contrary I am doing my best to hide "it."

3. As the new Judge advances in experience, he rapidly reconciles himself to his new office and its requirements. For the first ye·r or two the judge is solicitiously careful, he puts in honest industry in his work, burning the midnight oil and putting in a hard day's labour. Soon he finds the going easy and natural and he relaxes into a state of job enjoyment, maintaining, however, the attitude of careful and honest work. It is not much later that he may enter upon a mood of carefree relaxation, taking his office for granted, and slowly he ceases to put in the necessary industry. One he finds the going easy, and tolerated, he sides further into a state of careless abandon, letting things somehow drag on, he finds himself lagging behind in work and disposals, writing of Judgements lags behind, and the undelivered Judgements and orders pile up. Here he may find an easy solution by tripping into path of dishonesty. He gets desperate and may start ante-dating judgements. This is the usual easy road down the slope over which the judicial officer is apt to slide, unless he is careful and applies the brakes in time.

4. such degradation is totally wrong and wholly un-necessary. On entering into the office of a Judge, a certain amount of self discipline is essential and this self discipline has to be maintained throughout the judicial career of the Judge.

• Now what is discipline? Very simply put, discipline is imposition of a set of rules of conduct and behaviour, and once those set of rules are accepted and imposed, strictly observing those rules all the time. Those rules of conduct and behaviour may be self imposed, by

a particular person on himself, or they may be traditionally handed down from generation to generation, in a given culture, civilization or society. It is however essential that the set of rules are healthy and proper ones, and are beneficial to one and all, one cannot have a discipline with improper or wrong type of rules. For example, a society of thieves might impose on its members a rule that every member must commit a theft every day. Observance of this rule may not be called a proper discipline although the society of thieves might perhaps regard it as a proper internal dicipline for them. Discipline may vary from society to society and even from one field to another field in the same society. In western countries, for example, it is most common for members of different sexes to kiss in public, but this is simply not done in our country. Now this discipline in our country has been handed down traditionally from generation to generation, against the backdrop of our culture. Having accepted that traditional rule, adhering to it strictly is diciplin:, while committing breach of it is lack of discipline. Different professions may have different sets of rules to serve the needs of each profession. Adherence by members of each profession to these rules is maintaining discipline, while committing breach of those rules often is lack of discipline. Thus discipline for a Judge may be different from discipline for a singer, a professor or a doctor. Now our activities may be bodily i.e. physical, or of the mind, i.e. mental or of the intellectnal. So our discipline could also be physical, mental or intellectual. To help any one in distress to speak softly and sweetly to all, are examples of rules of physical activity and strict adherance. Feeling is a faculty of the mind, and so, to feel love and affection for all, to feel no hatred for any one, are rules of mental activity and strict adherance to these rules all the time is maintaining mental discipline. Thinking is a faculty of the intellect, so to think good thoughts, not to think bad thoughts are rules of intellectual behaviour, and strict adherence to these rules all the time is maintaining intellectual discipline. If you are a smoker resolving not to smoke and sticking to that resolution for the rest of your life is maintaining proper discipline, but lapsing into smoking number of times, while from time to time continuing to resolve not to smoke exhibits lack of discipline. I had once a District Judge wno was a chain smoker. He used to say "Giving up smoking is very easy. I have done it 300 times." This is an example of lack of discipline.

5. Now, this was a digression. coming back to the topic as I said, the impostion of this self-discipline may in the beginning appear hard and taxing, but if rigorously followed in the early years, the imposed self-discipline soon becomes a way of life, a sort of second self-discipline soon becomes a way of life, a sort of second nature, and then it automatically

continues in the judicial career of the judicial career of the judge without any conscious effort.

6. What is the nature of this self discipline? It can be covered under some broad heads. Of prime importance in this respect is punctuality in court work and working through the court hours. A new Judge usually commences his judicial career at a district place where there are a number of judicial officers senior and superior in rank to him. He is the last in the line. Of necessity the new Judge attends Court before time, he starts his judicial work punctually and works throughout the day. What pulls him through this discipline is his own starting zeal, and more important, the fear of reproach from his superiors. After two or three years the Judge is transferred to an outlying taluqa place. At this place there is no superior judicial Officer to watch whether the Judge attends court punctually or not or whether he does not work through the full Court hours. In the beginning the Judge is apt to follow this discipline properly, more from mere past habit than any conscious effort as part of discipline. Soon he realises that he need not be ultra-strict in this respect, it would not matter much if he goes to the Court a few minutes late or comes back from Court earlier than he should, there is no one to keep watch on him. So, from some un-intentional and casual lapses in the beginning, he may slowly drift into a regular habit of attending Court late and leaving the Court before closing time. Who is there to watch and report against him? The staff and litigants do not dare and the lawyers as a class are indifferent, on the contrary the Judge's late coming to court suits them perfectly, harried as they are by clients, litigants,and home rituals making heavy demands on their meagre morning hours every day. So the compass needle shifts radically from strict duty to heavy and deliberate neglect of duty.

7. Now think. Is this a proper state of affairs? The Judge should realise that greater is his duty to himself and to the litigating public to maintain the time schedule punctually at a place where there is no one to keep watch on him every day. After all he is the Presiding Officer of the Court, holding a post of trust and responsibility, controlling the entire staff under him and also the Bar. Consider the poor litigant who has come to the Court to attend his case, from miles away in the interior, on foot, in bullock cart or bus, he has come for his case for which he has paid amply to his lawyer as fees and to the Government as Court fee. Is the time of such a litigant so valueless as to be fritterred away by the Judge who must complete his news-paper reading before proceeding to the Court, does not matter half an hour late? And what about the staff working under the Judge? If the peon or the ahalmed or peshkar arrives at the Court 15 minutes later than the late Judge, what face has the Judge to pull him up

if the Judge himself comes to the Court late every day? Such a Judge is apt to lose his grip and control over the staff. They may not show it but the Judge may fall in their esteem. Practice is better than precept and the only way a Judge can discipline his staff is by personal adherence to strict standards of punctuality, integrity and honesty.

8. A Judge must take active interest in his work. He cannot afford to work mechanically. Many a Judge fall into a habit of asking Counsel on both sides to submit agreed issues in a Civil case fixed at the stage of settlement of issues. This, I believe, is an unwarrented delegation of duty amounting to neglect of duty by the Judge. The Judge is better trained to do this job. It takes a careful serutiny of the pleadings to frame the issues. The issues should not be overlapping, or issues in the alternative, on the same point, putting the burden of proof alternatively on one party and then the other. It is in such cases necessary to see on which side the initial burden of proof lies. The lawyers have not much experience in this respect. The framing of issues is not a duty which the Judge should neglect by delegating it to the lawyers. It is an important stage in the litigation, because the further controversy in the case is limited for purposes of evidence to the issues framed. A defeat introduced in the case at this stage is likely to prove fatal to the cause.

9. Another stage of work in which the Judge is apt to work mechanically without taking an active interest therein, is the stage of recording of oral evidence. Many a Judge is apt to start recording of oral evidence without first having studied the case in detail at home. The Judge then hardly knows anything about the controversy and believes he will read everything carefully after the evidence is recorded and he takes up the writing of judgement. This again is an erroneous attitude. Without having carefully studied the case by going through the pleadings, documents, issues etc. The Judge is really not in a position to record oral evidence properly. If he is thus quite unprepared, he cannot judge the import of questions put by the lawyers in the examination-in-chief and cross examination of witnesses. He cannot control the lawyers properly and limit their cross-examination within the sphere of relevancy. The Judge in such a case acts merely like a tape recorder, dutifully recording everything during the course of recording of evidence, without being able to weed out the unnecessary material. He thus collects together a heap of garbage from which the discarding of unnecessary material becomes even more confusing and difficult. If the examination-in-chief or cross examination of witness is deficient on some really material point, the Judge is unaware of it, and naturally therefore, he has failed to bring out the necessary material on record by putting Court questions.

10. Apart from these practical difficulties, if the Judge does not take an active interest in his work, what else is he really meant for? Surely the work of a Judge is rational, intelligent work and not merely a work of labour. Does the Judge not have a duty to the litigant to offer an intelligent and rational application of mind to the litigant's cause? Judicial work is the life time employment of a Judge, it is an occupation of his choice, and therefore the Judge must discharge his duties with a sense of dedication. His future in the Judicial career depends entirely on the efficiency he displays in his work, which again is open to judicial scrutiny at several appellate levels. It would seems to me, it is necessary for a Judge to raise his work from mere drudgery to the higher pedestal of worship. Work must engage the mind and the intellectual faculties in earnest with a sense of devotion before it can elevate itself to the level of worship. The best of one's performance offerred at the altar of God with a sense of devotion becomes workship. I recall to mind here a small story I read some where in English literature years ago. In Paris there was a juggler working in a circus, doing the juggling act, juggling several things -- rings, balls, etc. at the same time, at every performance of the circus. That was his life job, the only thing in which he excelled, that was the best in him to offer. One morning, a small boy five years of age, peeping through the slightly open door of a Church saw the juggler doing his juggling act, juggling several balls simultaneously, in the otherwise empty Church, and in front of the marble statue of Holy Mary the mother of Christ. The juggler was performing his act with all his skill, as an offering at the alter of Mary. He was doing it with such devotion and concen tration, that streams of perspiration ran down from his forehead and cheeks and began to obstruct his vision. The small peeping boy of five saw Mary in the marble statue lift up her veil and wipe the perspiration from the brows of the juggler still engaged in his performance. Such is the result of duty performed with a sense of devotion. If a Judge works in this spirit, what profound job-satisfaction does he achieve!

(11) With these somewhat preliminary and general observations I now proceed to examine in some detail the defferent facets of the life of a Judge.

(12) the first duty of the Judge is to the litigants who come before him to have their disputes adjudicated by him. The very existence of the Judge is for the litigants. They are the principal (subjects of the Judge's judicial career). It is for their benefit that the judge's office has been created, it is them he has to serve. It is for them the Judge is paid. Without the litigants, the Judge's office and the Judge role have no existence. If per chance all the people turned fair and just, avoiding any disputes inter se solving their disputes themselves, without recourse to a third agency, if ever society turned so pure and perfect, there would be no need for courts or Judges and that institution

would vanish. Naturally, the Judges owe their first duty to the litigants. Now, what does the litigant expect from the Judge ? An honest, impartial and just decision of the dispute he brings before the Judge for adjudication. After all, what is a litigant ? He is a person really ill, suffering from a social ill. He comes to the Court almost like the physically sick person who goes to the dispensary to get his disease attended to and cured, to have himself restored to his position of *ease*, cured of his *disease*. Naturally, the litigant needs as sympathetic an approch as a good doctor is wont to give to sick person. The litigant is an oppressed being. Of the two litigating parties one is usually at fault, he is the oppresser, while the other is the oppressed, or may be, in certain cases,both could be termed as oppressers of each other. To restore them to a proper state vis-a-vis each other, amounts to doing justice to their cause. It may not usually be that simple. The Judge has to go through many a complicated detail of formality, to carefully pull aside with a delicate judicial hand the useless strands from the fabric of facts and evidential material, and so try to trace out and locate the exact ill and to remove it with as little damage to either side as possible. This is a delicate operation, involving no less skill than that of a surgeon operating upon a patient to relieve him of his disturbing deepseated tumour.

13. While involved in this intricate judicial process, the Judge has to see that he is there to do real justice. He is not merely a ringmaster supervising acrobatics in a judicial circus. It is his duty to see that rules, forms and formalities do not overwhelm and bury justice under their worthless heap. After all, forms, formalities, rules and procedures are all subservent to dispensation of justice, they are all instruments for unravelling the truth. It is the Judge's duty to see that the reverse does not happen, formalities, forms and rules do not stifle the very cause of justice.

14. Judge's duty to the litigant lies in several directions. Usually the litigant is represented by a Counsel. With well merited assistance of Counsel on either side, dispensation of justice usually becomes easier, the points in controversy are properly laid out, and legal assistance is offered to the Judge, in the form of careful but scathing scruting of facts and evidence, to eliminate the unacceptable and to focus attention on the quality, strength and credibility of the acceptable material But such expert legal assistance on either side may not always be available Is it not the duty of the Judge to protect the litigant from the clutches of an unscrupulous lawyer, who is out to exploit his client to serve the lawyer's own financial ends? This may take several forms like asking for unnecessary adjournments only to squeeze out more money from the client, abandoning the client after the fees have been fully recovered, removing from the Court money for and on behalf of the client without paying it to him

and several such instances can be called to mind. It is true, there are some limitations to the powers of a Judge in these matters, but what is necessary is a keen discerning eye on the look-out for such mal-practices and to stop them wherever the Judge can. A Judge who is keen to assist a litigant in such matters, can do much if he sagaciously utilises his powers with tact and skill. The illiterate rural litigant is often the subject of such mal-practices.

15. Then there is the case of the litigant unrepresented by a Counsel. Let the Judge not treat him as a headache. Here is a genuine case calling for Judge's assistance to the litigant to enable him to justly match the professional skills of the lawyer on the other side. It is true the Judge cannot take sides, but it is also true that it is his job to be an impartial referee in the legal bout, to see that the rules of the judicial game are followed and that no undue advantage is obtained as against the work unrepressented litigant.

16. This brings me to the witness in the witness box, under cross-examination of the opposing counsel. It is true the Counsel for the party for whom the witness in deposing is there to protect his witness from blatant outrages of the cross-examining counsel, but that protection may at times be inadequate, on account of inefficiency or lack of experience of the other lawyer. It is in such cases that the witness needs the protection of the Court. Skilful cross examination has to be distinguished from bullying tactices; the former is sesential in a judicial process, but the latter has to be condemned. It is the Judge's duty to afford proper protection against it. It is the Court's duty to see that the witness has properly understood the question put to him, that the witness is not hustled or brow-beaten, or that words are not put in the mouth of the witness against his interest. Often the cross-examining counsel insists on a mono-syllabic answer from the witness, to a complex question. It is impossible for the witness to comply without unjustly involving himself, whatever answer he may give, "Yes", "No". "Have you stopped beating your wife?" is a simple classic example of a question of this category, impossible to be answered by a mere "Yes" or "No". If the answer is "Yes", the witness admits he had been beating his wife till he stopped the practice. If he says "No", he admits he is still beating his wife. The truth may be he never beat his wife. What can the poor witness do in such circumstances if he does not get protection of the court.

17. Here I may say a few words about the general atmoshere of the Court room. The Judge has to conduct the proceedings in the Court in an atmosphere of proper dignity and decorum. But that does

not mean that the Judge must preside over the Court with a grave, yard-long scowling face. Nor should the Judge permit the Court atmosphere to get informal, casual or flippant. While proper dignity and decorum with proper accent on ceremony and form is to be maintained, the atmosphere in the Court room should not get tense. It should be properly relaxed, so that no one feels any undue tension. It is usually the total personality of the presiding Judge that impresses itself on the Court room and generates the atmosphere therein. Indeed the Court is the temple of Justice, it should therefore, have the relaxed serenity of a temple, where unwanted lightness in word or action is totally out of place, though occasional but rare indulgence in the lighter vein may help to relieve the mounting tension.

