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FROM

THE LAWYERS

COLLECTIVE

BHOPAL DISASTER: TOWARDS A TRIAL

MINIMUM WAGES FOR AGRICULTURAL WORKERS

JUSTICE KRISHNA IYER ON THE LEGAL SERVICES ACT

HAAZIR HAI SARU- UNPROTECTED MUSLIM PERSONAL LAW

Dis(Appointed) Judges

The controversy surrounding the appointment of High Court Judges in Tamil Nadu exposes the anti-democratic method of appointment adopted by the Constitution makers. The nominations ordinarily originate from the Chief Justice and are forwarded to the Chief Minister who as a general rule accepts them and forwards the names to the Central Government and the Chief Justice of India for his concurrence. Traditionally the nominations made by the Chief Justice of a High Court have gone without challenge and been accepted by the State Government, Central Government and the Chief Justice of India. The vast majority of appointments being made from the Bar, there is nothing to prevent a Chief Justice from nominating his friends, relatives and fellow travellers. The most offensive part of the procedure is that nobody need know who is being considered for appointment.

In a sharp departure from existing practice, Law Minister Mr. C. Ponnian decided to go public, disclose the names recommended by Chief Justice Chandurkar and went one step further, rejecting the nominations on the ground that they were all upper caste. The Chief Justice denied the charges of communalism. It is not for us to decide who was right in this controversy. But Chief Justice Chandurkar is clearly wrong when he criticises the Law Minister for going public on the issue. He maintains that the nominations must be kept secret. It is time to insist that the secrecy surrounding appointments be shed. The people have a right to know who is being proposed for appointment before the appointment is actually made.

Amidst the trade in allegations, and counter allegations the only voice of sanity comes from the Civil Liberties Union. While rejecting the 'soil psychology' theory and condemning appointments on a communal basis, the Resolution moved by Palai, Shunmugan and K. Chandru calls for an amendment to Article 217 of the Constitution to ensure democratic participation by a large section of the people to prevent undesirable people getting into the higher echelons of the judiciary.

The recent American experience has several lessons for us. A historic nation-wide campaign by civil liberties groups to oppose the nomination of Robert. H. Bork resulted in his nomination being rejected by the Senate after a nation wide debate on his ideology. Reagan's next nominee, Ginsburg had to withdraw after revelations that he had smoked marijuana. Even otherwise, he was considered inexperienced. The American people as a whole had the last word in the process of selection.

Indira Jaising

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Editor: Indira Jaising

Cover Illustration: Kalpana Swaminathan

Readers may correspond with the Editor of The Lawyers at 818, Stock Exchange Towers, Dalal Street, Bombay 400 023, INDIA; Tel:272794

LETTERS

Reduce Bail Order

Due to the economic conditions prevailing in the country the majority of the people who are below the poverty line cannot afford assistance from advocates even at nominal rates and hence languish in custody for no fault of theirs. It is often observed that magistrates pass heavy bail orders and on account of the poor condition of most of the people, they cannot avail of the bail order. To add insult to injury, no power is conferred upon the magistrates to reduce the bail orders passed by them which are beyond the reach of the Accused languishing in custody. Section 440 (2) of the Criminal Procedure Code, 1973, provides that it is only the High Court or the Court of Sessions which can reduce the bail order passed by the magistrates. When most of the Accused cannot afford to pay for the charges of the advocates in the lower courts, it is too much to expect them to prefer Appeal or Revision in the higher courts. Often magistrates refuse to reduce the bail order passed long back for want of a specific provision in the law. I therefore suggest that a specific power should be conferred on the magistrates to reduce the bail order passed by them at a subsequent stage. The earlier this amendment is made in the Criminal Procedure Code 1973, Chapter XXXIII, the better.

Kishor U. Joshi
Abhinav Nagar, Borivli (East), Bombay 66.

Nagpur Lawyers Protest

For Vidharba, to hear of lawyers agitating is a rare thing, particularly for the removal of corruption from the judiciary. This was precisely why the Vidharba Labour Law Practitioners' Association, Nagpur was consistently in the news in the last two weeks of September this year. The agitation which began in the end of August was for the removal of two new appointees, Shri S. J. Gadmade and Shri R. V. Amrutkar to the Labour and Industrial Courts respectively at Nagpur. It began with signature campaigns and public calls for their removal, but seeing the lack of response from the government, the agitation culminated in a two-week hunger strike by the labour lawyers. The agitation was withdrawn with the removal of Shri Gadmade and the likelihood of Shri Amrutkar's removal in the near future.

The Association has found that particularly in the last three years, i.e. during the tenure of Shri Bhagwantrao Gaekwad as Labour Minister, they had to time and again agitate against the appointments of persons with dubious credentials and records. They quote the appointment of Shri B. R. Taori and M. D. Kamble in 1984 as cases in point. Despite the Association's recorded objection the State Government went ahead with confirming the appointments which was thwarted only with the appointees declining consent.

The appointments of Shri Gadmade and Amrutwar this year were therefore seen not only as a continuation of this trend by the State Government, but also as a taunt in the face of the Association's campaign for a cleaner judiciary. When the memorandums passed by the Association against the two new appointments failed to elicit any response from the Government, the Association's next step was to boycott both their courts and to conduct a public campaign against both the judges. However, it was found that the judges were continuing to conduct cases and pass orders ex-parte or in default. The next step was the hunger strike which was conducted on the premises of the Industrial and Labour Courts of Nagpur. Their agitation received response and support from their colleagues of the District and High Courts as well as from other parts of Vidharba.

Susan Abraham
Chandrapur.

Transfer of Judges

In a democratic form of Government, people must get justice in impartial courts. For this purpose only, the lower judiciary has adopted the policy that a person should not be a magistrate in his own taluka nor should he be the District Judge in his own district. The reason behind this policy is quite obvious. If a man is born, brought up, educated and has practiced as an advocate in that area, he is bound to have close relatives, several friends and a great number of well-acquainted people and well wishers in that area. Under the circumstances it is quite possible that a local judge could show favour if such people are directly or indirectly involved in the litigation before this Judge. Judge friended, justice ended. is the principle which will rule in his court. Local judges in the High Courts cannot be an exception to this experience.

We are aware that Mr. M. N. Chandurkar, the Chief Justice of Madras High Court, opposed the policy of inter-state transfer of High Court Judges while speaking on the occasion of the celebration at Bombay on completion of 125 years of the Bombay High Court. He criticised the policy of inter-state transfer under the ground of language difficulty. Mr Chandurkar, being Maharashtrian, is facing language difficulty. Whether it is genuine difficulty or not, we do not know. But we are aware that in the Madras High Court, the official language is English. There are also translators employed by High Court to translate the local language into English. Moreover, Mr. Chandurkar also knows English. Under the circumstances, the language difficulty cannot be the real one. When foreigners like English judges managed with work in High Courts all over India, it is rather ridiculous that Mr. Chandurkar, being Indian, finds language difficulty impossible to overcome in his own country.

Finally we remind the Government its duty to ensure impartial justice for the people, in High Courts. The policy of impartial justice, being of top most importance, should not be defeated by the trivial inconveniences which Mr. Chandurkar put forth. If the Government means that impartial justice should be available to the people in High Courts, then, under the above grounds the policy of inter-state transfer must be adopted by the Government and implemented with immediate effect.

K. B. Neware
General Secretary,
All India Weaker Section Advocates Association, Nagpur

Bhopal Disaster: Towards A Trial

The recent order of Justice Deo of the Bhopal District Court ordering Union Carbide Corporation to pay Rs.350 crores as interim relief for the victims has reaffirmed the strategy advocated by those who have argued that the case should be pursued through to the trial stage. In this context ***Kitty Behan*** *discusses the law on the subject and argues that the Government of India is not only not fit to represent the victims on its own but has not done a good job of it.*

After the Bhopal disaster, large numbers of American lawyers filed cases in US Courts on behalf of victims. These cases were eventually consolidated in the Southern District of New York. When the Indian Government assumed exclusive representation of the victims, it did so under the doctrine of parens patriae. The statute authorising this representation by depriving Indian citizens of their right to obtain a private lawyer to sue Union Carbide Corporation (UCC) on their own behalf, may be unconstitutional. A petition has been filed in the Supreme Court alleging that India's exclusive representation of the victims is unconstitutional, arbitrary, unreasonable, and contrary to the interests of the victims. The petition alleges that the Government in not filing a suit against Union Carbide India Limited (UCIL), failed to fully represent the victims. The petition also alleges that India's representation has been less than adequate, for example in failing to survey the victims to determine the extent of their injuries. The Petitioner asserts that the winding up of the Commission of Inquiry to look into the disaster was against the interests of the victims and the Petitioner, especially since they are as a result denied valuable information to use to establish their claims. Obviously, the impending settlement sought to be arrived at for a drastically low sum would also violate the Petitioner's right to full compensation.

Thus, the Petitioner alleges that the "Bhopal Gas Leak Disaster (Processing of Claims) Act" violates Articles 14 and 21 of the Constitution in taking away the victims right to sue, and in depriving the victims of their personal liberty to enforce the said rights. Since this deprivation of liberty is unnecessary, arbitrary and unreasonable, it violates Article 14 of the Constitution.

The Petitioner further asserts that there is a clear conflict of interests between the victims and the Government of India. These allegations have proved almost prophetic, as later UCC filed a counter claim against the Government of India alleging negligence on the part of the Government. Hence the Government is now Plaintiff and Defendant in the same case. While there were some advantages in the Government of India representing the victims, particularly in wresting the cases from the control of US lawyers and in consolidating the cases for efficiency and expediency, the disadvantages are serious. The individual victims have no control over the decision-making in the case-whether to settle, whom to sue and for how much. Individuals will have difficulty long after establishing their claims, since the Government's investigation and data collection capacities will provide less documentation than that of a private lawyer. In fact the victims may have an independent claim against the government for its possible negligence in the disaster. Thus the constitutionality of parens patriae is a continuing issue in the Bhopal litigation.

If the action were to proceed into litigation, many issues would arise. Should US or Indian law apply? What law of tort is applicable? Is UCC strictly liable for its activities? How will damages be decided and compensation given? Is there a criminal case against the directors of Union Carbide? And finally, does Carbide have any defence?

