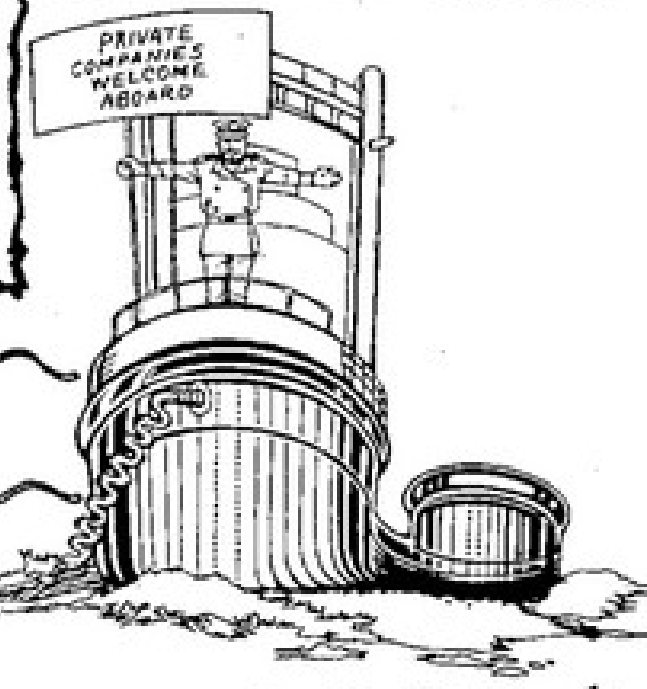
Vol. 11 - No. 3 MARCH 1996 Rs. 18/-

FROM THE LAWYERS COLLECTIVE

SHOULD THEIR POCKETS JINGLE?

MONEY IN ELECTIONS



PRIVATISATION SPEAKING

THE TELECOM JUDGEMENT

LETTERS

MARCH

POLICE REPRESSION ON DISPLACED ADIVASIS

On December 9, 1995, the Displaced of Tawa Dam, Cultural Proof Establishment and other adivasis from Kesla region in Madhya Pradesh, organised a traffic blockade at Kesla. The adivasis, who have been deprived of their land and livelihood due to the construction of the dam have been agitating for the following demands:

1. Irrigation in adivasi villages.
2. Fishing rights of Tawa Dam to be given to the Displaced and Affected Co-operative Society for five years on the same conditions as Bargi.
3. Agriculture of'dub'(submerged) lands without tax.
4. Land and title (pattas) to the displaced.
5. Cancel Tiger project.
6. Local authority over water, forests, and land.

Nearly 1500 men and women, friends from Ekta Parishad, Bhimpur (Dist. Betul, M.P.) Bargi Dam Displaced and Affected Sanghatana (Jabalpur, M.P.) and Hum Kisan Sanghatana (Dist. Jhalawad, Rajasthan) took part in the agitation. At around 4.00 pm a massive police force along with the District Administration started kicking and beating the unarmed villagers with batons and fists. When there was mild stone throwing by the villagers, the police resorted to tear gas. Almost 400 cycles and other belongings of the villagers were confiscated and chappals and blankets, left behind by the fleeing people were made into a bonfire by the police. The Sanghatana office was also ransacked. Nearly 200 people were arrested of whom 12 activists were sent to Hoshangabad jail. False cases of assault were made against several activists, who were later released on bail on December 15, 1995. But on the day of the blockade, many were detained at various police chowkies without food, water or blankets.

A number of people have protested against this brutal repression. Many MLAs boycotted the Madhya Pradesh Vidhan Sabha. The peoples' organisation in Madhya Pradesh sent a team led by Ms. Medha Patkar and Dr. B. D. Sharma on December 14 to conduct an inquiry. The team found that this was the biggest incident of repression of adivasis during the tenure of Digvijay Singh, the state Chief Minister.

To protest against this incident and in support of long-standing demands, a dharna was held on December 18 at Hoshangabad, in which several people's organisations participated. The dharna which was a success was followed by yet another one on January 11, 1996 in support of our demands.

The Kisan Adivasi Sanghatana,
Samajwadi Jana Parishad,
Kesla, Dist. Hoshangabad,
M.P. 461 111.

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EDITORIAL

MARCH

JUDGES AS MEDIA PERSONALITIES ?

Justice J. S. Verma's interview to India Today in the issue dated March 15, makes history not for what it says but for the very fact that it was given. Traditionally, we have always learnt what our judges have to say about law and life through their judgements, their lectures delivered at academic fora or through books written after retirement. Never before have we seen a sitting judge of the Supreme Court giving an extended interview to a news magazine. While it is arguable that greater access to our judges is welcome, is the press necessarily the best forum for doing so?

Just a few days before the India Today interview, an extract of Chief Justice A. M. Ahmedi's Zakir Hussain memorial lecture was published in the Times of India. He felt constrained to write to the newspaper that he had not authorised the publication. Obviously, here we have a major difference of opinion between Justice Ahmedi and Justice Verma.

While on the one hand, Justice Verma has chosen to go public on his judicial role, on the other he has reprimanded lawyers for talking to the press on pending cases, even if the cases be of great public importance such as the Narmada case. In Court, he conducts hearings in camera, effectively keeping the press out. He then goes on to reprimand the press for reporting comments made by judges in open court.

If judges have repeatedly charged lawyers and others with wanting to seek publicity, they too stand to run the risk of being accused of the same. While Justice Verma may not have wanted publicity—he has enough of it—he does owe us an explanation for his interview. What is more important, we need to have a publicly declared and uniformly followed policy of judges vis-a-vis the press.

Indira Jaising

FROM THE LAWYERS COLLECTIVE

CONTENTS VOL. 11 NO. 3

COVER STORY

MARCH

SHOULD THEIR POCKETS JINGLE?

MONEY IN ELECTIONS

The periodic exercise of canvassing for votes takes place with regularity on the Indian scene, where the electorate witnesses the fancy embroidering of promises by political parties. Who picks up the tab for the event? Where does the massive flow of funds come from? Is it accounted for? Is the source open to public scrutiny? MEGHNA ABRAHAM examines the current legal provisions of funding of elections and suggests some changes in the legal framework.

In the wake of the recent controversy, where a wide spectrum of politicians have accepted huge sums from questionable sources, a sense of panic has swept the country. This extends beyond the sensationalism of corruption in high places to a crisis of a proportion which has perhaps never been witnessed before. Questions are being raised as to political donations to parties and their leaders; of public accountability in the wider framework of the role of money in elections. This question has been raised from time to time. As a country we have accepted corruption as an integral part of our national institutions and as a way of life, to be complained about but not confronted. The Hawala case, however leaves us wondering as to who controls the very institutions designed to protect citizens' rights. The role of money in elections is not confined to the period of campaigning alone but includes all funding of politicians and political parties. Such funding naturally influences not only the outcome of the election but also the decisions which that party or individual makes after winning or losing (in its role as opposition).

THE EXISTING FRAMEWORK

After 1947, in order to allow people of different economic means an equal opportunity to stand for elections, it was considered necessary to impose a ceiling on what a candidate could spend for such purpose and in this regard S.77 of the Representation of People Act, 1951 was enacted. S. 77 provides that a candidate at an election or his agent must keep an account of all expenditure authorised or incurred in connection with the election from the date on which he is nominated, to the date on which the election results are announced and the total of such expenditure shall not exceed the prescribed amount. S.78 lays down that such accounts must be lodged with the district election officer within a period of thirty days from the date of the election. S.90 of the Conduct of Elections Rules, 1961, lays down the ceiling on such expenditure for parliamentary and assembly constituencies which amounts may vary from state to state. S. 123(6) of the Representation of People Act deems any violation of S.77 to be a corrupt practice and such violation will attract disqualification for a period of six years. S.10A of the Act provides for a disqualification for three years for a failure to lodge accounts without justification.

The rationale of a ceiling on the amount spent on

an election was based on a belief that the unrestricted use of big money would inevitably lead to a nexus between big industrial houses and political parties, finally leading to widespread corruption and a distortion of the political process. As stated by the Supreme Court in Kanwar Lal Gupta v/s A. N. Chawla, [(1975)2 SCR 259], "The other objective of limiting expenditure is to eliminate as far as possible the influence of big money in the electoral process.....Pre-election donations would be likely to operate as post-election promises resulting ultimately in the casualty of the interest of the common man." The court stated that since under S.123(6), authorising as well as incurring excess expenditure is a corrupt practice, when a political party sponsors expenditure in connection with a candidate's election with his knowledge, he impliedly authorises the political party to incur such expenditure. Thus such expenditure is to be included while calculating the total expenditure of the candidate. The court held that, "If a candidate were to be the subject of the limitation of the ceiling but the political party sponsoring him or his friends and supporters were to be free to spend as much as they like in connection with his election, the object of imposing a ceiling would be completely frustrated." However, immediately after the judgement, S.77 was amended to specifically exclude expenditure incurred by a political party in connection with the election of a candidate from its ambit.

Besides the provisions of the Representation of People Act, sections 171-H and 171-I of the Indian Penal Code make illegal payments in connection with an election and failure to keep election accounts, offences punishable with a fine for Rs.500 each. There is no ceiling on the expenditure that can be undertaken by a political party during elections. Thus the only means of accountability is the assessment of income and filing of returns under the Income Tax Act. S.13A of the Income Tax Act states that any income by way of voluntary contributions received by a political party from any person shall not be included in the total income, provided that the records of contribution in excess of Rs10,000 stating the name and address of the contributor and that such accounts are audited by a chartered accountant.

CORPORATE DONATIONS

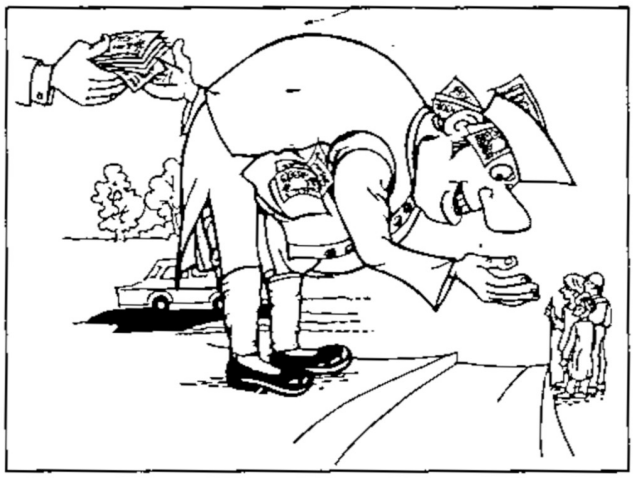
Prior to 1956, there was no restriction on companies making contributions to political parties. S.293(1)(e) of the Companies Act, 1956 provided for the Board of Directors of a company to contribute to charitable and other agencies a sum not exceeding Rs.25,000 or 5 per cent of the average net profits whichever was greater. In Jayanti R. Koticha vs. Tata Iron and Steel Co. Ltd., [AIR 1958 Bom 155], Chief Justice Chagla, while holding that donations to political parties were covered by this provision stated, " ...We think it our duty to draw the attention of Parliament to the great danger inherent in permitting companies to make contributions to the funds of political parties. It is a danger which may grow apace and which may ultimately overwhelm and even throttle democracy in the country...". By the Companies (Amendment) Bill, 1968, donations to political parties were proposed to be banned altogether. S. 293A was amended to its present form in 1985 which prohibits government-owned companies and companies who have not been in existence for three years from contributing any amount directly or indirectly to any political party or to any person for a political purpose. Even a company which has been in existence for three

years cannot make such contributions unless it is authorised to do so by a resolution passed in a meeting of the Board of Directors. Such amount should not exceed five per cent of the net profits of the company.

