From Cruelty to compassion
The story of animal rights and human wrongs in India
Political prisoners in handcuffs and bar fetters

During a visit to my clients lodged in Amravati Central Jail, I was shocked to see the cruelty with which TADA detainees were being treated. Four accused persons had been arrested in various criminal offences. However, they were basically political prisoners, associated with the Naxalite movement. They were transferred from Nagpur jail to Amravati jail. Now, after three years as undertrials, they are being kept in solitary confinement, in bar fetters and handcuffs.

Shri Amar Velshetti was brought before me for an interview in bar fetters and with a rod between his legs. He said, that on asking for a book sent to him by his relatives, this treatment was given to him for 3 months. He seemed to be suffering from psychiatric problems due to this ill-treatment. Pawan Kumar and Shrikant Jalgam were brought before me, with their hands handcuffed behind them. They are kept in solitary confinement in the high security ward and were being handcuffed whenever they were taken out. In February, when Shrikant wanted to meet Pawan Kumar, it led to an argument with a jailer who hit Shrikant so badly on the head, that he started bleeding profusely and became unconscious. The ironical point is that Amar who is kept in bar fetters has been discharged in one case and has obtained bail in the remaining three cases. He is only awaiting for sureties to be furnished, to secure his release.

The fourth prisoner is Girija, Pawan Kumar’s wife, who feels under considerable mental pressure, as she is also kept in solitary confinement. She is not allowed to meet her husband. In fact none of the TADA detainees are being allowed to receive any book or reading materials. Some complain of not receiving clothes. The letters which they have written are not received by me, their lawyer, or by their relatives. Moreover, they are not being produced before the designated court on dates.

According to the jail manual all prisoners are entitled to facilities for interviews and other communications including writing and receiving letters.

Further, it has been held by the Supreme Court in Sunil Batra (J) v. Delhi Administration (AIR 1978 page no. 673) that ‘Solitary confinement’ is only to be awarded by the court, not by the superintendent. It has also been held by the Supreme Court in Kishore Singh v. State of Rajasthan, reported in AIR 1981 page No. 625 that ‘Solitary confinement’ may only be used in the ‘rarest of rare cases’ and with strict adherence to the procedural guidelines. There seems to be no apparent reason why the prisoners are being treated with such cruelty after having been in jail for the last three years.

S. P. Gadling, Advocate
79, Misal Lay-Out, Nagpur 440 014.

Muslims suffer further outrage

The Muslims who are yet to recover from the shock and mental trauma over the demolition of Babri Masjid, once again received a jolt on the day of Bakrid (May 11, 1995). The auspicious day was observed as Black Thursday. The destruction of Charar-e-Sharief and the whole operation was pre-planned to achieve a definite objective. The blood curling and horrendous incidents that occurred in the aftermath of the demolition of the Babri Masjid are still fresh in the minds of the people. It was a calculated move to hurt religious sentiments and to arouse the worst of communal passions. There is hardly any doubt that the entire effort was pre-planned and could not have been done otherwise. The Rao government continued to be a mute spectator this time too. We are certainly living in an era of indecisiveness. The Rao government has earned the dubious distinction and international approbrium of being indecisive on the most decisive issues.

Every right thinking person should condemn the use of religion and communalism in the furtherance of the politics of power by major political parties.

A. S. Farida
16, T.N.P. Street
6th Lane, Perambur
Madras 600 011.
More vacancies in the Supreme Court

With the retirement of Justice P. B. Sawant and Justice R. M. Sahai, we have lost two good judges of the Supreme Court.

Our loyal readers will remember that in the very first issue of "The Lawyers", dated January 1986, we had published an interview with Justice P. B. Sawant, then a sitting judge of the Bombay High Court. What he said at that time, is as relevant today as it was then. Elsewhere in this issue, we republish extracts from that interview to remind our readers of what is wrong with the system. There are some who feel that Justice Sawant himself did little to fulfill the promise of social justice that was expected of him. What an irony that those who criticise him for failing to deliver social justice, are the very lawyers who in their daily practice represent the rich and the powerful, pleading their cause with such passion. The truth is that social justice cannot be "delivered" by any one judge — it can only be strived for, fought for and achieved through struggle, inch by inch, by the collective conscience of social forces.

Justice P. B. Sawant represented a powerful force for social change within the judiciary. He is perhaps the only sitting judge of the Supreme Court who was called upon to sit in judgment over one of his own peers, Justice V. Ramaswami. He discharged his duty without fear or favour — despite attempts to discredit him. He is the only one who had the courage to discipline the powerful lobby of lawyers practising in the Supreme Court, by insisting that lawyers would be held responsible for false statements made in affidavits settled by them.

Justice P. B. Sawant and Justice Sahai have one thing in common. They belong to that rare group of judges who give decisions without being carried away by the personality of the lawyers who appear before them. In a system in which success depends on briefing the right person depending on his closeness to the presiding judge, this was indeed a rare quality. Both were loved by members the junior bar who felt secure in the knowledge that they were appreciated for their worth. We shall miss them.

The views expressed by the authors do not necessarily represent those of the editorial board.

Editorial Board:
P. M. Bakshi K. Chandru
Anand Grover Indira Jaising K. G. Kannabiran
Address: Jalaram Jyot, 4th Floor, 63, Janmabhoomi Marg, Fort, Bombay 400 001. Tel: 283 09 57
Publisher: R. V. Pandit Editor: Indira Jaising
Assistant Editor: Hutokshi Rustomfram
Illustrations: Pramod Dixit
From Cruelty to compassion

The story of animal rights and human wrongs in India

The Prevention of cruelty to Animals Act 1960, is outdated and ineffective. In this article, Raju Z. Moray, argues that it should be rewritten in the light of the fundamental duty cast by the Constitution upon all citizens of India to have compassion for living creatures.

The Prevention of Cruelty to Animals Act, 1960, (PCA Act) is an outdated, ineffective and deficient piece of legislation. Indeed it is an anachronism on our statute books, in this age of growing consciousness for ecology and environment.

The PCA Act classifies all living creatures into two classes: human beings and animals (meaning, all living creatures other than human beings), and seeks to regulate the behavior of the former towards the latter. It was designed to be a law of the humans, by the humans, for the animals but in reality, like any other law, it has turned out to be a law of the humans, by the humans, for the humans.

This bias is evident from the preamble of the Act which clarifies that the Act is meant to prevent only the infliction of “unnecessary” pain or suffering on animals. This means that pain and suffering deemed “necessary” for animals by humans, is put out of the reach and purview of the Act. It therefore permits humans to inflict any pain or suffering upon animals, based solely upon their subjective perception as to what is “necessary” pain and suffering for animals.

The animals have no say in the matter of their pain and suffering. True, the Act set up the ‘Animal Welfare Board of India’, for the promotion of animal welfare generally, and for protecting animals from being subjected to unnecessary pain or suffering in particular. But the pervasive presence of officialdom ensures that the Board becomes yet another instrument for the maintenance of the status quo.

With its existence dependent upon the munificence of the Government in power and its purely advisory functions, including rendering of advice on the design and maintenance of slaughter houses, the role of the Boards is limited to ensuring humane killing methods rather than working towards the cessation of killing of animals for the satisfaction of the bodily wants of humans. In other words, the Board is powerless to do anything about animal killing, pain or suffering deemed to be “necessary”.

Concept of necessity

Can infliction of pain and suffering on animals ever be necessary? Can killing of animals ever be necessary? In order to answer this question, one will have to consider the concept of necessity. This again is highly subjective. One man’s option is another man’s necessity. The safest course therefore would be to consider what would amount to a purely legal necessity or a necessity in law.

Considered thus, applying settled principles of property law, we discover that to constitute legal necessity there must be such a pressure upon the estate that without the alienation in question, the estate could not have been preserved. The law says that any act committed due to legal necessity must necessarily be a defensive act undertaken for the protection of the estate already in possession.

Therefore dire and unavoidable necessity alone can constitute legal necessity. The questions which thus arise for consideration are: Is there any dire, unavoidable necessity for humans to kill animals or to inflict pain and suffering on them?
FACE STORY

As you ponder over these issues, you must remember that in law, the burden to prove legal necessity would be on the humans who claim such necessity.

Surgical operations

When we consider what the PCA Act considers necessary, and hence acceptable, we find that experiments on animals, including operations, are not considered unlawful even if they involve unnecessary pain and suffering. The only requirement is that the experimenter should claim that the experiment is for advancement by new discovery of physiological knowledge or knowledge which will be useful for saving or prolonging life, or alleviating suffering, or for combating any disease, whether of human beings, animals or plants.

On the face of it, this provision appears very reasonable, especially as a committee of officials and non-officials for controlling and supervising experiments on animals is also envisaged by the Act. But what its legal provision does is to permit one animal or plant to suffer or die in order to alleviate the suffering or prolong the life of another human being, animal or plant. The ground reality, however, is that even though human beings, animals and plants are mentioned in one breath, it is invariably the animals and plants who have to suffer and die for the sake of humans.

Apart from experiments on animals, several other acts which would be considered cruel by any reasonable person, have been considered necessary and acceptable by the PCA Act. Thus, de-horning of cattle, castration, branding, nose-roping, destruction of stray dogs in lethal chambers and the examination or destruction of any animal under the authority of any law enforcement officials who are found guilty if anyone has the courage, resources and patience to go through the process of a criminal trial under our legal system, notorious for its delays.

For the persevering prosecutor, it is small solace to know that offenders are punishable in the case of first offence with a fine which may extend up to fifty rupees only, and in the case of a second or subsequent offence committed within three years of the previous offence, with a fine which may extend to one hundred rupees only or imprisonment for a term which may extend to three months or with both.

The owner of an animal who has failed to exercise reasonable care and supervision with a view to preventing an offence against such animal is also made liable to prosecution. Now, that gives a glimmer of hope. But then it is stipulated that such an owner shall not be liable to imprisonment without the option of fine. This casts a shadow of darkness. When one looks at the ridiculously small price one has to pay if caught, tried and convicted for causing "unnecessary" pain and suffering to a fellow living creature, one can only say that something is seriously wrong with this state of affairs.

Question of religion

The PCA Act does not merely confine itself to the question of cruelty and its necessity. It makes allowance for religion and religious beliefs as well. Section 28 of the Act, expressly states that nothing contained in the Act shall render it an offence to kill any animal (i.e. any living creature other than a human being) in a manner required by the religion of any community. So, any cruelty can be practiced and any amount of wholly "unnecessary" pain and suffering can be inflicted without any impediment, provided it is done in the name of religion. What are not considered are the larger, and more important, ethical questions like — Can cruelty be religious? Can unnecessary pain and suffering be religious? Can the killing of other living creatures of Creation even be religious?

Right to kill animals

Whenever cases involving an assertion of a right to slaughter have gone up to the Supreme Court, they have always been taken there by the slaughterers, never by the slaughtered.
While slaughterers have claimed violation not only of their fundamental right to carry on their occupation, trade and business, but also of their fundamental right to practise their religion, the slaughtered creatures have never been able to plead a right life. Nor has anyone else been able or allowed to plead it for them.

The Supreme Court of India first grappled with this contentious issue in Mohammed Hanif Qureshi & Ors. vs. State of Bihar & Ors. decided on April 23, 1958. In that case, laws made by some State Governments banning the slaughter of certain cattle, especially cows, were challenged by the petitioners, who were practising "kasais" or slaughterers, on various grounds, including the right to practise their religion guaranteed by Article 25(1) of the Constitution of India.

A five judge Constitution Bench of the Supreme Court ruled that the State Courts were not violative of the fundamental rights of Mussalmans under Article 25(1) of the Constitution of India, as there was no material to substantiate the claim of the petitioners that the sacrifice of a cow on Bakrid Day was enjoined or sanctioned by Islam, in order to exhibit a Mussalman's religious beliefs and ideas. Mohammed Hanif Qureshi's case has been relied on and cited with approval by the Supreme Court of India on several subsequent occasions including in the case of 'State of West Bengal & Ors. vs. Ashotosh Lahiri & Ors. decided by the Supreme Court on November 16, 1994.

Duty of citizens

What the Supreme Court of India has never had an occasion to do so far, is to test the argument advocating the right to kill animals on the touchstone of the fundamental duty cast upon every citizen of India under Article 51-A(g) to have compassion for living creatures. In my opinion, any purported right to kill a living creature is clearly inconsistent with this fundamental duty to have compassion for living creatures. Besides, the right to kill living creatures has never been held to be 'fundamental' by anyone except its proponents who have sought to justify it on religious rather than legal grounds.

Did you Know?

from Maneka Gandhi's "Heads & Tails"

"All the calves are separated from their mothers after three days. If the calf is a healthy female, it is put on milk substitutes to become a dairy replacement in two years. The male calves are tied up and left to starve to death — which usually takes a week of intense suffering. Some are stuffed into trucks one on top of the other and sent to the slaughter house (illegally) to be killed for the veal you eat in hotels (which is also illegal). Some are sold to the cheese industry to have their stomachs slit (while alive) for rennet, the acid that is extracted for cheese making."

"Vegetables are the best source of iron. For instance, 50 gallons of milk are the equivalent (in iron content) of one bowl of spinach."

"In an egg factory, the males are unnecessary. So freshly hatched, fluffy little male chicks are pulled out from each tray by "chicken pullers" and literally thrown away into bags where they suffocate one on top of the other. They are then mashed and ground and fed to their sisters as "protein supplements."