18. There are two parties to every litigation and the Court has of necessity to decree in favour of one and against the other. In the very nature of things, the Court cannot please both sides. One party, the wrong doer, strives to derive the benefit of the situation as long as possible. Protection of the litigation is in his interest, and he and his lawyer will do everything to achieve it. It is for the Judge in such cases to study the situation and to see that he does not allow the party to indulge in delaying tactics. Here also lies the need to be extremety careful in granting interim relief. The real remedy is speedy disposal of cases. Courting popularity with the Bar, by yielding to all and sundry, is hardly conducive to real justice. Cheap popularity should never be the creed of a Judicial officer.

19. Judges of necessity displease almost half of the litigating public. Some of them may be seriously dealt with, suffering dispossession of lands and houses, of valuables, or suffering large scale money decrees, fines, jail sentences of various durations, and in the higher echelons of Judiciary suffering even life imprisonment and sentence of death. In many cases, judicial verdicts may be reversed in appeals, and the victims may be relieved. One wonders how such a large section of society suffering from the pronouncements of Judges, nevertheless does not hold any personal ill-will against the Judges concerned. Amazing as this might at first blush appear, the real reason seems to be simple. The suffering litigant knows and feels in his heart that the Judge decided may be erroneously or unjustly, but without any personal animus. The litigant, therefore, bears no personal ill will against the Judge. This is the natural defence shield that protects every Judge, as long as he acts honestly, impartially and without any personal animus against the litigant. The moment considerations of personal ill will or bias enter the mind of the Judicial Officer, or the Judicial Officer acts in such a manner that such inferences may reasonably arise

in the mind of the litigant, although the Judge may in reality have acted impartially and without bias, then this valuable protecting shield of the Judicial Officer drops away and then he may become vulnerable to revengeful actions of the litigant. Every Judicial Officer has to be extremely careful in this respect. He must act fairly and without personal prejudice, and it must also appear to every normal person that he is so acting.

20. A Judicial Officer should never entertain for Judicial decision any matter in which he has or may appear to have a personal interest. Any matter in which relatives, friends, colleagues or subordinates working in his office are concerned should never receive the Judicial Officer's judicial scrutiny. In such cases, even if the Judicial Officer acts impartially, motives can be attributed to him. If he throws out a friend's claim, the friend is apt to feel that he has been let down. If he decrees in favour of the friend, others can accuse him of partiality in favour of the friend. Hence the dictum : Justice must not only be done, but must also appear to have been done. The safest course in such situations is to decline to take up the case and to move the superior to have it transferred to some other Judicial Officer. The Judge should never allow personal interests to run counter to his duties.

21. A Judge must be careful of what he speaks from his Judicial seat. One does not realise this normally. Even stray innocent utterances of the Judge from the chair are apt to be strained and differenently interpreted by litigants, and this may at times lead to embarrassment or to wrong inferences being drawn. I remember one such instance when I was working as an Assistance Judge trying a serious Sessions case, a murder trial. The deposition writer was not attentively taking down the evidence and I reprimanded him saying "In such a serious case you are not working properly, be more attentive". The next day the defence counsel told me, his client, the accused, had asked him, what the Judge meant by saying "In such a serious case..." Was the Judge going to pass a sentence of death?

22. Even more careful must a Judge be as to how he speaks from the Chair. Strong words and haughty attitudes do not go to raise the respect of the Judge or the dignity of the Court. Just the opposite. An ever-smiling face, soft words and pleasant mannerism go a long way in endearing the Judge to the Bar and litigants, without detracting from the dignity and serenity of the Court atmosphere. A Judge who cannot adopt such attitudes had better keep his lips sealed as far as possible.

23. A word of caution again. Judges should not as a rule (save in material disputes) initiate or persuade the litigants to compromise their

case. If a compromise proposal comes voluntarily from the parties, the Judge may sometimes assist by putting in cautious and discreet suggestions to remove some minor snags. However if the Judge takes the initiative and persuades the parties to enter into a compromise, his action is apt to be misinterpreted as his disinclination to undertake the labours of a trial and decision. In some cases such initiation from the Court is apt to imply a hint of judicial coercion.

24. A Judge would do well to do everything in his power to reduce the unnecessary harassment of the litigants to the minimum. It is true, these days, for want of proper expansion of the judiciary, the files of Judges and Magistrates have become unmanageably large. This results in more litigants and witnesses attending the Court every day than can be reasonably managed by the Court. Thus the litigants are required to wait uselessly in the Court premises from morning to evening without their cases being dealt with, only to be told in the evening that their cases stand adjourned to another date. One solution is to fix for any day only as many cases as can be reasonably managed by the Court during the course of the day. If any day a larger crowd has assembled, then it is the duty of the Judge to see that the daily board is partially discharged and cases which could not possibly be reached are adjourned in the early part of the day. Judges should themselves give to these litigants the adjourned dates of hearing, without leaving that job to the peshkar. This is one method of stopping unnecessary harassment of litigants and also plugging a possible loopLole of corruption at the hands of the Court staff.

25. Corruption at the staff level can be reduced to a minimum by the personal efforts of the Judge if he keeps an open eye and strict supervision over the staff. The Judge should see by occasional surprise inspections of the staff that the daily work does not lag behind and arrears do not pile up. Of the greatest importance in this respect is the Judge's own mantle of honesty and integrity, it is only by impressing his own personal standards in this respect on the staff under him that a Judge can hope to reduce to a minimum corruption at the staff level.

26. That brings me to the subject of Judge's relations with the bar. This again is delicate field. Bar and Bench are complementary to each other, one cannot really do without the other. Constant inter-action between these two branches of judicial administration is apt to lead to trouble, despite ample good will on both the sides. Most of these troubles may be short lived and tactful handling is all that is necessary but it is well to remember that Bar is a multiple phenomenon with widely differring individual characteristics. Gone are the days when most Bar Associations

had very senior, generally the senior-most members, as Presidents, who were highly respected and exercised full control over the whole Bar. They used to be highly respected seniors, whom every member of the Bar obeyed. Now-a-days individualistic tendencies have outgrown that respect for seniors and no longer can any single Member of the Bar exercise full control over the entire Bar. An average Bar is usually composed or two or four top-rotchers, most mediocres, a few idiots and one or two fighters. An average goodnatured Judge can easily cope with the first three categories but it is rather difficult to handle a fighter. He is always up to a fight, whatever may be the rights and wrongs of the situation. Perhaps the only way to disarm a fighter is to decline to fight back. Just smile and flatter his ego and he will be deflated.

27. Most members of the Bareare cooperative and likable. They are easy to manage. What they really do not like is the unfairness or partiality of a Judge. If the Judge is a strict Judge, they do not worry much if he is consistently strict with all. They frown on a Judge who evolves different standards of strictness in dealing with different personalities in the Bar. The best course is to treat all the members of the Bar with equal consideration and impartially and then normally there would be no trouble.

28. The Judge must attain perfection in his field of work, that is the only way to earn the respect and esteem of the Bar. No Judge can work with dignity at any place if even a single member of the Bar can brow-beat him in legal knowledge and talent. The Judge has necssarily to be better than the best in the Bar. This is not as difficult as it sounds. With experience coming fast from full day-to-day work, if the Judge takes real interest in his work, the Judge gains in talent much faster than an average lawyer. He gets the best assistance from the Bar. Transforms from place to place, give him experience of different fields and different talents. With these facilitlies a Judge's judicial talent builds up fast, provided he is willing and eager to learn. At some places there is a tendency among senior most members of the Bar to extend a sort of patronage to the raw young Judge. They try to impress upon the Judge that they are available for advice and guidance for the Judge and that they will extend all sort of protection to the Judge Of course, they do not say so openly in words, but give out that intent by their mannerisms, gestures and subtle hints. The Judge has to be wary of such lawyers. They are dangerous allies, they are likely to take advantage of the Judge in due course. Firmness, patience and tact are necessary to show to such lawyers that the Judge is more than a match for them.

29. While dealing with the Bar, it is necessary to bear in mind that the Judge's behaviour with the members to the Bar has to be pleasingly

respectful, impartial, tactful but firm. It does not pay to be arrogant, insulting or haughty with the members of the Bar. A Bar is a hundred-headed dragon and the Judge cannot afford to unnecessarily ruffle or estrange them. They have the potential of damaging a Judge's judicial career. One has to play cool, safe, smilngly pleasant but firm with them, and thus charm them like a snake charmer who carefully keeps the snake at a safe distance away from him, but swaying to his tune. This does not mean that the Judge need fear or flatter the Bar, or to go out of way to please them, or allow them to dictate terms to the Judge.

30. It is always beneficial to keep the members of the Bar at a respectable distance in personal relations. If any member of the Bar is allowed by a Judge to come closer to him in personal life, it is most likely that the member will take unfair advantage of his closer relations with the Judge, however clean or impartial the Judge may be. Such nearness with any particular member of the Bar is likely to give rise to adverse criticism from other members of the Bar too. It is a highly risky situation and had best be avoided.

31. During the course of work as a judicial officer, the Judge has to keep an open mind, throughout. He may enter into a discussion or dialogue with the Advocate, over any point in issue, but the Judge should not be dogmatic in his approach, even though he may have formed an opinion one way. He must still keep an open mind and be open to correction rationally. The Judge has thus to be fair to the lawyers. There is always a natural egoistic tendency in every human being, to stick to one's conclusions, once they have been reached. This is a common human failing and Judges are no exception to it, and it is harder for them to be dislodged from the conclusions they may have reached. Such a Judge may become unfair and may reject the lawyer's contention contrary to the conclusion reached by the Judge, although the Lawyer may be correct and the Judge may be wrong. This is a totally unjudicious attitude, and Judges must overcome it. They must keep an open mind. More often than not, the Judge may have openly blurted out the conclusion he may have prima—facie reached, and then it is even harder for him to revise his view and change his stand. The safest rule is not to reveal your mind before all arguments have been heard, cooly considered, and final decision is reached. Indeed it takes courage to admit one's own error.

32. Calm and cool composure, a pleasant smiling face, a pleasant polite manner and soft speech can achieve much. Such an attitude is straightway disarming and those who come to fight stay to submit peacefully. The higher a person moves in position of prestige and power, the greater is the need for a likeable, pleasent temperament. It is

only the unlettered and uncultured, who can be rough and uncouth. Control of temper is essential for a Judge; never should a Judge get excited and flare up in temper. Such attitudes reveal an immature personality.

33. You may yourself experience soon enough that your reputation as a Judge builds up soon and it even travels faster than you. when a Judge is transferred from one place to another, his reputation reaches his new place even before he has stepped in the new town. Even before the arrival of the Judge, at the new station, the Bar knows what sort of a Judge they are getting. Even then at the new place he will experience a few probe and feelers to try him out. Somebody may send a gift, someone may send some article of daily requirement. All this, just to see how the Judge reacts. Much will depend upon how the new Judge reacts to these offers. He has to be firm. It is the first few days at the new place when he has to establish his reputation firmly. When I was a Judge of about two and a half years standing, I was transferred to an interior tahsil place. On the second day after my arrival there, in the morning came a servant with a lota full of milk for me telling me a particular lawyer had sent the milk. I told him firmly that I had already engaged a milkman and had made arrangements for my daily supply, and he should take back the milk to his master. The servant was stunned, perhaps it was considered bad etiquette among them, to reject an offer of milk and to send it back. "Well, are you going to make me take back the milk" was his surprised utterance. I was firm, that proved to be the end of such feelers.

34. I now move on to the next topic of importance, the Judge's relations with the staff under him. In the beginning the Judge may have very few people working under him, may be a clerk or two, and a couple of peons. As the Judge gests senior and moves on to an independent station, where he may perhaps be the only Judicial Officer, manning a single Court, the staff under him increases, to about a five or six members of the clerical staff, eight or ten bailiffs, a couple of peons, a Farrash and a Choukidar. He is then the head of his office, with all this staff. How does he control them, how does he act and react with them ? Now, the Judge's attitude with his staff has to be humane and considerate Let the staff consider the Judge not merely as a fault-finding boss, to be respected merely because of his position and more feared or hated than respected. Let the Judge make them realise that he is also otherwise to protect them, to care for them in their difficulties, to listen patiently to their difficulties and to try to find solutions thereto. If the Judge is particular to see that a member of the staff overstays in office to work overtime to dispose of heavy work any day or to clear off arrears, the Judge should also make them realise that he really cares for them by sending home a member of staff earlier than scheduled time when he is running temperature or has some serious difficulty at home.

After all, court work is essentially a team work ; without the cooperation of the staff hardly anything can be done. This is amply seen when class III and class IV employees go on long strike and do not turn up. The Judge by himself can hardly do any Judicial work at such times. Let the staff look to the Judge with respect and endearment rather than mere fear. For this it is necessary for the Judge to stamp upon the staff the impress of the Judge's own personality, gathered from the Judge's attitudes, conduct, and behaviour with one and all. At times the Judge may be required to put in a good word for a member of his staff to protect him from unmerited injustice from a higher officer.

35. In order to rule properly over his staff, it is necessary that the Judge knows thoroughly the working of every branch in his office and the work on every table managed by members of his staff. If this is lacking, the Judge, naturally cannot control his staff. They can take advantage of his ignorance and bluff him into silence. It is true, in the beginning a new Judge may not be conversant with the process of work of every branch and every table. He may not be fully aware of all the rules and instructions. But it is necessary that the Judge gains this knowledge as early as possible. Then alone can he be in a position to control his staff.

36. This is very essential particularly on the accounts side. I do not know how things go now, but I am here talking of my own times. Usually the daily accounts are written down in the Daily cash book and the Classification Register by the Nazir and he signs the accounts so written. The accounts are then counter checked by the Clerk of Court who counter-signs them. The account books are then brought to the Judge who is expected to check them and then to formally sign them. Many a Judge used to simply sign the accounts without taking pains to check and verify, from the concerned registers, receipts and vouchers etc., the individual entries in the account. When the Clerk of Court notices that the Judge merely signs the accounts without verifying the entries he too gets slack, he begins to depend upon the Nazir and takes to merely signing the accounts without checking them Thus what was intended by the rules to be a triple check, crumbles down to a positon of no check at all on the Nazir who writes the accounts. A dishonest Nazir or a Nazir in extreme financial difficulty can take advantage of such a situation and go unchecked. Honest errors also may pass undetected In the District Court the work of checking and signing the account-books used to be generally delegated to the Assistant Judge. I performed that daily chore till I was promoted as a District Judge and was relieved of this responsibility. Occasionally then, the Assistant Judge would be away on casual leave for some days, and the accounts would then be brought to me as District Judge for my signature. On the first day I found

the Nazir bringing to me only the account book for my signature, without caring to bring with him the other registers, vouchers, receipt books etc. for checking the individual account entries. He expected me to just put my signature formally on the account book, as probably the Assistant Judge had been doing every day. When I asked him to bring the vouchers, receipt books and other registers for checking the account entries, he was visibly surprised. He complied and brought them. When I proceeded to check and tally the previous day's closing balance with the current day's opening cash balance, and each individual entry in the Cash book with the vouchers, receipts and other register entries, and to check the entries in the Classification register with the totals in vertical and horizontal columns etc. the Nazir was immensely impressed. "You know everything Sir" was his surprised utterance. This is one way of keeping proper control on the staff. They must respect the Judge for his knowledge of every detail of the working.