PROBLEMS AND LIMITATIONS

The inadequacy of the existing legal system is emphasised by the fact that there are no reliable estimates as to the amount of money that is spent by candidates and political parties. The amount filed by the candidates in their official returns is believed to be aeons away from the actual expenditure. The efficacy of Income tax mechanisms in containing this expenditure can be lucidly illustrated by the public interest litigation filed by 'Common Cause' through their director, which points out that, practically none of the political parties have been filing returns or accounts on the basis of which they can claim exemption in respect of voluntary donations; therefore asking the Supreme Court to direct the Union of India, the Election Commission and others to ascertain why action has not been taken by the concerned authorities for the same. It is ludicrous that a petition has to be filed and that the Supreme Court has to direct political parties to submit their Income Tax returns. No further proof can possibly be required as to the apathy and failure of the present system.

B. Shiva Rao has stated that, "the third report of the Election Commission contained a note of helplessness inasmuch as the Commission observed that although the heavy expenditure then incurred by the parties and candidates on their election campaign was undesirable, it was not easy to find practical, effective and generally accepted methods which would make them spend less." The Election Commission in its First Annual report in 1983 stated that in the same year, 852 candidates were disqualified under S.10A for failure to lodge accounts. The Election Commission in its Second Annual report stated that in 1984, 341 candidates were disqualified while the disqualification of nine candidates was removed by the Commission. In the report for 1986 and 1987 the Commission disclosed the figures to be 1,438 but stated that cases were dropped in the case of 434 of these, as they subsequently filed accounts explaining reasons for delay or rectified the defects in their accounts. The cases of the remaining 651 candidates were



still being processed. But these figures are extremely deceptive and the accounts can rarely be relied on, a fact admitted by many politicians themselves.

The Tarkunde Committee Report on Electoral Reform stated: "Evidence led before us by witnesses who had personal knowledge shows that the sums spent in general by candidates in elections upto 1957, did not exceed by far the limits prescribed by law. Even in the 1967 elections, the extent by which those limits were exceeded would, by current standards, be deemed to be negligible. It is believed that in the 1971 election the Congress party alone spent over three times as much as in 1967. There is no doubt that very large amounts were also spent on the Uttar Pradesh and Orissa elections in February 1974. Since all expenditure in excess of legal limits is contrary to law, it obviously leads to corrupt practices and the moral degradation of the electoral process. This makes the limit on election expenditure one of the central conditions for the containment of money power which has been in the last five years so shamelessly abused."

SUGGESTIONS FOR REFORM

The Direct Taxes Enquiry Committee (Wanchoo Committee) in 1971 stated that the considerations which "weigh against large donations by big industrial and trading units in the corporate sector do not, however, apply to smaller donations by individuals. We therefore recommend that donations by tax-payers other than companies, to recognised political parties should be allowed as deduction from the gross total income, subject to certain restrictions." The ceiling for the same was fixed at Rs.10,000.

The Joint Committee on Amendments to Election Law (under the chairmanship of Jaganath Rao) in 1972 felt that "it was absolutely necessary to define" the terms 'election expenses' and 'personal expenses' which have not been defined in the Representation of People Act, 1951. "In the Committee's opinion 'election expense' in relation to an election should mean all expenses incurred or authorised by the candidate or his election agent between the date of publication of the notification announcing the election and the date of the declaration of the results thereof, both dates inclusive. 'Personal expenses' in relation to the expenditure of any candidate at an election should include all reasonable travelling and living expenses of the candidate for the purposes of and in relation to such election." The Committee also felt that, though the ceiling should continue to be operative, the limit of such expenditure should vary from state to state and region to region depending upon the area, population and other relevant factors. The upper limit of such expenditure should be suitably increased in case the elections to the Lok Sabha and State Assemblies are held separately.

The Committee also pointed out the incongruity in the law as, "under S.123(6) incurring or authorising expenses in excess of the prescribed amount under S.77, would entail a disqualification for a period of six years and would also constitute a corrupt practice. This may cause considerable hardship to the candidate who has not incurred even double or treble the prescribed expenditure but who has failed to lodge a return of the expenses, as he would escape with a comparitively minor punishment of three years disqualification and this would not constitute a corrupt practice either. On the other hand, another candidate who has incurred or authorised expenses which are technically a little over the prescribed amount would come within the mischief of S.123(6) as well as S.8A and thereby would suffer disqualification for six years for having committed a corrupt practice". In order to do away with this anomaly, it was suggested that clause (6) of S. 123 should be deleted and brought within the ambit of S.10A dealing with disqualification for failing to lodge accounts of election expenses. And at the same time, the period of disqualification should be raised from three years to six years. They also recommended that "the legal provisions relating to election expenses and filing of returns should be spelt out in greater detail so as to make them effective. In particular, there should be a provision which should prohibit election expenses being incurred by any person or agency excluding a political party sponsoring the candidate. It should further be provided that where any such authorised person incurs expenses, he would furnish a detailed return of those expenses."

"the problem of election expenses, can be solved only if it is accepted, in principle, that all election expenses ought to be a legitimate charge on public funds and efforts should be made to achieve that end."

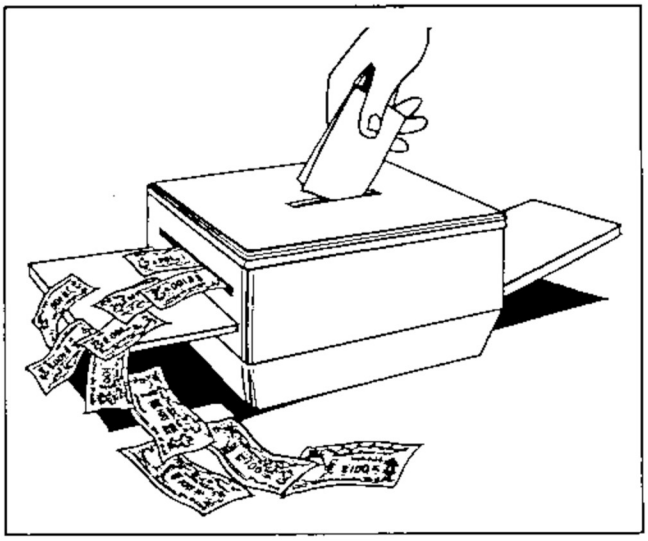
The Tarkunde Committee recommended that "all recognised political parties should be required by law to keep full and accurate accounts, including their sources of income and details of expenditure. "The committee also recommended that such accounts should be audited by recognised chartered accountants and that the failure to keep such accounts should be made a cognizable offence.

STATE FUNDING

The Wanchoo committee was of the opinion that in our country the government should finance political parties. "We recommend that reasonable grants-in-aid should be given by the Government to national political parties and suitable criteria should be evolved for recognising such parties and determining the extent of grant-in-aid to each of them. To accord recognition to a political party for this purpose, it should be necessary, inter alia, that it is registered under the Societies Registration Act, 1860, and its yearly accounts are audited and published within a prescribed time."

The Joint Committee on amendments to election law also stated: "The Committee, however, considers that basically the problem of election expenses, which has not only agitated the minds of the candidates and the thinking of political parties but also of the general public, can be solved only if it is accepted, in principle, that all election expenses ought to be a legitimate charge on

public funds and efforts should be made to achieve that end. The Committee felt that a process should be initiated, whereby the burden of legitimate election expenses, which are at present borne by the candidate or the political party would be progressively shifted to the state".



L.K. Advani, MP, has argued for state financing of elections drawing from examples of various countries, particularly England. "There was a time when, in England, even the fees of returning officers, the cost of constructing polling booths, etc had to be paid by the candidates. In 1711-12 an Act of Parliament had to be passed to authorise the sheriffs of Yorkshire and Cheshire to have tables made for use in elections at the proper cost and charge of the candidates. It was only in 1918 that a law was enacted transferring to the state the burden of paying returning officers and running the official election machinery. The trend has grown. Today every candidate is entitled to send one election address, postage-free, to every single voter in his constituency. In a way England has accepted the principle that election expenses are a legitimate charge on the exchequer. Recognised parties may be given election grants, partly before the poll (on the basis of their performance in the preceding election) and partly after the poll (on the basis of the their actual performance). A consequential piece of legislation would be a law requiring all recognised parties to publish their election accounts."

A question that is seldom addressed is, why parties and candidates need such large amounts of money to contest elections? In recent press interviews many parties stated that they would be unwilling to discuss revision of ceilings on election expenditure until the question of state funding was raised. The present ceiling of Rs. 1.5 lakh for an assembly constituency and Rs. 4.5 lakh for a parliamentary constituency, for an individual candidate cannot be considered meagre by any standards. In the case of a political party, as there is no ceiling on party expenditure the question does not arise. While demanding public funds, no explanation is given regarding the necessity for such an expense. Why should citizens pay for a candidate to tour his constituency with truckloads of paid canvassers or for free distribution of dhotis and sarees?

Parliamentary democracy rests on the foundation of periodic elections where political parties and individuals approach the voters with their package of policies and prescriptions. It seems legitimate to provide candidates and parties free postage to enable them to communicate their election manifesto to the public. So also free radio and television time for debates and information appears legitimate. It is appalling that in the so-called largest democracy in the world, what is not utilised is human resources. If parties and candidates are clear in their ideology, then they should be able to mobilise their sympathisers and supporters in spreading it. If the integrity and sincerity exists there is no dearth of common people who are ready to lend a hand. True democracy rests on a group's ideology and actual performance, not on money power. A report by the Centre for Policy Research suggests that, at 1994 prices, it would cost the exchequer Rs. 500 crore to subsidise an election, hardly a figure that a country like India can afford to squander.

Why should citizens pay for a candidate to tour his constituency with truckloads of paid canvassers or for free distribution of dhotis and sarees?

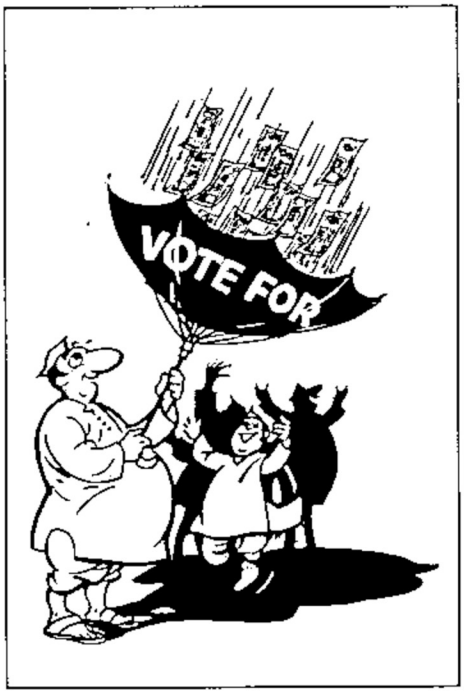
The second argument demonstrated in the post-hawala drama is even more appalling: politicians blithely describing the money received as "donations to the party" without bothering to explain why accounts have not been maintained for the same. Even more reprehensible are

statements to the effect that, so many people give them money that they do not recollect who gave how much.