Choice of Law

Commentators have assumed that Indian tort law will govern the Bhopal litigation, but such a conclusion is not automatic or indisputable. In deciding which law to follow, a court deciding a tort case cannot simply apply its own law. It must apply the principles of *conflict of law* to determine the relevant body of law. In the Bhopal litigation, the court could apply either the US or the Indian law of tort, depending upon how it resolves the choice of law question.

If the traditional English conflict of law principles are followed, the doctrine of *lex fori*- the law of the forum would govern an action. In the US, courts adopted the rule of *lex loci delicti*- applying the law of the location of the tort, so long as it was sufficiently similar to the law of the forum. In 1918, New York paved the way for completely discarding the *lex fori* doctrine in the case *Loucks v/s Standard Oil I Co.* of New York, where the *lex loci delicti* was found to be the sole determinant of tort liability, subject only to the public policy of the forum. The *lex loci delicti* has now become the dominant rule governing choice of law disputes in private international law.

Nevertheless it is not always easy to establish the place of the tort. In fact one could argue that UCC's actions in

planning and approving the MIC unit occurred on US rather than Indian soil and thus US tort law should apply. Of course, an Indian court could find that the tort itself occurred on Indian soil, when the plant was constructed or when the accident occurred. Further, an Indian court could choose not to follow the *lex loci delicti* test, applying instead, for example, a significant relationship test or the law of the forum test.

The US Restatement 2d of Conflicts lists the factors in the "most significant relationship test" that a court should consider in choosing the applicable law:

(a) the needs of the interstate and international systems;
(b) the relevant policies of the forum;
(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue;
(d) the protection of justified expectations;
(e) the basic policies underlying the field of tort law;
(f) predictability and uniformity of the result; and
(g) case in the determination and application of the law to be applied.

Under such a test, a court might decide to apply the US law if the substantive principles were more developed, or it may choose to apply Indian law since the result would be more certain, and develop the necessary substantive doctrines. In any case, the principles of tort law in both the US and India have many similarities.

If the Government of India were to pursue its claim on negligence, Carbide would probably argue that India's licensing, inspection and zoning/land use policies contributed to causing the accident. This defence of contributory negligence would probably fail, since India could not foresee that its policies could lead to the Bhopal disaster. There is ample evidence that a negligence claim would succeed since Union Carbide had a duty of care to the Bhopal victims and could reasonably foresee the accident. It breached this duty of care in constructing and managing a faulty plant.

The following decisions and omissions of Union Carbide would constitute violations of Carbide's duty of care:

1) Manufacturing with methyl-isocyanate (MIC) where less hazardous alternatives were known.
2) Storage of MIC in large quantities.
3) A plant design that permitted MIC to reach the atmosphere untreated through the vent gas scrubber (VGS).
4) Safety systems undersized to handle a runaway reaction.
5) Use of substandard materials in the MIC plant piping system known to be a source of MIC contamination.
6) Modification of the original plant design with the installation of a jumper line between the Process Vent Header (PVH) and the Relief Valve Vent Header (RVVH).
7) Endorsement of unsafe practices in the 1984 revision of the MIC plant operating manual.
8) Neglect of the findings of UCC's safety audits of the plant.
9) Preoccupation with cost cutting over safety (e.g. the shutdown of the refrigeration units).
10) Failure to develop or communicate to local authorities and the surrounding community an emergency response plan; failure to inform authorities of the leak.
11) Knowledge of the effects of MIC, yet failure to disclose those effects (comparing MIC to tear gas before and after the gas leak).

Strict Liability

Under the doctrine of strict liability laid down in the English case of *Rylands v/s. Fletcher* [(1868) L.R. 3.H.L.330] if an individual or enterprise undertakes a hazardous, ultra-hazardous or inherently dangerous activity, he or she would be liable for damage caused by such activity, regardless of whether that damage occurred through negligence or fault. The doctrine varies in different jurisdictions, but in India, it is even more liberally applied than in the United States, and would clearly apply to the Bhopal disaster.

In the United States, judges deciding cases involving mass torts and accidental gas leaks have often applied the doctrine of strict liability. In *Indiana Horbor v/s. American Cyanamide Company* [517 F Supp 314 (Ill 1981)], a leakage of acrylonitrile (a toxic substance) from a freight car resulted in the evacuation of 3000 people from their homes and extensive property damage. The court was called to decide whether Cyanamide should be held strictly liable for damage from the accident. The court found that if an activity is inherently dangerous and harm naturally and probably results from it despite the exercise of utmost care, liability will result. The court drew analogies to blasting cases and product liability cases where strict liability was imposed for public policy reasons through statute, since it is just to impose the loss on persons creating the risk and reaping the profit.

Most jurisdictions follow the formula of the Restatement of Torts. The Restatement lists six factors to consider in order to determine if an activity is ultra-hazardous:

1) the existence of a high degree of risk or harm to person, land or chattels
2) the likelihood of harm is great
3) inability toeliminate the harm by exercise of reasonable care
4) the activity is not common
5) the activity is inappropriate to the place where it is carried on
6) the extent of value to the community.

Strict liability was applied in the following cases:

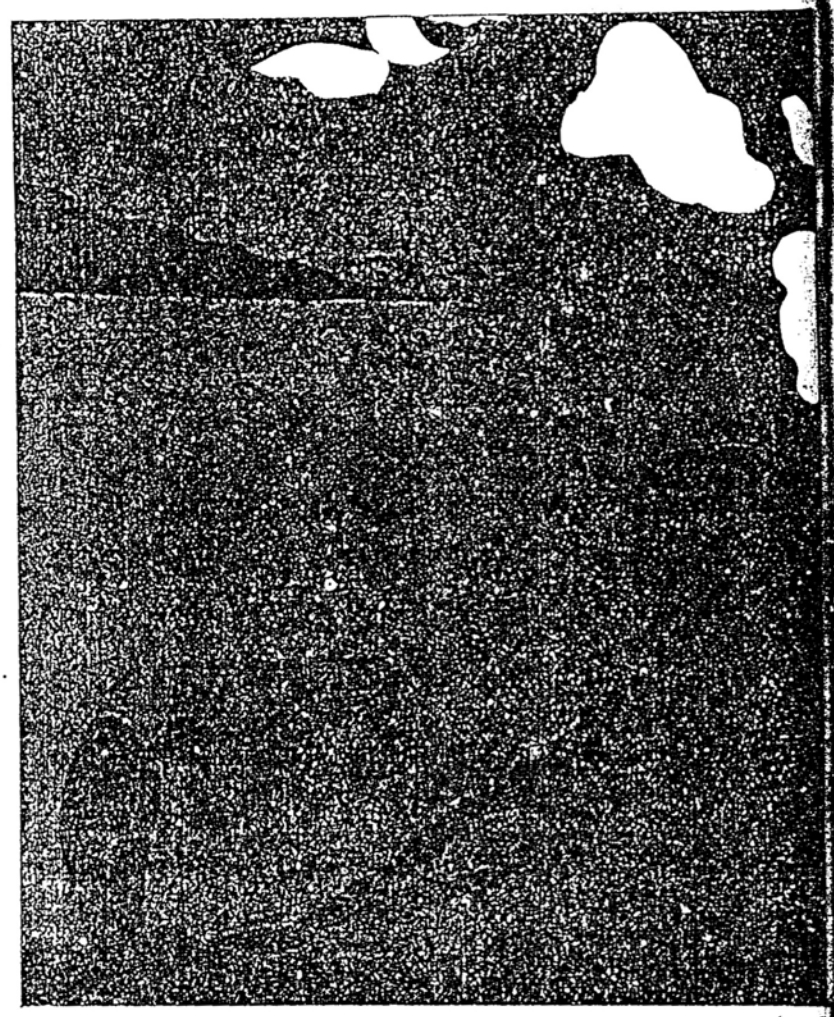
1) Where an oil company engaging flood water operations allowed seepage on to adjoining lands, *Mowrer v/s. Ashland Oil* , 518 F. 2d 659 (7 Cir 1979);
2) For an explosion of 18 bomb-loaded boxcars in a railroad yard, *Chavez v. Southern Pacific Transportation Co*, 4 F Supp. 1203 (ED Cal.1976).
3) Where chemical dust from crop spraying floated on to plaintiffs farm *Chapman Chemical v/s. Taylor*, 2 Ark 630 (1949);
4) From an explosion of stored gas in populous area, *McLane v/s. North West Natural Gas Co.* 255 Ore 324 (1970
5) Where gasoline storage tanks leak on to a private residence, *Yommer v. McKenzie.*

In *Langlois v/s. Allied Chemical Corporation* [249 So 2d 133 (La 1971)] fireman was injured by the inhalation of gas that escaped from the premises of a chemical corporation. The court found that the storage of the highly poisonous gas, antimony chloride, was an ultra hazardous activity and strict liability should be imposed strictly without proof of negligence. Never

less the defendant argued that the Plaintiffs own conduct contributed to his injuries and hence was contributorily negligent. The court found that the defense of contributory negligence presupposes original negligence and thus does not apply to cases of strict liability, but that the doctrine of assumption of risk might be a defence. This doctrine holds that where a plaintiff with full knowledge and appreciation of a danger voluntarily exposes himself to the danger he cannot recover. The determination is subjective, inquiring into the state of the plaintiffs understanding of the danger. In *Langlois*, the court concluded that the fireman had not voluntarily assumed the risk since "although Langlois as a fireman possessed more knowledge than many about the nature of gases and the consequences of exposure to gases, he did not knowingly and voluntarily encounter the risk which caused him harm".

Thus in applying the principle of US doctrines of strict liability to the Bhopal situation, production of MIC gas would clearly constitute an ultra hazardous activity and thus require the imposition of strict liability, since many less hazardous gases have been held to be ultra hazardous . Furthermore, the conduct of the defendant as it is, the defence of contributory negligence would not be sustained under any fact situation. Finally, it cannot be argued that India or the Bhopal victims assumed the risk of living near the plant, since Union Carbide withheld information on the dangers of MIC and since the victims assumed no known risky activity in living near the plant.

Under Indian law,the current doctrine of strict liability was enumerated in the recent case, *M.C.Metha v/s. Union of India*, AIR 1987 SC 965). In that case, a leakage of toxic chlorine gas caused substantial physical and property damage. The court found the defendants to be strictly liable for their actions, holding that, where an enterprise is engaged in hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example in escape of toxic gas, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the former principle of strict liability under the rule in *Rylands v/s. Fletcher*.