"...if the [chickens] are given any space to move, they will panic and pile on and smother one another... Naturally the birds in their frustration go berserk and try to peck each other to death. The industry has an answer to that. Each chicken's beak is cut off — not dead matter like human nails, but sensitive soft tissue...some debeaked birds have trouble eating or drinking and starve to death."

"In some factory farms, the birds are not only debeaked, their toes are clipped too using the same hot knife machine. This operation is said to keep the birds "quieter." Quieter because of the extreme pain that moving would cause them. Imagine your toes cut off without anesthesia."

"A rabbit's head is clamped in a clutch and the eyes pegged open with metal clips. Shampoo concentrate is dropped in. The rabbit cries out loud in its agony, struggling till it breaks its back. Over 100,000 rabbit eyes go into just the shampoo trade every year."

"Snake skin is more elastic if taken when the snake is alive. A nail through the head pins it to a tree, a foot holds the writhing tail straight and a knife cuts down each side and the skin is ripped off. The same method is used for lizards."

"Sixty to seventy thousand snakes die on Nagapanchami Day — several thousands die during the trapping and keeping; thousands because they are handled so roughly in the games, most due to the fact that snakes are allergic to milk. The milk forced down their open gullets finds its way to their lungs. They die of choking, of pneumoni for the milk is cold, of lung infection. The snake has an extremely thin oesophagus.
My argument is that if citizens of India have a fundamental duty to have compassion for living creatures, the living creatures of India have a corresponding fundamental right to expect compassion from the citizens of India.

I view the incorporation of a positive duty cast upon citizens of India to have compassion for living creatures as a manifestation of the principle of equal consideration of interests. This principle, which has gradually received widespread acceptance from animal rights activists all over the world, was first formulated comprehensively by the Australian Professor Peter Singer in his book 'Animal Liberation' whose first edition was published in New York, in 1975.

In Singer's words, "The essence of the principle of equal consideration of interests is that we give equal weight in our moral deliberation to the like interests of all those affected by our actions. This means that if only X and Y would be affected by a possible act, and if X stands to lose more than Y stands to gain, it is better not to do that act. We cannot, if we accept the principle of equal consideration of interests, say that doing the act is better, despite the facts described, because we are more concerned about Y than we are about X. What the principle really amounts to is this: an interest is an interest, whoever's interest it may be".

Ethical forum

It is not inconceivable that the lawmakers who inserted Chapter IV-A on 'Fundamental Duties' into our constitution with effect from January 3, 1977 were aware of this principle of equal consideration of interests which was being hotly debated and discussed in ecological and ethical forums all over the world at that time.

Since living creatures who plead a fundamental right to compassion are handicapped by reason of their physical disability, of not being able to plead their case in person or in the language of human beings in law courts, Non-Government Organisations (NGOs) representing their interests cannot be denied the right to intervene and plead on their behalf in a Court of Law. Animal Rights and Animal Welfare Groups in India are the natural and the right choice to represent the animals as their "next friends" in courts of law.

In my opinion, it is not impossible for NGOs to persuade an activist Court to read a "right to equal consideration of interest of living creatures" into the fundamental duty of citizens to have compassion for living creatures.

Time for amendment

It is imperative that the current PCA Act of 1960 must be substantially amended or better still, replaced by a new legislation. The scheme of the Act and most of its provisions are inconsistent, not only with subsequent developments in the field of animal welfare and animal rights, but as pointed out above, also with the fundamental duty to have compassion for living creatures, which is now an integral part of our Constitution, even though the right to compassion has not as yet been recognised as "fundamental".

At a bare minimum, any new legislation in this field must contain the following provisions as essential features:

1. Animals must be given a right to be heard in all matters affecting them adversely. This right would be in harmony with the well-established principles of natural justice and can be exercised through NGOs concerned with animal rights and animal welfare.

2. Punishment prescribed must actually slap the offenders, not merely pinch them. One way is to bring the punishments on par with the penal provisions of the Wildlife (Protection) Act, 1972, as substantially amended in 1991.

3. Enforcement should be entrusted to wardens of 'Societies for the Prevention of Cruelty to Animals' (SPCAs) or to a special 'Animal Police Force' comprising cadets selected from volunteers sponsored by NGOs. Limited police powers can be conferred upon such volunteers/wardens.

4. Special tribunals should be established with one judicial and two administrative members, one of whom should always be a representative of an animal rights/animal welfare NGO. Summary procedures should be evolved and all cases should be disposed of, as far as possible in six months. Alternatively, the jurisdiction to entertain, try and dispose of cases pertaining to animals should be conferred upon Environmental Courts or Tribunals when they materialise.

Once a strongly updated law relating to cruelty to animals is brought into force with adequate infrastructural machinery to enforce it, the number of offences against animals will in all probability decrease. The present PCA Act has proved that animals, when perceived as matter, don't really matter. The new PCA Act should therefore be a legislation whose bark should be as vicious as its bite.

Raju Z. Moray is an advocate practising at the Bombay High Court.
As Managing Trustee for People for Animals (PFA), Pritish Nandy, journalist and film personality, plays a pivotal role in the organization, along with other activists and PFA board members like Maneka Gandhi, Anupam Kher, M. F. Hussain, and Mario Miranda. "Members of the PFA do not have to be vegetarian—it is sufficient that they strive to be vegetarian," he explains, adding, "it is not our job to stop people from doing what is morally wrong by using brute force. Rather, our aim is to educate people so that they will do what is best for them and for the environment."

The PFA put all its weight behind shutting down the A1 Kabeer slaughterhouse not on moral issues of cruelty to animals, but rather more effectively on legal, environmental, health, and economic grounds. "We want to educate the people as to what goes on in these places," says Nandy elaborates, "and it supersedes religious and moral grounds. For example, many of the people working in the slaughterhouse were Muslim, so the visible face of it was Muslim. However, in reality, the owner was a Hindu and an NRI, who was making huge profits for himself while harming the environment and robbing the country of its resources and revenue." Nandy admits that we need more stringent animal rights laws, and that they need to be more strictly enforced.

And that’s another sore point. "Many people don’t live out their ideologies. They may be vegetarian themselves, but they will trade in meat stocks or export beef," says Nandy. The PFA has launched a four pronged programme. An important component of their program is education, and they believe in starting young. Nandy says the PFA approaches school principals to try to convince them to interject animal rights issues into their curricula. They also speak to religious groups like Jains. "With Jains, they are already aware of the ideology of ahimsa, and half the battle is won. We now have to convince those whose business practices, like trading in meat stocks, conflict with their beliefs." PFA has already convinced Doordarshan to air weekly shows in English and Hindi, called "New Horizons" and "Heads and Tails." They are also planning a film on household items that contain animal products.

Another component of the PFA is a subgroup called Artists for Animals. Last July, PFA organized an Art Show to raise funds for a shelter for strays and rescued animals at Murbad. Supporters included artists such as Jehangir Sabavala, K.C. Subramanium, Shakti Burman, and Akbar Padamsee. PFA reaches into the world of performing artists too. "When Hindi films show the heroine riding a tiger, many people are not aware that the poor tiger’s mouth has been cruelly stitched shut, and quite often, such animals will die from starvation or suffocation. In dramatic ‘horse’ scenes, they will trip a horse and cause it to break its legs."

Within the country, the PFA is fighting the abattoirs that operate under illegal and unhygienic conditions, and has obtained an order to shut down the Idgah abattoir in New Delhi. In addition, they target slaughterhouses such as A1 Kabeer and are planning an action in Deonar. "We are also going to take action against the junk food multinationals like Pepsi (Kentucky Fried Chicken) and McDonald’s. By their own estimates, they will increase the killing of animals in India by 40 to 50 percent," says Nandy.

"This is a war that must be fought on two levels," continues Nandy. "I see the PFA Board as the campaigning body. We, Maneka Gandhi, Anupam Kher, and I can use our visibility and social and political prominence to bring the issues into public focus, campaigning and fund raising. We leave the grass roots organization, management, and operations to others."

"If we appeal to people on a moral basis, they will think we are cranks. Instead, we stress the benefit to people in terms of a cleaner environment from a legally operated slaughterhouse, rather than appeal to their moral instincts to prevent the cruelty to animals." Among the PFA’s notable successes has been the appointment of a special DIG for Animals in Delhi. Maneka Gandhi will follow this up with a manual to educate the policeman on his beat about the law and how to deal with a complaint of cruelty to animals. Nandy explains, "We hope to be able to repeat this feat in other cities."

What about those who question such massive efforts for the benefit of animals when there are human beings suffering under the yoke of poverty, illness, injustice? Nandy does not wish to get into a philosophical argument on this issue. "There are agencies that have been created to deal with all kinds of problems. Everyone cannot deal with all the problems. For example, if the Animal Welfare Board was doing its job, we the PFA, would not need to exist," he counters.

Naeem Vargo is a law student at the Fordham University in New York.
**From electrocution chamber to operation theatre**

*An interview with Ms. Sudnya Patkar, President of the All India Animal Welfare Association (AIAWA) which is involved, among other activities, in the sterilisation of stray dogs in Bombay.*

**Q.** In spite of killing 30,000 dogs per year, the Bombay municipality was unsuccessful in controlling the population of stray dogs in the city. What could explain such a phenomenon?

**A.** This is dependent on a very interesting feature of animal behaviour. In "The guidelines for dog management" brought out by the World Health Organisation and the World Society for Protection of Animals, it is stated that "every habitat has a specific carrying capacity for each species. This depends on the availability, distribution, and quality of resources (shelter, food, water) for the species concerned.

The density of population of higher vertebrates (including dogs) is almost always near the capacity of the environment. Any reduction in population density through additional mortality is compensated by reproduction and survival." So in spite of the enormous cruelty perpetuated on stray dogs the authorities were not able to limit the number of strays.

**Q.** What was the method employed for eliminating stray dogs?

**A.** Strays were rounded up by the Municipal staff and taken to the dog pound where they were kept in common cages for three days, to enable owners to claim them. Thereafter, the dogs were doused with water and made to stand on metal plates through which an electric current was passed for twenty to thirty seconds. If after this gruesome torture the animal was still alive, the entire procedure would be repeated.

**Q.** How were animal activists able to secure sterilisation as against killing of dogs?

**A.** Stray dogs are being sterilised since January 26, 1994. Animal activists had been struggling for years to substitute electrocutions with sterilisation. The decising factor eventually was the interest taken by Maneka Gandhi who had already won this provision in Delhi. She joined us in a meeting with the Municipal Commissioner and that was the turning point. Her public image and connections did the trick.

**Q.** How do you conduct the animal birth control programme?

**A.** The municipality has loaned us the use of their old dog pound where we have converted the electrocution chamber into an operation theatre and constructed individual enclosures for post-operative care. The Animal Welfare Board of India contributes a fixed amount for each dog sterilised. We bear the rest of the cost through donations. We have a team of five honorary doctors and six paid attendants.

The dogs need about a week to recuperate after which they are given antibiotics and distemper shots and then returned to their original localities.

**Q.** Any reference to the prevention of cruelty to animals or animal rights invariably throws up the question of advocating vegetarianism. What is your stand?

**A.** Naturally we would like to promote vegetarianism but the burning need of our hour is to campaign for humane forms of slaughter. Those who really care for animals should propagate that animals should be raised in natural surroundings, be given good food and medical care during their lifetime and that their end should be brought about quickly and painlessly. Today we live in a society where unbelievable torture is perpetrated on animals not only in the ghastly way they are killed but more so in the way they are allowed to live. It is no secret that thousands of male calves are starved to death by the milk industry every year and all female calves are separated from the mother after three days, after which the mother is tortured and fed hormones to secrete milk. The transporting of animals in trucks with their legs tied, hauled one over the other, without food or water for days is one more example of mindless cruelty.

The same goes for the ban on cow slaughter. What happens to the cows in Gujarat? They are herded together in trucks and after days of an agonising journey are killed in a state where cow slaughter is not banned. The bottom line is that the ban helps the animal in no way as there are no resources allocated for the care of animals who have outlived their productivity.

**Q.** What would you advocate as a humane form of slaughter?

**A.** The method of stunning the animal before slaughter is employed in many countries, whereby the animal is administered an electric shock for a second which renders it unconscious, after which it is killed. This practice was used in India for some time but has been discontinued after protests from Muslim butchers. After the animal is unconscious either the jhatka method or the halal method can be used. No religion advocates the use of avoidable pain and cruelty on animals, certainly not Islam.

*Interviewed by Hutokshi Rustomfram.*  

*The Lawyers Vol. 10 – No. 6 1995*
COVER STORY

SPCA to the rescue

No discussion on animal rights can be complete without examining the contribution of the Society for the prevention of cruelty to animals (SPCA). Many Indian cities have SPCAs which are independent bodies with fraternal links to each other or to the Royal society for the prevention of cruelty to animals, which was founded in London as far back as 1824. To obtain an insight into how the SPCA functions and how it actually deals with animals in danger as well as the constraints it faces, both practical and legal, Hutokshi Rustomfram speaks to Lt. Col. A. R. Nageshkar, Secretary of the Bombay SPCA and of the Bai Sakarbai Dinshaw Petit Hospital for animals.

The Bai Sakarbai Petit animal hospital was set up by Dinshaw Petit and handed over to the SPCA in 1884. This unique institution, said to be the oldest of its kind in Asia is housed in a sprawling eight acre campus in the heart of Bombay. It is scrupulously clean, hygienic and welcoming. There are wards for dogs, cats, cattle, horses and even one for elephants and camels. It is fitted out with modern operation theatres, intensive care units, quarantine wards, an X-ray room, patho-bacteriological laboratory and more recently, an elaborate animal birth control unit for stray dogs. Over 60 per cent of the animals are treated free or at a concessional rate.