Attempting to justify corruption in political life on the basis of low expenditure ceilings cannot be tolerated in a country where the black money economy has exceeded even the gross domestic product. The common man may find the demands of the law unreasonable but he cannot violate it with impunity; so why should legislators be treated differently? Even if there was state funding, there is no guarantee that the allocated amounts will be considered reasonable considering the extravagance of most election campaigns.

SUGGESTIONS

Though there are many problems with the existing law, there is also a deeper systemic problem of apathy, tolerance to corruption and violation of laws which needs to be examined. At the legal level the following recommendations could be considered:



1. It is clear that there must be a ceiling on election expenditure both for the candidate and for the political party, based on the number of candidates it is sponsoring because the exclusion of political parties makes the ceiling farcical.
2. S. 85 of the Conduct of Election Rules, 1961 provides for the candidate to give an extensive account of the various expenditures incurred by him but he does not have to provide details as to the source of such funding. It is necessary that the candidate and the political party give a detailed account as to the source of their election funding which can also be utilised by the Income Tax authorities who should be actively involved in the election process.
3. As pointed out by the Joint Committee, it is ridiculous that a candidate who does not disclose his accounts is treated more leniently than one who may exceed the ceiling marginally. The law should be revised to provide equal punishment for both. Alternatively, the punishment should be made stricter in the case of non-disclosure.
4. Measures can be adopted to ensure that parties and candidates are given equal opportunity to project their ideology. Therefore, radio and television time for debates etc. as well as free postage for each registered voter could be permitted.
5. Donations to political parties could be freely allowed in the case of companies, subject to the consent of the shareholders. In the case of individuals, there ought to be no limit. To encourage free disclosure of the same, income tax deductions could be given upto a particular limit. However, it will be essential to maintain a comprehensive list of all donors to be published in leading newspapers. It is reasonable to allow donations. So also, it is imperative that the voter is able to have recourse to information regarding the source of a candidate's funds.
6. Income tax violations by political parties should be dealt with strictly and the annual returns of political parties should be published so that a comprehensive picture of the funding of political parties can emerge and not be restricted to the period of the actual election.
7. Any tax violations or electoral malpractices should be dealt with effectively and expeditiously.

The need of the hour is not more money being pumped into political parties and into the coffers of politicians but greater transparency and accountability in the existing system. The voter needs to have all the material regarding the candidate or party he is voting for, and information on who is footing the bill, so that he can judge on whose behalf decisions are being taken and whose interests are being served.

If public acquiescence to the notion of corruption as a way of life is replaced by anger and indignation at being systematically duped, the role played by money in elections can be reduced and the role of the individual enhanced.

Meghana Abraham is a student at the National Law School of India University, Bangalore.

HAAZIR
MARCH
HAI

A. K. SEN

Beginning this month, we provide a glimpse into the past, through the eyes and experiences of lawyers who have completed 50 years and more at the Bar. We profile A. K. Sen, whose colourful career has encompassed legal practice, teaching and an extended presence on the political scene. He was recently chargesheeted in the infamous Hawala affair, for allegedly accepting a bribe of Rs 20 lakh while he was the Union Minister for Steel and Mines.

Tell us something about your personal background and your early life.

My father was a civil servant, having joined the Civil Services, in the late nineteenth century. He was transferred from one place to another every three years. He belonged to the Bengal, Bihar and Orissa cadre of the government, which was then one single province. Therefore, my childhood was spent in different places in Bengal and Faridpore.

Did you join the profession by accident or by design?

I entered the legal profession intentionally. Soon after I reached London in October 1936, I joined Gray's Inn. I was also studying Economics at the London School of Economics from where I eventually graduated. I was called to the Bar from Gray's Inn in January 1941. Thereafter, I was enrolled as an advocate by the then State Bar Council of Bengal. At that time, each Province had its own Bar Council set up under the Bar Councils Act and there was no unified Bar in India.

What were your early days in the profession like? Tell us about the political scenario.

My early days in the profession were extremely difficult. I worked in the chambers of my seniors, as a "Devil", as juniors were then known. I joined the chamber of late Shri Sudhi Ranjan Das, who later became the Chief Justice of India and retired as the Vice Chancellor of Shanti Niketan. He was one of the leading barristers on the original side of the Calcutta High Court. At that time, the original side was the most important part of the Calcutta High Court, which was set up along with the Bombay and the Madras High Courts in 1864. These three High Courts, took over the original side of the Supreme Courts, which were set up in 1784 by the Regulating Act of Parliament.

There was a dual system on the original side

barristers and advocates practising on the original side, were strictly demarcated from the solicitors or attorneys who were enrolled by the Incorporated Law Society, after a very rigorous examination. Every attorney had to pass through a period of five years of Articles, during which, he received intensive and thorough training from the seniors. The demarcation was so strict that no solicitor could enter the Bar Library, where the advocates on the original side sat, excepting a specified part assigned for the advocates having conferences with these solicitors.

The original side of the High Court was almost wholly dominated by barristers who were called to the Bar in England, and who, according to the rules then in force, had the right to be enrolled as Indian advocates, only on the strength of their Certificates of Call. By the time I joined the Calcutta Bar, the vast majority were Indian advocates. I saw advocates like Sir A.K.Roy, former Advocate General and Law Member of India, Shri S.R.Das, who was appointed Chief Justice of India, Shri N.C.Chatterjee, Shri Atul Chandra Gupta who was a leader of the Appellate Side at that time, and others who have contributed substantially to the legal traditions of the Indian Bar.

We were expected to observe the highest traditions of the bar, namely rectitude, honest and fair advocacy dedicated to the duty of assisting the Courts in dispensing justice and also fair and honest dealings with clients.

The duty of the Bar was to build up an institution of service to the people, and not merely to make money. When I joined the profession, the Second World War had begun. India was passing through a crisis, at the brink of her final struggle for independence . The Calcutta, Allahabad and Bombay Bars produced giants to lead India's struggle for freedom.

How has the role of the legal fraternity changed in the years after independence?

We need leaders to lead us on the path of prosperity and development to make India a powerful and prosperous country. We need leaders to guide us in ridding ourselves of the many social and economic evils which still afflict us. The Bar has not been very significant in giving leadership after independence.

What would you consider to be the milestones in your career?

My career has not merely been confined to the Bar. I have also been a teacher of Law and Economics. I joined the revolutionary movement in Bengal, at the age of 14. Then I joined the Indian National Congress as a four-anna member, as early as 1930, when Netaji Subhash Chandra Bose was the President of the Bengal Provincial Congress Committee. After that, I came to Parliament in 1957 and became Minister of Law and later was also appointed Minister of Communication and Minister of Social Security along with Law. I have been in Parliament from 1957 till today.

My services under Pandit Jawahar Lal Nehru, Shri Lal Bahadur Shastri, and Smt. Indira Gandhi, whose appeal I won in the Supreme Court against the judgment of the Allahabad High Court, which set aside her election to Parliament, the passing of the Advocates Act, making the Indian Bar unified and various measures initiated by me as a Minister, are all milestones in my career.

Could you tell us about a few of your important cases?

The well-known case of Golak Nath is significant. I, along with a number of very illustrious colleagues, like late Shri Nambiar and Shri Nani Palkhivala, argued the case before Chief Justice Subbarao and his colleagues in the Supreme Court, in which it was held that fundamental rights could not be amended by the amending provision of Article 368 of the Constitution. My argument in the Indo-Afghan case may also be mentioned, where the Supreme Court, for the first time, held that the doctrine of promissory estoppel applied fully, in testing the validity of administrative decisions or rules. The case of Kraipak is also worthy of being mentioned. In this case, the Supreme Court decided that administrative and judicial or quasi-judicial decisions or orders, be tested equally on the anvil of reasonableness and fairness.

What do you see as the future of the legal profession?

I always envisage, a bright future for the legal profession. In a democracy, the legal profession has to bear the responsibility of being the watch-dog safeguarding liberty and freedom and our constitutional rights. This is a sacred responsibility and no endeavour of human activity can discharge it as well as the legal profession.

NATIONAL WORKSHOP ON DRAFTING GENDER JUST LAWS

Bombay 30 May - 02 June 1996

Day One :

(i) How Personal Laws Discriminate Against Women
(ii) History of Codification of Personal Laws.
(iii) Tribal Rights and Customary Rights.
(iv) Towards Gender Just Laws.

Day Two :

Plenary : Remedies for the Speedy Implementation of Family Law.

Workshops :

(i) Marriage and Divorce.
(ii) Sexual Discrimination/Harrassment.
(iii) Violence Against Women.

Plenary : Reportage on the day's workshops.

Day Three :

Plenary : State, Religion and law

Workshops :

(i) Maintenance/Custody/Adoption.
(ii) Matrimonial Property and Succession Rights.
(iii) Tribal Rights and Customary Rights.
(iv) Reportage on day's workshops.

Day Four :

Plenary : Sexuality and Gender Just Laws.
Position papers on approaches on the debate relating to the Uniform Civil Code.

For further information contact:
Workshop secretary :
Mihir Desai / Ajita Sinha Lyngdoh
Engineer House, 86 Apollo St., Fort,
Bombay - 400 023.
Tel: 2676680/2677385.

Venue :
J.J. Nursing Quarters, Near Aksa beach, Malad (W), Bombay. Tel.:882 5278.

Background papers are ready. Those who want to receive a copy before the start of the workshop may send a D.D./M.O. of Rs.200/- in the name of Mihir Desai at the above address.

Those wishing to participate in the workshop are requested to make the necessary railway reservations immediately.

Lawyers Collective
- Human Rights Law Network
Forum Against Oppression of Women
Kashtakari Sangathana

LAW AND PRACTICE

POWERS OF OFFICIATING OFFICERS

Evaluating the Supreme Court judgement in the case of Ram Kishan v/s Union Of India & Ors., G. S. WALIA calls for a reconsideration of the basis of the judgement.

During the course of the Supreme Court judgement in the case of Ram Kishan v/s Union of India & Ors. (Reported in 1995 (31) ATC page 475) a very significant question arose as to whether the Additional Deputy Commissioner was competent to remove a constable working in a police district in the state of Delhi or not. Paragraph 6 of the said judgement dealt with this question. The relevant paragraphs are as under:-

,6. It would be seen that the Deputy Commissioner of Police is in charge of the district and one or more Additional Deputy Commissioners of Police has/have been authorised to assist the Deputy Commissioner. Section 19 of the General Clauses Act, 1897 lays down thus:

"19. Official chiefs and subordinates: (i) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient for the purpose of expressing that a law relating to the chief of superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior."

Therefore by having recourse to Section 19 of General Clauses Act, 1897, the Supreme Court has held that the Additional Deputy Commissioner was competent to remove a constable in as much as he was lawfully performing his duties of the office in place of his superior. Simultaneously, in this particular case, the Supreme Court has also come to the conclusion that the Additional Deputy Commissioner of Police was, among others, one of the nominated authorities who could appoint a constable. However, it is not discernible as to why the Supreme Court referred to Section 19 of the General Clauses Act.

If the opinion of the Supreme Court is that an inferior officer who is simply performing the duty assigned to the post of his superior officer, is to exercise statutory powers in respect of disciplinary proceedings, then with utmost humility and respect, it is submitted that this view does not seem to be legally correct.