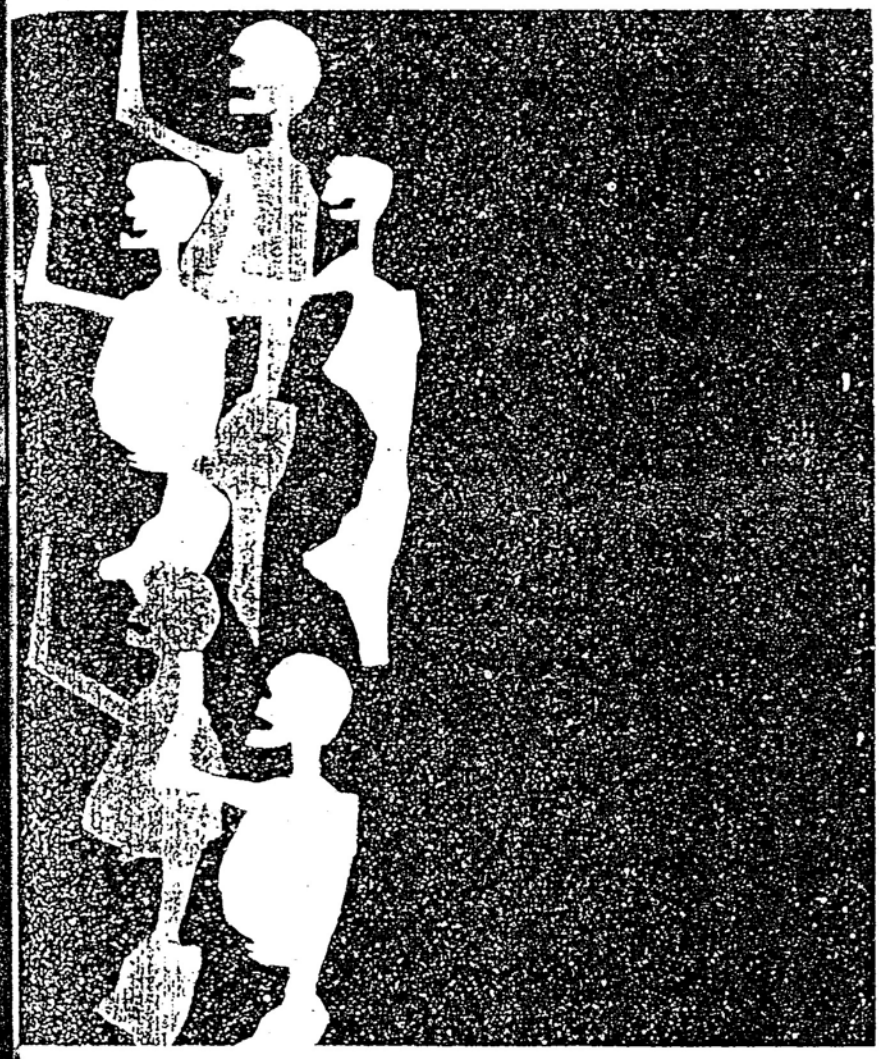


The Indian court has thus chosen not to follow the US in establishing the parameters of strict liability, not even requiring that the activity be "ultra hazardous". Thus, once Union Carbide's production of MIC gas at Bhopal is determined to be a hazardous, inherently dangerous activity, they will be strictly liable without exception, for example, without the exception for assumption of risk or overriding value to community in the US doctrine.

Multinational Enterprise Liability

Though Government of India's claims against Union Carbide rest primarily on Carbide's actions in planning and constructing the MIC plant, the Government of India could also argue that UCC and UCIL are not separate entities, but that the US multinational, UCC must be liable for the hazardous or inherently dangerous activities of its subsidiaries. In other words, the Government of India could argue that the Court must "pierce the veil" between UCC and UCIL.

Since 50.9% of UCIL was owned by UCC, the multinational had ultimate authority over the operations of the MIC plant. UCC closely supervised and monitored the Indian plant. The Government of India could prove this control through the extent of the contact between the companies and by showing that all important decisions regarding the plant were made in the US rather than in India. UCC has



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series of policy manuals which apply to all subsidiaries (affiliate companies in which UCC's ownership exceeds 50 percent). These policy manuals demonstrate UCC's extensive control over its subsidiaries. UCC's extensive transfer of employees through the network of international subsidiaries also illustrates that the two entities, UCC and UCIL, operate as one entity. A finding of multinational enterprise liability would be a clear declaration to multinationals that they must pay for all the costs of their activities on foreign soil.

Criminal Liability of Directors

The Directors of Union Carbide are criminally liable for their conduct in the Bhopal disaster. After a lapse of three years, on 30 November 1987, the Central Bureau of Investigation (CBI) has filed a chargesheet against the UCC Chairman, Warren Anderson, former Chairman of UCIL, Keshub Mahindra, the former Managing Director of UCIL, Vijay Gokhale, and six employees of UCIL, including J Mukund (Works Manager), R.B.Roy Chowdhary (Assistant Manager, Works), S.P.Choudhary (Manager Production), K.V.Shetty (Plant Superintendent), Shakeel Ibrahim Qureshi (Production Assistant) and Kishore Kumar (former Vice President, UCIL) under sections 304 of IPC (culpable homicide not amounting to murder), 326 IPC (causing grievous hurt), 324 IPC (causing simple hurt), 429 IPC (killing or maiming animals) read with Section 35 IPC (common knowledge).

Criminal prosecutions of Directors for failing to disclose the risks of a product or for illegally ignoring manufacturing procedures are common in some countries. Pharmaceutical company directors for example, have been prosecuted for releasing poisonous fuels [*US v/s. Abbot Laboratories* 505 F. 2d 565 (4th Cir 1974) denied 420 U.S. 990 (1975)]. When European companies distributed thalidomide, a tranquiliser which caused women to give birth to limbless or flippered children, Germany moved a criminal prosecution against Cfunenthal Corporation. In a Warner Lambert chewing gum plant in New York, an explosion killed six and injured 55. Four executives of the company were charged with homicide [*People v/s. Warner Lambert* Cir. App 434 N.Y.S. at 159].

But while prosecutions have been brought, rarely have they succeeded against directors. In the *Warner Lambert* case, for example, the Court dismissed the case since the immediate source of ignition could not be discovered. Thus in criminal cases, the prosecution will have to prove both that the accident was foreseen in the precise sequence of events and that it actually occurred. Such a finding will be nearly impossible to prove if such is the standard, especially in Bhopal, since the burden of proof in criminal cases is higher than in civil cases. Nevertheless criminal prosecutions convince companies to settle for larger sums than they might have otherwise agreed to because the directors feel individually threatened by a possible jail sentence.

Damages

The question of damages is quite controversial. Determining the amount of compensation per victim would be more fairly decided by a court rather than the Government. Damages can only be ascertained through testimony and examination of the victims.

With a death toll of around 2000 persons and injuries to 200,000 the quantum of damages could reach billions of dollars. A report for the Citizen Commission on Bhopal, "The Bhopal Tragedy", estimates the total sum necessary for compensation, relief, and restitution for the victims to be 41 billion dollars, once inflation is taken into account. That estimate includes a loss of $ 2,660 per fatality per year, a sum ridiculously low by standards set by US damages awards and also in the Indian context.

Second, the issue of whether punitive damages should be awarded against Union Carbide would be a controversial part of a trial. Punitive damages are often awarded in the US when a tortuous act involves wanton, reckless willful or malicious behaviour on the part of the tort feasor. Punitive damage law is less developed in India, but has precedent, for example in the case *Sitaram Bindraban Firm v/s. U.G.C. in Council* (AIR 1974 Nag 224). Since Union Carbide's mistakes were reckless and arguably willful (since safety concerns were subordinated to financial concerns), punitive damages may be applicable. The actions of Union Carbide personnel in not warning the town and in turning off the external alarm system are clear examples of reckless, malicious conduct warranting punitive relief. Finally, Union Carbide's non-disclosure of the potential risk of MIC to humans, may mandate the imposition of punitive damages.

Litigation on the damages issued in the Indian courts would be in the public interest in advancing tort law generally and the law of damages specifically. Since the availability of punitive damages provides individuals with added incentive to sue, a positive finding in the Bhopal case could energise the underutilised tort system. Litigation on damages could also be simplified by applying lessons learned from mass tort litigation in the US.

Mass Tort Litigation in US

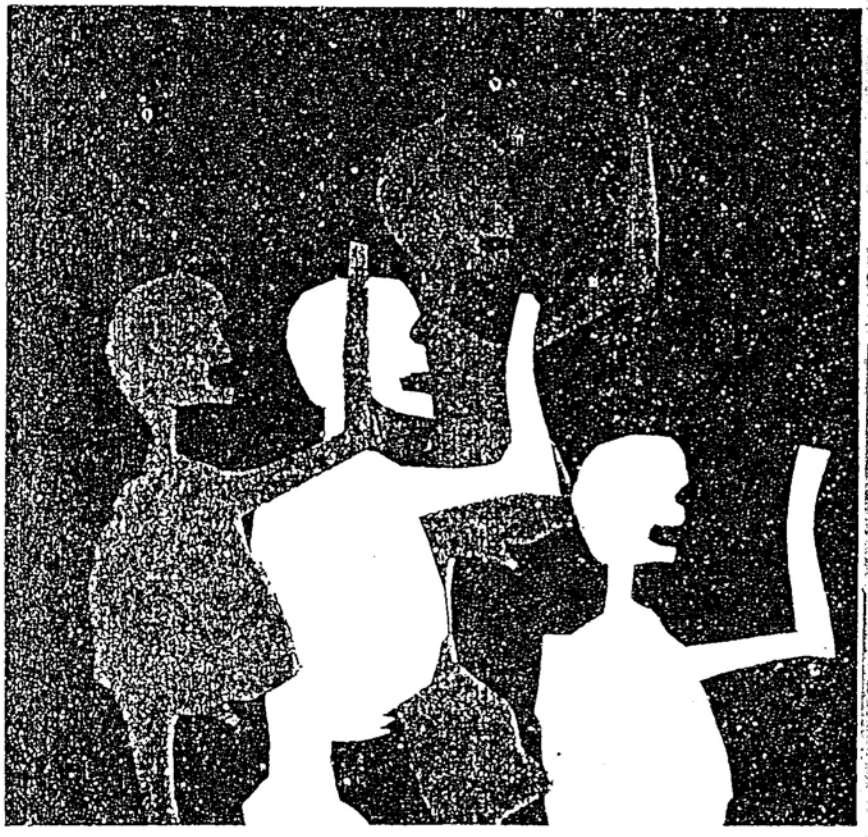
The Government of India would argue that the scale of the Bhopal disaster and the problems of litigating mass tort accidents necessitated the Government of India's exclusive representation of the victims. Yet the history of mass tort litigation in the United States demonstrates that litigation is a viable alternative in the Bhopal disaster

In the *Beverly Hills Super Club Fire* litigation, where 4000 people were in a club at the time of a fire, only the questions of liability and punitive damages were tried. Individual damage claims were not litigated, and only five witnesses testified to the events of the fire. In *MGM Grand Hotel fire* litigation, damages cases were limited to certain non-settling defendants. In the *Three Mile Island* litigation arising out of the disaster at the nuclear plant, plaintiffs in the class were determined by those who lived within a certain distance from the plant. Finally, in the *Agent Orange Product Liability* litigation arising out of the use of herbicides during the Vietnam war, Judge Weinstein oversaw a marathon settlement negotiation session in September 1984 involving numerous parties. He had handled the problems of scale by agreeing to litigate all liability issues and the court selected representative plaintiff cases to determine damages.