The Bombay SPCA employs fifteen uniformed agents led by a field officer and a supervisor who are armed with police powers by the Commissioner of Police under the Prevention of Cruelty to Animals Act, 1960. The field staff visits pet markets, railway stations, zoological gardens, the Borivali National park, cattle pounds, and stables, to ensure that animals and birds are properly cared for. They patrol different areas of Greater Bombay to check any cruelty inflicted on performing animals like bears, monkeys, dogs, besides being present at the Deonar abattoir to see that animals are not subjected to cruelty before and during the slaughter.

Q. Is it not a herculean task for fifteen field staff members to cover Bombay city? Can you tell us about the general procedure followed when your staff find an animal in distress?
A. True, fifteen field staff are grossly inadequate for Bombay. The Delhi SPCA, for instance, has 80 field agents who are even financed by the municipality. We, on the other hand get no State aid and are totally dependent on donations. After an animal, say a horse or a bullock, is found being cruelly treated, our Inspector books the owner and takes him to the local police station where he is asked to furnish a bail bond of Rs. 200 or appear at the Magistrate’s Court the following morning. The next morning, the owner is fined anything between Rs.10 to Rs.50, given a reprimand and allowed to go. If the owner fails to show up at the Court, his bail amount is forfeited. End of story. We cannot hope to change the situation with such paltry penalties. Instead, our inspectors try to influence the owners and guide them on how to obtain health care from the SPCA. We try in our own small way to influence by-standers by creating a small scene before taking the owner into custody, pointing out that the animal is helping the owner to earn his livelihood and has feelings of pain and pleasure just like humans do.

Q. What makes the owners take the SPCA Inspectors seriously?
A. Our Inspectors are dressed like policemen, in khaki clothes. They are all ex-service men from the armed forces and therefore they know how to carry themselves with some authority. Our concern is to create greater awareness towards the plight of the animals and their rights.

Q. What about the regular policemen? Do they ever report cruelty to animals on their own?
A. Under Section 73, of the Bombay Police Act, any policeman is empowered to take action but this never happens. They are perhaps unaware of the law and have little motivation.

Q. What is the procedure if the animal is in pain or is injured?
A. Our primary concern is always for the animal. Initially, we try the soft approach and request the owner to get the animal treated. In extreme cases we have to take possession of the animal and bring it to the hospital in our ambulance. We have one ambulance for large animals and three for smaller ones.
on call 24 hours of the day.

Q. You have been campaigning for the banning of entry of camels into Bombay, as their constitution is not suited to the humid climate and they are abandoned by the owners to starve to death on deserted beaches, after their productive life is over, or if it is expensive to feed them during the slack months. Do you think the government will co-operate?

A. We cannot say with certainty. We are trying to raise awareness among common people about the enormous suffering that the camel is subjected to. A medical team visits Juhu beach twice a week to treat the sores and wounds the camel invariably gets in a climate to which it is not accustomed.

Q. Is it not possible for you to rescue the abandoned animals?

A. The camels are abandoned on a marshy stretch of beach at Versova which is not accessible. Our people have tried to approach the camels but as we do not know the language that they are accustomed to, the animals run away and we cannot pursue them. Also, we lack the resources to feed and tend to an animal as large as a camel indefinitely.

Q. What are your views on vegetarianism and permanent closure of abattoirs?

A. We cannot support vegetarianism. What would the animals at our hospital eat? We serve them with beef. If we had to spend on vegetables, we would go bankrupt. Even otherwise, we are more concerned with ensuring humane behaviour towards animals and a painless death rather than entering into the controversy of vegetarianism. Our hands are full with the work on hand and that has to developed and spread.

Q. You won wide acclaim for your work after the Latur earthquake. Can you tell us briefly what it entailed?

A. We were able to send 40 doctors with ambulances and medicines within 24 hours of the disaster. We received Rs. 3 lakh worth of medicines and the government helped out with transport. Thousands of animals were rescued with the help of local villagers. The animals were treated and inoculated. It was a huge but rewarding effort.

Q. You have an animal birth control programme for stray dogs in your hospital. Do you think that with sterilisation becoming the norm in Indian cities, stray dogs will vanish from our streets and the only dogs seen will be pets on leashes? Is this a desirable goal?

A. Sterilisation is a better alternative to mass electrocution but to sterilise on such a scale that the species itself dies out is most inadvisable. One should not tamper with nature's delicate eco-balance. Stray dogs are the natural scavengers of our cities and the faithful and loving friends of thousands of poor children and common people who cannot keep a pet at home. A stray dog is the chowkidar's best friend. At our hospital we meet so many animal lovers who bring their local strays for treatment. It is simple to co-exist, surely, with our own best friends?

For the information of our readers we give below the addresses of a few Animal Rights Organisations.

All India Animal Welfare Association of India, Dr. E. Moses Road, Next to Municipal Dog Farm, Mahalaxmi (East), Bombay 400 011

People For Animals, 510 Prasad Chambers, Opera House Bombay 400 004

The Bombay Society For The Prevention of Cruelty to Animals, Dr. S. S. Rau Road, Parel, Bombay 400 012.

Beauty Without Cruelty, 4 Prince of Wales Drive, Wanowri, Poona 411 040.
HAZIR HAI

Justice P. B. Sawant

We republish for our readers extracts from an interview with Justice P. B. Sawant, which we had carried in the very first issue of 'The Lawyers', in January 1986. Justice Sawant has recently retired from the Supreme Court and will be greatly missed by all those who hoped to see social justice meted out fairly.

LC: Would you agree that the law as it stands today, both in its substantive and procedural aspects, is heavily weighted in favour of the 'haves' against the 'have-nots' though formally it treats all persons equally?

PBS: In a social system such as the one we have, it is inevitable that both substantive and procedural laws should be weighted in favour of those who control it. The concepts of the Rule of Law and democracy are themselves deceptive in such a society. Property is valued more than human beings and everything is sacrificed at the altar of profits. Unless the economic structure is changed, laws whether procedural or substantive, and their interpretation, will continue to be slanted in favour of the have.

LC: Public interest litigation has been with us for the last nearly 10 years. Its proponents see it as a tool to remedy the imbalance in the unequal legal system. How do you evaluate its development over the last 10 years?

PBS: As far as my information goes, the type of public interest litigation that we have developed in this country is unique in many respects. Through it the judiciary essentially exercises an executive power by requiring the State and the statutory bodies to discharge their obligatory duties. It is only to this extent that it can be said that it corrects the imbalance. However, when the imbalance is not between the State and the statutory authorities on the one hand and the citizens on the other, but between two individuals, it is, in its present state, powerless to correct the same. Public interest litigation should be welcomed by an enlightened executive as it is supplementary to its duties. It helps to set right the commissions and omissions of the executive and at the same time redresses the grievances of the citizens forthwith.

LC: Litigants facing big corporations, including public sector corporations, always find it difficult to have any access to information crucial for their case. Courts are also reluctant in ordering disclosure and cases are dismissed for want of adequate information. Do you think that a legislation of the type of "Freedom of Information Act" as existing in the U.S.A. and Australia is necessary in India?

PBS: I am in favour of legislation on the lines of the Freedom of Information Act as in the United States and Australia. Pending the enactment of such legislation, the Courts should use their powers to give directions for discovery and inspection requiring the concerned Corporations to furnish all information that is necessary to adjudicate properly the matters before them.

LC: Suggestions have been made that in cases of violation of fundamental rights, the burden to prove otherwise should always be on the State. What do you think of these suggestions? Would you agree that this principle can be extended in other case also?

PBS: When there is a violation not only of fundamental rights but any of the rights of the citizens, the burden to prove the contrary should be on the individual or the institution violating such rights. The State cannot be an exception to this rule. Every citizen is entitled to enjoy his rights unimpeded. The restrictions on the exercise of the rights can only be in the larger interests of the society and the larger interests have to be proved by those who profess them.

LC: What is your opinion of the method of appointment of judges? Would you agree that the process is shrouded in secrecy and is undemocratic? What should be the criteria for appointing judges of Constitution Courts, namely the High Courts and the Supreme Court?

PBS: The appointment of judges should be made not on the basis of the income at the bar but on the basis of their competence as lawyers and their commitment to the Constitution. A lawyer who has no commitment to the Constitution, however brilliant and prosperous in practice, should be scrupulously avoided for appointment as a judge at any level and more so at the level of the High Court and the Supreme Court.

LC: What is your experience with the ethics of the legal profession? Are there any effective sanctions against professional misconduct? Have the Bar Councils played their role in setting and enforcing norms of proper conduct amongst lawyers?

PBS: The profession has been commercialised with a consequent commercialisation of its ethics. The Courts have some powers even today to take action against the erring lawyers. They should, however, be vested with more powers for the purpose. The Bar Councils have by and large taken action against their erring members. But such actions by their very nature are taken only when complaints come before them. As against the few complaints which reach them, there are many which remain un-investigated.
The Doctor’s duty of confidence

A patient can expect better medical care if he confides in the doctor and the latter in turn should not divulge the patients' secrets to anyone. However, there are times when, in the interest of public safety, the doctor cannot afford to keep his promise, feels P. M. Bakshi.

There are, in life, many relationships of trust and confidence. In social life, marriage is one such relationship. A free flow of information between the spouses is a natural feature of married life. In business, employees are expected not to divulge the trade secrets of their employer to third persons. Among the members of the learned professions, there is a code of ethics which expects of the members that information obtained by them from those who have consulted them professionally will not be divulged in an unauthorised manner. Let us, for example deal with the doctor’s duty of secrecy.

The doctor’s traditional oath, which has come to us from Hippocrates, the Greek physician, shows that the ancient Greek physician undertook not to divulge that which ought not to be spoken elsewhere. The oath says — “Whatever in connection with my profession, practice or not in connection with it, I see or hear in the life of men, which ought not to be spoken abroad, I will not divulge, as reckoning that all such should be kept secret.”

Geneva Declaration

A similar teaching occurs in the writings of ancient India on Ayurveda. In modern times, the declaration of Geneva (an international Code of ethics) expects the doctor to go by this undertaking — “I will respect the secrets which are confided in me, even after the patient has died.” While the Greek oath left a certain element of discretion to the doctor, the declaration of Geneva appears to be more stringent.

In England, as early as 1820, action was taken to prevent the publication of a diary kept by the physician to George III. Wyatt v. Wilson, (1820), referred to in Prince Albert v. Strange, [(1840) 41 E.R. 1171, 1179]. The duty is shared by the doctor with other professions. The doctor’s duty was thus described in 1974 “... in common with other professional men, for instance, a priest and there are, of course, others — the doctor is under a duty not to disclose (voluntarily) without the consent of his patient, information which he (the doctor) has gained in his professional capacity "save in very exceptional circumstances." Hunter v. Mann [(1974) 1 Q.B. 767, 772].

Other professions

A lawyer is prohibited from disclosing to any other person (save in exceptional cases) information obtained by him from the client professionally, as also advice given by him professionally to the client. Employees would be guilty if they pass on trade secrets of their employer to rivals in the trade. [Gurry, Breach of Confidence Clarendon Press, Oxford (1984), Chapters 8 and 9]. Even a friend can be restrained from disclosing matters confided to him in intimate secrecy. Stephens v. Avery [(1988) 2 All E.R. 477]. Marital confidences have, of course, been given protection by a long line of judicial decisions. Argyle v. Argyle [(1967) 1 Ch. 302].

It is now well recognised that the obligation of secrecy can arise even where there is no contract, express or implied, to keep secrets. If the relationship is such that a duty to keep confidences ought to be implied in the interest of justice, and if, in that relationship, information of a confidential nature is given, then the court will protect the confidentiality. W. v. Egdell [(1990) 1 All E.R. 835, (C.A.)].

Patient’s death

A question that may arise is, whether the doctor’s obligation of confidentiality continues after the patient’s death. Prima facie, one would think that even after the patient’s...
death, members of his family would like the confidence to be respected. The Law Commission of England, in its report No. 110 on the subject of Breach of Confidence (1981), took the view that the doctor's duty of confidence should not survive after the patient's death, but there is much to be said for the opposite view. In fact, when the memoirs of Lord Moran, physician to Winston Churchill during the Second World War, were published, a great furore ensued. [Mason and McCall Smith, Law and Medical Ethics (Butterworth) 1991, pages 198-199]. In England, the guidelines issued by the General British Medical Council (popularly known as the "Bluebook") laid down that the death of the patient does not absolve the doctor from the duty of confidentiality.

**Statutory provision**

Many writings discuss the question whether a doctor is bound to breach the obligation of confidentiality which he owes to the patient, if he finds that the patient has committed an offence. Opinion on the subject is somewhat divided, but it is submitted that stated in broad terms, the correct position is as under:-

(a) Where a specific statutory provision requires a citizen to report the commission of a certain offence which comes to his knowledge, the doctor would be bound by that statutory duty, unless the statute itself exempts the doctor from the duty.

(b) Where there is no such statutory provision or where the statutory provision grants exemption to the doctor from the obligation to report, then the doctor is not justified in reporting to the police or other authority the commission of any offence that might have come to his knowledge in his professional capacity.

**Criminal prosecution**

Public interest in the maintenance of professional confidence should, in all such cases, be regarded as superior to the public interest in the detection of crime. The curing of the ailment and the immediate seeking of medical relief by the patient would be hampered if there is a lurking fear in the mind of the patient that if he seeks medical aid, he will be exposed to criminal prosecution. Thus, in 1896, it was held in England, that a doctor was not justified in going to the police after attending to a woman who had undergone criminal abortion. Mr. Justice Hawkin described any such course as a "monstrous cruelty". Kitson vs. Playfair (1896), [The Times, 28 March, Brazier. Medicine, Patients and the Law (1992), page 52.] A contrary view was expressed by Mr. Justice Avory in Birmingham Assizes, [(1914) 78 J.P. 604].