Perhaps the attention of the Supreme Court was not drawn towards the Home Ministry's circular, which puts an embargo on the exercise of statutory powers by a junior inferior officer who performed the duties of the higher officer without being so promoted, and who is not himself by virtue of his own rank and post clothed

These grey pages are a regular feature of the magazine. At the end of the year they will be indexed allowing the reader to use them as a ready reference.
In order to cater to the reader's needs, we will be carrying articles in these Grey Pages on topics specially suggested by the readers.
Would you like any particular topic of law to be discussed in the Grey Pages?
If you have any suggestions, send them to us. We will make sure your needs are served and the topics you suggested are covered.

with such powers. The said circular reads as follows:-

Copy of O. M. No. F/7/14/61-Ests A), dated 4.1.1963 from Ministry of Home Affairs New Delhi to all Ministries of Government of India, all Union Territory administrations, all Zonal Councils and attached and subordinate offices of M.H.A. etc.

Sub:- Holding of current charge of the duties of the post by another officer during the absence of the regular incumbent of the post.

The undersigned is directed to invite a reference to the Finance Ministry's O. M. No. F.12(2)-E-II (A)/60, dated 5.10.1960, according to which (i) an order appointing an officer to hold the current charge of the duties of a post should, in the absence of any specific direction to the contrary be deemed to the officer, with all the powers (including statutory powers vested in the full fledged incumbent of that post and (ii) where the exercise of statutory power is involved, it is necessary, that the appointment should also be notified in the gazette.

2. The Law Ministry has since advised that an officer appointed to perform the current duties of an appointment can exercise administrative, financial powers vested in full-fledged incumbent of the post but he cannot exercise statutory powers, whether those powers are derived direct from the Act of Parliament (for example,Income Tax Act) or Rules, Regulations and By-laws made under various Articles of the Constitution (for example, Fundamental Rules, classification, control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers Rules etc.)

3. The above legal position may be supercession of the O. M. of the 5.10.1960. Please be borne in mind while appointing Government servants to hold the current duties, or while performing the current duties, of posts other than their own.

4. In so far as the personnel serving in the Indian Audit and Accounts Departments are concerned, these orders issue after consultation with the Comptroller and Auditor General of India.

The aforesaid circular of the Home Ministry clearly lays down that when a person is looking after the post or performing the duties of the post or holding current charge of the post cannot exercise statutory powers if he, by virtue of his own post is not entitled to do so.

Further in paragraph 9 of the Supreme Court judgement it is laid down as under:-

"It is therefore, contended that the Rule indicates that an officer of the inferior rank cannot exercise the power to impose major punishment. It is already seen that under Rule 4 of the Rules, the Additional Deputy Commissioner of Police is also one of the appointing authorities, and by the force of section 19 of the General Clauses Act, he can exercise the power of the Deputy Commissioner of police. So, in a given case, even the Additional Deputy Commissioner can pass order of dismissal, if what has been provided in section 19 of the General Clauses Act is also borne in mind. The exercise of power with the aid of the Rules and the Appeal Rules by the Additional Deputy Commissioner in the present case cannot be said to be without authority of law or void. He is competent to pass the order".

From the judgement, it is not clear, as to who was the actual appointing authority and whether the Additional Deputy Commissioner was subordinate to the Deputy Commissioner. If one reads the submissions, which are enumerated in paragraph 4 of the judgement by the Union of India, one gathers the impression that the Deputy Commissioner and Additional Commissioner are of the same rank. From this it is evident that, the Additional Deputy Commissioner of police was competent to remove the constable, since he was not subordinate to the Deputy Commissioner.

It is astounding that the Supreme Court did not refer to Article 311 (i) of the Constitution of India, while considering the submission on behalf of the Appellant therein.

In my humble opinion, the view of the Supreme Court does not seem to be correct. No help could be sought from Section 19 of the General Clauses Act with a view to legalising the order given by the subordinate or inferior officer while performing the current duties of the higher post or while looking after the higher post insofar as the statutory and disciplinary matters are concerned. The simple performance of duties cannot vest such an inferior or subordinate officer with statutory powers in disciplinary matters. Therefore, these findings of the Supreme Court require reconsideration.

G. S. Walia is an advocate practising at the Bombay High court.

LAW AND PRACTICE

PANCHAYATS V/S MULTINATIONALS:
THE CASE OF DU PONT IN GOA (PART 1)

Tracing the events that led to the dismissal of the Thapar Du Pont company due to popular resistance in Goa, NORMA ALVARES discusses the emerging legal questions. We publish below the first part of this exhaustive and incisive piece.

It is well-known throughout the country and abroad, that the American multinational national corporation (MNC), Du Pont, which intended to establish a factory in Goa to produce Nylon 6,6, was forced to give up its plans and move to another state (Tamil Nadu) due to the sustained agitation launched by the villagers of the area where the factory was to be located.

Few people, however, know that the crucial decision that sealed Du Pont's fate was made by the Panchayat of Querim, utilising its new-found powers under the 73rd Constitutional Amendment and the Goa Panchayati Raj Act, 1993.

In the Du Pont case, the central government and the state government of Goa had both cleared the project. The clearing was executed under the Industrial Development Acts, which empowers governments to grant special favours to industry in the interests of development. After these permissions were granted, however, the 73rd Constitutional Amendment came into effect, and the state assembly, as a consequence, passed the Goa Panchayati Raj Act, 1993. Since the area fell under the jurisdiction of the Querim panchayat, the panchayat naturally exercised its new powers under the new legislation. The panchayat began to review decisions made by government authorities concerning the village.

This trend-setting action was made possible largely due to provisions in the Goa Panchayati Raj Act, 1993. Although these provisions may be absent in the new panchayat legislation required by the constitutional amendment in other states, the Goa case is a good example of grassroots democracy triumphing over national government, even when extremely powerful interests are involved.

This development is also significant since the central and state governments are now increasingly weak as far as multinationals are concerned. The power and responsibility for checking the multinational menace has passed into the hands of the local bodies and municipalities under the new constitutional amendments.

To many observers of the Nylon 6,6 controversy, it was clear from the start that if any force could stop the multinational Du Pont from imposing itself on an unwilling Goan population, it would be the joint action of the villagers of Querim and Savoi-Verem. Without the villagers' struggle nothing could have been achieved. One life, in fact, was sacrificed in the course of the agitation.

The location of the proposed site was also singularly appropriate for a strategically organised mass action. Only one road leads to the proposed site and Du Pont's personnel and vehicles had to pass through it to reach the site. The terrain was favourable to road blockades.

Because the population of Querim is so small, it was also possible to have effective village level consensus.

The American multinational is no small force to reckon with. In their struggle, the villagers received the support and encouragement of not only the citizens of Goa, but also from numerous environment groups. Even Greenpeace was roped into the war. As it turned out however, it was the local village panchayat that ultimately humbled the company, refusing Du Pont the necessary permission to construct the factory or any attendant constructions under the newly enacted Goa Panchayati Raj Act, 1993, which came into effect on August 16, 1994.

Prior to this Act, the Goa Village Panchayat Regulations 1962, defined the role of the panchayat as an implementing authority with power only to issue NOCs. Very often, parties did not even bother to apply for these NOCs. The actual political power of the panchayats was negligible.

Interestingly, much before the new constitutional amendment arrived on the scene, Du Pont had already applied for and received permissions under the Goa Village Panchayat Regulations to put up a few administrative buildings and a boundary fencing around the premises. The company, however, had not obtained conversion sanad under the Land Revenue Code and hence the permissions granted were questionable and in fact subsequently challenged in court. With these permissions, procured around 1990, Du Pont immediately began construction of the buildings and a compound wall.

Shortly thereafter, the Goa Government issued instructions to the company to stop the work and asked the panchayat to revoke the construction licences. This sudden development was launched by the creation of a House Committee by the Goa Legislative Assembly to examine irregularities in the land acquisition proceedings related to the Nylon 6,6 project which eventually went squarely against the proposed plant.

The state government, however, persisted with its plans to impose the project on the public, especially the protesting villages of Querim and Savoi Verem. In 1994, it resumed negotiations with the company to re-start work on the project at the disputed site.

Events began to escalate rapidly from June 1994, when the company began constructing a compound wall without the permission of the panchayat. The panchayat issued a show cause notice dated June 16, asking Du Pont to stop work. The very next day, Du Pont delivered a simple letter to the panchayat requesting the letter to be treated as an application for permission to construct the compound wall for the Nylon 6,6 factory site. The letter estimated the cost of the construction of the wall at Rs. 60 lakh.

The Panchayat rejected the suggestion, directing that a formal application be made, accompanied by a list of documents. This action was the first salvo, as one of the documents requested was the conversion sanad which the company had not yet obtained.

The company submitted a formal application dated June 24, 1994 to the panchayat. The new application now stated that the wall would cost Rs. 35 lakh. It also revealed that conversion sanad had not yet been granted. Since the company did not submit all the requested documents, the panchayat considered the application invalid and consequently, no decision was taken.

At its monthly meeting, the panchayat unanimously resolved that public opinion should be considered before granting permission/license to Du Pont. Accordingly, a Gram Sabha meeting was called on July 17, 1994. The villagers resolved not to grant permission, as the project was bound to cause pollution to the villages of the area and also affect population within a belt of 10 kms from the site of Nylon 6,6.

On August 1, 1994, the panchayat was surprised to receive a letter from Gannon Dunkerly, a firm engaged by Du Pont for development work. The letter stated that the firm was commencing work and would be using explosives at the site. The panchayat immediately informed the company not to carry out the operations and addressed copies of complaints to the police station. The company disregarded the communication.

On October 1, 1994, more than 80 villagers signed a memorandum to the Government protesting the damage done to their houses by the illegal blasting operations. But despite inspections by the BDO and Mamlatdar, no action was taken against the company.

On October 6, 1994, a meeting of Du Pont officials,

local leaders and members of the five panchayats in the area was held, but Du Pont was unable to convince those present of the bonafide nature of its proposed activities.

On the following day, amid the rising tension in the village and considering the provisions of the new Panchayat Act, the Sarpanch, Santosh M. Gaude, issued a show cause notice to Du Pont to stop the illegal construction work immediately, giving the company seven days to remove the illegal wall.

Du Pont however, preferred an appeal against the show cause notice before the Director of Panchayats - the Appellate Authority under the new Act - and prayed for interim relief staying the operation of the panchayat notice. The plea was rejected. The appeal was fixed for hearing on October 14, 1994 (the same day that the panchayat notice would expire). However, on October 12, some 2,000 villagers, fed up with the MNC's arrogance, demolished the illegal wall.

On October 14, 1994, the Director of Panchayats ordered status quo and thereafter, proceeded to hear the appeal Du Pont argued that:

1) the show cause notice was issued by the Sarpanch in his personal capacity and without the backing of a resolution from the panchayat;

2) Du Pont had a deemed permission to construct the wall as the panchayat had not rejected their application within 60 days of the stipulated time.

The panchayat in turn argued that:

1) a notice signed by the Sarpanch could only be in his official capacity;

2) Du Pont could not claim deeming provisions since it had submitted an incomplete application and the Panchayat had repeatedly requested it for documents and a proper evaluation certificate, without which correct license fees could not be charged.

The Director of Panchayats passed the judgement on November 21, 1994. He upheld Du Pont's first contention - that powers relating to demolition of unauthroised constructions are conferred on the panchayat, which is a corporate body and not the Sarpanch. As the Sarpanch failed to produce a resolution of the panchayat authorising him to issue the show cause notice, the Director accordingly quashed the notice.