37. In order to see that the daily entries in different office registers are promptly made, and all work in different branches is kept up to date, it is essential that the staff know that any moment any day the Judge will make a surprise inspection of their work. This necessitates occasional and periodic surprise checks of work in different branches of office by the Judge personally. After such a check, the Judge records a brief note of such Surprise inspection for record, Apart from spurring the staff into regular day to day work being kept up to date, this naturally helps in avoidance of piling up of arrears, and keeps the staff on their toes. This is not as difficult as it may seem. Such single surprise inspection does not take more than 15/20 minutes because, once this method is regularly undertaken, the period of time under each inspection is reduced to about a month. Any day 15 or 20 minutes spent over such surprise inspections either before or after the Court hours should suffice. Some day the diary may suddenly collapse because of compromise in the evidence case or for some other unforeseen reason, and the Judge is then left with no court work to keep him occupied. Such days can be utilised for such inspections. Of course the temptation of leaving the Court early and before time has to be overcome. Judges should realise that it is not merely the District Judges prerogative to have annual inspection of Courts under his jurisdiction, even more it is the judge's job to see that the working of his office is properly maintained and that his Court and office are kept clean and uptodate and no arrears pile up.

38. Every office and every Court usually has 2 or 3 efficient members of the staff, most of other members are mediocres somehow coping w th work and there are one or two idlers or stragglers, i. e. inefficient members of the staff. Occasionally these people pile up huge arrears of work. May be sometimes a new inexperienced person comes on the staff

nd he does not now how the work is done and work piles up. The Judge detects the ituation. What doe he then do? It is usual for hi to catch hold of one or two of he efficient members f the staff and require them to dispose of the arrears. This happens often and for the first two or three times, the effic ent members do his extra work ithou demur. But slowly the efficient members realise that every time the are required to do extra wor for someone else's neglec of duty. Then their re entm-ent is likely to build up. Is this a prop r solution ? I had one such occasion when a new Execution Clerk under me ad piled up 500 Execution applications without scrut ny and regi tration, simply because he did not know h w to do all that. I was a Munsif then. I deta ted the situation and told him that from next day I would be comin o the Court every mor ing half a hour earl er, he should then place the bundle of applicat-ions and registers before me, I would do not w rk myself and teach him how to do it. Next day when I came to the Court early and start d this work 2 or 3 ot er members of the staff voluntarily approached me and said I need not take th trouble, they would do the work and also instruct the newcomer.

39. The Judge is the boss of the staff under him and he writes their annual confidential reports. The Judge has to be very cereful in this resp-ect. He must correctly differentiate between efficiency and inefficiency, between a good worker and a bad worker, between an honest worker and a dishonest worker. In the matter of writing of annual confidential re-ports of the clerical staff under him, he cannot afford to be just goody—goody, painting every one with the same brush of goodness. If he does so, he is unfair to the good worker and equally unfair to the bad worker. Equally, it is necessary to evaluate the quality, grade of work, speed of work, dependability of the staff members dispassionately, cooly and with-out personal prejudice or anger. This is an exceedingly important matter. One distinguished District Judge gave me this advice wheh I was about to be promoted as an Assistant Judge. He said "Mr. Joshi, now you are going to occupy an important position. Remember, It is exeeeedingly diff-icult to do good to anyone. On the other hand you can spoil the career of any person under you merely by the flourish of your pen. Think ten times before you put the pen to the paper." I believe this is a very sound advice which evey Judicial Officer should bear in mind. Never act in anger. Cool down. Flaring up of temper, whether in Court office or outside, is indeed contra-indicated for the temperament of a Judge. If he flares up in a fit of temper, more likely than not he cuts a very sorry figure, and later when he cools down, he lands himself in a mood of shameful regret.

40. In this office administration, a Judge will sometimes find that errors have been committed. Sometimes the errors may be detected in

time to be avoided, and at times the detection may come after the error has occurred. Of course the error is then rectified and the position is remedied. The Judge may take to task the member of the staff responsible for the error and he may be reprimanded. But that is not all. In such cases the Judge must take up an investigation to find out how the error could occur despite strict rules. What particular, neglect, oversight, or failure of duty could make the error possible? Why could it not be detected in time to avoid it? In what way in future the repetition of the error could be avoided? Is there any loophole in the rules which needs to be rectified? All this is necessary to be done, and appropriate steps have to be taken to avoid a repetition of the error. I had once such an occasion when I was a Munsif An amount was lying in the Civil Court deposit, payable to a particular party. He made an application to the Court for its payment. The application went to the Nazir for his report. The Nazir reported that the amount was lying in deposit and was payable to the applicant. At this stage somehow that application got lost in the office. Waiting for a fortnight and finding that the amount was still not paid to him, the applicant made another similar application which again went to the Nazir for his report. As the amount had not yet been repaid, the Nazir made a similar report. The second application then came to the ahalmad for further action. In the meantime the first application for repayment got traced, and was proceeded with, and the Nazir made repayment to the applicant on its basis. Then the second application was similarly processed, and went to the Nazir, whose careful and uptodate work stopped the double payment in time.

41. Another important topic concerns the relationship of the Judge with the society of the place of his work. This again is a delicate field. Of necessity a person on appointment as a Judge has to impose upon himself certain social restrictions. As a lawyer, he could mix freely with one and all, he could even stand before a pen stall and take pans and cigarettes, and he could go anywhere and he could go anywhere and to anyone as he pleased. Naturally he cannot do all this at the place of his posting after he assumes office there, as a Judge. That is because certain things are not expected from him in view of his position of honour and responsibility. He is in constant lime-light and such flippant behaviour from him does not go unnoticed, on the contrary it becomes the talk of the town and is strongly criticised. Greater is this danger in a small place. He cannot even mix freely with the society at that place, because he cannot be sure who might figure before him as a litigant in Court or what cause might come up before him in a judicial controversy. The Judge cannot also afford to let anyone come close to him for fear that he might exploit the position and take some undue advantage. For similar reasons the Judge cannot mix freely with the members of the Bar outside the Court.

The Judge has therefore to choose his society very carefully. Generally the other officials of other departments at the station may afford a safe contact. Usually they are not local people. Like the Judge, they are birds of passage, gathered at the particular place in the course of their transfers, and so they are not involved in local controversies. The Judge may join the Officers Club, should there be one, at the place, provided local litigants do not have access thereto. It is again not wise to form a constant and exclusive company of four or five persons. Some Judges may be fond of playing bridge, and they may form a group of four or six persons for their bridge table. If they are all officers of different departments that would be all right. However, if one or two or more of this group are local lawyers, the Judge's daily association with them may land the Judge in a vulnerable position. The members of the business or commercial community may be always out to form contacts with the Judge, to oblige the Judge and so they may endeavour to gain a soft corner in the Judge's mind, or to gain for themselves a convenient position which they may be able to exploit. All this has necessarily to be avoided. The safest rule is to make all purchases openly from the open market and on cash payments. No secret or clandestine purchases for a Judge and no purchases on credit. No opportunity is to be given to any one to oblige the Judge. A very proper rule to follow is to see that no one meets the Judge or talks to him about court matters at the Judge's residence, or anywhere outside, except in the Court room and during Court hours, and no home matters are to be talked or discussed with any one in the Court.

42. At the place of his work different public institutions may at times invite a Judge to preside over their public function. Even in this respect the Judge has to be extremely wary and cautious. In the present day atmosphere, every place is ridden by controversies, political, social or communal, and association with even institutions may land him in controversies. The golden rule is to avoid all this. The Judge's office is not intended for craving for public or social acclaim.

43. What should be the Judge's relations with his equal colleagues? At a larger place there are usually several equal colleagues in the lowest rank of the Judicial Officers and the Judge has ample choice to choose his company. He can proceed to choose from them persons of likeable temperament, and may restrict his closer associations to this company. However, when the Judge is transferred to an outlying taluqa place, the situation is different. May be he the only Judicial Officer there. More often there may be one or two other Judicial Officers at the same station. The question is what sort of 'out of court' contacts does he keep with these colleagues?

44. In the early formative years of a Judicial Officer's career, the company of another Judicial Officer at the same station for a couple of years can be of profound influence in forming the life style of the younger Judicial Officer. In the early years of his career, a young Judge is easily impressionable and he is apt to pick up his manners, habits and life style from his senior colleague at the station. If the senior colleague is a right minded proper type of Judicial Officer, his constant company can have a healthy influence on the life and cereer of the younger Judge and may assist him in developing a proper personality. But supposing the senior colleage is wrong type of man? What if he is given to drinking or gambling, or is a man of bad character, or if he is a dis-honest corrupt Judge or even a slacker who does not put in honest work? In such company the Judicial career and even the life style of the junior officer would be in serious jeopardy. This is a matter in which the junior Judge has to be exceedingly careful. He has to decide for himself whether the senior is worth associating. If he decides that the company is not proper, it would be better for the Junior Judge to keep himself aloof from the senior as far as possible. It is true this is a serious decision to be taken at a time when the junior may not be ripe enough for taking such decisions. Still the decision has to be taken. If the junior Judge's life so far has been built on solid and proper foundations, I believe he may not have any serious difficulty in distinguishing right from wrong and in keeping himself insulated from the wrong.

45 Even among temperamentally good Judges, there could be two categories. A senior Judge may take full interest in his work and he would then be open for discussion with the junior colleague on all types of legal and judicial problems of the junior which he may bring up with the senior. Such a senior is an excellent colleague and guide, and he serves as a proper trainer for the junior. The other type of a senior colleague would tend to keep all legal and judicial talk confined to the Court room and during the court hours, and he would be unwilling to talk about these matters in his spare time. If the junior approaches such a colleague to consult him and to talk to him about some legal tangle, the senior is apt to rebuff the junior or by saying : "Stop it now. I have had enough of all this in Court the whole day. Let us talk of something else" Such a senior is hardly of any judicial assistance to the junior Judge. The junior would be lucky if he gets a proper senior colleague in all respects. Lasting friendships are likely to form, from such associations.

46. And now, a few words about the relationship of the Judge with his superiors i. e. with his Boss. Of course he has to be respectful, obedient and tactful with his superiors, consulting the superior and taking advantage of his better experience in such matters as the senior may be inclined to permit. Given a proper and able superior and a junior Judge

eager and willing to learn from him considerable advance and betterment can be achieved by the junior Judge. Occasions may however arise when the superior (boss) tells the junior Judge something which the junior Judge feels is totally wrong, incorrect or unacceptable. In such circumstances, the junior Judge would do well not to have a direct confrontation with the superior. He is not to be told that he is wrong. If the junior Judge tells him so, the superior boss is apt to flare up in anger and to retort "who is wiser? You or I : ? Here tact is the better part of discretion. The junior Judge should accept what the senior is saying and then humbly put forth, the junior Judge's version in the form of a difficulty found by the junior, for which the Junior judge is seeking advice and solution from the senior boss. The policy here is not one of confrontation or denial outright, but one of confession and avoidance, in the parlence of pleadings. Sooner than later, the Superior Boss is likely to realise his own mistake and correct himself. This advice was given to me in own junior days by an Additional District Judge who rose to be a District Judge and retired as a Senior Lecturer in the I. A. S. training School, at Mussorie. I have always treasured this advice. It never pays to cross swords with your boss, the latter can well ruin the career of a Judge.

47. It would always be useful for a Judicial Officer to keep friendly and cordial relations with other equal officers of other departments at the station. This may afford immense advantage in times of need in private or official matters. Such contacts are usually (though not always) safe and dependable.

48. For a Judicial Officer of the lower ranks, problems will always be arising in judicial as well as administrative matters. Every time a problem arises, the Judge is not to run to his Superior or Boss for a solution. The Judge should try to solve the problem himself and in most cases he would succeed in finding the solution. Only in serious or important matters should he refer the problem to his boss. The Judge must learn and develop the ability of finding his own solutions to his problems. How else is he going to get the capacity to solve others' problems when he is himself promoted to a higher post and others run to him with their problems. When I was a District Judge, one morning I received a phone call from a Judicial Magistrate at a taluqa place requesting me to come immediately to his station so that he may verify the valuable Muddemal articles of his Court, which he feared to do himself, because he was afraid his Clerk concerned would play some mischief. I told him on phone that I would not come, it was not my duty, and I reproached him saying I could not understand a Magistrate being afraid of his own clerk. I ordered him to go ahead with the verification of the valuable muddemal and to send me the report. He complied and all was well, nothing serious developed. Many

times one is needlessly afraid of a particular situation, like a small child sometimes feeling afraid of his or her own shadow.

49. As I said problems will always arise and Judges have to rise to the occasion and seek their solutions themselves. There are no set solutions, just as there are no set problems. Different situations and different tangles arise from time to time and the ingenuity of a Judge lies in seeking and securing the proper way to tackle them.

50. A judge must keep himself up to date in the matter of case law and precedents. This can be done easily by browsing through the monthly law journals. When a point arises for judicial decision the Judge should study all the case law on the point, in particular the decisions of the High Court and the Supreme Court. It would be beneficial to keep a register or notebook in which the precedents could be briefly noted for easy reference when it may be necessary to refer to them again. Similarly the Judge should keep himself well informed of current events in the State, in the nation and outside in the world, he must keep himself up to date in most matters of general knowlege. These days Judges cannot live in ivory towers, secluded from world events. A Judge must realise he is living in a glass house, from where he notes the events happening around him, though he does not mess himself with those happenings. He must also realise that his living in a glass house exposes him and his actions to the public gaze, indeed, more strongly, because he is always in the glare of lime light. He is also vulnerable to public opinion, a single pebble thrown can crash his glass house. His innocence and the inherent goodness of the people are his strongest shields, and equally they are the source of his strength.

51. And what about the relations of the Judge with the members of his family at home ? Let the Judge be relexed at home, let him not carry his court troubles and anxieties home to torture him around the clock. Let not the family members suffer in silence with the Judge. Let the Judge not take out his anger and frustration in court, on the members of his family. The golden rule for a Judge is to forget the Court matters and Court problems as soon as he leaves the Court premises. Nor should the Judge ponder over his court cases and problems day and night. That again is unfair to the Judge himself and to the members of his family. The Judge should develop the habit of thinking about his cases only when he is in the Court or when at home he is at his study table studying the cases fixed for the day.

52. Well, Gentlemen, I believe I have almost finished what I had to talk to you. Finally one word of advice. Let the Judge realise that there is no short cut to progress and success. The only road to that ideal is

through honest hard work. If the Judge follows that road, there is no limit to his possible progress. Justice D. G. Palekar travelled on that path right from the lowest rank of a Civil Judge Jr. Division (Munsif) to become finally a Judge of the Supreme Court. The going should be steady and on the correct path. How does a Judge know whether he is on the correct path or not? Let him listen to the small voice within himself, that to the only sure guide. One may deceive and cheat the whole world, but one cannot deceive and cheat oneself. He may argue with and convince the whole world that what he has done is not wrong but is proper, but that little voice inside himself, his conscience, whispers to him in silence the truth, it tells him "well, what you have done is not proper." Always listen to that small whisper of your conscience to correct yourself, let it be your guide. By inconsiderate, rash and selfish actions, without paying head to that whisper within oneself, one may by habit and constant indifference to it, stifle, that small whisper into silence, and if that happens, I am afraid no one can save the person, because he has disabled himself from being salvaged.