It has been stated by one writer that in cases of child abuse, rape and serious violence, the doctor may be justified in informing the police to ensure that the offence is not repeated. Pereira Gray, "Legal Aspects of Violence within the Family" [(1981) 282 B.M.J. 20, 21]. Obviously, this suggestion has been made in the context of the special situation of violence within the family and has to be read as confined to intra-family offences in which the offender and the victim are related to each other.

**Written consent**

In England, the General Medical Council’s "Bluebook" entitled Professional Conduct: Fitness to Practise (February 1991), pages 18-21 sets out eight exceptional cases in which disclosure of information by the doctor is permitted. In brief, these are as under:-

1) Patient or his legal adviser gives written consent.
2) Information is shared with other health professionals participating in caring for the patient.
3) On medical grounds, it is undesirable to seek the patient's consent.
4) In the doctor's view, sharing of the information with a person other than a relative is in the best interests of the patient and the circumstances are an exception.
5) There is a statutory obligation to disclose.
6) Disclosure is ordered by a court.
7) Rarely, disclosure may be justified on the ground that it is in the public interest in certain circumstances, such as, for example, investigation by the police of a grave or very serious crime might override the doctor's duty to maintain his patient's confidence.
8) Information may also be disclosed if necessary for the purpose of a medical research project approved by a recognised ethical committee.

**Public safety**

The public interest in confidentiality has to be weighed against the public interest in public safety, as is illustrated by W v/s. Egdell, [(1990) 1 All E. R. 835 (Court of Appeal)]. In this case, a psychiatrist was held to have acted properly in communicating to the Home Secretary the fact that a particular person whom he (the psychiatrist) had treated was a dangerous psychopath and was not fit for discharge from a secure mental hospital.

**Duty to disclose**

Finally, it would be of interest to note an American case holding a doctor liable for failure to disclose, the jilted lover of a girl sought psychiatric help. He told the staff that he had violent intentions towards the girl and that he had a gun. The centre did not inform the girl. They informed the police but the police failed to act. The girl was murdered by her lover. The Centre was held liable to pay damages to the family for negligence. [Tarasoff v/s. Regents of the University of California (1976) 531 P 2d 334].
Proliferation of Judicial Tribunals — Erosion of judicial power

In this article M. A. Rane stresses the need for creating a common State Judicial Service for manning not only the regular civil and criminal courts but the special tribunals as well.

Rule of law, separation of powers, legislative, executive and judicial, and the independence of the judiciary are some of the basic features of our Constitution. Disputes arising between citizens and citizens, and/or citizens and the State are required to be resolved by delivering judgments binding the parties to the dispute. (The judiciary is divided broadly into the subordinate ones and the superior ones comprising the State High Courts and Supreme Court as the Apex Court of the Country).

In primitive or authoritarian societies not governed by rule of law and where might is right, such disputes were resolved by force. It follows as a corollary that for deciding disputes fairly and impartially, without fear or favour, the judiciary must be independent of all other wings of power or force.

It further follows that the executive or any other power foreign to the judiciary, should not have a determinative voice in the appointment, posting, promotion, transfer, punishment or laying down conditions of service, of the members of the judiciary, whether higher or subordinate.

Nebulous provisions

The somewhat nebulous provisions in the Constitution relating to the appointment, promotion and transfer of the judges of the superior courts have been finally interpreted, at least for the time being, by the majority judgment of the Supreme Court in October 1993, reversing its earlier 1982 ruling in the Judges' case, that conferred primacy on the Executive over the Judiciary in these matters.

Where the subordinate courts are concerned, there are express provisions in Articles 233 to 237 of Chapter VI of Part VII of the Constitution. Article 233 provides that appointment, posting and promotions of district judges as defined in Article 236(a) shall be made by the Governor of the State in consultation with the High Court concerned and based on their qualifications. Article 234 provides that appointment of persons other than district judges to the judicial service, shall be made by the Governor in accordance with rules made by him in that behalf after consultation with the State Public Service Commission (SPSC) and the High Court.

It is now a well established convention that one judge of the High Court sits with the SPSC for interviewing the candidates and the opinion of the High Court judge is invariably accepted by the SPSC. Article 235, the fulcrum of the Chapter, provides inter alia that the control over district courts and courts subordinate thereto, including the posting and promotion of and granting of leave to the latter, shall be vested in the High Court.

Charges of misconduct

The aforesaid provisions of Articles 233 to 237 have been the subject matter of judicial pronouncements both by the Supreme Court and High Courts. It is now well established that all the courts subordinate to the High Court in the judicial service of the State, including even the staff of the courts, are under the exclusive control of their High Courts in the matter of their appointments, postings, promotions and other conditions of service, though the orders relating to the subordinate judges are made in the name of the Governor as the head of the State.

In Samsher Singh's case [AIR (1974) SC 2192], a seven member bench of the Supreme Court held unanimously: "The High Court under Article 235 is vested with the control of the subordinate judiciary. The members of the subordinate judiciary are not only under the control of the High Court but also under the care and custody of the High Court. The request by the High Court to have the inquiry for charges of misconduct against the member of the subordinate judicial service through the Director of Vigilance was an act of self-abnegation. The High Court should have conducted the inquiry preferably through District Judges.

The members of the subordinate judiciary look up to the High Court not only for discipline but also for dignity. The High Court acted in total disregard of Article 235 by asking the Government to inquire through the Director of Vigilance. When the High Court exercising disciplinary control over the subordinate judiciary finds, after a proper inquiry, that a certain officer is guilty of gross misconduct and is unworthy to be retained in judicial service and therefore, recommends to the Governor his removal, the recommendation of the High Court in respect of judicial officers should always be accepted by the Governor, and the Governor has no power to consult the Public Service Commission under Article 320(3)(c).

Show cause notices

Recently, three judges of the Court of Small Causes, Pune, charged with acts of alleged serious misconduct were held...
guilty of some of the charges by the District Judges holding inquiry into the same at the instance of the High Court and were dismissed from service by the orders passed by the Governor accepting the recommendations of the High Court. The three judges challenged the orders by filing writ petitions under Article 226 urging inter alia that the Governor should have issued separate show cause notices before passing the orders. The High Court negated the contention and dismissed the petitions, subject to the rights of the judges to appeal to the Supreme Court if they were so advised.

Now, if, under a special enactment, tribunals are created for deciding disputes under an Act whose decisions are binding on the parties to the disputes, and jurisdiction of the ordinary civil or criminal courts over the said matter is excluded, do the members of such tribunals not form part of the subordinate judiciary, covered by Articles 233 to 237 of the Constitution?

Can the executive and the concerned Ministry appoint the members of such tribunals, exercising original or appellate powers under an Act, give departmental directions to them in discharging their judicial functions, maintain their confidential records and exercise disciplinary jurisdiction over them whilst the concerned High Courts of the State have no power whatsoever in these matters except the one of superintendence under Article 227 of the Constitution?

Labour Courts

In two separate decisions the Bombay High Court has sought to answer these questions in respect of the Labour Courts in the State of Maharashtra which are constituted under the provisions of the Industrial Disputes Act, 1946 and the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 (MRTU & PULP Act) and in respect of the Cooperative Courts constituted under the Maharashtra Cooperative Societies Act, 1961.

In State of Maharashtra v/s. Labour Law Practitioners Association and others (1987 Mah. L. J. 1991) a Division Bench of the Bombay High Court (Bharucha and Variaja JJ) confirmed the decision of Pendse J. and held that Labour Courts constituted under the three enactments i.e. Industrial Disputes Act, 1947, Bombay Industrial Relations Act, 1947, and MRTU and PULP Act, 1971 are invested with judicial powers of the State deriving the power from statutes and having all the trappings of a court, that a member of the Industrial Court is a “District Judge” within the inclusive definition of the term in Article 236(a), that the Industrial Court and Labour Court constitute a hierarchy or system of courts, the latter being inferior to the former, both forming part of the judicial service as contemplated under Article 236(b) and therefore appointment of judges of the Labour Courts, must be made in conformity with Article 234.

The court, therefore, set aside the appointment by the Government of an Assistant Commissioner of Labour as a Labour Judge. In arriving at the said decision, the Division Bench relied among others on an old ruling of the Supreme Court in the Bharat Bank Ltd. v/s. Employees of the Bharat Bank Ltd. [AIR (1950) SC 459], which ruled that the Industrial Court was a court for the purpose of Article 136, exercising ‘judicial power’ of the State, which consisted of deciding “controversies between its subjects, or between itself and its subjects, whether the rights related to life, liberty or property,” as per the dictat of Mahajan J.

Confidential reports

In Maharashtra Cooperative Courts Bar Association and others v/s. State of Maharashtra and others [(1990) Mah. L. J. 1064] Pendse J. held that Cooperative Courts constituted under the Maharashtra Cooperative Societies Act, 1961, satisfy all the requirements of a court of law deciding disputes of a judicial nature and recording decisions having binding effect on the parties thereto, and therefore, judges of the Cooperative Courts form cadre of subordinate courts as understood by Article 234 and their appointments should be made in conformity with Article 234.

Pendse J. therefore struck down a Government Resolution declaring the Commissioner for Cooperation as controlling officer for administration purposes and for writing the confidential reports of judges of the Cooperative Courts.

A necessary corollary of the above decision of Pendse J is that Cooperative Courts belong to the State Judicial Service as contemplated under Article 236(a) and apart from being governed by Article 234 in the matter of their appointments, they will be governed by Article 235 as well under which the control over their posting, promotion and discipline including disciplinary jurisdiction over them would vest in the High Court.

By the same line of reasoning, the members of the Maharashtra State Cooperative Court, which exercises appellate and revisional powers over the Cooperative Courts, should be deemed to be District Judges within the meaning of Article 236(b), liable to be appointed by the High Court under Article 233 and subject to the control of the High Court under Article 235 as members of the State Judicial Service.

Exclusive Jurisdiction

In view of the two aforesaid decisions of the Bombay High Court, there is no reason why various authorities, by whatever nomenclature they may be called, whether as courts, tribunals or otherwise, constituted under specific enactments and invested with exclusive jurisdiction and powers to adjudicate upon disputes arising under the said Act to the exclusion of the ordinary civil or criminal courts, should not form part of the judicial service within the meaning of Article 236(b) and be governed by the provisions of Articles 233 to 237 of the Constitution.

This will be in consonance with the basic features of the Constitution and ensure the independence of the mem-
The four attributes of a Court are now well-established as being: (1) commencement of the case by presentation of the case by parties to the dispute; (2) in case of dispute on questions of fact, ascertainment of the facts by means of evidence adduced, if any, by the parties and arguments made thereon; (3) in case of dispute on questions of law, submissions of legal arguments by the parties and (4) ultimate delivery of decisions on the disputes by finding upon the facts so found, which decision shall be binding upon the parties to the dispute.

Only those tribunals satisfying these attributes and those exercising appellate or revisional jurisdiction over them should form part of the State Judicial Service, and not those authorised to pass mere administrative orders or carry out policies of the Government.

**Tenancy Act**

In the interests of both competence and integrity of the members of exclusive tribunals, all the tribunals constituted to exercise judicial power should form part of the judicial service under Article 236 and be governed by Articles 233 to 237, Soon after Independence and after the Constitution came into force the popular Governments passed a number of welfare legislations like the Bombay Tenancy and Agricultural Lands Act, 1947 and several other Acts relating to agricultural lands and tenures, conferring exclusive judicial powers under the Acts on Revenue Officers, like, tahsildars and collectors.

Apart from some exceptions, they had neither the training nor the integrity to decide the dispute competently or impartially. In particular, the disputes relating to tenancy under the BT and AL Act were highly complicated and affected a large number of people in the State. It was found that a large number of decisions delivered by Tenancy Appellate Tribunals or Deputy Collectors and Collectors exercising appellate powers were influenced by considerations other than the merits of the case.

Initially, the Revenue Tribunals exercising revisional powers over the decisions of the Revenue officers were manned by retired High Court Judges or retired District Judges of competence and unquestioned integrity. But as time passed, the members appointed by the Government were not necessarily judicial officers and a number of decisions of the Revenue Tribunal were also found to be lacking in competence or integrity. The entire hierarchy was found to be wanting both in legal competence and integrity. This has also been the experience of the working of the Courts under the Cooperative Societies Act, or laws relating to Industrial Relations or the Motor Vehicles Act. Retired members of the judiciary were found in the corridors of Mantralaya canvassing for their appointments on such special Tribunals with the Ministers or Secretaries concerned. This is totally derogatory to the dignity of the judiciary and harmful to its independence.

In order to correct such perversion of the administration of justice, it is eminently desirable that members of all such special tribunals constituted under various enactments should form part of the State Judicial service governed by Articles 233 to 237 of the Constitution and be under the control of the concerned High Courts.

Ideally, there should be one common State Judicial Service as contemplated under Articles 233 to 237 for manning the regular civil and criminal courts as well as the special tribunals. The services of the members of the single judicial service should be transferable to the special tribunals by turns, so that they gather experience of adjudicating upon disputes arising in the regular courts as well as the special tribunals. As the judges of the High Courts are recruited from the subordinate judiciary as well as the Bar, it is desirable that the subordinate judiciary should have all-round experience. If members of the Bar practising in the special tribunals are directly recruited to those tribunals, they should be integrated in the common judicial service. Expediency and public interest may justify the creation of special courts or tribunals or hierarchy of such tribunals with exclusive jurisdiction under special Acts, in view of the congestion in regular courts. There are no reasons why such special courts or tribunals cannot be manned by members belonging to the single judicial service.