Du Pont's claim for permission to construct a compound wall, however, was rejected on the grounds that during the period when its application lay before the panchayat, the Village Panchayat Regulations 1962 had already been repealed but the new Panchayat Raj Act had not yet come into force. Therefore, he held, no law was in force during the said period. Hence, the question of deeming provisions did not arise and the panchayat was moreover right in not deciding the application for the issue of licence.

Further, in his order, the Director of Panchayats directed the company to submit the Conversion Sanad to the panchayat, upon which the panchayat would take a decision within 10 days. Therefore, the Appellate Authority endorsed the Panchayat's claim that Du Pont's application was incomplete. What is significant is that the Appellate Authority affirmed the law that the company could not construct anything without the permission of the panchayat.

It was generally believed at this stage that only the Conversion Sanad now stood in the way of Du Pont and its factory premises. Environment groups thus prepared themselves to begin court proceedings to challenge the Nylon 6,6 project on environmental and other grounds. Led by the Goa Foundation, five of the leading environment groups in the state came together and prepared three writ petitions to be moved in the High Court.

The first writ petition challenged the earlier licenses given by the panchayat and also the directions being issued to the panchayat by functionaries of the government, (BDO, Collector and so on). It argued that these authorities no longer had the power to issue directions to the panchayat, now that the Goa Panchayat Raj Act was in force. The petition also sought a declaration from the Court that the panchayat could only grant permissions for the Du Pont factory in accordance with the new Panchayati Raj Act, 1993.

The second petition challenged the land acquisition proceedings on the ground that the mandatory site selection tests had not been carried out. On the other hand, both the Chief Town Planner and the Director of Industries had rejected the site chosen because it would have had disastrous

consequences on the ecology of the area.

The third petition was filed on environmental grounds and marshalled all the relevant arguments against the setting up of the plant at the Querim site.

The petitions were filed in January 1995 soon after it was known that the Deputy Collector had rejected all arguments filed by environment groups and villagers against land conversion and was preparing to issue the Conversion Sanad. On January 10, 1995, due to pressures from above, the Deputy Collector was forced to issue the crucial sanad, thus clearing all obstacles for Du Pont.

As directed by the judgement of November 21, 1994, Du pont immediately made a formal application to the panchayat for permission to construct a compound wall around the Nylon 6,6 factory site. This time it attached the Conversion Sanad to the application. As per the Director of Panchayat's judgement, the Panchayat now had ten days to decide the application. The stipulated time of ten days was completely unlawful since the Director had no authority in law to issue such directions. The following day, on January 12, 1995 the company submitted the factory plans for the panchayat's approval.

The anti-Nylon 6,6 agitation seemed to have nearly reached a dead end. The writ petitions, the only hope against the project, were scheduled for admission at the end of January.

Sensing victory at hand, on January 23, Du Pont took a bus load of foreigners to the plant site. News of the visit spread like wildfire. Everyone knew that construction work would soon begin despite opposition from the local people. At 4 pm, just before the arrival of the visitors, hundreds of people, mostly women, turned out on the lone road leading to the site, to block the way. The bus carrying the visitors was forced to go back due to the resistance put up by the crowd, who refused to move from the road. But Du Pont met the Chief Minister and secured a police posse to accompany the bus. This action only added fuel to fire. The angry villagers decided to block the police vans and jeeps. As the protesters swarmed along the road, the police opened fire on the defenceless mob. A 25- year- old youth was shot dead at point blank range. Three young women were shot in the arms and thighs.

This brutal police repression at the company's behest, further united the enraged villagers. Ponda town was shut down the next day and the entire Du Pont office was ransacked and set on fire. The crowd found suitcases full of Rs.500 denomination notes. These were burnt along with files and fax machines. The verdict of the people was loud and clear. Nylon 6,6 was not wanted at Querim.

All eyes were now focused on the panchayat. How would it react to the still pending application before it? On January 24, 1995 the panchayat held its meeting at the Querim office, with hundreds of villagers waiting outside for the verdict. The meeting lasted three hours, and in the end, the panchayat minutes stated:-

"As the plant is not accepted in the village, the files of compound wall and of building construction are rejected.

"Resolution passed unanimously."

By this resolution, the Querim Panchayat rejected both Du Pont's application dated January 12 to construct the factory and the January 11 application to raise the compound wall. The people were jubilant. But shock waves ran through the officialdom in the state. Could a panchayat reject a huge plant which had received all the required approvals and clearances from state and central governments, and which claimed to bring the country new technology? Is this what Panchayati Raj was all about?

The stage was now set for another round of litigation and interpretation of the law.

(TO BE CONCLUDED)

Norma Alvares is an advocate practising environment law at the Bombay High Court. She handled the cases on behalf of the villagers of Querim, environment groups and the Panchayat of Querim.

MONTHLY UPDATE

CRIMINAL LAW : SEARCH & SEIZURE

On the basis of secret information the police raided a house and found over 1 kg of charas. The search and seizure was admittedly in violation of the mandatory provisions of section 50 of the Narcotic Drugs and Psychotropic Substance Act, 1985. In view of the non-compliance of the provisions of section 50, the Sessions Judge, at the stage of taking cognizance of the offence, discharged the accused even before the trial was conducted on merits. The question, therefore, arose whether the Trial Court was justified in discharging the accused.

The Supreme Court held that the evidence obtained under an illegal search and seizure does not exclude relevant evidence on that ground. Any illegality committed in investigation does not render the evidence obtained during that investigation inadmissible. Inspite of an illegal search, property seized on the basis of such a search would still form basis for further investigation and prosecution. Every deviation from the details to the procedure prescribed for search, does not necessarily lead to the conclusion, that search by the police renders the recovery of the articles pursuant to the illegal search irrelevant as evidence, nor does it make the discovery of the act admissible at the trial. Therefore, at the stage of filing the chargesheet, it cannot be said that there was no evidence and the Magistrate and the Sessions Judge would be wrong in discharging the accused on the ground that section 50 of the NDPS Act or any other provisions have not been complied with. The Court further clarified that at the stage of trial an opportunity would be available to the prosecution to prove that the search was conducted in accordance with law. Even if a search is found to be in violation of law, what weight should be given to such an evidence is a question that may be gone into at this stage.

State of Himachal Pradesh v/s. Pirthi Chand & Anr. 1996 (1) SCALE 48.

TADA

Some persons were put on trial for offences under TADA in incidents relating to the communal riots that occurred in the city of Bombay after the demolition of Babri Masjid at Ayodhya. The designated court rejected their prayer for bail. On appeal to the Supreme Court, it was contended that TADA was a temporary Act, the same had admittedly lapsed and, therefore, there was no question of the accused being tried for offences under any of the sections of TADA and further conditions prescribed by section 20(8) in respect of grant of bail would have to be ignored.

Rejecting the argument, the Court held that despite the expiry of the Act, proceedings initiated under the Act would not come to an end without the final conclusion and determination. Inspite of the fact that the Act had expired, it had to be treated as if it had not expired, so far as pending investigations and legal proceedings were concerned. The Court held that by virtue of the provisions of Section 1, sub-Clause 4 of TADA which gives protection and keeps pending investigations and trials alive, it was not possible to contend, that because of the expiry of TADA, which was a temporary Act, the situation had changed so far as the offences which are alleged to have been committed when the Act was in force, are concerned.

Mohd. Iqbal Madar Sheikh & Ors. v/s. State of Maharashtra 1996 (1) SCALE 123.

HUMAN RIGHTS

The National Human Rights Commission (NHRC) filed a Public Interest Litigation under Article 32 of the Constitution, seeking enforcement and protection of the rights of about 65,000 Chakma and Hajong tribals settled in the state of Arunachal Pradesh. A large number of Chakmas, originally from erstwhile East Pakistan, were displaced by the Kaptai Hydel Power Project and then took shelter in Assam and Tripura in due course becoming Indian citizens. The state of Assam, however, expressed its inability to rehabilitate all the refugees and sought

assistance from other neighbouring states. Thereafter, in consultation with the erstwhile North East Frontier Agency administration, over 4,000 Chakmas were settled in various parts. Representations were made from time to time, by the Chakmas for grant of Indian citizenship. With the passage of time, however, relations between the citizens of Arunachal Pradesh and the Chakmas deteriorated and the latter complained that they were being subjected to repressive measures to forcibly expel them.

The Committee of Citizenship Rights of the Chakmas filed a representation with the NHRC complaining of the persecution and also attached therewith a press report dated August 26, 1994 which was carried in the 'Telegraph' stating that the All Arunachal Pradesh Student Union had issued "quit notices" to all alleged foreigners, including the Chakmas. The matter was treated as a formal complaint by the National Human Rights Commission, which called for reports from the state of Arunachal Pradesh and the Union of India. On considering the reports, the NHRC recorded a prima-facie conclusion that the officers of the state of Arunachal Pradesh were acting in co-ordination with the Arunachal Pradesh Student Union with a view to expel Chakmas from the state. In these circumstances, the NHRC approached the Supreme Court to seek relief.

Before the Court, the state of Arunachal Pradesh contended that the allegation of violation of human rights was incorrect. In any event, since the Chakmas were foreigners they were not entitled to the protection of Fundamental Rights except Article 21. The Court held that the foreigners are entitled to the protection of Article 21 of the Constitution. Further in view of the prima-facie findings of the NHRC, there existed a clear and present danger to the lives and personal liberty of the Chakmas. As far as the claim for citizenship was concerned, the Court held that it was the duty of the Deputy Collector to forward the application for citizenship to the central government. The Deputy Collector, by refusing to forward the applications, was failing in his duty and was also preventing the central government from performing its duty under the Citizenship Act, 1955.

The Court allowed the petition of the NHRC and directed the state of Arunachal Pradesh to ensure that the life and personal liberty of each and every Chakma residing within the state would be protected and any attempt to forcibly evict or drive them out of the state by any organized group would be repelled, if necessary, by requisitioning the services of para-military forces or the Air Force. The Court also directed that any application made by any Chakma for citizenship should be entered in the register maintained under section 5 of the Citizenship Act and the same should be forwarded by the Collector to the Central Government for its consideration. The Court clarified that, during the pendency of any such application, the State would ensure that no Chakma was evicted.

National Human Rights Commission v/s. State of Arunachal Pradesh, 1996 (1) SCALE 155.

Under the various local Acts in the state of Tamil Nadu wagering or betting on a horse did not constitute "gaming" and was therefore permitted. However, in 1974, the Tamil Nadu Horse Races (Abolition of Wagering or Betting) Act, was enacted. The Act was challenged in the High Court and the High Court upheld the provisions of the Act on the ground that Horse Racing was a game of chance, and as such gambling, and therefore within the legislative competence of the State Legislature (Entry 34, List - II). Appeals were filed in the Supreme Court and under its interim orders, the club was functioning and horse races were being conducted. During the pendency of the appeals, the Madras Race Club (Acquisition and Transfer of Undertakings) Act, 1986, came into force. The said Act was also challenged by the Committee Members of the Club along with horse owners by filing a writ petition under Article 32 of the Constitution.

The first issue addressed by the Court was that horse racing is a game where winning depends substantially and preponderantly on skill.

The Court also struck down 0the Acquisition Act of 1986 as unconstitutional.