The major problem which arises in appraising individual damages amounts in mass tort cases lies in determining the proximate cause of the death of or injury to each individual. For example, in the asbestos litigation the defendant argued that smoking contributed to causing the death of certain individuals. In the *Dalkon Shield* litigation, defendants tried to argue that other actions of the plaintiff were responsible for their physical illnesses or concern.

While Union Carbide could argue that the illnesses of certain patients were exacerbated by their smoking, they could not argue, as in some mass tort cases, that the injuries to the plaintiffs would not have occurred but for the plaintiffs other injurious conduct.

The Bhopal disaster is more analogous to fire or explosion cases than products liability cases, since "but for" causation is firmly established. The injuries of the Bhopal victims were clearly caused by the December 2-3 gas leak, and would not have occurred but for the leak. Thus, assessing the damages to the individual plaintiffs would not be a difficult task and could be accomplished by litigating a representative set of damages cases. Like in the *Agent Orange* case for example, the court could litigate the claims of fatalities, full disabilities, part disabilities, physical suffering, punitive damages and property damages separately. After a court determination of the proper amount to be accorded to each type of damage, the court could appoint an independent administrative tribunal, perhaps consisting of mechanical ex-



perts, to appraise the claims of the individual victims. Even if India enters into a settlement, it will have to set up some form of tribunal to assess victims claims. It is much preferable, considering India's status as a defendant in the counterclaim, to have the body administering the proceeds independent of the Government and accountable to the Judiciary. If a party is denied liability entirely, he or she should be able to appeal that decision to the Judiciary. Otherwise, the amount of damages should be non-appealable as a matter of fact by the tribunal examiners.

Such a solution seems the only just alternative in compensating the Bhopal victims. The government is an interested party. One cannot be sure that its primary interest won't lie in rejecting the claims of the victims to avoid distributing the proceeds. The Indian system has committed itself to litigation as a means of resolving disputes arising from injuries to private persons. In such a system dedicated to litigation, the independent Judiciary must be allowed to play its crucial role in balancing the scales of justice.

Carbide's Defences

Finally, one must consider Union Carbide's defences and counterclaims. Union Carbide replied to the Indian complaint in the Bhopal District court with a 169 page written statement, set off and counterclaim. Among its many counter allegations and defences, Carbide alleges that India's extensive licensing and regulation of the Bhopal plant illustrates its collaboration in and knowledge of the designs and operation of the plant. Carbide challenges the assertion that the plant design was unsafe, citing a number of safety devices (e.g. vacuum system, fire extinguishers, walkie talkies). UCC alleges that UCIL did not utilise the design package, and that UCIL, not UCC operated, managed and controlled the plant at all times. Finally, Carbide alleges that "the entry of large quantities of water into tank 610 could only have been caused by a deliberate act". To support this allegation, Carbide posed the following theory:

"A person deliberately intending to introduce water into tank 610 could, within the space of only several minutes, close the isolation valve on the presence indicator, remove the pre ure indicator. connect a water h from a heading water service drop the opening from which the press indicator had been removed. and op the three valves necessary to introdu water."

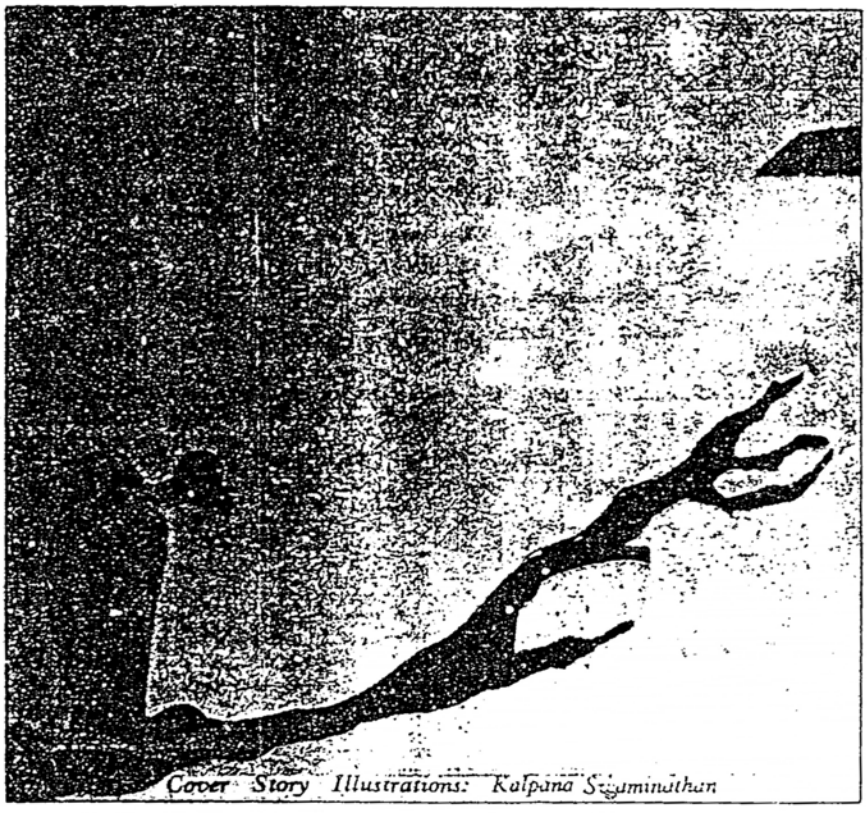
Carbide's theoretical account sabotage contradicts all previ accounts of the accide: .. and viola norms of common sense. The Gove ment of India responded to Carbid allegations in a reply to the Distr Court, stating that:-

"The Plaintiff further states that fendant's concluding allegations of deliberate act or sabotage are tota void of factual support and even if th were factually correct, would not co stitute a defense to the plaint".

In fact, The Government of Ind maintains that while sabotage is high unlikely, even if it did occur, it w foreseeable and the Union Carbide d sign of the plant should have provid for such a eventuality. A plant desi which would have prevented a sab aged runaway reaction would also pr vent a accidental runaway reactio Furthermore, a country may licence i plants without accepting responsibili for accidents in the plants. Licensin of manufacturing and chemical plan is a routine procedure and does not in sulate a multinational from liability.

Conclusion

Thus, it appears tl the lawsuit ari ing out of the Bhopal disaster were t proceed to trial, Union Carbide woul be found liable for the full extent of th injuries to the Bhopal victims, thei families, and properties. The fact point to Union Carbide United State active participation in the design, con struction, operation and maintenanc of the MIC unit, resulting in the fata gas leak. Only if the trial proceeds t the damages stage will the world know the full extent of the havoc, wreake by Carbide's negligence. It is impor tant that the representatives of the vic tims be able to come forward before a independent tribunal to testify to th horrors of the disaster itself, and thei ongoing suffering and disabilities.



Cover Story Illustrations: Kalpana Sriraminathan

Kitty Behan is a student of law at the Columbi ... hool, New York

The Proposed Amendment to the Companies Act, 1956

Bill No. 10 of 1987

A Bill further to amend the Companies Act, 1956.

BE it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:-

1. Short title and commencement.

(1) This Act may be called the Companies (Amendment) Act, 1987.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of Section 252.

In section 252 of the Companies Act, 1956 (hereinafter referred to as the principal Act), after sub-section (3), the following sub-section shall be inserted, namely:-

"(4) At least one-third of the directors shall be elected by the employees of the company, provided that there shall be at least one representative so elected on the Board of every public company in such manner as may be prescribed by the Central Government by notification in the Official Gazette."

3. Insertion of New Section 255A.

After section 255 of the principal Act, the following new section shall be inserted, namely:-

"255A. Election of Directors to be by ballot.

The election of directors, other than those to be elected by the employees of the public company, under section 255 shall be held by ballot and by distributive vote, that is to say, every shareholder at general meeting shall be entitled to cast as many votes as there are directors to be elected by the shareholders at the annual general meeting of the company so as to secure representation for minority opinion among the general body of the shareholders."

4. Amendment of Section 275.

In section 275 of the principal Act, for the words "twenty companies", the words "ten companies" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The principle of workers' participation in management must be applied not only to public sector undertakings but should also be introduced in the private sector (in public limited companies) as well. Participation by the elected representatives of the employees in the top management of the companies will not only act as a check on the malpractices that are rampant but will also enable the workers to put across their point of view at the highest level, and acquire an intimate knowledge of the working of the company, including its financial condition, without which neither will there be a sense of responsibility among the workers nor will they be able to make a useful and constructive contribution to the increasing of company's efficiency and productivity per man hour of labour.

This Bill makes a beginning in this regard.

The Bill also provides for representation of minority opinion on the Boards of Directors of the Company by changing the system of voting at the election of these directors. This principle, too, has been widely acclaimed in progressive business circles, and its enactment into law is now overdue.

The Bill further seeks to reduce concentration of economic and industrial power in the hands of a few persons by reducing the number of directorships which any single individual can hold from 20 to 10.

Altogether these three amendments will help further to democratise the structure of company management and also reduce concentration of money power in the hands of a few persons.

New Delhi;
January 30, 1987.