53. Well the journey is hard and long but the prospects are good. An average Judge with proper industry and selection of right methods has all the capabilities in the world with sky as the limit. May I wish you all a prosperous and fruitful judicial career. May you all rise in high position and occupy higher posts of prestige and honour. May I hope that at least some of you, thirty years later will be in a position to lecture to the beginners in Judicial Service, as I am doing today, so that guiding light for judicial generations to come is kept lighted for all the time.

Best of wishes to you all, Thank you, Gentlemen.

—Courtesy, Maharashtra Institute.

PROTECTION OF JUDGES ; CONTEMPT OF COURT

By

Mr. JUSTICE V. K. MEHROTRA

Fearless Judges :--

The foremost attribute of an effective legal system is independence and fearlessness of its judges. In other words, freedom from any action against the presiding offiicer which may deter him from discharging his duties as an arbiter of disputes between contending parties is to be ensured. Our law makers have taken care to do so. Long ago, in the year 1850, the *Judicial Officers' Protection Act* (Act No. XVIII of 1850) was enacted. The avowed object of this Act is the protection of the judicial officers. The preamble says that the Act was being enacted for the greater protection of Magistrates and others acting judicially. It provides that no Judge or Magistrate shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duties whether or not within the limits of his jurisdiction provided, of course that at that time he believed in good faith that he had the jurisdictipn to do or order the act complained of.

In regard to the prosecution of the Judges, the Code of Criminal Procedure, 1973 says in section 197 that when any person who is or was a Judge or Magistrate is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his judicial duties, no Court shall take cognizance of such an offence except with the previous sanction of the appropriate government. The object of the protection given by this section is to secure absolute independence for him in cases where he is discharging his official duties. The profection, however, does not extend to those actions which cannot be said to be part of the official duties of the Magistrate or the Judge. The action of a Judge or Magistrate in accepting bribe is an example of an action which cannot be said to be in discharge of official duties or purported discharge thereof by the presiding officer. Likewise, commission of criminal breach of trust by him would not entitle the Judge to say that he cannot be prosecuted for it without proper sanction.

The test which has been laid down by the Supreme Court recently about finding out whether the act complained of was in the discharge of his official duties by a Judge is that there should be a reasonable connection between the act and the discharge of official duties and that the act must bear such relation to the Judge that he could lay a reasonable, though not

a pretended or fanciful, claim that he did it in the course of his official duties (See: *Pukhraj*-1973(2) S. C.C. 701)

Recently, Parliament has come out with another Act. It is the *Judges' (Protection) Act, 1985* (Parliament Act 59 of 1985). The provisions of the Act are in addition to and not in derogation of the provisions of any other law for the time being in force providing for protection of Judges. A Judge, according to the definition of that term, means not only every person who is officially designated as a Judge but also a person who is empowered by Law to give a definitive judgment in any legal proceedings. The protection provided by this Act is that no court shall entertain or continue any civil or criminal proceedings against any person who is or was a Judge for any act, thing or word, committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function. This protection is subject to the right of the High Court or the Governor to take such action by way of civil, or criminal or departmental proceedings or otherwise against any person who is or was a Judge.

The statutory provisions aforesaid make it abundantly clear that for any action which can lawfully be termed as one taken by you in discharge of your official duties as a presiding officer, no one can run you down by recouse to civil or criminal proceedings not only while you serve as a presiding officer but also after you have ceased to be a Judge or Magistrate. There is thus a guarantee that you can dispense justice fearlesly and that your decisions will not land you in trouble at the instance of any party to a cause before you.

Solemn Proceedings :--

Fearlessness and independence in decision making is ensured for you in other ways also. The proceedings in a court of law are solemn in character. It should be possible for the Judge or the Magistrate to conduct them peacefully and with dignity. If there is any effort to impede the even course of justice, enough power is given to the court to deal with that situation. There are certain categories of offences which may be committed in the view of the Presiding Officer which may require immediate action to ensure that the judicial proceedings go on smoothly. They may be dealt with in the manner provided in section 345, Cr. P. C. For example, a person, who is bound to do so, omits to produce a document intentionally before the court is guilty of the offence mentioned in section 175, I. P. C. A person refusing to take oath that he is bound to do, commits an offence under section 178, I. P. C. A witness who refuses to answer a question which he is legally bouned to do, commits an offence punishable under section 179 I. P. C. A person who offers insult to the presiding Officer

intentionally or interrupts the judicial proceedings before him or does so in relation to another public servant assisting the court during the course of the judicial proceedings in the view of the court is liable to punishment under section 228 I. P. C. The actions of the aforesaid nature impede the smooth conduct of judicial proceedings and when committed in the view or the presence of the court, amount to its contempt. They can be punished by following the procedure mentioned in section 345 Cr. P. C.

Briefly, the procedure is that the offender may be detained in custody at the direction of the court which may, at any time before rising, on the same day, take cognizance of the offence and after giving the offender a reasonable opportunity of showing cause why he should not be punished under this provision, sentence him to a fine not exceeding Rs. 200/- or in default of the payment of fine to simple imprisonment for a term which may extend to one month unless the fine is paid earlier. The court is required to record the facts constituting the offence along with the statement, if any, made by the offender as also the finding and sentence. If the offence is one under section 228 I. P. C. the record should also show the nature and stage of the judicial proceedings in which the court was interrupted or insulted and the nature of interruption or insult.

The power of a court under section 345 is a special power to deal with a case of insult etc. occurring in its presence. The court is not bound to hear evidence. It can rely upon its own opinion of what actually happened and can detain the offender in custody, take cognizance of the offence and sentence him but it must all be done the same day before the rising of the court. No substantive sentence of imprisonment can be passed by the court while taking action under section 345 Cr.P.C. The sentence of imprisonment can only be in default of payment of fine. Proceedings under section 345 Cr.P.C., like proceedings for contempt of court committed otherwise, should be taken with great circumspection. It is only when the Presiding Officer feels that the judicial proceedings before him are being intentionally impeded by any action of the nature mentioned earlier and that the offender is bent upon interrupting the proceedings deliberately, and without any reasonable cause, that the court should normally take recourse to action under section 345 Cr.P.C. The idea is that the court should not be unduly sensitive about its dignity. Notice should not be taken by it of trivial incidents or actions which may not be calculated to impede proceedings of the court deliberately. The element of self-restraint should always be present in the mind of the Presiding Judge while-conducting proceedings in court. Variations of human nature and the difference which individuals have in their level of discipline should not be lost sight of by the presiding Judge while taking notice of the conduct of those present before him in court. It is only where a calculated effort is found on the part of the offender to

impede the judicial proceedings that recourse should normally be taken to the provisions of section 345 Cr.P.C.

Before leaving this aspect, I may emphasise that the bearing, conduct and utterance of the Presiding Judge himself in the court room should be dignified, failing which those others present in the court room may be tempted to take liberties.

Since the object of section 345, Cr.P.C. is basically to ensure the smoothness of judicial proceedings, if the offender makes amends in respect of the lapse attributed to him or offers a genuine apology for his conduct, the court should not be hesitant in discharging him or remitting the punishment awarded to him. Such an attitude would enhance the respect for the court.

There may be cases where the court may feel that the offences committed in its view are such as should entail greater punishment than what is provided in section 345 Cr.P.C. (namely, a fine upto Rs. 200/-). The court may, in such a situation, forward the case to a Magistrate having jurisdiction to try the same, after recording the facts constituting the ofience and the statement of the offender. The offender may be required to give security for his appearance before the Magistrate or, if sufficient security is not available, the offender may be forwarded to the Magistrate under custody. The Magistrate to whom the case is forwarded shall proceed to deal with it, as far as possible, as if it was brought before him on a police report. All this is provided in section 346 Cr P.C. Even in such a case, the court may, in its discretion, discharge the offender if he submits to the direction made by the court about the disregard whereof he was being proceeded against or on submitting a genuine apology to the court. Section 348, Cr.P.C. contemplates this.

Majesty of Courts :

For upholding the majesty of courts, the Supreme court, as also the High Courts, enjoy the power to punish people for having committed contempt of court. As courts of record, these powers are enjoyed by them dehors any statutory provision. They may take action suo motu or on the facts, constituting their contempt, being brought to their notice. A discussion about it in any further detail is not necessary today. What should really be of interest to you gentlemen would be the fact that the law relating to contempt of court has now been codified by enactment of the *Contempt of Courts Act*, 1971. The basic purpose of a law of this nature is to ensure that the authority and dignity of courts should not be imperilled by certain kind of actions so that society, as a whole, continues to have

confidence in them. It is, undoubtedly, a worthy objective because once the confidence in the efficacy and dignity of the courts is shaken, the institution of courts will be robbed of its necessary role in ensuring the continuance of an orderly society.

The Act Of 1971 :

The Contempt of Courts Act defines contempt of Court to mean "civil or criminal contempt". Under the head of 'civil contempt' comes the wilful disobedience of any judgment, decree, direction or writ or other process of court or wilful breach of an undertaking given to a court. 'Criminal Contempt' covers publication of any matter by words, signs or other visible representation or doing of an act which scandalises or tends to scandalise or lower the authority of any court or prejudices or interfers or tends to interfere with the due course of any judicial proceeding or obstructs or tends to obstruct the administration of justice in any other manner. If the High Court finds any one guilty of having committed contempt of Court, it may punish the contemner with simple imprisonment for a term which may extend to six months or with a fine which may extend to Rs. 2,000/- or with both. The High Court may award this punishment for any contempt either of itself or of a court subordinate to it. The court can remit the punishment awarded by it, or discharge an accused if it is satisfied with an apology given by the accused. If the apology is given bonafide it may not be rejected merely on the ground that it is qualified or conditional.

An appeal lies to the Supreme Court if the order of punishment for Contempt has been made by a bench of two or more Judges of the High Court. The order made by a single Judge can be appealed against before a bench of not less than two Judges of the High Court. The High Court may suspend the order on its satisfaction that the person who committed contempt of court intends to prefer an appeal. The appellate court may suspend the sentence during the pendency of the appeal.

So far as the courts subordinate to the High Court are concerned, they have to bring the facts constituting the alleged contempt to the notice of the High Court. The High Court may then decide whether it will take cognizence thereof or not. The Advocate General of the State may also make a motion to the High Court in regard to an alleged criminal contempt. Any other person may do so with the consent in writing of the Advocate General. This is provided by section 15 of the Act and relates to contempts other than those committed in the presence or view of the High Court. Section 14 of the Act deals with contempts committed in view of the High Court or the Supreme Court.

Proceedings for contempt can be initiated only within one year from the date on which the contempt is alleged to have been committsd. This is provided in section 20 of the Act.

Where cognizance of a criminal contempt is taken by the High Court, the person charged should be personally served with no'ice which shall be accompanied by a copy of the motion, where a proceeding is commenced on a motion, or by a copy of the reference made by a subordinate court. If the court feels satisfied that the person charged under section 15 is likely to abscond or would avoid service of notice, it may order attachment of his property of a value which is considered reasonable. The attachment shall be affected in the manner provided in the Code of Criminal Procedure for attachment of property in execution of a decree for payment of money. A person charged with criminal contempt may file an affidavit in support of his defence. The court may decide the matter on the basis of affidavits filed or after taking such further evidence as it considers necessary and pass such orders as the justice of the case requires.

Section 10 of the Act says that a High Court shall have power and authority and the same jurisdiction in regard to contempts of courts subordinate to it as it has in respect of contempt of itself. Where, however, the contempt alleged is an offence punishable under the Indian Penal Code, the High Court shall not take cognizance of such a contempt said to have been committed in respect of the court subordinate to it. The High Court can enquire into and try a contempt, either of itself or of any court subordinate to it, irrespective of the fact whether contempt is alleged to have been committed within or outside the local limits of its jurisdiction and whether the alleged contemner is within or outside such limits. This is what section 11 says. The High Court, under section 23, may make rules, not inconsistent with provisions of the Act, providing for any matter relating to its procedure in the matter. The Allahabad High Court has framed rules under this section which are known as the Contempt of Courts (Allahabad High Court) Rules, 1977.

The provisions of the Act are declared to be in addition to, and not in derogation of, the provisions of any other law relating to contempt of courts under section 22 while section 9 says that "nothing contained in this Act shall be construed as implying that any disobedience, breach, publication or other act is punishable as contempt of court which would not be so punishable apart from this Act."

The definition of civil and criminal contempts contained in section 2 of the Act is followed by some significant provisions which may be noticed at this stage. These are sections 3 to 8. In substance, they say that in

case publication is made at a time when the civil or criminal proceedings were not actually pending before the court or that the offender had no reasonable ground to believe in that the proceedings were pending, or the publication is only a fair and accurate report of a judicial proceeding, it would not amount to contempt. Likewise, if the case has been heard and finally decided, a fair comment on the merits of the case would also not amount to contempt. Any statement made by a person in good faith against the Presiding Officer of a subordinate court to the High Court or any other subordinate court will also not amount to contempt of court.

A Judge or a Magistrate or any other person acting judicially can also be liable for the contempt of his own court or some other court. This has been given statutory recognition in section 16 of the Act.

Birds Eye View

Before I close, I must tell you what has been interpreted by the courts as amounting to contempt of court by way of a general idea. The statutory provisions have been indicated briefly earlier. The nature of contempt ptoceedings must be judged in the background of its object. The idea is to punish for contempt all acts which are calculated to impede, embarass or obstruct the court. A contempt can assume any form. It can be any act, any slander, any contemptuous utterance. It can be subject matter of any news, report or article. It may be an act of disobedience of an order of the court. Any conduct which has the effect of diminishing the prestige and authority of the court or which is likely to lower the esteem of the court in the mind of the public an which gives an impression that with impunity the orders of the court could be disobeyed by mere strategem or contrivance would amount to contempt. It is immaterial whether the order is legal or otherwise.

If litigation is pending before a court, no one shall comment on it in a manner so that there is a real or substantial danger of prejudice to the trial of the action by influence upon the Judge or a witness or by prejudicing people at large. Law punishes not only the acts which, in fact, interfere with the course and administration of justice but also those who have that tendency. The chief forms of contempt, according to the Supreme Court, are insult to Judges, attacks upon them, comment on pending proceedings with a tendency to prejudice fair trial, obstruction to officers of courts or the parties, abuse of the process of court, breach of duty by officers connected with the court and scandalising the Judges or the courts, apart from disobedience of the orders of the court.

Contempt proceedings are special type of proceedings wherein summary Justice is meted out. This proceeding is to be sparingly used, only when

gravity of the occasion demands it. The power of the court to punish for contempt is generally not exercised when the contempt is merely technical, slight or trifling in character. In such cases, the court normally does not proceed to inflict punishment upon the contemner if it is satisfied with expression of genuine regret by him. The court is both accuser as well as the Judge in the matter of contempt of court. Therefore, it is only when a clear case of contemptuous conduct, not explainable otherwise, is established that the contemner is punished. The courts normally avoid extreme hyper-reactivity to marginal indifference to judicial authority.

The Presiding Officer of the court has also to conduct himself with dignity and restraint. In cases where he insults or abuses or holds out a threat to an advocate appearing before the court, he might be equally guilty of having committed contempt of the court as such a conduct interferes with the course of proper administration of justice and impairs the dignity of the court. It is true that the duty of the presiding officer is to regulate the proceedings of his court and maintain its decorum but this has to be done in a dignified manner which may be in consonance with the prestige of the court and not in an angry and adusive and ignoble form which may undermine the decorum. In *Bar Association Library* Moardabad *v. S.L. Kothari, Sub Divisional Magistrate Amroha* (1966 A.L.J. 953), the Presiding Officer of the court was held guilty of contempt of his own court for outrageous and undignified manner in which he dealt with a counsel.