Dr. K. R. Lakshmanan v/s. State of Tamil Nadu & Anr. 1996(1) SCALE 208.

COMMENT

MARCH

THE CONTINUED TRIALS OF HAMIDA

We had referred to the story of Hamida, a 10-year old victim of sexual abuse, in the October-November 1995 issue of THE LAWYERS 'Violation of innocence - child abuse and the law'. Here, MEGHANA ABRAHAM gives an account of the child's continued abuse and distress — this time at the hands of the judiciary.

Hamida is a 12 year old girl who was brought from Bangladesh to India in 1993 by a distant relative, Rashid. Over a period of many months she was raped repeatedly by Rashid, his friends, Mehtab and Om Prakash and five policemen.The case soon caught the attention of both the media and the public.

On March 22, 1995, Sanjay Kaw reported in the Times of India, about Hamida's ordeals when she was reduced to tears as she was intensely and repeatedly asked to explain where and how she was raped two years ago. Hamida was asked questions like, " What do you mean by 'galat kam'? Can you tell us in detail what Rashid did to you?" in the presence of two of the accused and their family members who kept making intimidating signs to the child and otherwise interrupting the proceedings.

Organisations such as the Janwadi Mahila Samiti condemned the insensitive questioning of the child and many activists and lawyers started attending the proceedings after the newspaper report was published. Many of the proceedings, however, were postponed due to the absence of the public prosecutor and then subsequently that of the judge.

Though the FIR was lodged on June 20, 1993, only two of the three civilians accused have been charged and none of the five policemen has been produced before the court two and a half years later. Hamida's statement could not be recorded due to her being able to speak only Bengali and due to the absence of a credible translator. Ms. Roma Debabrata, a lecturer, on reading about this problem in the paper offered her services as a translator. Her services were accepted only after problems arose with the translator offered by the police.

During one hearing, the defence counsel requested the court to change the translator as she was taking undue interest in the case. On April 10, 1995, Ms. Debabrata's application to meet the child, as she had been allowed to do on previous occasions, was rejected. On May 4, 1995, Ms. Debabrata was removed as the translator. The proceedings were also rather belatedly made in-camera after the publication of the newspaper report.

During the last two years, Hamida was kept in Nirmal Chayya, a home for neglected children. Shockingly, till the High Court recently ordered her transfer to another wing, Hamida was kept in a locked room with 30-40 juvenile delinquents, who are kept separately from the others.

Janwadi Mahila Samiti, Sakshi, People's Union Of

Civil Liberties and Ms. Debabrata have filed a petition before the High Court through their lawyer Ms. Diviya Kapur asking for counselling and medical treatment for the child, for charging of the policemen, for a speedy trial and challenging the removal of Ms. Debabrata as unfair and arbitrary.

It is disgraceful that in our country, a writ petition has to be filed to demand counselling for a girl who, at the age of 10, was raped repeatedly and who has subsequently been kept in isolation in a foreign country where her communication with others is limited by language.

Hamida's experience highlights the insensitivity and ineptitude of the judiciary and the legal system in dealing with children who have been sexually abused particularly when they appear as witnesses before the court or when they are in the care of the court during the trial. Ss. 151 and 152 of the Indian Evidence Act clearly empower the court to forbid questions or enquiries which it considers 'indecent' or 'scandalous' or 'needlessly offensive' but since children are treated in the same fashion as other victims of rape, the courts rarely bother to consider what questions could be offensive or traumatic for a child to answer. The language of sexuality even poses a problem for adults particularly in the context of assault.In the case of a child who is hampered both by understanding and by describing what happened to her, the difficulty is much greater. To allow unnecessarily explicit questions and to make the child describe repeatedly her experience is to force her to relive the trauma of her assault again and again. The child has to describe her experience in front of the persons who assaulted her, adding to her confusion and fear. S. 327 of the Criminal Procedure Code provides that the presiding judge or magistrate, if he thinks fit, may order at any stage of any inquiry or trial that the public generally or any particular person shall not have access to or remain in the court. However, in Hamida's case, the measure was not taken when the accused and their family were trying to intimidate her, but only when activists began to complain about the way in which the case was being handled.

Many western countries have at least tried to take some measures to understand the trauma of the entire litigation process on the child and lessen it. Australian law provides that in case of sexual offences when the witness is below 18 years, the court may make alternative arrangements which may include permitting the evidence to be given in a place other than the courtroom by the means of a closed circuit television or other facilities that enable communication between that place and the courtroom, removing the accused from the witness' direct line of vision with the aid of a screen, allowing a person to be beside the witness in order to provide emotional support, requiring the counsel not to be in robes, requiring them to remain seated while examining or cross-examining and allowing only specified people to be present while the witness is giving evidence.

S. 486 of the Canadian Criminal Code provides that when the complainant in cases of sexual offences is under 18 years of age, the judge can allow that the complainant to testify behind a screen or outside the courtroom by means of a closed-circuit television to allow for a full and candid account of the acts complained of. The Women's National Commission in the United States has recognised that for the child to give testimony in the presence of the defendant is clearly extremely undesirable and may traumatise or inhibit her or him from speaking. In Texas, use of video tapes in prosecutions for child sexual abuse is now routinely permitted. Lothika Sarkar, speaking in a public convention against sexual abuse of children held in New Delhi on October 28, 1995, suggested that a child under 12 should not be produced in a police station or court and that her statement should be recorded in her home.

The Janwadi Mahila Samiti, Sakshi and other petitioners before the High Court are asking that Hamida be given counselling for post-rape trauma. It is disgraceful that in our country, a writ petition has to be filed to demand counselling for a girl who, at the age of 10, was raped repeatedly and who has subsequently been kept in isolation in a foreign country where her communication with others is limited by language.

Our country's legal system, has locked up Hamida for the last two years, while the people who abused her continue to remain free. It would seem by our attitudes and our laws that we punish the children who have been abused rather than the people who have abused them. It is time that the judiciary, and the legislators attempted to

understand what sexually abused children go through, the effect that the litigation process has on them and to give some serious thought to how best these children could be protected and supported.

A TRANSLATOR'S TRAUMA

Roma Debabrata, a lecturer in Miranda House, became involved in Hamida's case in June 1993 after reading in a newspaper about a Bangladeshi minor girl who had been repeatedly raped but whose statement could not be recorded because of a language problem. She approached the concerned Magistrate the very same day and offered her services as a translator.

In 1993, Ms. Debabrata was asked to attend the court proceedings about twice or thrice when she accompanied Hamida to the police booth. In 1994, she was not called at all nor were any summons served on her though the court records show her presence in the court on six or seven occasions. It was only in 1995 that she was called to a number of hearings. This did not last long as the defence counsel requested the court to change her services as a translator alleging undue interest on her part in the case. On April 10, 1995, Ms. Debabrata's application to meet the child as she did on previous occasions, was rejected. Finally, on May 4, 1995 Ms. Debabrata was removed as a translator.

Ms. Debabrata along with other organisations has filed a petition before the Delhi High Court challenging inter alia this removal as unfair and arbitrary.

She spoke in an interview to MEGHNA ABRAHAM about her experiences.

Q. Why did you offer your services as a translator in this case?

R. D.: I felt suffocated that a little child should be kept in a court unable to communicate. When I met the child, she was wearing a tattered green kurta and sitting in the witness box - she looked so frail and withdrawn and her reaction was one of total apathy and disbelief. Seeing her like that I wanted to comfort her but she did not look at me...

Q. Can you explain what Hamida underwent during the court proceedings?

R. D. : In the police booth she was asked detailed questions like, " Was the light on ? Was there a bed sheet? Did he insert his organ? Were there people there?" In the court room again these questions were asked. Hamida asked, " Why are you asking me this again and again?" Obviously the child was feeling humiliated.

Q. Can you describe the atmosphere created by the accused and their relatives in the court?

R. D. : On one occasion, the relatives of the accused started screaming that I was translating incorrectly. They surrounded the witness box and I felt something pinch me which later turned into an abcess. Then they raised an objection that I hugged the child while trying to protect her in the commotion. I was removed from the case on the ground that I was sympathetic towards the child and went to meet her, that the child was dependent on me and that since I was a woman and hence sympathetic, I would not be 'just'. Even before I was removed I was asked repeatedly whether I was related to the journalist who had reported the matter.

Q. What did Hamida feel about the procedure and what was its effect on her?

R. D. : When I visited her initially she said that she would commit suicide. Now she feels better because she knows I'll meet her. After the rape she only understood the pain; now she understands the social implications. She says that people there say bad things to her. When I first met her, her self-esteem was low, she was suffering from T.B. and had scabies. For two years her development had completely stopped. Initially she wanted to go back but now she tells me to take her back for a visit and then to keep her with me.

I was removed from the case on the ground that I was sympathetic towards the child and went to meet her, that the child was dependent on me and that since I was a woman, I would not be 'just'.

She was scared everytime she had to go to the court - she used to think it was a kind of punishment. Things are a little better for her now that she has been moved to the children's wing.

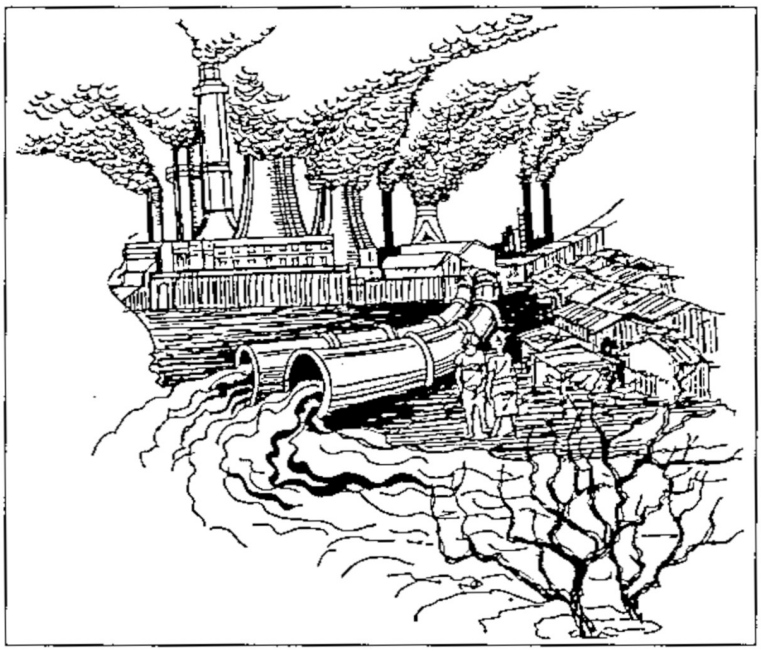
COMMENT

MARCH

OF POVERTY, LOCUS STANDI AND POLLUTION

Indian courts are increasingly following the 'polluter-pays-principle' as borne out in the recent Supreme Court decision to close down five polluting industrial units in Rajasthan. MENAKA GURUSWAMY discusses the positive legal consquences of following the expanded locus standi jurisprudence.

The United Nations conference on Human Environment at Stockholm in 1972 became the first major global effort, expressing deep concern over environmental degradation and urged for steps to halt nature's degradation. The historic Stockholm Declaration, noted:



"Man is both creature and moulder of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long tortuous evolution of the human race on this planet a stage has been reached when through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and man made, are essential to his well being and to the enjoyment of basic human rights - even the right to life itself".