MADHU DANDAVATE

NOTICE BOARD

The Civil Disturbance Victims Compensation Bill, 1987.

Bill No. 13 Of 1987

A Bill to provide for the payment of compensation by the State to citizens or their dependants for injury suffered and damage to property in the course of civil disturbance or riot.

BE it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:-

1. **Short title, extent and commencement.**

(1) This Act may be called the Civil Disturbance Victims Compensation Act, 1987.

(2) It extends to the whole of India.

(3) It shall come into force at once.

2. **Definitions.**

In this Act, unless the context otherwise requires,--

(a) "appropriate Government" means, the State Government in relation to any of the matters falling within its purview and in respect of any other matter, the Central Government;

(b) "compensation" means compensation as provided under section 3; and

(c) "dependants" means wife, children or parents.

3. **Payment of compensation for injury to the victims.**

If injury is caused to a person or a citizen by an accident or design arising out of or in the course of a civil disturbance or riot, the appropriate Government shall pay compensation to the citizen in accordance with the provisions of the Act.

4. **Provision of shelter in case of damage to property.**

If damage is caused to the property of a citizen in the course of a civil disturbance or riot the appropriate Government shall be liable to provide him with shelter.

5. **Payment of compensation in case of death.**

If any person or a citizen dies in the course of a civil disturbance or riot, the appropriate Government shall provide job to his wife or any child in addition to payment of rupees one lakh to his dependants as compensation.

6. **Appointment of Commissioner.**

The appropriate Government shall, by public notification, appoint a Commissioner, within thirty days of the date of occurrence of a civil disturbance or riot which caused injury to any citizen, for settling, the claims of the victims or their dependants for payment of compensation for death, injury received and/or damage to property.

STATEMENT OF OBJECTS AND REASONS

Social violence has assumed an endemic form and virulent dimension in our country. Violent disturbances caused by communal, linguistic, ethnic and caste tensions have given rise to deaths and injuries to persons and loss of property on a mass scale. The Government and the administrative machinery appears to be helpless in the face of such disturbances, unable to pre-empt the outbreak or to control it by timely and effective action.

The relief provided to the victims by the State has been nominal or inadequate and on a much smaller scale.

At present there is no legal liability on the State, either under the Constitution or under the existing laws, to give compensation to the victims of such disturbances, riots and commotion. The State has a moral obligation to compensate and rehabilitate the victims.

Social violence is often motivated by a desire to cause economic losses. So adequate compensation would deter such motivation.

Hence this Bill

NEW DELHI — G. S. Basvaraju

February 9, 1987.

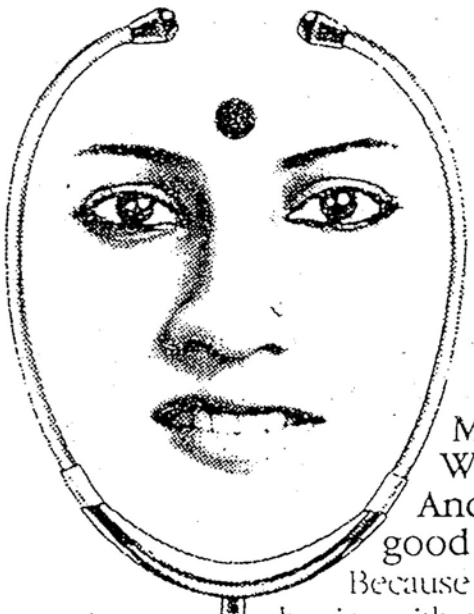
'Channelize energy into unity'

PHILIPS WORKERS' UNION

Kalwa

(Regd. No. 6124)

Nilesh Apartment Raghoba Shankar Road, Chendani Koliwada,
Near Datta Mandir Thane-400 602, (Maharashtra)



FAMILY DOCTOR AT WORK

Mother. Housewife.
Working woman.
And her family's good health specialist.

Because she knows that good health begins with self-care.

That's right, good health begins with self-care. And self-care means avoiding health hazards, exercising, eating sensibly... and treating minor ailments with self-care medications.

Good health begins when you accept the responsibility of caring for your own health. And when you look after your health you look after your future: a more active, vibrant, happier you.

Of course, self-care medications are no substitutes for expert professional treatment in cases of serious illness. However, studies have proved that 3 out of 4 illnesses are minor and can be treated at home.

Self-care: A healthy practice.

CLARION/B-PI45-201

Issued in the public interest by RICHARDSON HINDUSTAN LIMITED

The Legal Services Authorities Act -A Critique

For years there has been talk of free legal services being made a statutory right. The Legal Services Authority Bill was supposed to fulfill precisely that function. But, does it do so? Justice V. R. Krishna Iyer makes a penetrating critique of the new Act.

The rule of law, in Third World conditions, has an activist tryst with social justice. Fourteen distant years ago, the Indira Gandhi Government appointed a Committee to recommend measures at a national level, to secure for the people a democracy of remedies and easy access to justice. Many committees at Central and State levels followed; some interpellative pressure from Parliament was periodically applied; a constitutional provision, as an expression of the State's fundamental commitment, was enacted (Article 39A); administrative experiments in free legal services were launched, with many 'robed lordships' joining the circus, while other high bench highbrows and radical cynics, debunked legal aid and public interest litigation as "a tale told by an idiot, full of sound and fury, signifying nothing". However, popular demands for free legal services mounted; judicial commands reading such rights into the equality and liberty clauses of the suprema lex resounded; some States like Tamil Nadu and Karnataka worked quasi-government schemes with reasonable bona fides and a Central Implementation Committee was set up.

At the end of this gestation period, a Central bill (The Legal Services Authorities Act, for short, the Authorities Act) was midwifed, with a garbled preamble composed of a jumbled regurgitation of Article 39A. The legislative baby, alas, has genetic disorders of head, heart and hands. My critique seeks a curative chemistry, a pharmacopia of radical remedies and an infrastructure operated by people oriented functionaries. Social justice, after all, is humanist healing and its strategies should never be distanced from the people by bureaucratic and hierarchic structuring and engineering.

Viable Social Philosophy Absent

Any ambitious statutory project for popular delivery of justice, on a basis of equal opportunity, must manifest in its soul and sinews a viable social philosophy, strategic sensitivity to economic realities, credibility as an instrument of the commonalty, egaletarian accessibility and ability to operate the justice system to their benefit, functional effectiveness as a sword and a shield against the oppressive Establishment, including the powerful vested interests with political clout and the Government itself which often abets or blinks as blatant violations of humane law and human justice designed to defend the have-nots are committed.

The ideological minimum deducible from the Directive Principles of Part IV, the freedoms under Part III and the judicial pronouncements on human rights must inform the law. Legal literacy for the commonalty, para-legal training for welfare workers, pro bono litigation, test cases and class actions, the innovation of delivery systems of people's justice like quasi-judicial bodies, Lok Adalats, conciliation boards and other native alternatives promotive of rights and remedies thro' participatory processes and voluntary agencies must vivify the juridicare measure.

Mass Participation Lacking

The mobilisation of the masses into an awareness of the law as their power, thro' educative campaigns among weaker sections now in invisible tears, the creation of new classes of flexible administrative tribunals which reach the agrestics' doorsteps, the setting up of preventive and pre-emptive legal advice therapeutic centres, the organisation and development of research and investigation into people-based jurisprudence and poverty law in action, data banks, information service and dissemination bureaus as back-up on projects for garibi-hatao legislation, litigation and pre-litigative action, these protean shapes and myriad modes of processual justice to the people, belighted by a vision of all Indians as equal in value and in law must be reflected in the enactment.

You look in vain in the void for such light in the traditional, centralised, officialised, authority-oriented, people-allergic chapters of the Authorities Act. What a sublime subject of social justice and what cold clauses sans human warmth! Where do we find the backward people's presence, militant legal locomotion, panchayati justice, voluntary agencies, weeping women and marooned men, law school resources, legal profession's involvement, and a decisive direction towards a people's law and a people's law service unveiling a vistarama of a wider 'juridicare' for India!

Suitable Processes Absent

Public Interest Litigation is a new phenomenon with many facets regarding locus standi, exemption from court fees and other incidentals, procedural informality, the qualification for and the classes of beneficiaries, and the persons or organs entitled to invoke the judicial process. The adversary procedure may have to be varied. The power of the Court to collect evidence on its own and give relief beyond monetary remedies may have to be provided for and the weaker sector helped in a hundred ways to seek equal justice. Regrettably there is no chapter on this important topic except three words in section 4(d) "Social Justice Litigation", whatever it may mean.

In the absence of substantive prov-

sions the courts especially at the lesser levels are at a loss to act and lawyers in the districts despatch the aggrieved to higher courts or ask them to write letters to judges creating what is pejoratively called epistolary jurisdiction. The absence of specific statutory provisions creates confusion. This is a pitiful lacuna.

New Ventures Necessary

India and the Third World as a whole need new ventures in justice delivery adapted to native milieus. Those who view legal aid not in narrow pedantry but as a broader goal would have been adventurous. The Authorities Act is a blinkered, hide-bound version sans vision, divorced from the challenges of grim realities and safely distant from swadeshi experiments except that noisy but necessary mela of populist justice called Lok Adalat and even there, in its congealed, judicialised incarnation.

Institutional and procedural innovations of popular tribunals and informal, even deprofessionalised experiments have been indigenous and ideological in many countries. They have been tried in the socialist countries in many forms; as neighbourhood tribunals in Chile; people's mediation centres as a technique for coping with local conflicts, and family feuds as in Burma; conciliation boards and village courts as in the revivalist, reformist and socially rooted efforts with statutory support in several States and as evening courts, arbitral boards and so on in the U.S.A. These are all inspired by the nobly worded ideas of Art. 39A. But why has our Bill blinked at these intelligent alternatives which are integral to the national pledge to 'secure that the operation of the legal system promotes justice...by suitable legislation or schemes...to any citizen handicapped by 'economic or other disabilities'. Alas, our Authorities Bill, obsessed with creating Councils and Committees of nominated conformists, has turned ideologically myopic, litigatively pragmatic and elitistically unrealist. The truth is innovative timidity, anaemic imagination and a hurry to make do with something traditional to silence popular criticism, like a rubber nipple put in the mouth of a baby to stop its crying for mother's milk.