This has been experimented in the case of Family Courts under the Family Courts Act. A question may arise as to how members of special tribunals constituted under a Central Act, may be integrated in the State Judicial Service, since we do not have a Federal Judicial Service as in the USA. These and several other questions in the matter of creation of such a common State Judicial Service of the subordinate judiciary governed by Articles 233 to 237 can be considered and decided after debate and discussion.

A last word of caution. In making appointments to and controlling such a common State Judicial Service, the High Courts should act openly, shunning undue secrecy, in order to ensure impartiality and obviate grievances and allegations of favouritism. Judges of the High Courts are human beings not necessarily immune to human frailties and the common Indian diseases of casteism and nepotism. The best guarantee against such apprehensions is openness, since there is no other mode of accountability in the functioning of the High Courts.

**Advocate M. A. Rane who practises in the Bombay High Court, is also the Editor of ‘The Radical Humanist’.**
Civil procedure

In a suit for ejectment, Bashir Ahmed was the party respondent. When the matter was listed on 8.8.1994, the plaintiff was present in person as the advocate were on strike due to the death of a fellow advocate. Consequently, the matter was adjourned to 9.8.1994. On that day since the counsel appearing for Bashir Ahmed was unwell, he could not proceed with the cross-examination of the plaintiff and accordingly sought a short adjournment and even agreed to pay costs. The court however, directed Bashir Ahmed to engage another lawyer for cross-examination of the Plaintiff. Since he did not do so, the court ordered for forfeiture of cross-examination and thereafter proceeded with the matter. Questioning the procedure adopted by the Trial Court, the appellant filed a Revision Petition before the High Court, which was dismissed.

The Supreme Court while allowing the appeal observed that though protraction of trial of a suit should not be encouraged, if an occasion for an adjournment arises on any sufficient ground, then under Order 17, Rule 1, the court may adjourn the matter to a short date while asking the party seeking adjournment to pay costs. The Trial Court is, therefore, enjoined to satisfy itself that the case for adjournment has been made out.

The Court further held that a reasonable time has to be given to parties to make alternative arrangements. Unless time is given for engaging new counsel, it would be difficult for him to proceed with the cross-examination on the spur of the moment, without applying his mind to the pleadings, issues framed and the evidence already on record. It was, therefore, held that the Trial Court should have adjourned the case for the next date so as to enable the party to engage another counsel and give instructions. It was observed that engaging a new counsel at such short notice would be "fraught with grave risk and be unrealistic."


Custodial Death — Compensation

Ranjit Upadhaya was a convict who was serving his sentence under Section 302 IPC in Central Jail, Varanasi. On account of his strictness in maintaining discipline among other inmates, in his capacity as Numbardar, he was attacked and killed by a co-accused. His wife by Letter Petition to the Supreme Court claimed compensation for the death of Ranjit Upadhaya.

The Supreme Court held that even though Ranjit Upadhaya was a convict, the jail authorities were not absolved of their responsibility to ensure the life and safety of inmates in the jail. A prisoner does not cease to have his constitutional rights except to the extent he has been deprived of them in accordance with law.

Since the killing took place when he was in jail, it resulted in the deprivation of his life contrary to law. The Court was of the opinion that, in the circumstances his wife and children were entitled to compensation. The court directed the State of U.P. to deposit a sum of Rs. 1 lakh with the Registrar of the Supreme Court out of which a sum of Rs. 50,000 would be put in a fixed deposit with a nationalised bank and the interest on it would be paid to the wife and children. The remaining amount would be handed over to the wife.


Consumer Protection

A small scale industry purchased certain machinery from the P.S.G. Industrial Institute. After installation and operation, several defects were noticed. Despite efforts by the supplier, the defects could not be rectified. On account of the financial loss caused to the industry due to the defective functioning of the machinery, a complaint was lodged before the Maharashtra Consumer Disputes Redressal Commission, claiming an amount of Rs. 4 lakh. An objection was raised before the State Commission that since the machinery was purchased for a commercial purpose, the industry was not a consumer within the meaning of the Consumer Protection Act, 1986. The State Commission partly allowed the claim. In appeal the National Commission reversed the order on the ground that the Complainant was not a consumer.

The Supreme Court held that if a buyer of goods uses the goods himself/herself i.e. for self-employment, for earning one's livelihood, it would not be treated as a "commercial purpose". Thus, a person who buys a typewriter or a car and uses them for his/her personal use, is a consumer. Similarly, if a person purchases an autorickshaw or a car or other machine to be pilled or operated exclusively by another person, then he/she would not be a consumer.

The Court further held that the explanation added to Section 2 (d)(1) of the Act by an amendment in 1993, was more in the nature of a clarification and it merely made explicit what was implicit in the Act. Thus, the question as to what is 'commercial purpose' is a question of fact to be decided on the merits of each case.

Laxmi Engineering Works v/s. P.S.G. Industrial Institute, 1995(2) Scale 626.
MONTHLY UPDATE

Caste Certificate

In a case where a candidate sought admission to an engineering course on the basis of a caste certificate obtained by fraud, by which he claimed that he belonged to a Schedule Tribe, the Supreme Court once again reiterated certain guidelines regarding the granting of caste certificates.

The Court held that the burden of proof of social status is always on the person who seeks to take advantage of that status. It is not the duty of the State to disprove it. The court noted that the criteria to obtain caste certificates from the Mandal Revenue Officer/Revenue Divisional Officer was relevant for the reason that the Schedule Tribes generally live in forest areas, mountainous regions and specified pockets, and they would therefore be known to local officers and would be easily accessible for verification.

In order to streamline the procedure for granting of social status certificates, their scrutiny and their approval, the Court laid down detailed guidelines like filing of an affidavit by the concerned parents/guardian of the candidate stating the particulars of caste, tribe etc. setting up of a scrutiny committee for verification of the caste certificate; constitution of a Vigilance Cell for investigation into social status claims; prosecution of parents/guardian/candidate, if a caste certificate is found to be false. Further any order passed by the Scrutiny Committee would be final and conclusive and subject only to proceedings under Article 136 of the Constitution. No other suit or proceeding would lie before any other authority. When the writ petition is disposed of by a learned Single Judge, no appeal would lie against that order to a Division bench except under Article 136 of the Constitution.

Director of Tribal Welfare, Govt. of U.P. vs. Laveti Giri & Anr. 1995(2) Scale 815.

Criminal Procedure

A complaint was filed against Mr. S. Bangarappa and two others under Section 500 of the Indian Penal Code. The basis of the complaint was that Mr. Bangarappa had allegedly made false imputations against the complainant who was the cousin of the then Chief Minister of Karnataka. The Magistrate after receiving evidence under Section 244 Cr.P.C. framed charges against the respondents and recorded his reasons for doing so. Thereafter, a revision was filed under Section 399 Cr.P.C. before the Additional Sessions Judge, who dismissed the same on the ground that the Magistrate had framed the charge on consideration of the evidence adduced and on being satisfied that there was a prima facie case made out against the accused. Thereafter, the first respondent, Mr. Bangarappa, approached the High Court under Section 482 Cr. P.C. praying for quashing of the charge. The Single Judge allowed the petition and quashed the charge not only with respect to the first respondent accused, but also with respect to the other two accused, who had neither filed a revision before the Sessions Judge nor before the High Court. The Supreme Court while setting aside the order of the High Court, held that the Single Judge had gone beyond the purview of Section 482 in quashing the charge. In exercise of its powers under Section 482, the High Court cannot act as a second Revisional Court under the garb of exercising its inherent powers. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of the court. It was further held that the High Court while acting under Section 482 ought not have entered the arena of appreciation of evidence nor should it have recorded a finding that the complaint was the result of political differences.

It was also contended on behalf of the respondent-accused that a period of 12 years had elapsed since the complaint had been filed and, therefore, the matter should not be allowed to be proceeded with. While rejecting the contention, the Court reiterated that despite repeated admonitions of the Supreme Court, superior courts continued to interfere at initial or interlocutory stages of criminal cases and consequently little progress is ever made in the case. The interference by superior courts should only be in exceptional cases where the interests of justice demanded.

Ganesh Narayan Hegde vs. S. Bangarappa & Ors. 1995 (2) SCALE 748

Service law — Accident Compensation

Rajanna was a Security Assistant in the Special Protection Group (SPG) attached to the Cabinet Secretariat and was amongst the security personnel attached to the Prime Minister's office. Along with other members of the SPG personnel, Rajanna was traveling by the official SPG vehicle from the staff quarters to the South Block for duty. On the way, the vehicle was involved in a road accident, as a result of which Rajanna sustained injuries resulting in his permanent partial disablement. As per the circular providing for ex-gratia payment of SPG personnel who suffered permanent partial disablement as the result of injuries received while performing actual VIP duty, the amount payable was Rs. 50,000. Rajanna consequently claimed ex-gratia payment of Rs. 50,000 according to the circular. The claim was rejected. On approaching the Central Administrative Tribunal, Rajanna's petition was also dismissed.

It was contended that the phrase “actual VIP security duty” meant the actual period when the person provides security to the VIP, on commencement of duty hours. The Supreme Court rejected the contention and held that there was a notional extension of the actual duty which would include the journey undertaken by Rajanna in the official SPG vehicle, between
the staff quarters and South Block. The Court further held that the principle under the Workmen’s Compensation Act for determining whether an accident arises out of or in the course of employment of a workman, would be applicable to the circular, since both had the same object. It was therefore held that there was a causal relationship between the accident in which Rajanna sustained the injuries and his employment in the SPG for actual VIP security duty; & it was an instance of his employment to travel from the staff quarters to South Block. The meaning of the expression “actual VIP security duty”, the Court held, is the same as that of the words “in the course of employment” in the Workmen’s Compensation act.

Rajanna v/s. Union of India 1995(2) SCALE 852.

Contempt of Court

In a preventive detention case before the Supreme court, affidavits were filed by various respondents from which a contradictory picture was portrayed. Consequently, the Court ordered the CBI to conduct an enquiry, in order to ascertain whether false versions had been filed by way of affidavits. The report of the CBI filed pursuant to the orders of the Court found that three police officers and another person, who was present at the scene when the alleged detention took place, had filed false affidavits. While accepting the findings of the CBI, the Supreme Court came to the conclusion that the four persons had committed criminal contempt. The Court held that the swearing of false affidavits in judicial proceedings not only had the tendency of causing obstruction in the due course of judicial proceedings but also had the tendency to impede, obstruct and interfere with the administration of justice. Any person who therefore makes an attempt to impede or undermine or obstruct the administration of justice by resorting to the filing of false affidavits, commits criminal contempt of court. The Court also refused to accept the apologies which were tendered on behalf of the three police officers and accordingly sentenced them to suffer simple imprisonment of varying terms. As regards the fourth person, who was present at the scene of the accident, it transpired that he had been tutored by the police and that his earlier statements, both oral and through his affidavit, were not voluntary. Taking into account the mitigating circumstances and the unconditional and unqualified apology tendered by him, the Court sentenced him to one day’s simple imprisonment and to a fine of Rs. 1,000.


Sick Companies’ Sale of Assets

The U. P. State Sugar Corporation was incorporated with the object of taking over and running private sugar mills which had been acquired by the State of U.P. In August 1992, the Government of U.P. took a policy decision to privatise some of the units. Consequently, in March 1994, an advertisement was published in leading newspapers inviting tenders for outright sale of 8 sugar mills. In May, 1994, the Corporation addressed a letter to the BIFR and made “a reference” in Form - CC, as prescribed under Regulation 36, stating that its net worth had been eroded by more than 50 per cent. Writ petitions were filed in the High Court assailing the decision of sale of eight sugar mills.

Before the High Court it was contended that it had not been declared a sick industrial undertaking. The High Court however proceeded on the basis that the communication sent in May 1994 to the Board was a reference under Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985, and accordingly quashed the notice for sale. The question that arose was whether after a report had been made to the BIFR, the company is prohibited from disposing of its assets.

The Supreme Court while setting aside the judgment of the High Court held that the letter sent by the Corporation was not a reference under Section 15 of the Act but it was a report under Section 23 of the Act and that the High Court was not right in proceeding on the basis that a reference had been made. The court held that under the Act the only restriction on the right of an industrial company to dispose of its assets is that contained in Section 22A of the Act. Since the power under Section 22A is restricted in its application to a sick industrial company, it would not apply to a potentially sick industrial company. The court further clarified that even making a reference under Section 15, would not ipso-facto attract the restriction on the right of a sick industrial company to dispose of its assets. Such a restriction would have to be imposed by the Board by a specific order passed under Section 22A U.P.

State Sugar Corporation Limited v/s. U. P. State Sugar Corporation Karamchari Association & Ors. 1995 (3) Scale 118.
To be a mother (or a child) on G. B. Road

Five years ago, the Delhi Police acquired notoriety when they 'arrested' 112 children of women in prostitution on the charge of being 'neglected juveniles', simply because their mothers were prostitutes. Even after the Juvenile Welfare Board pronounced that the children were not neglected, the State went in appeal. The appeal was dismissed in March 1995. We publish a report prepared by the Aids Bhedbhav Virodhi Andolan which gives a graphic account of the suffering and the struggle of these women in prostitution, and exposes the hypocrisy and crassness of the powers that be.