Given the degradation and pollution of the environment in our country, it is fortunate that our courts have evolved and followed the expanded locus standi jurisprudence, which has enabled activists like M. C. Mehta and organisations like the Indian Council for Enviro - Legal Action to embark on public interest litigation.

This may be compared to U.S. Court decisions on "environmental standing". In America, the issue of environmental standing continues to be a highly controversial area of law after recent Supreme Court decisions.

Environmental economists and legal scholars have a popular adage that the polluter should bear direct responsibility for the cost of pollution he/she imposes on the rest of society - "the polluter pays principle". According to this principle hazardous waste

represents an "externality", a cost that a polluter imposes upon others or upon society at large.

For example, a landowner who allows hazardous waste to migrate from his property into a shared water source is imposing an unbargained for cost on other users who must incur the costs of the shared water source of uncontaminated water or suffer the consequences of using contaminated water.

Society would be better served if it developed a means by which the landowner would be required to face the true social cost of his actions when determining the level of precaution forcing him to balance the private marginal benefits he gains from not dealing properly with hazardous wastes found on his land against the costs imposed on society for his acts of malfeasance or nonfeasance.

The polluter undoubtedly imposes a cost on society for his actions. But what is equally disturbing is that the direct effects of pollution, or polluting industries is more than often borne by those who are unable to protest effectively.

Allan Kanner an American lawyer, who engages in activist environmental litigation declared, "study after study affirms that low income, minority communities bear a disproportionate burden of pollution". Similarly the Enironmental Pollution Agency (EPA) has acknowledged that polluting industries and hazardous waste dumps are most often located in predominantly poor minority communities.

Of course, this phenomenon is not only true of the West, but of present day India too. On February 15, 1996 the Supreme Court of India ordered the immediate closure of five chemical industries responsible for devastating villages in Udaipur district, Rajasthan. The five industries, Hindustan Agro Chemicals, Silver Chemicals, Rajasthan Multi Fertilizers, Phosphates India and Jyoti Chemicals are located at Bichhri and its surrounding villages.

They were described as "rogue industries" by a division bench comprising Justice B. N. Jeevan Reddy and Mr. Justice B. N. Kripal in an 83-page judgement on a public interest petition filed by the Indian Council for Enviro-Legal Action.

The court made it clear that the Centre had a duty to determine the amount of remedial action and recover it from the industries. It is estimated that over Rs 40 crore is required to overcome the damage caused to the environment (water and land pollution) caused by the industries. The Supreme Court seems to be reaffirming the "polluter pays principle" discussed earlier. The Supreme Court in the above judgment directed the five industries to pay Rs. 50,000 as costs to the Council which had to fight the litigation for more than six years. It observed that voluntary bodies like the petitioner deserved encouragement.

Justices Jeevan Reddy and B. N. Kripal said that these industries had continuously and insolently violated the law, attempted to conceal poisonous sludge, discharged toxic effluents from the sulphuric acid plant, and that they had failed to implement orders of the Supreme Court over the years. The judges observed that these industries had inflicted untold misery upon the poor, unsuspecting villagers, despoiling their land and water sources and their entire environment, all in pursuance of their private profit.

It is obvious that the "polluter pays principle" is the only method to stop rogue industries from conciously locating in poor and remote areas and surreptiously polluting the surrounding environment.

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WARRANTS MARCH ATTENTION

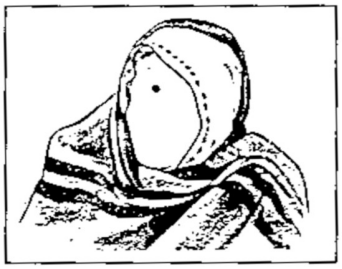
BHANWRI'S PETITION

A revision petition has been filed by Bhanwri Devi before the Rajasthan High Court against the judgement of the Sessions Judge whereby he had acquitted the respondents who had been accused of raping her. We give the salient features of the petition.

Bhanwri Devi's revision petition has been filed on the grounds that:

(a) The fact that Bhanwri had apprehended a child marriage of two children belonging to the powerful Gujar community, to which the accused belonged, had not been taken into account by the Sessions Judge. The Judge failed to understand the psychological condition of the rape victim and improperly evaluated her testimony.

(b) The intentional flaws in the police investigation were completely ignored by the Judge. The major ones being:-



First, Bhanwri's medical examination was not done for 52 hours, only because of the inefficiency of the police. The medical examination also was done perfunctorily as the concerned doctor just took the vaginal swabs and smear, but made no attempt to retrieve evidence from the intra-uterine cavity. The police did not arrest the accused from the village nor seize their clothes at all. For that matter, they visited the village three days after the incident.

Bhanwri's statement was recorded wrongly by the local police that she sustained minor injuries (from bamboo thorns) when the medical examination report revealed that she had suffered injuries on the back of her hands and legs.

(c) In spite of the perfect consistency of Bhanwri Devi's testimony, the Judge treated the case as though it were based on circumstantial evidence.

(d) Even though Mohan, her husband, was an eyewitness to the crime, his testimony was totally ignored.

(e) The Judge based his entire reasoning on medical evidence and erred in appreciating both the factual position and the fundamentals of medical jurisprudence.

(f) The Judge unconditionally accepted the contentions of the accused without testing their validity that Mohan's behaviour was highly unnatural as he did not make any attempt to free his wife. Mohan's testimony proved otherwise as he had stated that he tried his level best to free himself and rescue his wife.

(g) The Judge overlooked the fact that there was no motive for Bhanwari Devi to fabricate a case. Allegations of gang rape against the accused would expose her to social ostracism and personal ridicule and would plunge her family into grave difficulties. It is unreasonable to believe that she would have invited personal shame and social isolation by inventing a false case.

These briefly, are the main grounds on which Bhanwri Devi has filed her revision petition to set aside the judgement of the Sessions Judge.

WARRANTS MARCH ATTENTION

BJP CONDEMNS BHANWRI

The position of women in Indian society may have scarcely changed from Mathura to Bhanwri Devi but the forces of communal reaction are markedly bolder and stronger. KAVITA SRIVASTAVA reports on the BJP rally convened in Jaipur to condemn Bhanwri and honour the men accused of raping her.

There was a massive display of strength (of 7,000 according to the police) at a rally organised in Jaipur in the third week of January this year under the banner of Gramin Mahila Vikas Evam Sangharsh Samiti, by the BJP MLA from Bassi, Kanahaiya Lal Meena, the panchayat members from Bassi block and the BJP Mahila Morcha. It was clearly communicated that any woman who would dare to raise her voice against rape and challenge the existing power structures, would be publicly rejected like "Bhanwri the liar". The rally was organised in support of the judgement and against the Rajasthan government's decision to allow an appeal in the High Court on behalf of Bhanwri.

Slogans such as "Bhanwri Randi Jhoothi hai," were raised and speeches deriding Bhanwri and her supporters were made. Speaker after speaker came up on stage and strongly condemned Bhanwri and the womens groups who supported her. "She should be hanged, her face should be blackened and she should be burnt alive", were some of the suggestions. The BJP MLA of the neighbouring Jamwa Ram Garh block, Dr. Ram Rai, interpreted the medical report and declared that the semen found on Bhanwri's genitals and petticoat was neither her husband's and nor of the two accused. "Then who is the fourth man?" he asked amidst loud laughter, hooting and clapping.

Of the seven sarpanches and one councillor who spoke, four were women. There were three other women speakers. Women's groups were specially targetted. The MLAs spoke on how the women's groups had terrorised everybody including the state government, the first time was ostensibly in 1992, when these groups brought women from Bihar and Punjab and pressurised the government to hand over the case to the CBI. This time they had pressurised the government to appeal in the High Court.

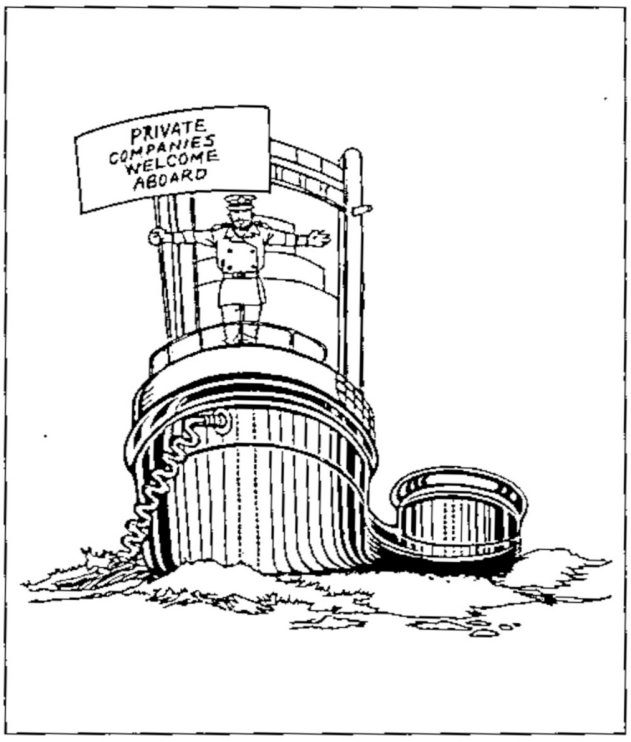
Speakers demanded that all awards be taken away from Bhanwri and the Rs.10,000 that Bhanwri received from the prime minister's fund should be recovered. Bhanwri had even "defiled" a pure name like Seshan's as she had received the Neerja Bhanot award from him! They publicly condemned her visit to Beijing. What upset them most was the rally organised by women's organisations on December 15, 1995. They were upset that Justice Krishna Iyer had been used to "dishonour" the judiciary. The masses of village women were told that they were the women of this country, the devis, "Bassi ki nari devi saman hai". Indian culture does not look at women as sex objects.

Bhanwri Devi's continued struggle has driven home to political parties like the BJP the point that even village women, the lower castes and the most oppressed are now getting organised to challenge the atrocities committed by the rural upper caste hierarchy.

REPORT
MARCH

PRIVATISATION SPEAKING
THE TELECOM JUDGEMENT

The recent Supreme Court judgement on the entry of private investment in the telecom industry has thrown open the doors of the hitherto public sector enterprise to domestic and foreign private corporations.



The Supreme Court has finally put to rest the controversy regarding the power of the government to privatise tele-communication services in the country and the validity of the procedure adopted to do so. Several public interest petitions were filed by various social action groups and some members of the opposition, in different High Courts and all these were transferred to the Supreme Court to be heard together.

MAIN CONTENTIONS

The issues that arose before the Court were whether the policies adopted by Parliament can be tested in a court of law and whether the central government has the power to delegate the exclusive privilege granted to it under section 4 of the Indian Telegraph Act, for establishing, maintaining, and working telegraphs, (which include telephones). The primary contention of the petitioners was that this exclusive privilege cannot be delegated to private companies. The petitioners also alleged that the government had not formulated the rules for the management of the telecom services as it is empowered to do under section 7 of the Indian Telegraph Act. It was feared that the Telecom Policy would endanger the national security of the country and not serve the economic interests of the nation. Questions also arose as to whether sensitive services such as these should be within the exclusive control and domain of the central government.

THE JUDGEMENT

The Supreme Court upheld the power of the central government to grant licenses to privatise tele-communication systems in the country and the procedure adopted to implement the National Telecom Policy. The Bench which consisted of Chief Justice A. M. Ahmedi, Justice N. P. Singh and Justice K. Venkataswami, held

BOX 1

FACTS LEADING UP TO THE CASE

* In February 1993, the Finance Minister announced the government's intention to encourage privatisation of Telecom Services.