The instances where contempt of court can be said to have taken place are myriad. It is not possible to envisage them all. But the golden rule always is that the repository of the power to punish for contempt must act with great restraint and circumspection before taking action against any one in this regard.

APPENDIX

Criminal Misc. Case No. 2659 (C) of 1987

SATYA DEV SINGH — **Applicant**

Versus

HON'BLE MR. JUSTICE SATISH CHANDRA MATHUR AND ANOTHER — **Opp-parties**

Hon'ble K. C. Agrawal, J.
Hon'ble P. Dayal, J.

Delivered by Hon'ble K.C. Agrawal, J. (Dec. 1987)

This petition under Article 215 of the Constitution read with section 16 of the Contempt of Courts Act, 1971, has been filed by Sri Satya Dev Singh, who is an advocate practising in the Lucknow Bench of the Allahabad High Court, for drawing contempt proceedings against two sitting Hon'ble Judges of this court.

We have perused the record and heard Sri G.S.L. Verma, applicant's counsel, as well as the applicant Sri Satya Dev Singh.

The applicant has narrated three instances, which, according to him, amounted to criminal contempt committed by the opposite-parties. Although in paragraph 23 of the application it has been alleged that the acts of the opposite parties constitute criminal contempt of the High Court, but before us the learned counsel conceded that the incidences narrated by him in the application did not amount to criminal contempt. According to him it constituted a civil contempt. Civil contempt basically comprises the failure to comply with an order of a court. No doubt, the rules of civil contempt are also concerned to uphold the administration of justice as that of criminal contempt.

We have examined all the three incidents narrated by the applicant and are of the view that none of them, taken independently, amounts to commission of contempt of its own court by the opposite parties 1 and 2. Section 16 of the Contempt of Coutts Act does make a Judge liable for contempt of his own court by saying that the court would be liable in the same manner as any other individual is. But no ground has been made out in this case for drawing contempt proceedings against the opposite parties 1 and 2. It may be wrong to say that a Judge is bound to pass an interim order in a case to the same effect as it was done in other case or cases. It is a mistake to think that an interim order passed by particular court on certain considerations are precedents for other cases which may be having similar facts. Each court is entitled to consider the application for interim order itself and

if it thinks that no case for interim order is made out, it can reject the same. In *Empire Industries Ltd. v Union of India* (AIR 1986 SC 662 at page 679) the Supreme Court had an occasion to consider this aspect of the matter. It said :-

> "An argument is being built up now-a-days that once an interim order has been passed by this Court on certain factors specially in fiscal matters, in subsequent matter on more or less similar fact, there should not be a different order passed nor should there be any variation with that kind of interim order passed. It is submitted at the Bar that such variance creates discrimination. This is an unfortunate approach. Every Bench hearing a matter on the facts and circumstances of each case should have the right to grant interim orders on such terms as it considers fit and proper and if it had granted interim order at one stage, it should have the right to vary or alter such interim orders."

A Court has full power to regulate its proceedings. Whether a case should be adjourned or not is a matter of discretion for the Court and passing of any order in respect of that matter should not give rise to a thinking that the same was not in the interest of justice. A desire of the court that a case should not be dragged on too long and be decided expeditiously is a worthy motive. This has been done for centuries. In his book on 'the Due process of Law' Lord Denning has quoted the following passage from a decision given *ex parte* Lloyd* which is as under :-

> "Even in England, however, a Judge is not a mere umpire to answer the question "How's that?" His object, above all, is to find out the truth, and to do justice according to law; and in the daily pursuit of it the advocate plays an honourable and necessary role."

A judge of accute perception, acknowledged learning, and actuated by the best of motives, has to regulate the proceedings of his court in a manner which he considers to be more suitable for the disposal of cases listed before him.

In *Sirros v. Moors*' (1974) 3 WLR 459 a Court of appeal, of which Lord Denning was a member, had an occasion to consider whether a judge is liable for some act which he reports to have done in his judicial capacity. The learned Judge held :—

---

* (1822) Mont 70 at 72n.

"Ever since the year 1613, if not before, it has been accepted in our law that no action is maintainable against a Judge for anything said or done by him in the exercise of a jurisdiction which belongs to him. The words which he speaks are protected by an absolute privilege. The orders which he gives, and the sentences which he imposes, cannot be made the subject of civil proceedings against him. No matter that the Judge was under some gross error or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness he is not liable to an action. The remedy of the party aggrieved is to appeal to a Court of Appeal or to apply for habeas corpus, or a writ of error or certiorari, or take some such step to reverse his ruling. Of course, if the Judge has accepted bribes or been in the least degree corrupt, or has perverted the course of justice, he can be punished in the criminal courts. That apart, however, a Judge is not liable to an action for damages. The reason is not because the Judge has any privilege to make mistakes or to do wrong. It is so that he should be able to do his duty with complete independence and free from fear. It was well stated by Lord Tenterden CJ in *Garnett v Ferrand* (1827) 6 B&C 611, 625 : "This freedom from action and question at the suit of an individual is given by the law to the Judges, not so much for their own sake as for the sake of the pub lic, and for the advancement of justice, that being free from actions they may be free in thought and independent in judgment, as all who are to administer justice ought to be".

But what was said by Lord Denning does not only apply to the Judges of the inferior courts but also to the judges of all ranks high or low.

We have not found any merits in the allegations made in paraqtaph 54 of this application.

It is a general principle of the highest importance, to the proper administration of justice that a judicial officer, in exercising the authority vested in him, should be free to act upon his own conviction, without apprehension of personal consequences to himself. Liability to answer to every person, who might feel aggrieved by the action of the Judge, would be inconsistent with the possession of freedom, and would destroy that independence without which no Judiciary can be either respectable or useful.

Every Judge has a right to evolve the procedure in which he would like to decide the case. Whether particular case is passed over or not is a matter which falls within his discretion. No exception to the passing over

or refusing to do so can be taken by any person if the same is done in the routine discharge of the duties. It is a matter of common knowledge that the Judges of this Court are working under a great pressure and if they concede to every request for adjournment or passing over, they would not be able to discharge their duties effectively. It is not being suggested by us that the Judges can act arbitrarily or capriciously.

In M. R. Parashar v Farooq Abdullah (1984) 2 SCC 343, the Supreme Court had on occasion to observe that :—

> "Those who attack the judiciary must remember that they are attacking an institution which is indispensable for the survival of the rule of law but which has no means of defending itself. In the very nature of things, it cannot engage itself in an open war, nor indulge in releasing contradictions. The sword of justice is in the hands of the Goddess of Justice, not in the hands of mortal Judges. Therefore, Judges must receive the due protection of law from unfounded attacks on their character."

The Judge should be at liberty to exercise his functions with independence and without fear of consequences as the same is for the benefit of the public. Any errors, which are committed during the course of a proceeding, may be corrected on appeal. A wrong judgment given or a procedure applied does not entitle any one to apply for drawing contempt proceedings against the Judge.

It is the duty of a lawyer to maintain towards the Court respectful attitude for the sake of maintenance of its supreme importance, Judges, not being wholly dependent themselves, are in particularly, entitled to receive the support of the Bar against the unjust criticism and clamour. It is similarly true that the Judges and the lawyers are the wheels of the chariot. They have to go together.

Lord Russell of killowen CJ in R v Gray (1900) 2 QB 36 at 40 has said :—

> "Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt or to lower his authority, is a contempt of Court."

The necessity for this branch of contempt lies in the idea that without well regulated laws a civilised community cannot survive. It is, therefore, thought important to maintain the respect and dignity of the court and its officers, whose task it is to uphold and enforce the law, because without

such respect, public faith in the administration of justice would be undermined and the law itself would fall into disrepute.

We do not find any justification for the applicant to file the present application for drawing of contempt proceeding against the two sitting Judges by Sri Satya Dev Singh, Advocate, who is fairly senior advocate practising in this Court. We were greatly pained by the averments made in this application. But, since we hope and trust that this will not re occur, we do no more than to reject this contempt application.

———

BAR OF JURISDICTION OF CIVIL COURTS IN REVENUE AND CONSOLIDATION CASES

(By Hon. Mr. Justice K.N. Misra)

It is clearly to be undrestood that 'jurisdiction' of a Court means the extent of authority of a Court to administer justice with reference to the subject-matter, pecuniary value and local limits. Before a Court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the order sought for. In short, jurisdiction means exteot of authority to administer justice either as a Court of original jurisdiction or court of appeal to or revision decide matters that are litigated before it or to take cognizance of matters presented in the formal way for its decision. Where a Court has no jurisdiction over subject matter of the suit, the decree passed by it would be a nullity. It is, therefore, necessary that the Court must find out as to whether it has got jurisdiction to entertain and decide a suit brought before it. If a Court has jurisdiction to entertain and decide a suit, then the decree passed by it would not be a nullity though it may be wrong and unsustainable on facts and law applicable thereto. Merely because the Court committed error in deciding an issue involved in the suit, it cannot be said that it had acted beyond jurisdiction. The error in the decree passed by a Court having jurisdiction to decide the suit can be corrected by the Court itself in exercise of powers of review or by the appellate or revisional Court. There is, thus, a clear distinction between the jurisdiction of Court to consider and determine a matter and the erroneous action of such Court in the exercise of that jurisdiction. The former involves the power to entertain a suit while the later involves rendering of a decision in the suit on merits, and while doing so the error of law or fact can be corrected by the appellate or revisional Court and even by the concerned Court itself in exercise of statutory powers of review, if conferred by the statute.

A Civil Court is vested with jurisdicition to entertain a suit of civil nature unless its cognizance is either expressly or impliedly barred. Where a claim is of a civil nature every presumption should be made that a suit lies in the Civil Court. Exclusion of jurisdiction of Civil Court is not to be readily inferred but such exclusion must be either explicitly expreesed or clearly implied. The Hon'ble Supreme Court in *Dhulabhai* v. *state of M.P.* (1969 S. C. 78) and also in several decisions reported in AIR 1964 S.C. 322; AIR 1964 S.C. 1873; AIR 1966 S.C. 249; AIR 1966 S.C. 893; AIR 1966 S.C. 1089 and AIR 1968 S.C. 271 laid-down the principles and the criteria for determining the question regarding exclusion of the jurisdiction of Civil Court which can be summarised as under :—

(1) Where the statute gives a finality to the orders of the special tribunals, the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil Courts would normally do in a suit.

(2) Where there is an express bar of the jurisdiction of the Civil Court, on examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court. But where there is any expressed exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive.

(3) If in statute form for determination of right or liability is provided and it further provides expressly or impliedly exclusion of jurisdiction of Civil Court to entertain and decide that suit, then the Civil Court will have no jurisdiction to entertain and decide such suits or proceedings.

(4) Ouster of jurisdiction of a Civil Court cannot be presumed. The ouster must be the result of expressed provision in the Legislative Enactment or one of necessary implication therefrom.

In the matters relating to right, title and interest in the agricultural land, there are special enactments which provide forum for determination of disputes and there are express provisions in the enactments relating to exclusion of jurisdiction of Civil Court for entertaining suits enumerated in the Schedule appended to the Acts. It is to be found out in the land laws that jurisdiction has been conferred on the Revenue Courts to decide the disputes relating to right title and interest in respect of agricultural land and the jurisdiction of the Civil Courts to entertain such suits has been specifically barred. But such statutes which create special jurisdiction taking away jurisdiction of the Civil Court are to be strictly construed keeping in mind that where in the statute jurisdiction is conferred on the Revenue Court or on the Authority created under a special statute to decide dispute relating to agricultural land, then the jurisdiction of the Civil Court would be ousted although the Courts of exclusive jurisdiction may not be able to grant all the reliefs prayed for in that suit.

Prior to enforcement of U. P. Zamindari Abolition and Land Reforme Act, there was an express provision contained in Section 242 of the U. P. Tenancy Act providing that all suits and applications of the nature specified in the Fourth Schedule could only be entertained and decided by the

Revenue Courts. In said provision an amendment was made by the U. P. Act X of 1947 by which it was specifically provided that if the cause of action, on which suit or application is based, is such that the plaintiff can claim *any relief* on its basis in the Revenue Court, he must seek his remedy there. Jurisdiction of Civil Court was largely eroded and the Revenue Courts were conferred wide jurisdiction in entertaining suits and deciding disputes relating to agricultural land. This is exhibited by Explanation I added to Section 242 which provided that if the cause of action is one in respect of which relief *might be granted* by the Revenue Court it is *immaterial* that the relief asked for from the Civil Court may not be *identical* with that which the Revenue Court could have granted. Explanation II further provides that if the cause of action is one in respect of which relief *might be granted* by the Revenue Court under Section 180 it is immaterial that the relief *which may be asked for* from the Civil Court is greater than or *additional* to that which the revenue Court could have granted. These two Explanations incorporated in Section 242 ousted jurisdiction of Civi Court completely in the matters relating to agricultural land with regard to claim of right title and interest in the land in respect of which a suit or application of the nature specified in IV Schedule of the Act could be filed.

The said provision came up for consideration before the High Court in *Parmeshwari Das* v. *Angan Lal* (1944 RD 173) wherein it was observed that the section would exclude only those suits based on a cause of action in respect of which relief could be obtained by means of a suit in the Revenue Court, and though the word 'relief' may not mean the entire relief, *at the same time it does not mean insignificant relief* and the natural meaning of the word 'relief' as occurring in this section is that it must be either the relief which the plaintiff claims or a *substantial portion* of it. The Legislature thereupon found it necessary to amend Section 242 and the aforesaid two Explanations were incorporated in the Section.

It is well settled that the plaintiff has to file suit in the Court of competent jurisdiction. Although jurisdiction of the Court is to be determined initially on plaint allegations, the averments of cause of action and the relief claimed, but the plaintiff cannot oust the jurisdiction of the Revenue Court by mere plaint allegations and stating cause of action and claiming relief in the manner so as to create jurisdiction in Civil Court. Thus, if the object of a suit brought in a Civil Court in such a form so as to oust the jurisdiction of the Revenue Court or to forestall a suit in the Revenue Court by the defendants, the Civil Court will have no jurisdiction to entertain the suit. It was held in one of the earlier decisions (*Ananti v. Channu*, AIR 1930 Allh. 193) that the mere fact that the plaintiff adds a relief for perpetuel injunction will not take the case out of the jurisdiction of the Revenue Court. Similar view was held in later decisions and a reference

may be made to the decision in *Mohd. Umar Khan v. Idris Mohd Ghani* (AIR 1980 Allh. 89) where it was held that the pith and substance of the allegations made in the plaint will have to be scrutinised and if on those allegations some adequate or satisfactory relief can be obtained from the revenue Court, notwithstanding that the relief has been so modulated that it falls outside the purview of the Revenue Court, the suit was triably by Revenue Court.

In *Ram Awalamb v. Jata Shanker* (196) All. L. J. 1108) (Full Bench) the High Court held that where the main relief sought in the plaint is cognizable by the Civil Court then the ancillary relief claimed in the suit would be awarded to the plaintiff by the Civil Court, but where in respect of main relief the suit is triable by the Revenue Court, then the jurisdiction of Civil Court would be barred and the suit would be entertainable by the Revenue Court.