“We were all asleep when suddenly at about 7.00 a.m. our ‘razais’ were pulled by a gang of men and women in plain clothes. We were pulled by our hair, made to stand up and dragged to the waiting police vans. The raiding party was accompanied by an army of photographers including a video cameraman. They never told us where we were being taken and why. Only after we put up stiff resistance were we told that the children and young girls were being taken to the hospital and would be released in the evening after medical examinations. In this melee we were not even allowed to take our ‘dupattas’ or wear our slippers. Only after we reached the police headquarters did we realise that we had been arrested; neither was any medical examination conducted nor were we released. The video camera was in operation throughout the day at the police headquarters”.

The above account given by a woman in prostitution residing at G. B. Road, Delhi to Aids Bhedbhav Virodhi Andolan members on 16.3.90, gives an insight into the incident highlighting police brutality which occurred on March 15, 1990 when the then DCP (Crime & Railways), Shri Amod Kanth swooped upon the women and children at G. B. Road and arrested 112 of them (79 girls, 33 boys) in a lightning raid under the Juvenile Justice Act (JJ Act), 1986, for being neglected juveniles. They were taken to the Police Headquarters, where they were wrongly detained, before being presented before the Juvenile Welfare Board late at night.

A male under 16 and a female under 18 constitute a “juvenile” under section 2(h) of the JJ Act. But as Dr. B. O. Kantroo, Chairman of the Juvenile Welfare Board commented in a newspaper interview, “We are not responsible for the actions of the police. Our work begins only when the child is produced before us. But there were no children. They were young women who looked well over twenty and had young babies with them. Many were just from ordinary homes in the neighbourhood and not even from brothels. Many of the boys had visible beards.”

The police in their zeal to “rescue” the children, failed to notice that their raid was conducted on a day when the Board did not hold court. Instead the detainees were kept at the police headquarters.

“The police are not supposed to hold minors. They were produced before me at 8 p.m. The grand raid upset the entire G. B. Road and the uproar made our work impossible”, said Mr. Kantroo.

Role of the police

The action of the police was clearly illegal because the JJ Act does not give blanket power to the police to arrest children who have parents. Section 2 (1)(iv) states, “Neglected juvenile” means a juvenile who lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life”.

Section 14 of the JJ Act states, “Special procedure to be followed when neglected juvenile has parents — (1) If a person, who in the opinion of the police officer or the authorised person or organisation is a neglected juvenile, has a parent or guardian who has the actual charge of or control over the juvenile, the police officer or the authorised person or the organisation may, instead of taking charge of the juvenile, make a report to the Board for initiating an inquiry regarding that juvenile. (2) On receipt of a report under sub-section (1), the Board may call upon the parent or guardian to produce the juvenile before it and to show cause why the juvenile should not be dealt with as a neglected juvenile under the provisions of this Act and if it appears to the Board that the juvenile is likely to be removed from its jurisdiction or to be concealed, it may immediately order his removal (if necessary by issuing a search warrant for the immediate production of the juvenile) to an observation home or a place of safety.”

Even though Section 2 (1)(iv) of the JJ Act, 1986, includes children living in brothels, it does not mean that children of women in prostitution are neglected juveniles. ABVA’s interviews with women and children revealed that most of them were either above the required age or were school-going children, properly looked after and happened to be there on that day visiting their mothers or relatives.

The question is, why was the special procedure laid down in Section 14 of the JJ Act, 1986, (for children with parents) not followed in this case? Is it because the police force believes
that women in prostitution have no
right to become mothers? This is de-
spite the fact the Supreme Court in
a conference afterwards. The Film
Certificate Appellate Tribunal, in a
decision involving the news magazine
"Newstrack", observed "The police
raid on the children had been widely
covered in the press. In fact the DCP
(Crime) Mr. Amod Kanth had held a
press conference about the raid". Evi-
dently the DCP wanted publicity.

In further violation of the law (Sec-
tion 36 of the Act) the DCP not only
called press photographers to record
the raid but also invited the press for
a conference afterwards. The Film
Certificate Appellate Tribunal, in a
decision involving the news magazine
"Newstrack", observed "The police
raid on the children had been widely
covered in the press. In fact the DCP
(Crime) Mr. Amod Kanth had held a
press conference about the raid". Evi-
dently the DCP wanted publicity.

Many women in prostitution who
were thus identified had to face acute
social harassment from their relatives
in other parts of the city and even in
other parts of the country, when people
came to know of their circumstances.
Ironically many children were thrown
out of local schools when the authori-
ties came to know that they were chil-
dren of women in prostitution.

Should not the DCP himself be
prosecuted under section 36 of the JJ
Act? Instead he merited a promotion
as officer on Special Duty in the Home
Ministry!

Why then did the police feel this
sudden urge to go ahead and act while
the case was under consideration of the
Supreme Court at that time?

Invasive press coverage

During the raid, photographs of the
women of G. B. Road were widely
published. This was done not only
against Section 36 of the JJ Act, but
also against their will as is evident
from their attempt to hide their faces
in most of the pictures published in
the national dailies from Delhi. The
women understandably even smashed
a video camera at the police headquar-
ters when it was not removed after
their repeated requests.

A major section of the print media
indulged in sensational, scandalous,
voyeuristic and even anti-women re-
porting. Photographs of the women and
their children were displayed with
scant discretion.

Protest action

While the 112 'neglected juveniles'
were brought to the police headquar-
ters, a large number of women in pros-
titution collected there. Hurt and an-
gry, their reactions varied widely —
either lashing out widely at everyone
who tried to speak to them or coax-
ing every reporter to take them inside
so that they could meet their children/
fellow co-workers.

Women staged a day-long dharna
outside the Observation Home, blocked
traffic outside the Ambedkar Stadium
and attacked photographers who
trained their cameras on them. Not
even knowing where their children
were kept the women gleamed every
car that went past the Observation
Home and lashed out at anybody who
tried to speak to them. When after six
hours of vigils outside the Home, the
Magistrate’s car staged a grand exit,
they finally realised that they were not
going to be able to see their children
after all. Then, discovering that the
girls had been taken to Nari Niketan
and were not at the home as they had
thought, the women took buses,
hitched rides to reach Jail Road 15
kms. away.

Hypocritical Voluntary
organisations

Some voluntary organisations in
Delhi are widely believed to be be-
hind the monstrous raid conducted by
the police at G. B. Road. Mr. K. L.
Bhola of Bharatiya Patita Udhar Sabha
issued a statement welcoming the raid.
In fact, the women there were fully
convinced about his involvement in the
operation, so much so, that he could
visit G. B. Road only under heavy
police protection after the raid. This
suspicion is based on the meetings he
arranged at the local police station in
which he threatened the women that
if they did not give away their chil-
dren to the government orphanages
voluntarily, they would be taken away
by force.

The same contemptuous attitude
towards women in prostitution and
their basic human rights of parenting
is shown by another organisation,
'Centre of Concern for Child Labour'.
It opined "This step of the police was
laudable. The J. J. Board released
these children to rot once again at G.
B. Road, due to the silence of volun-
tary, human rights and political
organisations". This organisation
which cannot claim to have helped in the
rehabilitation of a single child from
G. B. Road has taken it for granted
that the Delhi Police is better equipped
to take charge of these children than
their parents simply because the mothers happen to be women in prostitution.

The crucial question is why did activists/organisations who otherwise have progressive, liberal, radical credentials, who claim to have a “world-view” and a socio-political philosophy, not speak up against the police action on 15.3.90? Do women in prostitution have no human rights?

Role of Judiciary

The women in prostitution learnt once again that “equality before the law” did not apply to them. Apparently the Indian constitution stops operating within the boundaries of the red light area.

A “habeas corpus” writ filed in the Supreme Court for the recovery of the children was not listed on Saturday (the raid had taken place on Thursday) by the Joint Registrar because he said the matter was “not urgent” enough. While the illegal arrest of 112 persons has no urgency for the highest court of the land, the same court can hold a sitting on a national holiday, October 2, to decide whether a particular industrial house can go ahead with a public issue or not.

A petition in the form of a public interest litigation was also filed in the Delhi High Court by Lawyers Forum for Civil Liberties and it was dismissed on March 20, 1990, by a Double Bench stating that the police action in the case was in accordance with the procedure.

In the month of March/April 1990, the State through the Public Prosecutor filed a Criminal appeal under section 37 of the JJ Act, in the Court of District and Sessions Judge, Delhi on the ground that the order of release of the Respondents (Juveniles) by the Chairman of the Juvenile Welfare Board is against facts and law both. For a full year the net result of this petition was that women in prostitution faced enormous harassment and humiliation as they were made to appear on all the dates of hearing in the court. If they remained absent, they were served warrants.

Many school-going children had to miss school just to mark their attendance in court. The judges were completely oblivious of their plight. It is surprising why the judges did not follow the provisions laid down in Section 317(1) Cr.P.C. 1973 to dispense with the attendance.

In any case, a common practice in the courts is that in cases of criminal appeal the presence of the accused is not required if the pleader is present. But in this case, two hours of every hearing were spent in taking attendance. The respondents actually never went inside the court or set eyes upon the judge. It was only after 2 years that on an application made by the lawyer of some respondents that the attendance of the accused was dispensed with.

On 25.2.1991, Shobha Aggarwal, advocate for some of the respondents filed an application under Section 384, of the Cr.P.C. read with Section 37 of the JJ Act, for the summary dismissal of the appeal mentioned above. It was submitted that under section 37 of the said Act no appeal could be filed against an order of the Board in respect of a finding that a person is not a neglected juvenile. For the next three years, there was virtually no progress in the case.

Ray of hope

Finally the application for summary dismissal was heard on February 24, 1995, almost five years after the orders of release of the respondents by the Chairman of the Juvenile Welfare Board, Shri B. S. Chaudhary, Additional Sessions Judge, Delhi, pronounced the judgment. He stated:

“Here is a case wherein the State has come forward with an appeal against the order of the Chairman of the Juvenile Welfare Board. The order was passed under Section 39 of the said Act and the enquiries were disposed of in a summary as if it was a trial in a summons case. Whatever procedure was adopted by the Board is not relevant but the fact remains that the learned Board has held that the said juveniles were not neglected and so the enquiries were decided accordingly. Section 37(2)(b) of the said Act bars this court to hear any appeal against the order made by the Board in respect of a finding that the person is not a neglected juvenile. In such like situation, this court is handicapped. The hands of the court are tied to allow the appeal as prayed by the State”.

The net result has been that the police has refrained from indulging in a repeat performance of such brutal raids during the last five years. The protests by the women concerned, the debate that ensued in the media and the protracted legal battle has had a salutary effect on the powers that be.
State Terrorism in Chandigarh
Advocate Ranjan Lakhanpal’s son killed

Mr. Ranjan Lakhanpal, an advocate practising in the Punjab and Haryana High Court is a well-known name in the human rights circles. He is known for his spirited fight against murder, torture, disappearances and other acts of lawlessness committed by the Punjab police. On March 29, 1995, just a day before the hearing of an important case against Mr. Prithpal Singh Virk, Superintendent (Detective) of Sunam, Ranjan Lakhanpal’s ten-year-old son, Ashish, was crushed to death in a road accident, when the bicycle on which he was riding near his house in Sector 10, Chandigarh, was hit by a speeding Maruti Car.

According to eye witnesses, the vehicle which belongs to the M.L.A. of Sunam, Mr. Bhagwan Singh Arora, was being driven by Prakash Chander, and two Punjab Policemen were in the car. Ashish, according to eye witnesses was flung several feet into the air before landing directly in the way of a private jeep coming from the opposite direction. The maruti car, according to eye witnesses, Mr. Atul Lakhanpal, Ashish’s uncle, which was initially approaching at normal speed, suddenly speeded up on spotting the child on his bicycle. According to Mr. Lakhanpal’s family members, it is not difficult for anyone to keep track of their movements, as their house is under constant watch by plain-clothes policemen, thanks to Ranjan Lakhanpal’s involvement in important cases of human rights violations by the Punjab police. Mr. Lakhanpal has, in a representation to the Governor of Punjab, dated April 12, 1995, demanded a C.B.I. enquiry as he suspects the involvement of the Punjab police in the murder of his son Ashish. Several important human rights organisations and activists have supported the case of Mr. Ranjan Lakhanpal. A candlelight procession was also held on May 6, 1995, in Chandigarh in support of Lakhanpal’s petition to the Governor.

So far, there has been no acknowledgment of his representation. When contacted, Mr. K.P.S. Gill, the Chief of Punjab police, pleaded ignorance and said that he had no knowledge about this case as the accident had occurred in Chandigarh and that it did not fall within the jurisdiction of the Punjab police. Mr. Gill conveniently forgot that the two police officials who were involved in causing the accident and who were in the car, belonged to the Punjab police.

The media has by and large ignored this atrocity. Lawyers Collective reproduces Lakhanpal’s representation and urges that an enquiry be conducted without delay.

The circumstances are that a white Maruti owned by MLA Bhagwan Dass Arora of District Sangrur, was being driven by policemen from the Sangrur district. There were 3 policemen and one driver in the vehicle. The police investigation revealed that the vehicle was being driven in an easterly direction at high speed on the road, between section 3 and 10, Chandigarh, at around 7.15 p.m. on the evening of March 29, 1995. The Maruti struck Ashish Lakhanpal, who with some other children and his uncle Atul Lakhanpal was riding a bicycle along the same road. The ten-year-old boy was struck at a very high speed by the Maruti, his body cleared the bonnet and bounced off the windscreen shattering it in the process. The boy then fell in the on-coming lane whereupon a Mahindra Jeep traveling in the on-coming direction ran over his mid-section. He sustained massive head injuries, pre-
sumably internal injuries. Ashish was neither taken to the hospital by the Maruti car driver nor the jeep driver. Atul Lakhanpal had to rush home, fetch his car and along with me, Ranjan Lakhanpal, Ashish was rushed to the hospital. He died on route to PGI Hospital.