No Slant on Side of Handicapped

Where is the decisive slant of the statutory authority on the side of the handicapped humanity in its struggle for justice against influential power blocks? In the Proletariat vs. Proprietariat conflict, the Legal Aid Movement must lend its services for the former and this should be made clear by statutory prescription. A justice system with access to the jetsams and flotsams is a necessary input in the statute. We do not find it in the Bill except parrot-like repetition of the phrase-weaker sections'. What is needed is a revolutionary role on the part of the Legal Services Boards, to be an auxiliary in this great change. Essentially, the Act is only a litigation and law.

Nowhere in the Bill do we notice meaningful guidelines based on the broader interpretations in the bonded labour cases [*Bandhua Mukti Morcha* -(AIR. 1984 SC.802)], [*Asiad* (AIR. 1982 SC. 1473], gender justice rulings a la *Sheela Barse* AIR, 1983 SC. 378) prison justice decisions [(*Sunil Batra Cases* - AIR 1978 SC. 1675 and AIR 1980 SC. 1519)] and other affirmative action perspectives judicially recognised. These are integral parts of the package of free legal services to the different down-trodden classes but the Bill is innocent.

No Accountability

Accountability and democracy are close companions. A free legal services project affecting vast numbers of under-privileged Indians must be accountable to the people. I wonder why there is no provision for the Central or State authorities to present reports to Parliament and the legislatures so that there may be annual discussions at the highest levels and consequential changes wrought in the system itself.

Administrative Set-up

At the State level, the Chief Justice or any other serving or retired judge nominated by the Governor shall be the Chairman. Here again, Government may nominate an agreeable sitting or super-annuated Judge. To do what? All the other members will be Government Secretaries or Government nominees and the Law Secretary will be the Chief Executive. The formal presence of the judge hardly impacts on the scheme. Government have its way and the judge will hav abide not merely by the Central G ernment's directions and policies also by the limitations of funds posed by the Centre and the State. dependence is of the essence of st tory legal aid bodies, yet is a casualt the scheme of the Act. Coming d to the District Authority, we find District Judge sitting as Chairman otherwise governed by the memb who are all nominated by the G ernor. The entire staff, at the Cent State and District levels, will be p vided by the respective governmer So much so, they will obey the Gove ment and ignore the judge who is a dressing to make the scheme palatal More importantly, even the State G ernment is controlled by the Cen which has the authority as the power issue directions regarding the perfor ance of functions and to make ru which bind.

State Acts Better

The Central Act, finally appe should not extinguish the excelle work now being carried on by the Ka nataka Board, under its far better st tute. While there are defects in t Karnataka law, its social commitmer infra-structural provisions, litigativ conciliatory drives, literacy campaig and popular representations exc those in the Central legislation.

Likewise the Tamil Nadu Boar although a voluntary society with sul stantial State support has bee acclaimed as the best in the countr and appreciated judicially as a re sponsible activist body. Indeed, it is model, at once dynamic and mult dimensional for the rest of the countr to copy.

Conclusion

In sum, this Bill, as it now stands does not fill the bill but is nearer bloomer, judged by the goal set b Article 39A. Is it too much sarcasm t say that the bill is against structura changes in the social order even though Republic is socialist. Is Anatole France apt:

To disarm the strong and arm the weak would be to change the social order which it's my job to preserve. Justice is the means by which established injustice are [illegible]

Minimising the Minimum

M. M.Katre indicts the Maharashtra government about the crafty manner in which it has fixed minimum wages for agricultural workers below the poverty line.

In order to keep the solemn promise given to the nation during the course of the freedom movement and as a measure in ratification of I.L.O. conventions, a Bill to provide for minimum wages was moved in the Central Assembly in the year 1946, by Dr. Babasaheb Ambedkar, who then was the Labour Minister in the Provisional Government. The object of the Bill was to protect workers in employments in which unorganised labour prevailed. Thus came on the statute book the Minimum Wages Act, 1948 which is by now applicable to more than 65 employments in Maharashtra including agriculture.

Advisory Committee

Section 9 of the Minimum Wages Act provides for an Advisory Committeee to guide the Government in fixing the minimum wage. Further that this Advisory Committee shall consist of persons to be nominated by the appropriate Government, and shall represent employers and employees in the scheduled employments, who shall be equal in number and independent persons not exceeding one third of its total number of members. The Committee of 1971 was wholly composed of MLAs and MLCs,and there were no representatives of any agricultural workers' organisations on it. Even though this Committee was asked to submit it's report within 4 months, it was submitted after 20 months and the Government took another 8 months to issue the first notification fixing the minimum wage.The composition of the successive committees, the inordinate delay in their appointment, in the submission of their respective reports and the consequent notification fixing the minimum wage took much the same course.

The minimum wage for 85 per cent of the areas of the state is either Rs.6 or Rs.7 per day, and this wage prevails today even after 4 years and nine months. The Central Government had time and again directed that the agricultural workers' minimum wage should be revised every two years, but the Maharashtra Government has been deaf and blind to this.

Employers' Representative as Chairman

On 15.7.1987, the Government of Maharashtra by a Notification issued under the Minimum Wages Act, appointed a nine member Committee under the Chairmanship of Shri Balasaheb Vikhe Patil, M. P for advising the Government to revise the minimum wage for agricultural workers, making it the fourth of its kind. This notification nowhere states who are the members representing employers and employees and who are independents. Earlier, that is in 1977, Shri Balasaheb Vikhe Patil had been appointed as a member representing farm owners and he continues to be more so even now.

Linkage With Cost of Living Index Denied

Section 4 of the Minimum Wages Act, 1948, provides that the minimum wage may consist of a basic rate of wages and a special allowance at a rate to be adjusted with the variation in the cost of living index. However, the State Government has, during the last 10 years, refused to link the meagre minimum wage of the agricultural workers with the cost of living index, resulting in further erosion of the starvation level real wage. The recommendation of the third committee to revise the minimum wage every year in tune with the rise in cost of living index was not accepted by the State Government. The major anxiety of these three Committees was the paying capacity of the agriculturists. Consideration of improving the lot of agricultural workers was the last thing the Committees had in mind. The successive Committees conveniently connived at the fact that poor and middle peasants only occasionally employ agricultural workers while they themselves have to work as hired labourers at other times especially in drought conditions. For them increase in wage rates proves a net gain. The bulk of agricultural workers are employed by rich peasants, who enjoy irrigation facilities and it is their paying capacity which is material.

One plus One equals One

The most obnoxious part of these reports is the conclusion that a family of an agricultural worker consists of 3 1/2 units i.e. husband, wife and 3 children of which 2 are earning members. The minimum daily requirements and the minimum daily amount required for the livelihood of a family of 3 1/2 units is calculated and then half of it is recommended to be the minimum wage of an agricultural worker. Really a novel exercise! These Committees and the State Government, both dominated by kulak interests, were not at all perturbed when I.L.O. conventions, decisions of the Fifteenth Tripartite Committee in the year 1957, report of the National Labour Commission and various decisions of the Supreme Court and High Courts were brought to their notice to show that the minimum wage has to be fixed by taking into consideration the earnings of a single member in the worker's family which may be taken to consist of 3 units. It was pointed out that the successive National Sample Survey shows that agricultural workers, both men and women get employment only for about half the days in a year. The Committees and the Government turned dumb and deaf when they were told that 2 earning members in a family has never been the accepted norm for fixing wages in any industry or employment even under the Minimum Wages Act.

Static Concept

The story does not end here. The Second Committee based its report on the "basket" of an agricultural worker's family evolved by the National Sample Survey in the year 1960-61,

which is taken into consideration for calculating the consumer price index for agricultural workers. The next two successive Committees also based their recommendations on this same 1960-61 basket. It was pointed out that this basket is based on the then existing mode of living of agricultural workers when planned development had not yet begun, when there was no legislation for agricultural workers and when they were not at all organised.

The object of fixing a minimum wage and revising it is to improve the standard of living in pace with growing national income and rising standards of living and to protect them from exploitation to a certain extent. The three committees have adopted a static concept in this respect and have assumed on the basis of this very basket that 75% of the expenditure in an agricultural workers family is on food items while 25% is other expenditure. A progressive reduction in the percentage of expenditure on food in a family's budget is the expression of a rising standard of living. In case of other workers, the food expenditure is taken to be around 55%. Since the rate of increase in the prices of items other than food is greater, this point has much relevance while revising wages.

Link with E. G. S.

Another reason to keep this minimum wage as low as possible is the Government's desire to pay the lowest possible wages on Employment Guarantee Scheme works. Under Section 7(2)(vii) of the Maharashtra E.G.S. Act, 1977, the E.G.S. wages are directly linked with minimum wages of agricultural workers. Initially the task rates on E.G.S. works were to be fixed so as to ensure people employed under the EGS throughout the State in all zones, the minimum wage fixed for agricultural workers in the lowest zone. That was the reason for creating Zone IV and fixing the lowest wage at Rs.6/-. However, this provision was successfully challenged by the agricultural workers' unions with the help of *Lawyers Collective* and it was struck down by the Bombay High Court in the year 1984. The State Government was directed to pay the E.G.S. workers the minimum wage fixed for the respective zones. That is the reason why one of the terms of reference of this Fourth Committee is to consider and recommend whether the E.G.S. wages should be linked with agricultural minimum wages. A legislative policy decision being entrusted to a minimum wages committee! Obviously this is an an attempt to link agricultural workers wages with the capacity of the reluctant Government to provide for expenditure on E.G.S. works.

Heavy Work

It is a matter of common knowledge that the work of the agricultural workers and of E.G.S. workers is extremely onerous. They always have to work under the open sky and to face the hazards of nature during all the days of the year. But the three committees and the State Government have assumed without any rhyme or reason that the work of agricultural workers is of light or of average type, and therefore the average daily calorie requirements of a member of the agricultural worker's family is 2200. The nutrition experts unanimously say that a male worker doing heavy manual work requires an intake of 3900 calories while a femal worker requires 3000 calories per day. So the average of the family comes to 2540 calories per day per unit. But the State Government has refused to take this aspect into consideration.

Bonded Labour

Salgadies and Mahindars i.e. the workers bonded for a year or a month, constitute about 10% of the agricultural work force. The State Government had exempted these Salgadis from the provisions of daily hours of work uptil 1981: All workers in all occupations are statutorily provided a weekly rest day. But the State Government is of the opinion that it is sufficient for an agricultural worker to get 24 holidays in a year. The innocuous recommendation of the Third Committee to ask the employers to take Janata Insurance Policy of Rs.12/- per year in the name of their Salgadis to provide for accidental death or loss in earning capacity was turned down by the Government.