Thus, the pith and substance of the cause of action and the relief claimed is material for determining the question of jurisdiction of the Civil Court and mere adding relief of injunction could not oust the jurisdiction of Civil Court. But if a plaintiff files a suit for injunction simpliciter asserting to be tenure holder of the land in suit and there is no dispute about his title vis-a-vis State Government and the Gaon Sabha and plaintiff's name is recorded in revenue records, then the suit for injunction simpliciter claiming relief of mandatory injunction prohibiting defendant from interfering in the possession of the plaintiff would be maintainable in Civil Court.

In the case of *Parsottam v. Narottam* (1970 All. L.J. 505) the Division Bench held that a suit for injunction simpliciter restraining the defendant from cutting crops standing over the plots in suit is maintainable in Civil Court. It is to be noted that in the suit entries in revenue papers supported the plaintiff's claim of being tenure holder of the land in dispute and no relief was claimed against the Gaon Sabha and State Government. It was, thus, held that the plaintiff was not obliged to file a suit for declaration under Section 229-B of the U. P Zamindari Abolition & Land Reforms Act in the Revenue Court and the suit was held to be maintainable by the Civil Court. It may, however, be mentioned that though the suit may be maintainable in Civil Court, but the Court will not base its decision on mere entries in favour of the plaintiff and will determine the question on merits, if raised, as to whether plaintiff is or is not tenure holder of the land in suit and entitled to relief claimed.

The Hon'ble Supreme Court in *Chandrika Misir v. Bhaiya Lal* (1973 RD 365) held that the Civil Court had no jurisdiction to decide the suit which was exclusively triable by the Revenue Court in view of Section 331 of the U.P. Zamindari Abolition and Land Reforms Act. The Hon'ble

Supreme Court has taken the said view on the ground that there was a prayer for possession, although in the alternative. It is, therefore, well settled that where the plaintiff files a suit for permanent injunction and also claims the relief for possession, although in the alternative, the suit would not be entertainable by the Civil Court.

Several cases also come up before the Civil Court of the nature where the plaintiff claims relief for possession over the agricultural land by demolition of construction made thereon by the defendant or by up-rooting the trees situate on the plot planted by the defendant who has no right, title or interest in the land. Divergent opinions were expressed in some of the cases on the point. Some of the cases may be mentioned hereunder relating to the period prior to the enforcement of U.P. Zamindari Abolition and Land Reforms Act. In the case *Puttu vs. Bharat Singh* (1949 A.W.R. 52) a suit was filed for possession of the plot by uprooting the trees standing thereon. It was held that such a suit would lie in the Civil Court. In *Kanhaya Lal v. Huriyan* (I.L.R XXIII All. 486), on similar facts, the Full Bench held that such a suit is cognizable in Revenue Court only. This view appears to have been expressed because such suits were cognizable in Revenue Courts under Section 93 of Act XII of 1881. These two decisions, being under two different Acts, cannot be taken to express a contrary view.

In *Angnu v. Mahabir* (1954 A.L.J. 669) it was held by the Division Bench that suit for demolition and possession against a trespasser may lie in Civil Court. In another case : *Mewa and others v. Baldeo* (1966 R.D. 392) a Division Bench held that suit for possession of agricultural land and demolition of unauthorised construction standing thereon filed against the trespasser would be cognizable only by the Revenue Court. The above view was expressed by the Division Bench in *Mewa's* case (Supra) on the consideration of the definition of the word 'land' as mentioned in Act No. I of 1951. It was observed that definition of the word 'land' contained in this Act is different from that given in the U.P. Tenancy Act where in the land, as soon as it was built upon, ceased to be land but that is not so under the U.P. Zamindari Abolition and Land Reforms Act. The Division Bench, thus, observed that the ruling on the point wherein said difference in the definition of land in two enactments was not considered are not of much relevance and not considered to be good law under the provisions of Act No. I of 1951. It was further observed that the relief against trespasser for possession would be the main relief and the relief of injunction ancillary relief, and, as such, suit would be cognizable by the Revenue Court. The matter finally came up for consideration before the Full Bench in *Ram Awalamb v. Jata Shanker and others* (1968 RD. 470), the observations of which are required to be quoted extensively for proper consideration of said point under discussion. It was held that :—

"The main point for consideration in all cases where on a definite cause of action two reliefs can be claimed is which of the two reliefs is the main relief and which relief or other reliefs are ancillary reliefs. Where from facts and circumstances of the case the relief for demolition and injunction is the main relief there could be no reason why the jurisdiction of the Civil Court should be barred. On the other hand, if it could be said that the main relief, that is to say, the real and substantial relief, could on that cause of action be of possession only then the suit will definitely lie in the revenue court."

In aforesaid decision the full Bench has not given any guideline or criteria for judging, in a suit for possession by demolition of the constructions, which of the relief would be treated to be real and substantial relief and which relief would be treated to be ancillary relief. It was observed :—

"In our opinion it is difficult to lay down any hard and fast rule that where the suit brought against a trespasser the only relief which the plaintiff should claim as an effective relief is that of possession and he need not try to obtain an injunction order and get the construction made by the trespasser demolished. The revenue courts have not been empowered to grant the relief of injunction and demolition and in case the defendant refuse to take away the materials from the land in dispute after the decree for possession has been passed against him the main object of the plaintiff would be frustrated. A Civil Court will, therefore, have the power to entertain the suit where the main relief sought by the plaintiff is that of injunction and demolition, a relief which could be granted by the civil court only. The relief of possession will be merely ancillary relief which the civil court could grant after having taken cognizance of the suit for injunction and demolition.

The above referred Division Bench decision in *Mewals* case (Supra) was partly approved and partly dissented with the observation :—

"We respectfully agree with the view expressed by Dayal and Seth, JJ. in the case of *Mewa v. Baldeo* that once the suit is maintainable for the main relief in the Civil Court then there is no bar for the Civil Court to grant all the possible reliefs flowing from the same cause of action. We, however, with great respect differ from the view takea by the Division Bench in the case of *Mukteshwari Prasad Tewari v. Ram Wali* (1965 All. L.J. 1137) that whenever a suit is for demolition and possession against a trespasser it must always be held that the main relief was that of

possession. We are of the view that the determination of the question as to which out of the several reliefs arising from the same cause of action is the main relief will depend on the facts and circumstances of each case."

The view expressed in the Full Bench decision in Ram Awalamb's case (Supra) still holds the field as its correctness has yet not been doubted in any other case. It thus, appears well settled that in a suit for demolition and possession against trespasser it must always be determined as to which relief is the main and substantial relief. If it is found that the relief for possession is the main relief and the relief for demolition is ancillary relief then the revenue court would have jurisdiction to entertain and decide the case. But on the other hand if it is found on the facts and circumstances of the case that the relief for demolition and injunction is the main relief and the relief for possession in ancillary relief, then the suit would be cognizable by the Civil Court.

Subsequently, in *Ram Shanker Prasad* vs. *Sarabjit* (1975 RD 38) before O.P. trivedi, J. as question was canvassed as to whether the suit for possession by demolition of construction over a portion of agricultural plot in suit could be cognizable by Civil Court or not. The defendant in that case had encroached upon a part of the plaintiff's plot in suit by enclosing it by bamboo fencing and thereupon constructed a Pucca wall and put up cattle trough and thatch. The plaintiff claimed relief for possession by demolition of and constructions and possession over the entire plot in suit. The trial court accepted the contention of the defendant that the suit was maintainable in the Revenue Court and the order was affirmed in appeal by the Civil Judge. It was urged on behalf of the plaintiff-petitioner placing reliance on *Ram Awalamb's* case (Supra) that the suit was maintainable in Civil Court as the main relief was relief for mandatory injunction by demolition of the construction and the relief for possession was merely ancillary relief and so it could be granted by Civil Court on the principles laid down in *Ram Awalambs* case. This contention was repelled and it was held that applying the test laid down by the Full Bench in above case and having regard to the plaint allegation it is to be held that the relief for possession was the main relief in the case because in para-2 of the plaint there was a clear assertion that dispossession of the petitioner-plaintiff was caused by closure of the disputed plot with Bamboo fence and by putting up a wall, cattle trough and hatch. The area of the land on which the plaintiff seeks possession was also given in para-2 of the plaint. According to it the plaintiff had been dispossessed from the plot bounded and enclosed upon by wooden fencing, the wall, cattle trough and the disputed thatch wrongfully put up. It was, therefore, held that this is not one of those cases in which *dispossession has been caused merely by wrongful construction which are sought to be demolished.*

In those cases where dispossession is alleged only by wrongful constructions and a decree for possession is claimed only in respect of the area *encroached upon by wrongful constructions* respecting which demolition is sought, In my judgment the relief of demolition should be treated as the main relief and the relief of possession is the ancillary relief because *dispossession has resulted only from demolition and is confined only to the portion on which wrongful constructions have been made* But in a case like the present one where dispossession is not only confined to the site of wrongful constructions but extends to land beyond it, it cannot be said that dispossession has resulted only from wrongful construction and in cases of the latter category to which the present belongs the main relief is the relief of possession and the elief of demolition must be treated as an ancillary relief." His lordship further held that it is well settled that *in those cases of dispossession from agricultural land ancillary relief of domolition can be granted by the Revenue Court.*

The correctness of the above decision in *Ram Shanker's* case (Supra) appears to have not been doubted as it has not been referred and dissented in any subsequent decision expressing contrary view.

In *Ram Shanker's* case what has been held is that if relief of possession has been sought by the plaintiff over a larger area and it is not confined to the area of the plot in suit over which constructions were made by the defendant then the main relief in such a suit will be deemed that to be of possession and the suit would be cognizable by the Revenue Court.

It is, therefore, essential in all such cases to consider the pith and substance of the cause of action and the relief claimed and if the main and substantial relief is cognizable by the Revenue Court, the jurisdiction of Civil Court will be barred. But if the main relief in the suit would be considered to be that of mandatory injunction by demolition, then the suit would be cognizable by Civil Court and relief of possession by demolition would be granted by it as held in *Ram Awalamb's case* (Supra) (F. B.)

It is no doubt correct to say that a relief for mandatory or perpetual injunction cannot be granted by the Revenue Court, but if a suit, as already mentioned above, involves determination of the question of title, it would not be entertainable by Civil Court although identical relief may not be granted by the Revenue Court as would be granted by the Civil Court. The Revenue Court can grant temporary injunction under Se 229-B. It would, therefore, be seen that if on the facts and circumstances of the case, the main relief would be congnizable by the Revenue Court, then the Civil Court would not have jurisdiction to entertain the suit.

The term 'cause of action' has not been defined but it is taken to mean every fact which it will be necessary for the plaintiff to prove to support his right to the judgment. (See *Mohammad Khalil Khan* vs. *Mahboob Ali* AIR 1949 P. C. 78). In a case where on one cause of action two reliefs were sought, then the question for consideration would be as to which relief is ancillary (See *Laxmi Shanker* v. *Sunder*. 1971 R.D. 271) If main relief is cognizable by Civil Court, then ancillary relief would also be granted by Civil Court (See *Ram Awalumb* v. *Jata Shanker*. 1968 All.L.J 1108)

In a suit for in specific performance of contract and possession, the main relief is the relief for specific performance of contract (*L. Deep Chandra v. Lala Durga Prasad*. 1956 All. L.J. 955).

In a suit for declaration that the sale deed is Benami transaction and the defendant acquires no title as tenure holder on its basis, the suit would be cognizable by the Civil Court because such a declaration regarding character of a document of being a Benami transaction cannot be granted by the revenue court. In such a suit the ancillary relief regarding possession claimed in such suit can be awarded by the Civil Court. (See Civil Revision No. 126 of 1986 *Sajid Ali* v. *Smt. Zoidun Nisan and others* decided on 14. 10. 1986).

It is also well settled that a voidable sale deed or such other voidable document of conveyance, unless it is avoided, will be enforcible against the executant or any other person claiming under him as held in *Ningawwa v. Bijrappa Slieddeppa Hirekuraban*. AIR 1968 S.C. 556) : and that a suit brought for cancellation of a voidable sale deed relating to agricultural plot would not be cognizable by revenue Court, as has been observed in the Full Bench decision this Court in *Ram Nath v. Smt. Munna* reported in 1976 ALL. W.C. 412. But the jurisdiction of Civil Court to entertain a suit for cancellation of a void sale deed or any other void document of conveyance relating to agricultural plots, together with the relief claimed for declaration of rights as tenure holder of the land covered by the impugned deed, would, however, be barred by Sec. 331 (1) of the said Act in view of Explanation appended to it because in such a suit the main relief would be the relief for declaration of rights as tenure holder of the land covered by the deed, which can be granted by the Revenue Court under Section 229-B of the U. P. Zamindari Abolition and Land Reforms Act, because the void sale deed would be liable to be ignored being nullity requiring no cancellation for making it ineffective. The Revenue Courts are vested with jurisdiction by necessary implication of their statutory powers to adjudicate upon such rights and interest in land to declare such documents to be ineffective being void and nullity requiring no cancellation and so it would be immaterial if the revenue Courts would not be able to

grant identical relief for cancellation as could be granted by the Civil Court (See *Gorakh Nath v. H. N. Singh*, AIR 1973 SC 2451).

In Vijai Singh v. II Additional District & Sessions Judge, Bulandshahr and others (1982 R. D. 207) the case set up in the plaint was that the plaintiff actually did not execute that sale deed but some other person had impersonated for that purpose and that no consideration was paid for it. It was alleged that on the basis of that forged and fictitious sale deed the defendant started interfering in the possession of the plaintiff over the disputed plot and since he did not desist despite plaintiff's remonstrances to the contrary, hence the suit for permanent injunction restraining the defendant from interfering with the possession over the possession plot was filed in the Civil Court. Hon'ble R. R. Rastogi, J. considering the legal case law on the subject held that on the allegations made in the plaint the impugned sale deed was a void transction, and, that being so even though the relief claimed was of injunction, the effective relief on the cause of action set out in the plaint was that of declaration which could be granted only by the revenue court. Such a suit was not cognizable by the Civil Court and the plaint was ordered to be returned for presentation to the proper Court. In recording this decision his lordship took a view that the suit for cancellation of voidable document is required to be filed and the same will be cognizable by the Civil Court as held in *Gorakh Nath's* case (AIR 1973 SC 2451). The revenue courts are vested with the jurisdiction to adjudicate upon and declare a void document to be ineffective. Thus, as per plaint allegations the impugned transaction was a void trasaction and that being so the suit was not cognizable by Civil Court even though the relief claimed was for injunction. Reliance was placed on the decisions in *Balj Nath v. Binda* (1978 RD. 77); *Amanat Ullah v. Mohd. Faryad* (1978 RD 262); *Sunder Chamar v. Sohan Chamar* (1979 RD 91); *Ram Roop v. Smt. Budhiya* (1979 RD. 212) and *Ram Awalamb Jata Shanker* (1968 All. L. J. 1108).