I would like to clarify the circumstances leading to the serious probability that my son's death was not purely an accident, but that nefarious designs are contributing and causal. I am known for the number of human rights cases of which I am undertaking here in Punjab. Several of such cases involve indictment of police, the defence of alleged militants and many other persons illegally detained, tortured or gone missing whilst in the custody of the police. In October 1994, in a serious murder case involving several police we were successful in securing redressal for our clients the family of a boy from Saharanpur, U.P. The boy was picked up in February 1994 and later killed by a posse of bounty hunting policemen who have been indicted under section 302 IPC (murder) in a scandalous case of cover-ups, deceptions and custody death. The matter has been entrusted to the CBI for investigation. It has been further ordered that in the meanwhile the said policemen be suspended and transferred to some other district.

Recently, I initiated another case, this being of Sardar Budh Singh son of Har Singh, resident of B.T. 263, Ram Nagar, Sunam, District Sangrur. Budh Singh along with his son Tejinder Singh was picked-up by policemen under the administration of Sardar Prithpal Singh Virk, Superintendent of police, Sangrur District. Through a series of court proceedings, it has been proven beyond a doubt that Tejinder Singh was murdered while in police custody. In fact the Sessions judge Vigilance (Haryana), after holding an enquiry has delivered a judgment that Mr. Prithpal Singh has either eliminated Tejinder Singh or is still keeping him in illegal custody. In ordinary course, most probably Mr. Prithpal Singh Virk, S. P. would have been suspended and arrested in a case under Section 302, of the IPC. This is precisely what happened in the Saharanpur case as referred to above. In the Saharanpur case a similar judgment was also determined by a Sessions judge after a judicial enquiry.

Budh Singh's case was listed for hearing on 14.3.95 in the High Court of Punjab and Haryana. S.P. Prithpal Singh Virk was successful in getting an adjournment of the case on some pretext in the Punjab & Haryana High Court for one week and the case adjourned on 22.3.95. On 22.3.95 he was again successful in securing an adjournment of the hearing and the case was listed again for the March 30, 1995. As the case had been adjourned twice at the request of S. P. Prithpal Singh Virk’s counsel, there was no further excuse left for any further adjournment. On March 30, the case would have been heard and the S. P. Prithpal Singh ordered to be arrested in a case under Section 302 IPC (murder).

It is pertinent to mention here that

1. My son was killed on the evening of March 29, only one day prior to the proceeding date that would effect S. P. Prithpal Singh Virk’s arrest and suspension.

2. Ashish was killed by a Maruti car owned by an MLA of Sunam, which was driven by his driver.

3. The driver was accompanied by three other gunmen belonging to the Punjab police, these same policemen belong to the Sunam police.

4. Prithpal Singh Virk is the Superintendent of police of the Sunam area and all policemen, constables etc. posted in Sunam area work under him, hence the persons responsible for the death of Ashish are under the command of the said S.P.

The fact that -

1. the men responsible for the accident belong to Sunam.

2. the men responsible are under the command of the Sunam S. P. who was going to be directly affected.

3. the proceedings were to take place on the 30th March in the Punjab and Haryana High Court and

4. the timing of the accident to 29th March 1995.

all cannot be a simple coincidence. The manner in which the accident has been caused the speed with which the car struck Ashish and the fact of the occupants fleeing the accident scene, all present grounds of probable cause for malicious intent.

It is pertinent to mention hereto that during the course of the Prithpal Singh Virk case some persons have met Mr. Atul Lakhanpal, my brother who too practices in the High Court. Attempts were made to pressurize Atul into influencing Ranjan Lakhanpal to be lenient in the said S. P.’s case.

In view of these circumstances there is basis to extrapolate that Mr. Prithpal Singh Virk had no other alternative to avoid arrest and being charged with murder but to determine a method of delaying his inevitable arrest. He either had to eliminate me or in some other manner conduct a similarly disruptive act. The finding of the session’s judge in the Budh Singh case, clearly concludes that Mr. Virk has eliminated Tejinder Singh. Hence, taking life is neither something impossible nor new to him.

Contd. on page 27
Advocates and Apostates
The Bangladesh Supreme Court protects writers under attack

The Bangladeshi feminist activist and writer, Taslima Nasrin, is presently in exile in Europe, after facing death threats from fundamentalists, and criminal charges from the government, for allegedly criticising the Koran. Sara Hossain, a lawyer practising in the Dhaka High Court, reports on her legal battle.

For two months, the world's press reported that Bangladesh was in the grip of religious extremists, their demands for the trial of progressive writers and the banning of secular newspapers. These demands gained unexpected fuel under the government-initiated prosecutions for 'causing hurt to religious sentiment' against the feminist author Taslima Nasrin and four editors of the secular daily "Jonokontho". Overnight, the fundamentalists launched a hate campaign in the rightist media and on the streets, calling for Taslima to be hanged for blasphemy and for the editors to be given exemplary punishment.

Many sectors of civil society responded with counter demands for withdrawal of the case against Jonokontho and for legal action against the extremists. Although a significant group of people - mainly women's organisations, academics, development activists and students spoke up for Taslima, they were far fewer in number. The fundamentalists seemed to have successfully obscured the issues at stake. They played on religious sentiment by labelling the accused as apostates and blasphemers. Through repeated incitement to violence they also sought to intimidate traditionally secular voices into silence and to influence the outcome of the cases.

The extremists' relative success may be gauged by the fact that none of the Jonokontho editors were able to obtain bail in the first instance. One of the editors eventually obtained bail from the Supreme Court, where he surrendered in person.

The resolution of the Taslima crisis (though accelerated by international pressure) was ultimately also resolved by the Supreme Court. Represented by a team of ten lawyers, Taslima appeared in the High Court two months after the arrest warrant was issued, flanked on all sides by hundreds of lawyers, including a cordon of women. Moving the bail petition, her counsel pointed out that she had repeatedly denied the statement ascribed to her (of a need for 'revision of the Koran') and spoken of religious laws to ensure gender-equality, and that she had no intention of hurting any person's religious sentiment. He described how, in spite of these denials, a particular political group and the rightist media had continued to publish and to repeat the alleged statements, and had deliberately and maliciously incited violence against her. Given the extremely unusual circumstances of the case, Taslima was directed to appear before a Division Bench of the High Court (rather than the crowded Magistrate's Court in the old city). Following her appearance, she was granted pre-arrest bail, given the government's assurance of her personal safety and allowed to appear through her lawyers on all subsequent dates. Taslima then returned quietly to her flat. Not only did the city fail to immediately erupt in outrage, as predicted by the fundamentalists, but its inhabitants continued about their daily business without any untoward incidents.

In disposing of the petition, Mr. Justice Sadeq and Mr. Justice Hassan successfully diffused the tension which had built up over two months and reaffirmed the court's independence, its refusal to succumb to intimidation and scare tactics and its role as a bulwark against human rights violations.
Having suffered a defeat in the High Court, the fundamentalists are now ready to play their trump card. They had capitalised on the furore created around Taslima to initiate the demand for a ‘blasphemy’ law. [The Penal Code (Amendment) Act, 1994, a private member’s bill proposed by the Secretary General of the Jamait-e-Islami]. This proposed law envisages the creation of two new criminal offences, of ‘defiling the Koran’ and ‘defiling the name of the holy Prophet’, punishable by a maximum sentence of life imprisonment and death respectively. It differs from the existing offence of ‘causing hurt to religious sentiment’, it does not require proof of intent, or prior government sanction, and it provides for the death sentence. The vagueness of the law’s definition raises fears as to its potential abuse by those with personal or political scores to settle.

Commenting on the proposed law, the Attorney General, Mr. Aminul Haq, recently described it as ‘anti-Constitution, anti-human rights and anti-Islam’. This pithily describes the fundamentalists’ agenda, which is wholly political in nature.

Their electoral strength is insignificant, and their potential base in feudal and patriarchal rural society is being gradually eroded, as a result of the gradual empowerment of the rural poor by development organisations. The creation of Bangladesh itself, following the war of liberation in 1971 against Pakistan, was premised on the failure of religious nationalism. Ironically, many leading fundamentalists themselves face allegations of war crimes, for their collaboration with the Pakistan army in the name of ‘saving Islam’ which led to the genocide of millions of Bengalis. Their attempt now to re-invoke the religious card in order to re-impose their own monolithic and repressive brand of Islam and to destroy all dissent has been stopped in its tracks by the Courts, at least for now.

Contd. from page 25

With the violent demise of Ashish Lakhanpal on the evening of March 29, understandably neither I nor my assistants were able to attend the court on the day that followed (March 30, 1995) viz. the same day as the anticipated arrest of Prithpal Singh Virk. The High Court is presently in recess, hence S. P. Prithpal Singh Virk has been granted delay of proceeding until May 8, 1995. Thus, ample time has been again given for the said S. P. to achieve even further delays through whatever desperate measures he can muster.

Other relevant circumstances to the case of my son’s death are that I am currently conducting a number of other serious human rights cases. The most notable one involves the grandson of the Punjab Chief Minister, Besant Singh in the infamous Ms. Katia Darmend rape case. Additionally as mentioned above, I am ensconced in several other cases involving allegations of missing persons and death at the hands of Punjab police. A rather high profile case of this type involves the death of 7 family members allegedly at the hands of Ajit Singh Sandhu, S. P. of Taran Taran. The case is replete with police atrocities, deceptions and intrigues that entail illegal confiscation of Guruwara assets, amounting to lakhs of rupees. This case is on-going and has serious overtones to the constables and officers concerned. Ajit Singh Sandhu is the right arm, strong man of Punjab’s D.G.P., K.P.S. Gill.

I am also conducting all the cases of Shiromani Akali Dal leader, Sardar Simranjit Singh Mann. Mr. Mann has been ordered to be released on five of the eleven cases registered against him since January 5, 1995. In another two cases registered against Mr. Mann, I have filed bail applications at Ludhiana. I had to appear for the same cases at the Ludhiana Court on 3rd April 1995. It is pertinent to mention here that the State of Punjab is leaving no stone unturned to keep Mr. Mann behind bars at all costs.

In July 1994, an illegal daylight detention by the Sangrur police of known Sangrur District Sessions Court human rights advocate S. S. Bhatt, led to his involuntary disappearance and presumed death. I, along with other advocates in Punjab, illustrated concern in a letter we transmitted to the Supreme Court Justice Kuldip Singh. That letter was seeking protection for the undersigned as the last few years have seen the disappearance of fellow advocates at the hands of security forces.

In October 1994, Sardar Satnam Singh a human rights advocate in the Jammu and Kashmir High Court was detained and subsequently disappeared at the hands of the local police. I have taken up the case.

Today’s post-armed insurgency period finds Punjab with a criminal nexus between police, politicians and prominent citizens. The task as a practising advocate in Punjab of ensuring public due process of law is onerous and dangerous. As a result of my son’s death, I have seen the disappearance of fellow advocates at the hands of the local police. I have taken up the case.

Mail arrives opened or does not arrive at all. It is common knowledge that India’s political and ruling culture uses the intelligence services to strengthen its governance over its opposition to stamp out any form of dissent or free expression.

In view of the serious circumstances posed herein, I and my family request that an exhaustive and procedurally verifiable enquiry by the CBI be made into the death of my son, Ashish Lakhanpal. I urge investigation be made to as to determine the truth and punish the culprits in accordance with law.
Towards an egalitarian civil code

Arguing that personal laws only benefit the opportunists and fundamentalists of any community, Indira Jaising underlines the need for a common civil code, to begin the process of providing a semblance of justice to women of all communities.

Sometime last year, a wealthy young Hindu asked his wife for a divorce. He had found another woman around town, who he suddenly decided to marry. He was willing to jettison his marriage of more than ten years, rejecting a wife and two children. A decent offer of settlement was not made. The wife refused. Then, he started planning his strategy. The man was well-connected and both husband and wife had common friends. One of their close friends was a hot shot Bombay lawyer. Obviously, the husband got to him first and the lawyer worked out the strategy: convert to Islam and marry, was the answer. With the blessings of the lawyer and the maulavi, the conversion and marriage took place. A reception at a Bombay Five Star hotel was attended by the city's bold and beautiful. The newly-acquired wife was a Delhi-based Hindu — so she too obviously had to convert to Islam. And so they went on their honeymoon, accompanied by their lawyer — an insurance against a snap law suit by the first wife, and hoped to live happily ever after.

As if to spoil the fun, less that six months later, comes the Supreme Court judgment of Justice Kulip Singh and Justice Sahai, to the effect that, such a marriage was no marriage in law and the husband was liable to be prosecuted for bigamy. The legal wife will probably work out her own remedies but the point of relating this story is that this phenomenon is all too common among Hindus. Although polygamy for men was abolished in 1955 by the Hindu Marriage Act (and earlier in some States), the phenomenon of second marriage among Hindus is quite common. Obviously, the Hindu male has not adjusted to this change — after all, it has only been a few decades since the Hindu male lost his God-given right to marry as many called backwardness of Muslim personal laws.

There can hardly be any doubt that we have inherited our system of multiple personal laws from the divide-and-rule-policy of the British in pre-independence days. But why the system should continue to thrive in post-independence India remains a mystery. Perhaps it can only be explained as a continuation of the policy of divide-and-vote.