About 20% of these workers are children and adolescents. In all other Scheduled Employments, under the Minimum Wages Act, the wage for adolescents is fixed at 80% of the adult while in case of agricultural workers, the same is fixed at 60%.

Illegal Actions Legalised

More than 50% of the agricultu workers are women. Big farm owne time and again raise a cry that wom work less than the normal worki hours and thus justify denying the the statutory minimum wage. In ord to legalise the super exploitation of t socially suppressed Section, the St Government has amended the Mah ashtra Minimum Wages Rules, 19 by adding a separate Rule No. 24-A allowing payment of proportionate lesser wages for those working le than normal working hours in case agricultural workers only. The Go ernment must have arrived at the co clusion that the remedy available employers in other employments deny employment to casual worke who do not work for the requir hours is not available to employers agriculture! Of this special provision protect the interests of the employe in an enactment meant for protecti the employees with regard to the i plementation of this meagre minimu wage in Maha ashtra, the less said a out it the better. It can be said that th minimum wage is observed in case women workers almost ntirely in i breach.

Below Poverty Line

There is a general direction from t Central Government that the mi mum wage in any employment und the Minimum Wages Act should n be below the poverty line. The pover line in rural areas in 1985 was drawn Rs.533/- per month. Even though t minimum wage is fixed at Rs.11/- f the last zone, the minimum month earnings come to Rs.286/- for 26 wor ing days which is roughly 50% belo the poverty line. The present wage Rs.6/- in the last zone is just a mocke of the minimum wage. If the Gover ment really intended to raise this wa to the meagre level of Rs.11/- it nee not have appointed a Committee at a Under the provision of Section 5(1)(of the Minimum Wages Act, the Go ernment could have published i proposals and could have finalised th same after two months. But the Sta Government least desires so. It want to kill time and to make a facade just show that it is doing something.

M. M. Katre is an activist of the Lal Nish Party and has spent a lifetime organising ag cultural worker. He is also the President of t Labour Law Practitioner Association, Ahme nagar.

Pandian Perumal Ki Ajeeb Dastan

Delays have become an inseparable part of our judicial system due to a terribly inadequate strength of judges, heavy boards, adjournments taken on flimsy grounds, and the like. Rajiv Mane reports on yet another tragic case, where criminal delay on the part of the administration cost a man four long years of life in prison.

Somewhere in 1974, one Pandian Mutthu Perumal was arrested on the charge of having murdered one Mulji. In 1977, the Sessions Judge convicted him under Section 302 of the I.P.C. and sentenced him to life imprisonment. In 1978, Perumal preferred an appeal in the Bombay High Court against his conviction, which was admitted in January 1979. This appeal came up for final hearing on March 14, 1983. On that day, the advocates appearing for Perumal told the Court that parts of the copies of the paper books given to them were illegible. The Court therefore thought it better to adjourn the hearing and directed the office to expeditiously supply to the advocates representing Perumal and the Public Prosecutor legible paper books relating to the Appeal.

Four Years of Slumber

The Criminal Department of the High Court did a most criminal deed by sleeping over the matter for over four long years till 1 June 1987, when a letter was sent to the Sessions Judge, Bombay, bringing to his notice the order passed by the Court on 14 March 1983. Breaking its hoary tradition of taking its own sweet time in preparing paper books, the Sessions Court sent the paper books, legible ones this time, within one week. Thereafter the appeal was placed before Justice R. A. Jahagirdar and Justice A. D. Tated for final hearing and disposal. The Court found that Perumal's conviction under Section 302 of the IPC was not sustainable and allowed the appeal. Thus Perumal, who was ultimately found not guilty of the crime of murder, had to languish in prison for more than 10 years. And four of those 10 years were clearly due to the criminal negligence of the judicial administration. Perumal's only fault was that he was too poor to hire a lawyer to monitor the progress of his appeal. The Court went so far as to say that "We are not sure whether even if he had engaged an Advocate the delay which has been caused by the masterly inactivity of the Criminal Department of this Court could have been prevented.

... Perumal, who was ultimately found not guilty of the crime of murder, had to languish in prison for more than 10 years. And four of those 10 years were clearly due to the criminal negligence of the judicial administration.

No Monitoring System

Unfortunately, there is no system in our courts of monitoring the progress of different types of matters, even though such a system could easily be established. In his judgement, Justice R. A. Jahagirdar pointed out that Rule 1 of Chapter X of the Bombay High Court Appellate Side Rules clearly provides for the nomination of judges from time to time to be in charge of different types of matters, and that if such nomination is carried out a review of the status of all pending matters will be made and we need not fear repetition of Perumal's tragic story. The whole judicial administrative set-up needs to be revamped completely and modernised adequately with the introduction of modern management systems and computers. More benches need to be created by appointing more judges. But most of all, the system (not to exclude even the advocates) needs to imbue the spirit to fiercely protect and cherish each person's life and liberty to ensure that no matters where a person's life or property is at stake will be delayed. Perumal paid heavily with his freedom for the criminal negligence of others. Can four long years of unnecessary imprisonment ever be compensated for?

Rajiv Mane is an advocate practising in the Bombay High Court.

Pending Criminal Cases in Bombay High Court as on 30 June, 1981.

A. Appeals	
By convicted person	*1830*
State Appeal	*1244*
Appeal by Complainant	*387*
Appeal for enhancement	*207*
Total	*3668*
B. Criminal Writ Petitions (Detention & Externment Matters)	*779*
C. Criminal Revision Applications	*639*
D. Petitions u/s. 482 Cr.P.C.	*171*
E. Contempt Petitions	*36*
TOTAL	*5239*

INTERNATIONAL

Health Care for the Poor

The inhuman practice of private hospitals in the U.S. refusing to admit patient in an emergen condition may soon come to an end with the passing of a federal law which prohibits t practice. Kathleen Behan explains the legal position prior to and after the act.

A recent federal law passed in the United States may radically change the availability of emergency medical care for the indigent. The law, "*Examination and Treatment for Emergency Medical Conditions and Woman Active Labour*" [P.L.99-272,42 USCA 1395dd (1985)] prohibits hospitals from rejecting emergency patients and women in labour, even when they are unable to pay for medical services. By bringing suits to enforce the law, public interest lawyers can ensure that adequate emergency health care is available to all.

The Act is a radical change in health care law in the United States because it applies to both public and private hospitals who receive any federal aid, in short, 98% of the operating hospitals. The Act was passed because of the growing tendency of U.S. private profitable hospitals to turn away patients who had no money or medical insurance. On the way to a public hospital, some of these patients died, and many suffered a worsening of their condition. This frequent practice by hospitals came to be known as "patient dumping".

In passing the Bill, the Congress expressed its purposes in the House Ways and Means Committee Report. "The Committee is greatly concerned about the increasing number of reports that hospital emergency rooms are refusing to accept or treat patients with emergency conditions if the patient does not have medical insurance. The Committee is most concerned that medically unstable patients are not being treated appropriately. There have been reports of situations where treatment was simply not provided. In numerous other instances, patients in an unstable condition have been transferred improperly." [H.R. Rep. No.241, 994 Cong. 1st Sess. Pt. 1 at. 27 (1985)]

Congress had tried to provide the poor with emergency medical care previously in an Act called the Hill Burton Act. That Act provided funds to hospitals for building and renovation but required those hospitals to provide emergency services regardless of ability to pay. But that act did not apply to all hospitals and was rarely enforced even when it did apply to a hospital. The mechanisms for enforcement were weak, since the Federal Government promulgated no regulations and the act provided no private cause of action. Thus a new federal "anti-patient dumping" statute was passed.

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The Provisions of the Act

Under the 1985 Act, when an individual enters the emergency ward of a hospital, the hospital must provide an appropriate medical screening of the patient to determine whether the patient is in an emergency condition or in active labour. The definition of an "emergency condition" under the statute is "a medical condition manifesting itself by acute symptoms of su cient severity, such that the absence immediate medical attention co reasonably be expected to result in rious jeopardy", "impairment", "disfunction" [Section 1867(e)]

Once a patient is determined to suffering from an emergency condi or in active labour, the hospital n take steps to stabilise the patient. S stabilisation will include treatmen delivery until "no material deteri tion of the condition is likely to r from the transfer of the indivi from a facility." [Section 1867, (e (A)]. After a patient has been st ised, the hospital may transfer th tient by an emergency vehicl another hospital, if the hospital ac that patient.

If the hospital violates the provi of the Act, the repercussions m quite serious. First, hospitals m fined up to $ 25,000 per inci Second, the hospital's medicare vider agreement may be canc Third, the injured patient (or fan a deceased patient) may sue the and hospital for damages. Fin hospital which receives a patien was "dumped" may sue the du hospital.

The Statutes

A private cause of action for of illegal patient dumping sho the most potent remedy. Unde medical malpractice laws, indi may obtain significant damage for their injuries and suffering. interest lawyers may bring class on behalf of large groups of i patients who either were refus or are likely to be refused care. als, threatened by the possib such suits and large damage will voluntarily begin to treat gent, hopefully ending the pr patient dumping in the Unite

Kathleen Behan is studying in the Colu School, New York.

P. K. Saru

The Muslim Women's Protection of Rights on Divorce Act was passed after the protest against the Shah Bano Case, taking Muslim women out of the purview of Section 125 of the Criminal Procedure Code. No longer is it possible for a divorced Muslim woman to file a claim for maintenance against her divorced husband under the Criminal Procedure Code. This has led to a great deal of havoc in the lives of Muslim women. The new act has encouraged men to unilaterally divorce their wives confident in the knowledge that, they will not be liable to maintain their divorced wives. This month we interview Saru a victim of the power of unilateral divorce and of the new Act. Saru filed a claim under the new Act for maintenance and for "reasonable and fair provision" in addition. The Magistrate in Calicut, while granting her claim for maintenance has rejected her claim for "reasonable and fair provision". Saru is determined to fight the power of the muslim husband to pronounce unilateral irrevocable divorce. She plans to challenge the constitutional validity of this power in the Supreme Court and also to ask for a progressive interpretation of the new law so that it's harmful effects can be neutralised.

Saru hails from a family of conventional, aristocratic Kerala Muslims and her father, Justice P. Kunhammed Kutty Haji was the first Muslim Judge of the Kerala High Court. Saru describes herself as a devout Muslim who has always mixed freely with other communities.