* On May 13, 1993, The National Telecom Policy was placed before Parliament.

* Subsequently, the guidelines for induction of the private sector into telecom services were announced and a committee was set up to draft the tender documents.

* The ministry of communications published the 'tender documents for provision of telephone services' which specified the terms and conditions for the basic service.

* The tenders were submitted to various circles before giving notice inviting them .

* Meanwhile, writ petitions were filed in different High Courts before licenses could be granted by the central government, and the case came up before the Courts.

that the National Telecom Policy was "a historic departure from the practice followed during the past century". It was not merely a commercial venture of the central government but "the object of the policy is also to improve the service so that it is within the reach of the common man". Stressing the importance of the aspect of national security, the Court directed the Telecom Regulatory Authority of India (TRAI) "to function as active trustees for the public good" while implementing the policy. The Bench observed that the TRAI "with appropriate powers was essential for introduction of plurality in the Telecom Service".

The Court rejected the plea of the petitioners that the government had no authority to part with the right given to it under section 4 of the Indian Telegraph Act for consideration, holding that this right flows from sub-section (1) of section 4. This part of the section reads, "the Central Government may grant a license on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India". While empowering the government in this regard the Court also enjoined it with a fiduciary duty to exercise the policy in a manner that is lawful. With respect to the grant of licenses to any authority including the Central Government, the court held that, not only the source of the power needs to be traced, but it is also to be ensured that the procedure adopted for such grant was reasonable, rational, and in conformity with the conditions which had been announced.

Section 7 of the Indian Telegraph Act empowers the government to make rules consistent with the provisions of the Act for the conduct of all telegraphs maintained by the government or by the persons licensed to operate such services. Although it has been contended that such rules have not been formulated by the government, the Court has pointed out that "it cannot be held that unless such rules are framed the power under section 4(1) cannot be exercised by the Central Government. The power has been granted to the Central Government by the Act itself and the exercise of that right by the Central Government cannot be circumscribed, limited or restricted by any subordinate legislation to be framed under section 7 of the Act. The Court went on to say, "it is advisable on the part of the Central Government to frame such rules when it was so desired by the Parliament."

Thus the verdict of the Supreme Court, upholding the validity of the procedure adopted by the government in evaluating bids for basic telecom services, has definitely paved the way for private operators to enter the telecom industry in a big way and clears the hurdles in the path of the government to implement the National Telecom Policy.

BOX 2

THE NATIONAL TELECOM POLICY — SOME FEATURES

1. The Department of Tele-communications no longer has the monopoly over basic telephone services within the states although the inter-state and international services will continue to be in its control.

2. All new services, including mobile phones, electronic mail, etc. will be provided by private companies.

3. Telephone service is to be available on demand and at affordable rates. All license holders also have an obligation to provide telecom services in rural and remote areas within a period of three years.

4. The Telecom Policy is based on privatisation with foreign equity participation between 10 and 49 per cent.

LEGAL DIARY
MARCH

February 3

- The Court of the Chief Judicial Magistrate, Chandigarh begins recording the statement of Rupan Deol Bajaj against former Punjab super-cop, K.P.S.Gill who allegedly slapped her posterior at a party seven years ago.

- MS Shoes sues SBI Caps for Rs.500 crore, the largest ever amount claimed under the MRTP Act, a fall-out of the previous years' controversy when MS Shoes had to cancel its controversial public issue due to inadequate subscription. It has been contended that if SBI had fulfilled its underwriting liability, the Rs. 350 crore issue would not have had to be cancelled.

- Janashakthi, a voluntary organisation has moved the Supreme Court seeking directions to prosecute the presidents of all political parties for failing to file income-tax returns as per provisions in the Income Tax Act.

- In the Skipper Case, the Supreme Court asks the Government to submit the report on action taken against the IAS officials, by February 12.

February 4

- The Punjab and Haryana High Court describes cow slaughter as a serious offence where those who kill a cow are to be dealt with severely under the law.

- The Delhi High Court orders surprise checks of the old age homes of Delhi following a complaint made by an intern of one of the three old age homes.

February 5

- The Supreme Court directs the setting up of a National Council of Blood Transfusion as a society registered under the Societies Registration Act.

- The Supreme Court holds that the government cannot discriminate against women on account of marriage with regard to regularization of government quarters saying that "a son is a son until he gets a wife and a daughter is a daughter throughout her life".

- The Delhi High Court admits a writ petition challenging Section 10 of the Indian Divorce Act on the grounds of discrimination against Christian women.

February 7

- Instead of sending the case back for re-trial, the Supreme Court sentences a rapist to life term, after he was acquitted by the High Court and the trial Court.

- The Supreme Court reserves its judgement on a PIL petition seeking the establishment of an independent quasi-judicial Commission to supervise prosecution on the basis of material collected by the Vohra Committee Report.

February 10

- The Allahabad High Court holds the Uttar Pradesh administration guilty of human rights violations for firing upon peaceful demonstrators in an agitation in 1994 and orders that compensation be paid to the victims.

- The National Commission for Women, reacting to the atrocities committed by the police on sex workers, petitions for a code of conduct for police personnel

involved in such cases.

February 14

- A Delhi Court acquits Vishwa Hindu Parishad leader Sadhavi Rithambara of charges of making inflammatory speeches in which she allegedly tried to incite the Hindus to shed blood for a Ram temple in Ayodhya, and passed strictures against the central government for politically instigating the case against her.
- Calling it a housing scam the Supreme Court orders the CBI to probe the out-of-turn allotments of around 8,700 government houses by officials of the Urban Development Ministry.
- The Supreme Court passes strictures on the Rajasthan High Court for awarding merely 45 days imprisonment to 18 year old Ram Narain charged with raping a 16 year old girl. It orders that Ram Narain should undergo five years rigorous imprisonment and also pay a fine of Rs. 2,000 to the victim.
- The Supreme Court drops contempt proceedings against Bal Thackeray after accepting his unconditional apology for having insulted Supreme Court Judges.

February 16

- Following a judgement by the Andhra Pradesh High Court restraining political parties from holding meetings in the historic Mecca Masjid at Hyderabad, the Supreme Court is to hear an S.L.P. by the All India Majlis Ittehadul Muslimeen that the judgement was an interference in their right to speech and religion.
- Special Judge V. B. Gupta rejects V. C. Shukla's plea against taking cognisance of the chargesheet filed against him by the CBI and reserves orders on a similar plea made by L. K. Advani, in the Hawala case.
- The Supreme Court orders closure of five polluting chemical industries in Udaipur in Rajasthan and directs the centre to subject all such chemical industries to scrutiny.

February 17

- The Delhi High Court adjourns the hearing of a petition by Om Pal Hoon seeking a ban on the controversial film, "The Bandit Queen". Hoon alleges that the movie is not only obscene but also hurts the sentiments of the Gujjar community as its members are shown to have raped Phoolan.

February 18

- Three Punjab militants file a petition before the designated TADA Court that they should not be forced to say daily prayers and made to sing the national anthem on the ground that India is a secular country.
- The Supreme Court holds that the person who carried on the business and received the income when it accrued,is liable to pay the tax, while answering the question whether pre-incorporation profits could be included while assessing a company for income tax.
- The special Court rejects L.K.Advani's plea that chargesheets have been filed against him on the eve of the election to tarnish his image.

February 19

- The Supreme Court is to hear a public interest petition filed by the Lawyers Forum For Civil Liberties alleging failure of the central government and the Uttar Pradesh government in curbing child labour in the Ferozabad glass bangle industries.
- The Supreme Court suggests the setting up of environmental courts so that the machinery to enforce anti-pollution laws can be strengthened.

February 21

- The Supreme Court directs political parties to file their income tax returns from 1979.

February 22

- The Punjab and Haryana High Court orders that the three accused police officers in the " jebkatri " case be put on trial and directs the CBI to prosecute them and to complete the trial within six months.
- The CBI chargesheets 14 more politicians in the Hawala scandal and also seeks sanction to prosecute the Delhi Chief Minister, Madan Lal Khurana. The 14 ministers chargesheeted include Jaffer Sharief, Buta Singh, Ashok Sen, N.D.Tiwari, Sharad Yadav, Kamal Nath and R.K.Dhawan.

February 26

- The CBI expresses difficulty in booking Chandraswami in the Jain Hawala case where he has been charged with receiving Rs. 2.5 crore from S. K. Jain, as he never held any official government post.

February 28

- There is an uproar in the Lok Sabha over comments made by TADA Judge, Judge Dhingra while rejecting Kalpanath Rai's plea. The charges were believed to be derogatory about parliamentarians in general.

R. N. 43792/86 Postal R. No. MH-BY-SOUTH-382

ADAALAT MARCH ANTICS

PRACTISING WHAT OTHERS PREACH

We have heard of judges who are innovative and those who are creative. But what about those who practice what is preached, especially in the sphere of theories of punishment. Recently, Judge S. L. Khanna, the Additional Sessions Judge in Delhi, "convicted" a head constable for uttering a lie in his court. The constable immediately apologised. But the judge felt some punishment was called for. He made the constable stand facing the wall from 11.00 am to 5.00 pm, (without holding his ears), warning him how he was liable for seven years imprisonment.

EXPERT WITNESS

Talking of innovation, recently a judge of the Delhi High Court known for his creative methods, while trying a patent case on the ability of seeds to germinate, decided he had had enough of expert witnesses. The question whether the seeds would or would not germinate, need not be left to an agricultural expert he proclaimed. On pronouncing his view thus, he immediately summoned the mali of the Delhi High Court and instructed him to plant the seeds according to his wealth of experience and let him know the results within an appropriate time, that is, whether the seeds germinated or not. "Nothing like direct evidence, gentlemen," he retorted to the chagrin of eminent lawyers with their treatise on "expert" evidence.

POLITICIAN HEEL THYSELF

Recently, Kalpnath Rai, one of the many politicians caught in the Hawala scandal, made a plea to the court about the abysmal conditions he had to suffer in jail. The Special Judge, V. V. Gupta told him that he should not forget that he himself was partly responsible for this state of affairs as he had been a minister in the Cabinet. On another occasion, when the politician complained that there were too many mosquitoes in jail, due to which he could not sleep and that something should be done about it, the Special Judge once more reminded him about his responsibility in this area. His lawyer had little choice but to click his heels and say, "Obliged my Lord."

NOTHING BUT THE WHOLE TRUTH

Some years ago, a lady witness was being cross-examined by an eminent lawyer. When the lawyer asked her about her age, after a bit of hesitation, she replied that she was 20 years old. After some more questions, a series of objections from the other side and a ruling by the judge on the objections, the matter was adjourned for the parties to approach the appeal court on the issue. The appeal court remanded the issue and after three years, the lady was back in the stand with the lawyer once again cross-examining her. Again the the lady was asked her age. After an objection from the lawyer that the question had already been asked and answered earlier and the judge over-ruling the same, the lady, after a bit of hesitation, stated that her age was 20 years. The judge, obviously perplexed by the reply, pointed out to the lady witness that three years earlier she had deposed that she was 20 years of age. The judge warned her that this kind of coquetishness had no room in a court of law. To this, pat came the reply, "I don't believe in changing my statement, your Honour!"