As if to obfuscate the issue, a strange debate is taking place in the press over the question of a common civil code. Those who have misused it, the Hindus are demanding a change, as if it were a stick in their hands with which to beat the Muslims. Nowhere in the rhetoric of the BJP is there an acknowledgment of the fact that it is the Hindu men who have used the existing system to their advantage. Perhaps, if there was such an acknowledgment, the other community would be more willing for a change. And conversely, the community which has been used for such nefarious purposes has never questioned the validity of such bogus marriages and is now resisting the idea of a common civil code.

Nowhere in the rhetoric of the BJP is there an acknowledgment of the fact that it is the Hindu men who have used the existing system to their advantage. Perhaps, if there was such an acknowledgment, the other community would be more willing for a change. And conversely, the community which has been used for such nefarious purposes has never questioned the validity of such bogus marriages and is now resisting the idea of a common civil code.

It is ironic therefore, to see the Bharatiya Janata Party (BJP) demanding the introduction of a common civil code and the Muslims resisting it. One of the largest beneficiaries of the absence of a common civil code has been the Hindu community. The boot is really on the other foot — the judgment exposes the hypocrisy of the Hindu community rather than the so-called backwardness of Muslim personal laws.

It is a pity that in all this, the voice of women is silenced. The only group
that has a true interest in change and a common civil code is women of all communities. It is time that we listened to their voices. The history of the last 10-15 years is full of cases of women of all communities each of whom have challenged in their own way, the personal laws applicable to them. Tribal women complaining of loss of inheritance, Syrian Christian women disinherited, Christian women complaining of non-availability of divorce; Muslim women protesting polygamy and Hindu women complaining of loss of co-parsonary status and rights over the family home, have all gone to court and succeeded in establishing their claims. The climate of opinion among women is ripe for a change in the direction of a more egalitarian personal law and such a law can only be a common law for all women, regardless of cast, creed, community and religion.

It is therefore very amusing to follow the debate, if you can even call it that, over the issue. We have the usual Supreme Court lectures, (perhaps these periodic judgments come from the Supreme Court as it has no immediate political constituency or vote bank to loose), the usual round of BJP demands and Muslim protests and then the issue is put back into cold storage. What this indicates is that women have not yet consolidated themselves into a significant political constituency capable to raising issues in Parliament and pushing through legislation. The instruments of empowerment created for that purpose have been blunted. The National Women’s Commission has been rendered ineffective, either by making appointments which are political or by simply keeping the post of Chairperson vacant. Its recommendations are thrown in the trash can. Earlier this year the commission had recommended a common law for registration of all marriages with powers given to judges for distribution and division of marital assets. Nobody lobbied for the law and the recommendations are gathering dust.

While communities should be free to practice their religions and solemnise marriages in accordance with their own religious traditions, the civil consequences of marriage, cannot be left to religion. Rights to inheritance, maintenance, matrimonial home, alimony, marital assets and custody of children can and must be dealt with by civil law in accordance with acceptable egalitarian norms. What consequences follow on the breakdown of marriage for the wife? Does she have the right to the matrimonial home? Does she have a share in marital assets? What are her rights during the subsistence of the marriage? These are questions which affect all women equally regardless of religion. It is time they were addressed frankly, devoid of political & religious rhetoric.

Coming back to the story of the Hindu couple, they have a limping marriage, one that is recognised as valid by Islam but invalid by Hindu Law.

This only shows that our society has little or no respect for legal norms. Everybody who attended the marriage knew that the “conversion” was a sham but were happy to play along with the wealthy couple. Until such social attitudes change, we will continue to have polygamy among Hindus, despite the moralistic rhetoric of the BJP.

The judgment of the Supreme Court categorically states that the second marriage is void. The beauty queen who married with such fan-fare is not a wife after all. Her efforts at legitimising her marriage have failed, eminent lawyers notwithstanding. The man is in danger to being prosecuted for bigamy. If only someone had told him that even before the Justice Kuldeep Singh - Sahai judgment such marriages based on conversion as a convenience have always been considered illegal, he would have spared himself, his queen-bee-wife and his legal wife a lot of trouble. The real tragedy is that there is no social boycott of such marriages and no condemnation of such conduct. That such a marriage could have been planned by lawyers and attended by High Society in the heart of Bombay, openly and not clandestinely, is the real tragedy and the true reason why we do not have a common civil code.
The Supreme Court has held that handcuffing of suspected criminals without just cause is repugnant to Article 21 of the Constitution, in addition to being inhuman, unreasonable, rash, and arbitrary. In Prem Shankar Shukla v/s. Delhi Administration, the Court held that the use of handcuffs should not be routine because the practice is not merely a preventive measure — it is humiliating and punitive as well. Therefore, the court held, handcuffs should only be used if the accused is rowdy, desperate, or involved in a non-bailable offence.

Even so, the Court has not left the use of handcuffs to the discretion of the local police, but retained the power to handcuff, in the hands of the judiciary. A magistrate can grant permission to handcuff a prisoner produced before him or her, if the police can show that the prisoner has a tendency towards violence or escape. Earlier Supreme Court decisions required the police to obtain a magistrate’s permission in this manner before handcuffing a person. However, the police have routinely disregarded this mandate and handcuffed prisoners based on their subjective discretion.

If the Supreme Court’s decision is not to be flouted through willfulness or ignorance, police personnel need to be educated about the procedures to be followed, the applicable laws, the Constitutional provisions, and the penalties for disregarding the Court’s mandate under the Contempt of Court Act. The Supreme Court has already spoken. How its orders are implemented by the magistrates and police departments remains to be seen.

The Bombay High Court in a recent ground-breaking decision passed an interim order suppressing the identity of an HIV positive individual by a public sector corporation who were both allowed to sue by pseudonyms, Mr. MX and M/s ZY respectively. This marks the first decision of its kind by the Bombay High Court. The petition was also admitted. It challenged the decision of the corporation in discontinuing Mr. MX on the ground he reported HIV positive as also the policy/circular of the corporation which permitted the corporation to discriminate on that basis. Mr. MX had been a casual labourer for a public sector corporation, M/s ZY. After working for the corporation for some years, Mr. MX was interviewed for a vacancy for a regular post in the corporation which he cleared and was to be made permanent subject to his medical fitness. The corporation challenged the policy and the decision in the Bombay High Court on the ground that it is in violation of Articles 14, 15 and 16, the non-discrimination clauses, of the Constitution of India. The petition is still to come for a final hearing.

The Official Secrets Act (OSA) dates back to 1923. Jana Shakti, a voluntary organisation, has filed a petition to abolish the act, and is advocating drastic changes in the All-India Service Rules and the Central Civil Service (Conduct) Rules under Article 32 of the Constitution.

Jana Shakti maintains that the rules are repugnant to a democratic process that secrecy only perpetuates corruption. The Jana Shakti’s position is that the right to freedom of speech is predicated on a right to freedom of information. They contend that the government unfairly uses OSA to hide its
shenanigans from the public, as it did with the Rs. 1,000 crore sugar scandal investigated by the Gian Prakash Committee. Moreover, government officials who would blow the whistle on corrupt practices are prevented from doing so by the Rules.

Without the OSA, Jana Shakti feels, there will be greater accountability, which will lead to a decline in corruption. Official misdeeds and plunder are sought to be covered up by using colonial antiquated laws, which are an insult to the dignity of citizens. Public accountability is an elementary requisite of any civilised society. Let us see what the courts have to say.

Even in the rare cases where there is a conviction, the penalties awarded are not commensurate with the seriousness of the crime, with maximum sentences being five to six years in prison. Recently, however, in 1992, the death sentence was awarded to a man for raping and murdering a two-year-old girl in 1986. In 75 percent of the reported rape cases, children are the victims. The perpetrator in such cases is usually someone who knows the child and who later murders the child for fear of being identified. Commissions and legislations notwithstanding the crime graph of violence keeps climbing.

Getting away with murder and rape

Almost a thousand rape cases were reported in New Delhi over the last three years, from 1992 through March of this year. But only five of these cases — 0.5 percent — ended in conviction. The Crime Against Women Cell of the Delhi Police reported that 973 of the 978 accused are either awaiting trial or have been acquitted for lack of evidence. You may be sitting next to one of the accused on the bus, since many of them are out on bail.

There are several reasons for the shockingly low rate of conviction. Often, the victim does not pursue the case because society adds insult to injury: social stigma attaches to the victim of the crime rather than to the perpetrator. Long delays in trial proceedings deter victims from pursuing the case and favour the defendant; police leads grow cold and crucial details of the incident can be forgotten. Public prosecutors are not always careful about documenting the investigation and the resulting inconsistencies in recording the victim's statements or in the medical examination also favour the accused.

Rebirth at retirement

The courts have inadvertently become akin to employment agencies for several government employees whose retirement is imminent. These employees wish to have their recorded date of birth legally amended so that they can continue working. With interim orders from the court pending a final decision on the date of birth, many of these government employees do manage to continue working. The Supreme Court has attempted to curtail their efforts by setting out rules designed to sift out bona fide cases.

The courts have inadvertently become akin to employment agencies for several government employees whose retirement is imminent. These employees wish to have their recorded date of birth legally amended so that they can continue working. With interim orders from the court pending a final decision on the date of birth, many of these government employees do manage to continue working. The Supreme Court has attempted to curtail their efforts by setting out rules designed to sift out bona fide cases.

Even in the rare cases where there is a conviction, the penalties awarded are not commensurate with the seriousness of the crime, with maximum sentences being five to six years in prison. Recently, however, in 1992, the death sentence was awarded to a man for raping and murdering a two-year-old girl in 1986. In 75 percent of the reported rape cases, children are the victims. The perpetrator in such cases is usually someone who knows the child and who later murders the child for fear of being identified. Commissions and legislations notwithstanding the crime graph of violence keeps climbing.
The group of five

No------- sooner did the Supreme Court close for the vacation, that five of the senior-most judges pushed off to the USA, under the pretext of making an Indo-US Society visit. Readers will remember that this Indo-US network sprung up overnight about a year ago, when some judges of the U. S. Supreme Court visited India on a tour. Their visit was shrouded in secrecy; a closed door meeting was held with selected judges of the Supreme Court, High Courts and a few hand-picked lawyers. The proceedings of the meeting have not been published or made known to any of us. Lawyers who attended were specifically told not to talk to anyone about it. Although a woman judge of the US Supreme Court visited India as part of the team, she did not care to meet women lawyers or grass root women’s organisations, and this, despite the fact that she was known for her ‘feminist’ credentials.

The two US Supreme Court judges were honoured by being allowed to sit on the bench of the Indian Supreme Court in the Chief Justice’s Court. It will be interesting to know whether our group of five will be conferred with a similar honour. Anyway, these minor irritants apart, we would like to know who is footing the bill for all these foreign jaunts — many of them are not due back till the end of June. No doubt, our ever-obliging ambassador to the US, that charming Mr. Sidhartha Shankar Ray, has been the chief organiser of the show and host to the group of five. Well, let’s wait and see what pearls of wisdom they bring back.

The real tragedy is that all these visits don’t seem to make a difference to our judges. There is so much they could learn but don’t. Nothing changes when it changes for them.

Sycophancy

The story goes that when a judge’s dog is sick, hordes of lawyers line up to visit the dog. When a judge’s 98-year-old mother is sick, hundreds of lawyers line up outside the hospital to be seen and counted. When word spreads that a Mr. So-and-so is to become a judge, suddenly he is flooded with invitations to dinner where previously he was completely ignored. But when a judge dies, there is nobody present to attend his funeral. Well, what use do lawyers have for a dead judge? A cynical way of looking at life, but when you have been around in the legal profession long enough, you will become cynical too.

Recruitment time

Now’s the time when law students are passing out and looking for jobs. It’s the time when all the high flying foreign firms are on the look-out for young yuppies. It’s the time when Indian law firms too have got into the act and started campus recruitment. This year, like last year, campus recruitments have taken place at the National Law School, Bangalore. And the story goes that several have been recruited by Arthur Anderson, Shroff & Co. and the like. And while these recruitments have ensured that law graduates get a decent salary and put an end to the gross exploitation of young lawyers, we wonder what happened to Dr. Madhav Menon’s idea of training young lawyers to practice public interest law.

With more and more joining the commercial world of servicing multinationals, in this land of multinationals, we will probably witness a changing scenario in the legal profession. Who knows in the years to come, public interest litigation may well become a dirty word?

More rhymes for our times

Our readers are familiar with Raju Moray’s satire. We publish below some more of his sparkling verse.

Mary, Mary, better be wary
How does your lawyer fly?
In Executive Class,
With the Top Brass
So his spirits are always high.

Mary, Mary, it’s so scary
Where does your lawyer stay?
In a 5-Star Hotel
Whose bills I dutifully pay.

Mary, Mary, quite contrary
Isn’t this a great disgrace?
Oh no, Sir, no!
He’s worth the dough
For the judges can’t resist his face...

To Court, to Court
To do no work
Home again, Home again
Shirk-ety-shirk.

To Court, to Court
To go on a strike
Home again, Home again
That’s what I like.

Devil’s Advocate

Edited by Indira Jaising, published by R. V. Pandit for The Lawyers Collective, Jalaram Jyot, 4th Floor, 63, Janmabhoomi Marg, Fort, Bombay 400 001 and printed by him at Excel Typesetters and Printers, 42-B, Sonal Apartments, I. C. Colony, Borivali (West), Bombay 400 103. Tel: 894 3556.