In *Jagamba Prasad v. Prahlad Singh* (1981 AWC. 328) a suit was brought for cancellation of a sale deed in respect of Sirdari Land, and for possession in the Civil Court. It was found by two courts below that the sale deed executed by respondent's mother, his natural guardian, in favour of appellants was void and inoperative as respondent being lunatic no sale deed could be executed on his behalf even by the natural guardian without the permission of the District Judge. It was pressed that the suit was not maintainable in Civil Court and a reference was made to *Gorakh Nath's* case (Supra). It was on said facts held that the word 'any relief' has been interpreted by this Court to mean 'main relief'. The question, therefore, is what was the main relief. In other words was the relief for possession only ancillary. If the sale deed was void as has been found to be, then

it could be avoided by respondent and the only relief or main relief for which he could approach was for possession. By seeking declaration that the sale deed was void the plaintiff only attempted to camouflage the suit so that it may become cognizable by Civil Court. This he could not be permitted to do. In the result, the appeals were allowed and the suit were dismissed. The plaintiffs were directed to approach the Revenue Court for seeking remedy.

It is, thus, fairly well settled that a suit for cancellation of void document is needed. A reference may be made to a decision of the Privy Council reported in *I. L. R. Calcutta 551* (P.C). The plaintiff, therefore, can seek relief in the revenue court for declaration that he is a tenure holder irrespective of the deed of transfer which is void and ineffective. The jurisdiction of the Civil Court would, therefore, be barred under Section 331 (1) of the U. P. Zamindari Abolition and Land Reforms Act in respect of suit for cancellation of void documents.

There are yet another type of cases which are often filed in the Civil Court claiming a decree of mesne profits in respect of agricultural land. Whether such suits are maintainable in Civil Court or not requires to be considered. In pre-vesting period this question cropped up for consideration in the cases reported in *Jumna Das and another v. Misri Lal and others* (1935 A. L. J. (R) 112; and *Qudsia Jan v. Zahid Husain* (1935 A. L. J. (R) 482 and it was held that a suit for mesne profit is not cognizable by a revenue court. After the enforcement of U. P. Zamindari Abolition and Land Reforms Act in a case reported in *Drugpal Singh vs. Pratap Sg.* (1982 R. D. 269) a suit was filed for recovery of mesne profit in the Civil Court. The jurisdiction of the court was challenged, but it was decided by the trial court in favour of the plaintiff by holding that it has jurisdiction to try the suit. In Revision filed by the defendants challenging that order it was contended that the suit being for recovery of money in respect of plaintiff's alleged share of mesne profits in the sale proceeds of the guava fruits and the profits arising out of the land in dispute cannot be maintainable in Revenue Court. On the other hand, the learned counsel for the opposite parties contend that the suit being one purely for recovery of money, it was cognizable by revenue court. Reliance was placed on *Mohammad Abdul Jalil Khan and another v. Mohammad Abdul Salam Khan* (AIR 1933 Allh 519). Hon'ble Gopi Nath, J. on a careful consideration of the relevant case law observed that under the U. P. Zemindari Abolition and Land Reforms Act there is no provision to cover a suit for recovery of mesne profits. Since jurisdiction is barred only in respect of those suits which are enumerated in Column 3 of Schedule-II, and, as such, the jurisdiction of Civil Court would not be barred and it can entertain and decide it. This decision as such laid down that in

order to oust jurisdiction of the Civil Court, the suit has to be filed under one of the item mentioned in Column 3 of Schedule II of the U. P. Zamindari Abolition and land Reforms Act.

The above are some of the cases wherein question of ouster of jurisdiction of Civil Courts on said material matters have been dealt with.

To sum up, as per decided cases on the point, the following are matters in which suit will lie in the Revenue Court as jurisdiction of Civil Court is barred under Section 331 (1) of the U. P. Zamindari Abolition and Land Reforms Act :

(1) Suit for declaration of title in respect of agricultural land as tenure holder thereof.

(2) Suit for ejectment against trespasser by a tenure holder.

(3) Proceedings for ejectment and damages in respect of land vested in Gaon Sabha.

(4) Suits for partition of the agricultural holdings filed by the recorded as well as un-recorded tenure holders.

(5) All other suits and proceedings specified in IV Schedule of the U. P. Zamindari Abolition and Land Reforms Act.

(6) The above is subject to the condition that the jurisdiction of the revenue court to determine right title and interest of the tenure holder in the agricultural land is not barred under Sec. 49 of the U. P. Consolidation of Holding Act relating to land of consolidation area.

The aforesaid Section 331 (1) of the U.P. Zamindari Abolition & Land Reforms Act Expressly vests jurisdiction exclusively in Revenue Courts to take cognizance and decide suits, applications or proceedings mentioned in Column 3 of Schedule II of the Act and it bars the jurisdiction of all other courts in respect of such suits and proceedings. Thus, while interpreting this provision relating to jurisdiction one must see the purpose behind the statute and the object of conferring exclusive jurisdiction in Revenue Court for deciding cases relating to agricultural land in suits and proceedings referred in Schedule II of the Act. From the very inception of the establishment of Revenue Courts the Legislative intent had been expressly incorporated conferring exclusive jurisdiction for deciding cases relating to agricultural land referred in various Land Laws. Thus, one has to interpret and construe the said provision, which has been amended from time to time, bearing in mind the intent and purpose of the enactment. The well recognized 'golden rule' of construction as laid down in *'Grey v. Pearson'* (1857), 6 H.L. Case 61 has been that the Courts should "adhere as

regidly as possible to the express words that are found and to give those words their natural and ordinary meaning". This rule of construction, however, dominated in the 19th and early 20th Century. But today, the art of interpretation has been changed to what is termed as "Schematic" method of interpretation. The Courts now look to the purpose, intent scheme or design of the legislature and then, if necessary, fill in the gaps. The aforesaid provision has thus been interpreted accordingly in various decisions holding that the Revenue Courts alone have got absolute jurisd iction to determine right, title and interest involved for determination in all suits relating to agricultural land and the civil courts' jurisdiction would be barred in view of the aforesaid express statutory provision.

We now switch over to consider the impact of enactment, U. P. Consolidation of Holdings Act (Act No V of 1954). This Act was passed with a view to finally determine the matters relating to title in agricultural land belonging to the tenure holders and the re-arrangement of the scattered plots of the holding of tenure holders. Initially in the original Act (Act No. V of 1954) correction of entries in revenue records was t ken up at the stage under Section 8 Appeal and revision were also provided against such orders passed under Section 8 of the Act. Thereupon proceedings for determination of question of title was to be taken up at the stage of Section 12 of the Act. At this stage as well, against the decision of consolidation officer right of appeal and revision was provided. There was, thus, duplication of proceedings and it was also time consuming. The Act was, therefore, drastically amended from time to time. The correction of records and determination of title and the claim of the tenure holders in respect of the disputed land was taken up under Section 12 of the Act. The exercise of making correction under Sec. 8 of the Act in the revenue records was given up. The consolidation officer under Section 12 of the Act was empowered to determine the question of title of the claimant as Sirdar, Adhivasi, and Asami tenant in the disputed land. So far as the question of Bhumidhari rights were concerned, it was provided under Section 12 (7) of the Act that the consolidation officer would refer the question regarding claim of Bhumidhari rights in the land in dispute, if raised by the claimant. Reference was to be made to Civil Court for being referred to the Arbitrator. The award of the Arbitrator was required to be considered by the Court and after disposal of the objection against the award, a decree making Award rule of the Court was to be passed determining the question of title as Bhumidhar in the land in dispute. The consolidation officer on receiving the findings so recorded by the Civil Court was required to decide the case in accordance with the Award made rule of the Court.

It is, thus, to be noticed that even under the aforesaid land law, nemely, U.P. Consolidation of Holdings Act jurisdiction was conferred on Civil Court to decide the question of title, i.e. claim regarding bhumidhari rights

in the land in dispute but it was felt that this procedure for determining Bhumidhari right was time consuming and the re-arrangement of the holding was not expeditiously possible unless the question of title was determined by the Civil Court. The Act was, therefore, again amended drastically in the year 1963 and the jurisdiction of the Civil Court to determine question of Bhumidhari title on reference to the Arbitrator was excluded and the consolidation officer was conferred jurisdiction to determine the question of title about Sirdari, Bhumidhari and Adivasi rights in the land in dispute. The consolidation officer was empowered to decide the question and while doing so he was treated to be a court of competent jurisdiction to decide those questions. The Assistant consolidation officer was also empowered under Section 9 of the Act to decide disputes between the parties in conciliation proceedings to be recorded in presence of two members of the Consolidation Committee. The orders so passed on conciliation are final subject to decision in appeal and revision. The Assistant Consolidation Officer has also been empowered to decide cases on the basis of conciliation as court of competent jurisdiction notwithstanding anything contained in the U.P. Zamindari Abolition and Land Reforms Act. The orderrs passed by the consolidation officer in proceedings under Section 10 of the Act are open to appeal and revision under Section 11 and 48. Thus, by simplification of the procedure, the consolidation proceedings and re-arrangement of the holdings is done expeditiously after deciding the disputed question of title.

An important provision which requires to be referred is Section 5 (c) (1). According to it on the notification under Sec. 4 (2) all suits and proceedings; appeals or revisions pendings in any other court, i.e. Civil Land Revenue Courts, would stand abated and the parties in the suit would be entitled to raise the question in proceedings before the consolidation authorities under Sections 9 and 10 of the Act. Thus, the question of title raised in a suit filed earlier prior to the notification made under Section 4 (2) of Act is required to be raised and re-asserted in proceedings before the consolidation authorities.

This provision, therefore, completely ousted the jurisdiction of Civil and Revenue Courts to decide regular title suits pending before them on the date of notification under Section 4 (2) of the Act provided the question of title is involved for determination in the suit in respect of agricultural land. In view of this provision the suit would abate in respect of land in dispute in which the question of title is raised. The other questions involved in the suit not relating to agricultural land in the suit would require to be determined by the Court in the suit pending before it.

There were cases in which the cancellation of void sale deed was sought in a suit which was pending on the date of notification under Section 4(2)

of the U.P. Consolidation of Holdings Act. This question was considered by the Hon'ble Supreme Court in *Gorakh Nath v. H.N.Singh* (AIR 1973 SC 2451) wherein it was held that the suit for cancellation of void sale deed would abate because the revenue courts are vested with jurisdiction by necessary implication of their statutory powers to adjudicate upon such rights and interest in land to de lase such documents to be ineffective being void and nullity requiring no cancellation and so it would be immaterial if the revenue Courts would not be able to grant identical relief for cancellation as could be granted by the Civil Court. In *Gorakh Nath's* case (AIR 1973 SC 2451) considering a Division Bench decision of the Allahabad High Court in *Jagarnath Shukla v. Sita Ram Pande and others* (1969 RD 529) their Lord ships of the Supreme Court held that "..we think that a distinction can be made between cases where a document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. An alienation made in excess of transfer would be, to the extent of excess of power, invalid. An adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights or interests in land which are the subject matter of consolidation proceedings. *The existence and quantum of rights claimed or, denied will have to be declared by the consolidation authorities which would be deemed to be invested with jurisdiction, by the necessary implication of their statutory powers to adjudicate upon such rights and interests in land, to declare such documents effective or ineffective*, but, where there is a document the legal effect of which can be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by court having the powers to cancel it."

The Hon'ble Supreme Court endorsed the view held by the Division Bench in *Jagar Nath Shukla's case* that it is the substance of the claim and not its form which is decisive. The Hon'ble Supreme Court set aside the decrees of the Court below and ordered that the claim of the parties now will be decided by the consolidation courts, and the suit of the plaintiff, which was for cancellation of void sale deed, was held to have abated.

In view of this decision and other decided cases on the point by the High Court, it appears well settled that the consolidation authorities would have jurisdiction to determine as to whether the deed of sale, gift and exchange was void or voidable. If it is found that the tranafer deed is void then the consolidation officer would ignore the transfer deed and proceed to determine the claim of the tenure holder irrespective of the void deed of transfer. But if it is found that the sale deed is voidable and without it

being cancelled the same will be operative, then the consolidation authorities will have no jurisdiction to cancel such sale deed and will have to accept it unless cancelled by the competent civil Court. It is, thus evident that the suits in respect of void sale deeds would abate on the notification made under Section 4 (2) of the Act and the jurisdiction of Civil Court would be outed for determining such pending suits.

The Question whether cancellation of deed of transfer is void or voidable document would be determined with reference to the pleadings contained in the plaint. If it has been averred that the impugned sale deed has been executed by the minor executant or that someone else had impersonated and had executed it and the plaintiff had not at all executed the impugned transfer deed, then the transfer deed would be taken to be a void document. These examples are not exhaustive and there may be other facts and circumstances where cancellation of transfer deed is sought may be void document. All the facts and circumstances are, therefore, to be meticulously examined by the Court while determining the question whether tranasfer deed is void or voidable. If on the averments contained in the plaint, the deed would be found prima facie to be void, then the pending suit will abate. The consolidation authorities will have jurisdiction to entertain objection relating to claim in respect of disputed land and to record a finding on the point as to whether the deed is void or voidable and if on the evidence tendered before it, the impugned deed is found to be void, the same will be ignorned and it will not effect the title of the parties which has get to be determined on merits. But if it is found that the deed is voidable and not void, then the consolidation authorities will accept the deed and decide the case on its basis until it is cancelled by the competent Civil Court as already observed above.

Another jurisdictional question which requires consideration is whether a suit can or cannot be filed in Civil Court seeking cancellation of order passed by the consolidation authorities in proceedings under the U.P. Consolidation of Holdings Act. Similar questions came up for consideration in *Smt. Sumera and others v. Balj Nath and others* (1984 R.D. 46, wherein the plaintiffs wanted to avoid the order passed and the entries made in the consolidation proceedings on the ground that they were fraudulent and collusive and were without jurisdiction and in a such as they were passed without any notice to them. The plaintiffs claimed relief for declaration that the entry in the name of the defendants as co-tenure holders with them were wrong. The jurisdiction of the Civil Court was challenged and a issue was framed. It was also stated that the suit is barred under Sec. 4 of the U.P. Consolidation of Holdings Act. Several other issues as per pleadings of parties were also framed. The trial court held that it had jurisdiction to try the suit. The question whether the suit

was barred by Sec. 49 of the U.P. Consolidation of Holdings Act was also considered. The trial court held that bar of Sec. 49 of the Act may become operative in case the plaintiffs are unable to prove that proceedings taken by consolidation authorities were vitiated by fraud or collusion but the suit could not be thrown out at the outset for want of jurisdiction. The question regarding bar of Sec. 49 was, thus, postponed for decision at the final stage. After recording evidence, the trial court as a matter of fact found that the plaintiffs had failed to prove that the impugned order passed by the Assistant Consolidation Officer is void or liable to be cancelled on any ground, and that being so, the plaintiffs were merely co-tenure holders. Consequently, it was held that the suit in respect of title and possession of land was barred under Section 49 of the U.P. Consolidation of Holdings Act. The appellate court held the suit to be not barred under Section 49 of the U.P. Consolidation of Holdings Act. It was also found that the order passed by the Assistant Consolidation Officer was nullified and liable to be cancelled as provisions of Section 21 of the Act were not complied with. The appellate court, however, desisted from recording a finding as to whether the appellants are sole-sirdar tenants of the disputed plots or not. Hon'ble Deoki Nandan, J. on the consideration of pleadings as set up in the plaint observed that the real relief and the only effective relief which the plaintiffs desired in the present suit was a declaration of their rights as the sole Sirdars of the land in suit to the exclusion of the defendants and they wanted that relief by having the revenue records corrected by expunging the names of the defendants therefrom. They could get that relief and adequately and properly too, by a suit under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act in case they could succeed in showing that they were Sirdars in possession and the defendants were not in possession. But in case they were out of possession they could also get relief by a suit for possession under Section 209 of the U.P. Zamindari Abolition and Land Reforms Act. That being so, the jurisdiction of the Civil Court to entertain suit was held to be barred by Section 331 of the U.P. Zamindari Abolition and Land Reforms Act. He repelled the contention of the plaintiffs-appellants that the main relief sought by the plaintiffs was the relief of injunction and that the relief for the avoidance of the order of Assistant Consolidation Officer was merely ancellary and held that the main relief was for declaration of the incorrecetness of the entries made in reve une records on the order of the Assistant Consolidation Officer and the relief of injunction was merely consequential. Thus, the Civil Court had no jurisdiction to entertain and decide the suit. Section 31 of the Specific Relief Act has been considared and fully discussed in this decision.