L.C. When did you get married?

S. My first marriage was arranged by my parents when I was 20. From this marriage I had two sons. The marriage broke down and we separated by mutual consent. I returned to my parental home with my two children. This was in 1966. Then in 1967, I married again to P. A. Salim against the wishes of my family. He was a Muslim from Kerala. A little later my family reconciled to this marriage. His parents were both doctors. He is also highly educated. They accepted the marriage. His father was considered a progressive Muslim. I was well treated in the family.

L.C. How was the relationship between you and Salim?

S. Like every marriage it had it's ups and downs but we shared a lot with each other. There was nothing basically wrong with our relationship. There were no insurmountable problems. Due to differences in our family and cultural background, there were differences between us, but we considered this part of loving and living. I have 2 sons from this marriage who are now 19 and 15 1/2 years old.

L.C. When were you divorced?

S. We were staying in Jedha for sometime as Salim had a job there. We planned to come back to India and settle in Cochin. We had built a house there. Last May we came back from Jedha to Cochin together on the 21st. On the 23rd he went to Madras to see the Principal of the School where my son was to be admitted. The next thing I know was that I got a four line letter from him from Madras saying that he had irrevocably divorced me due to mental incompatibility.

L.C. What was your reaction to this?

S. At first absolute shock, then pain. How can 20 years of marriage be wiped away by a 4 line letter? How could any human being throw away a relationship of 20 years standing. He had never spoken to me of a divorce.

L.C. What could have made him take such a drastic step?

S. I don't know. I have all along been an independent person and an individual in my own right. He always felt threatened by this. He felt he must have the leadership role in the family.

L.C. What do you think of this system of unilateral divorce?

S. I think it is highly impertinent. The Koran does not advocate irrevocable divorce at all and the Prophet has forbidden it. According to the Koran, the husband is to pronounce one talaq and the woman is supposed to continue staying under his name, roof and protection, so as not to close any possible chances of reconciliation, and during this period the woman is not even referred to as a divorcee. Here, talaq is pronounced in one single sentence which according to Muslim Personal Law, as prevalent in India alone is considered as irrevocable talaq, and once this is done the woman becomes a stranger immediately and they are not supposed to live under the same roof or see each other. My husband could discard me only because of the so-called personal law which allowed him to divorce me. My husband was never a believer in Islam. He never followed the tenets of Islam in any other aspect of his life. He used Islam and the utter helplessness of

a woman having to accept her most pathetic fate. After the divorce, he coolly comes and tells me, "let's have a good relationship."

L.C. Did he make any provision for you?

S. No. He literally threw me out of the house. As a self-respecting woman I could not have lived in the same house like a discarded wife. I had no right to be there according to him and I was not willing to accept charity. Since I had contributed to the house in good measure, I requested him to assign the house to me till death and then to our two children. My rights after death could have gone to the children. He won't have it. He said it was his hard earned money. I had no option but to leave. I requested him to allow me to take all my ancestral furniture and whatever I had brought to the house. He first agreed, but when I actually went to collect it he insisted I sign a receipt for Rs.50,000/- which I had not received. I refused to sign it. He gave me nothing. My furniture, jewellery and passport are all with him, to this day.

L.C. What was your next course of action?

S. I had to go and live with my brother in Calicut. I had filed a police complaint with the DIG Police for breach of trust for my jewellery and passport. In retaliation, he sent a lawyer's notice accusing me of stealing 20 sovereigns of gold and cash worth Rs.50,000/- before leaving the house.

L.C. What made you finally go to Court?

S. It was his arrogance, his insistence on getting a receipt for Rs.50,000/- which he never gave. He said he had to "tie up all the loose ends, close the file and go back to Jedha". It was then that I decided I had to fight back. I had no alternative but to go to court, to claim what belongs to me- my furniture, jewellery, personal effects and what I am lawfully entitled to as a 'divorced Muslim woman'.

L.C. What is your experience in court?

S. You will not believe it if I tell you that my husband, after twenty years of marriage and two children, tried to convince the court that I was a woman of bad character. As evidence of this, he said that I had a runaway marriage but he forgot to tell the court that it was with him that I had got married against my parent's wishes. This he now holds against me. In his reply to my complaint he says my behaviour with young men was unacceptable. I had asked for trial in camera. He opposed my application and insisted that I should be examined in open court. He produced a photograph of me taken prior to my marriage in a salwar kameez to show that I am a woman of bad character and not a respectable Muslim.

L.C. In fighting this case, what is it that you are looking for?

S. My pain and sorrow cannot be shared by anybody else. I do not want another woman to suffer the same injustice that I have. I was neither given any hearing before the divorce, nor has he compensated me in any way. He says I am a rich woman so why should he make any provision for me. This is not true. In 20 years of my life, whatever resources I had have been used without any hesitation for the welfare of the family. I contributed largely to the building up of the home financially and in every other way. I invested everything I had. There was no question of yours and mine. Nothing is to be given to me because legally everything was in his name. That is why he could throw me out. If the house was in our joint name, he would not have had the guts to do this.

L.C. What do you feel about the provisions of Muslim Personal Law?

S. They are very unfair to women and totally out of tune with Koranic injunctions. According to the Koran, divorce is the most heinous sin you can commit. An irrevocable divorce is prohibited by the Prophet. It prevails only in India. I very strongly feel, that rather than making acts to protect rights after divorce, there should be acts to prevent divorce to the extent possible.

L.C. But surely you are not against divorce in all circumstances?

S. There should be a body to regulate and implement the proper Koranic method of divorce.

L.C. What do you think of the way the Muslim community reacted after the Shah Bano judgement?

S. The men only wanted to protect their rights without any consideration for women. The issue was also politically exploited.

L.C. Would you argue that religion has no role to play in women's issues?

S. A woman is a woman, whether she is a Hindu, Muslim or Christian emotions, feelings, pain and hu all the same. How can a M woman be governed by a differen

L.C. What are the lessons you learnt from this experience?

S. I don't want any other M woman to have the same fate I suffered.

My experience should make lesse vileged women aware of their according to the Koran and not a ing to some stupid man-made Pe Law. The Personal Law now pre is not according to the Koran.

POSTSCRIPT: As this issue g press we have received the new Saru's appeal before the D Judge, Calicut for a "reasonabl fair provision" for maintenanc been rejected.

ADAALAT ANTICS

Forward to the 21st Century

Who needs computers to leap into the 21st century. Courts have already arrived there with their futuristic ideas. One young litigant, whose case was only 5 years old was told by the judge "What are you cribbing about, I have to attend to the 20 year old cases first. S. O. to the 21st century". The dazed young litigant went around asking his friend, "What is the S.O.?" An obliging lawyer volunteered a reply "It means stand over to the 21st century, that means adjourned to the 21st century. You need not come to the court till then."

Don't Lecture Me

When told that a matter peremptorily fixed for hearing in the High Court never would come up for hearing on the date fixed, Justice Pendse of the Bombay High Court retorted "Don't give us lectures". For his benefit and the benefit of our readers, reproduced below are the figures of the cases pending in various High Courts as on 30 June 1987.

Allahabad	2,[illegible]3,060
Madras	1, 7,250
Calcutta	1,[illegible]6,447
Bombay	1[illegible]13,245
Kerala	1[illegible]20,890
Andhra Pradesh	86,137
Delhi	77,191
Karnataka	66,191
Patna	56,504
Madhya Pradesh	53,883
Punjab Harayana	53,568
Gujarat	52,623
Rajasthan	48,945
Orrisa	37,850
Jammu & Kashmir	35,945
Gauhati	17,880
Sikkim	36

Perhaps Justice Pendse was consoling himself with the knowledge that Bombay is after all, only fourth in the list, and hence has reason to feel smug. So why bother with lectures about delays, about people out of jobs, about people dying while judges wait to dispense justice. In the meantime, judges of the Bombay High Court have been quick to grant interim orders in terms of "minutes of the order" handed in by Counsel directing customs and excise refund duty paid by "mistake of law". The poor dear merchants and traders cannot wait for the hearing and final disposal. Never mind if their claims are fraudulent. While judges have been quick to unite on issues that concern them, witness the recent solidarity between the Supreme Court and High Court judges over the resolution of the Supreme Court Bar Association stating that they had "acted against the oath of allegiance that they have taken under the Constitution". They have done little or nothing to take up demands of litigants or to make the system responsive to their needs. Oh, sorry, there I go lecturing again!

The Mantle of Infallibility

Speaking on the occasion of his retirement, Justice M. P. Menon of Kerala said "Reference has been made to the capacity of individual judges to make contributions to the development of law. Time there was, when some judges of this Court, and of other High Courts also, were able to make such contributions. But in these days, when even a rejection of an adjournment application ends up in a Special Leave Petition, and considered decisions of Full Benches are upset without disclosing the reason why, which judge of the High Court will have the inclination and dedication for making serious efforts in that direction? The constraints of Article 141 are now not on me, and I am therefore being outspoken, though only to a very limited extent. If any of my brethren happen to be elevated still higher up in future, I have one request to make of them in advance; when you assume the mantle of infallibility, please do not forget that once upon a time, you were sitting in this Court along with others who were capable of making mistakes."

There are many, who have appealed to the Supreme Court against orders granting adjournments or refusing to grant adjournments. some successfully, some unsuccessfully. N. A. Palkhiwala reportedly appealed to the Supreme Court against the order of the Delhi High Court adjourning an application in a dispute between the Jaipur royal family. Yet another senior lawyer, filed a Special Leave Petition in the Supreme Court against an order refusing to grant an adjournment.

Who is Right?

Chief Justice Chandurkar landed in trouble when he thundered in a legal aid board meeting. "I say so with a full sense of responsibility.. this profession of lawyers is now being treated not as that noble profession of Webster and Lincoln, but as a money making machine". Promptly a meeting of High Court Advocate's Association condemned him for casting "aspersions" on advocates.

The lesson was quickly learnt by the Bench. While speaking at a meeting to lay the foundation stone for a Bar Association Building, Justice V. Ramaswamy made a startling remark: "Advocates had ceased to be money-making machines, and they are active participants in public service. They should be provided with all facilities and it was the duty of the Government to do it." Since the quotations are from two Hon'ble judges of the High Court the question is, which one is to be believed?

Devil's Advocate

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