In view of the above, it is to be noticed that the jurisdiction of the Civil Court to decide question of right, title and interest in respect of agri-

cultural land has been taken away from time to time and it has to be underclearly so that erroneous decision in the matter regarding jurisdiction to stood entertain and decide a suit may not be rendered.

BASIC FEATURES OF THE CONSTITUTION

By Hon'ble Mr. Justice K. C. Agarwal
Judge, Allahabad High Court

For the philosophy underlying our Constitution we must look back into the historic Objectives Resolution moved by Pandit Nehru, which was adopted by the Constituent Assembly on January 22, 1947, and which inspired the shaping of the Constitution through all its subsequent stages. It reads thus —

"This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution :

(2) WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and

(3) WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of Government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting there from; and

(4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of Governments are derived from the people; and

(5) WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

(6) WHEREIN adequate safeguards shall be provided for minorities backward and tribal areas, and depressed and other backward classes; and

(7) WHEREIN shall be maintained the integrity of the territory of the Republic and its sovereign right on land, sea, and air according to justice and the law of civilised nations; and

(8) The ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."

In the words of Pt. Nehru the aforesaid Resolution was "something more than a Resolution. It is a declaration, a firm resolve, a pledge and undertaking and for all of us a dedication." Mahatma Gandhi as early as in 1922 had demanded that India's political destiny should be determined by the Indians themselves. Pt. Nehru formulated his demand for a Constituent Assembly in 1938. The Resolution was :

> "This cannot be done by the wisest of lawyers sitting together in conclave; it cannot be done by small committees trying to balance interests and calling that Constitution-making; it can never be done under the shadow of an external authority. It can only be done effectively when the political and psychological conditions are present, and the urge and sanctions come from the masses."

It is, although, of interest to know as to how was the Constituent Assembly constituted and who were its members, but time at our disposal being short, I would not like to discuss the same here. The members of the Constituent Assembly approached the task of drafting of the Constitution in a practical rather than a theoretical way. They know that the Constitution must help to bring about the reform, the renaissance of Indian society, that it must embody the national goals and subserve their achievement, but they were politicians in the sense that they practised the art of the possible.

Members of the Constituent Assembly, although representing extremely diverse country, brought a spirit of unity, a national awareness. They also had,—this applies particularly to Nehru, Patel, Prasad, Azad, Pant, and several others, practical experience, personal popularity, intellectual ability and the political power to impress upon the Assembly the concept of the type of Constitution best able to bring about the new India. Granville Austin in his book on the Indian Constitution (1966 Edition) at page 21 has noted the respect which the leaders aforesaid commanded and which proved to be of immense help in drafting the same:

> "Nehru, Patel, Prasad, and Azad, in fact, constituted an oligarchy within the Assembly. Their honour was unquestioned, their wisdom hardly less so. In their god-like status they may have been feared; certainly they were loved. An Assembly member was not greatly exaggerating the esteem in which his colleagues held these men when he said that the government rested 'in the hands of those who (were) utterly incapable of doing any wrong to the people'. The oligarchy's influence was nearly irresistible, yet the Assembly decided issues democratically after genuine debate, for it was made up of strongminded men and the leaders themselves were peculiary responsive."

There were many others who were involved in the framing of the Constituion but these names and their services to the country are unparalleled."

We must now try to understand what a Constitution is. There are various types of Constitutions which were born after the Second World War. Each one of them serves as symbol of the country's statehood and independence. These Constitutions can be grouped broadly into three categories : 1. the Western Democratic Libertarian, 2. the Socialistic Communist Constitution, and 3. others.

Again Constitutions have been classified as written and unwritten, or unitary and federal, or flexible and rigid, or democratic and totalitarian. United Kingdom has a unitary constitution and a Parliament which is sovereign. It was once said that the sovereignity of the Parliament is so wide that it could do anything except make a man a woman or a woman a man. The history of the British people shows that they have been brought up on struggle and conflict against the King and/or Parliament, for the establishment or their rights, for freedom or speech and press, and for the establishment of an independent judiciary. They will never tolerate the use of parliamentary power to trample upon or transgress their cherished rights, though theoretically Parliament is omni-potent.

William Gladstone, the British statesman and Prime Minister once described the American Constitution as "the most wonderful work ever struck off at a given time by the brain and performance of men".

The next category of Constitutions are those of Socialist-Communist States. These States have an aspiration to maximise economic welfare of all. They limit free economic enterprise and accumulation of private property.

Ours is a Constitution of unique type which secures to all of its citizens :

> "Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship :

and to promote among them all :

Fraternity assuring the dignity of the individual and the unity and integrity of the Nation."

The importance and utility of the Preamble has been pointed out in several decisions of our Supreme Court. For a proper appreciation of the aims and aspirations embodied in our Constitution, therefore, we must turn to the various expressions contained in the Preamble reproduced above. It is not possible to deal with all the aspects of the Premable in this short lecture. However, I wish to note that guarantee of certain rights to each individual would be meaningless unless all avoidable inequalities are vanished from the social structure and each individual is assured of equality of status and opportunity for the development of the best in him.

In the Directive Principles, however, one finds a clear statement of the social values. They aim at making the Indian masses free in the positive sense, free from passivity and inertia engendered by centuries of coercion by the society and by nature. At one time the view was that these principles are not justiciable. But there has of late been a change in approach to the interpretation of Directive Principles, the details of which need not be discussed here.

The question as to what are the basic principles of the Constitution came to be decided by the Supreme Court for the first time in **Keshavananda Bharati v The State of Kerala** (1973 SC 1461). The Bench which decided this case consisted of thirteen Judges, and as many as 2158 paragraphs have been written. According to the majority view the basic features of the Constitution cannot be altered or amended. Other decisions relevant on the point are Smt. **Indira Gandhi v. Raj Narain** (AIR 1975 SC 2299) : **Minerva Mills v. Union of India** (AIR 1980 SC 1789); **Sanjeev Coke Mafg. Co. v. M/s Bharat Coking Coal Ltd.** (AIR 1983 SC 239); **Minerva Mills Ltd. v. Union of India** (AIR 1986 SC 2030). In **Golakhnath v. State of Punjab** (AIR 1967 SC 1643), a majority of the Supreme Court Judges, including Chief justice Subba Rao, had held that the fundamental rights enshrined in Part III of the Constitution could not by virtue of Article 13(2) be taken away or abridged by an amendment under Article 368. The contention of Government that the Parliament was supreme and could under Article 368 amend any part of the Constitution, abrogate or take away any of the fundamatal rights was not accepted. What was, however, conceded by Government was that Parliament could not abrogate the entire Constitution and replace another one instead. Thereafter the Supreme Court decided two other cases, namely, **R. C. Cooper v. The Union of India**, 1970 SC 564 and the **Privy Purses Case, Madhava Rao v. Union of India**, AIR 1971 SC 530. In the latter decision the abolition of Privy Purses was set aside. These decisions led to the passing of Twenty-fourth and Twenty-fifth Amendments in the Constitution. By the former (i.e. 24th Amendment), **Golaknath's case** was sought to be overcome by enacting Article 13(2). By the latter (i.e. 25th Amendment), Article 31(2) was amended to provide that the acquisition of any one's property can be made on payment of an "amount" instead of "compensation". This amendment also inserted Article 31C which had a wide sweep.

After these amendments **Keashevananda Bharti's** case came to be decided by the Supreme Court in 1973. The majority overruled **Golaknath's** case. It further held that Parliament, in the exercise of its amendment power, cannot alter the basic structure or framework of the Constitution. In other words Article 368 could not be pressed into service to destroy the basic structure of the Constitution.

When this controversy was going on, the Allahabad High Court allowed an election petition against Smt. Indira Gandhi on June 12, 1975, and held her guilty of corrupt practices. The Parliament amended the Representation of the People Act removing the corrupt practice of which the Prime Minister was held guilty. In the appeal before the Supreme Court, the reference of which has been given above, the question was whether clauses (4) and (5) of Article 329A of the Constitution were unconstitutional being against the basic structure. The Supreme Court held that there could be no legislative validation of an election which is judicially declared invalid as it would be an encroachment on the judicial power.

Keshavananda Bharati's case, thus made the destruction of the basic structures of the Constitution impermissible. Again the controversy about the power of amendment was considered by the Supreme Court in **Minerva Mills Ltd. v Union of India,** 1980 AIR SC 1789. The majority consisting of Chandrachud, C.J., Gupta, Untwalia and Kailasam, JJ. held that section 55 of the 42nd Amendment Act, which added clauses (4) and (5) to Article 368 confers on Parliament a vast and undefined power to amend the Constitution so as to distort it out of recognition. Since the Constitution conferred only a limited amendment power on Parliament, as held in **Keshavananda Bharati's Case**, Parliament could not under the exercise of that limited power, enlarge that very power into an absolute power. Hence, Section 55 of the Amendment Act was held to be beyond the amending power of parliament. Correctness of the aforesaid **Minerva Mills Ltd. Case** was doubted by another bench of the Supreme Court in **Sanjeev Coke Mufg. Co. v. Bharat Coking Coal Ltd.** (AIR 1983 SC 239).

There has been a criticism of the 'basic features' theory by some jurists and public men on the ground that Article 368 of the Constitution does not contain any limitation on the Parliament's power to amend the Constitution. According to their views the judiciary has placed an unjustified limitation on the Parliament's power and thereby if has shown itself in favour of **Status quo.** In support of this view it is pointed out that no such limitation can be placed on the right of a future Parliament elected under the Constitution. If exigencies require, the argument runs, the Parliament can amend any of the part of the Constitution.

N.A. Palkhivala in his book 'We the People' at pages 212 and 213 has observed :

> "The basic structure of the Constitution is of marble. Article 31C, as amended by s. 4 of the Forty-Second Amendment Act, sought to substitute a framework of red bricks. The Supreme Court's judgment has cried a halt to the process of administering euthanasia to freedom."
>
> "The bogey of a conflict between fundamental rights and directive principles is wholly misconceived. While part IV (direc-

tive principles) contains the directory ends of the State, Part III (fundamental rights) indicates the permissible means of giving effect to those ends.

"There can be no conflict between the directory ends and the permissible means. The only conflict is between the Constitution and those who refuse to accept the discipline of the Constitution. The real question is not of social interest versus the individual's but whether in the name of social interest the basic human freedoms can be trampled under foot."

Any discussion about the scope of Article 368 would be incomplete without making a reference to the speech of Dr.B.R. Ambedkar while moving the motion in the Constituent Assembly for consideration of the draft Constitution in justification of the restrictions placed (namely, requirement of special majority, etc) on future Parliaments' power of amendment.

The Constituent Assembly in making a Constitution has no partisan motive. Beyond securing a good and workable Constitution it has no axe to grind. In considering the articles of the Constitution it has no eye on getting through a particular measure. The future Parliament if it met as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the Constitution to facilitate the passing of party measures which they have failed to get through Parliament by reason of some article of the Constitution which has acted as an obstacle in their way. Parliament will have an axe to grind while the Constituent Assembly has none.

One may or may not agree with the 'basic features' theory. But, for so long as the Supreme Court does not change its view, the decisions, referred to above, would be binding.

Paras 292, 295 to 297, 300 (partly), 301, 302 & 303 of **Kesavananda Bharati's case**, AIR 1973 SC 1461 . per S. M. Sikri, C.J.

It seems to me that reading the Preamble, the fundamental importance of the freedom of the individual, indeed its inalienability, and the importance of the economic, social and political justice mentioned in the Preamble, the importance of directive principles, the noninclusion in Article 368 of provisions like Arts. 52, 53 and various other provisions to which reference has already been made an irresistible conclusion emerges that it was not the intention to use the word "amendment" in the Widest sense.

This conclusion is reinforced if I consider the consequences of the contentions of both sides. The respondents, who appeal fervently to democratic principles, urge that there is no limit to the powers of Parliament to amend the Constitution. Article 368 can itself be amended to make the Constitution completely flexible or extremely rigid and unamendable. If this is so, a political party with a two-third majority in Parliament for a few years could so amend the Constitution as to debar any other party from functioning, establish totalitarianism, enslave the people, and after having affected these purposes make the Constitution unamendable or extremely rigid. This would no doubt invite extra-constitutional revolution. Therefore, the appeal by the respondents to democratic principles and the necessity of having absolute amending power to prevent a revolution to buttress their contention is rather fruitless, because if their contention is accepted the very democratic principles, which they appeal to, would disappear and a revolution would also become a possibility.

However, if the meaning I have suggested is accepted a social and economic revolution can gradually take place while preserving the freedom and dignity of every citizen.

For the aforesaid reasons, I am driven to the conclusion that the expression "amendment of this Constitution" in Art. 368 means any addition or change in any of the provisions of the Constitution within the broad contours of the Preamble and the Constitution to carry out the objectives in the Preamble and the Directive Principles. Applied to fundamental rights, it would mean that while fundamental rights cannot be abrogated reasonable abridgments of fundamental rights can be effected in the public interest.

As Lord Reid observed in **Ridge v. Baldwin**, 1964 AC 40 (64-65).
"In modern times opinions have sometimes been expressed to the

effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist.

The idea of negligence is equally insusceptible of exact definition, but what a reasonable man would regard as fair procedure in particular circumstances and what he would regard as negligence in particular circumstances are equally capable of serving as tests in law, and natural justice as it has been interpreted in the Courts is much more definite than that".

It seems to me that the cancept of amendment within the contours of the Preamble and the Constitution cannot be said to be a vague and unsatisfactory idea which Parliamentarians and the public would not be able to understand.

The learned Attorney General said that every provision of the Constitution is essential; otherwise it would not have been put in the Constitution. This is true. But this does not place every provision of the Constitution in the same position. The true position is that every provision of the Constitution can be amended provided in the result the basic foundation and structure of the constitution remains the same. The basic structure may be said to consist of the following features :

(1) Supremacy of the Constitution;

(2) Republican and Democratic forms of Government.

(3) Secular character of the Constitution;

(4) Separation of powers between the legislature, the executive and the judiciary;

(5) Federal character of the Constitution.

The above structure is built on the basic foundation, i.e., the dignity and freedom of the individual. This is of supreme importance. This cannot by any form of amendment be destroyed.
