SEPTEMBER 1987 Rs.5

FROM

THE LAWYERS COLLECTIVE

THE CRIME OF DEFAMATION

PRISONER WITHOUT A NAME

POLICE MISCONDUCT

EDITORIAL

Legal Aid - A Democratic Right

It has become something of a style to rush legislation through Parliament without giving to the people whom it most vitally concerns, an opportunity to debate it. This is what happened with the ***Legal Services Authority Bill, 1987*** rushed through Parliament in the monsoon session. In between Fairfax and Bofors, the Legal Services Bill slipped through without any debate. Neither professional bodies of lawyers, nor social action groups, nor Parliament itself witnessed any debate on the merits and demerits of the Bill.

We welcome the statutory right to legal aid. But a fundamental prerequisite to the success of a legal aid scheme is the awareness of legal rights among the underprivileged and the existence of lawyers committed to changing the inequitous legal system itself. The attempt of the legal aid scheme should be to identify and encourage such lawyers committed to the rights of the working masses.

There are many who would willingly devote their entire time and attention to strengthening and defending the rights of the oppressed. The new Act should attempt to encourage such people and build up an alternate bar of lawyers committed to furthering the rights of the working class. Such lawyers must be adequately remunerated for doing legal aid work so that they are not compelled, for their survival to chase private work or take up any work, however abhorrent it may be to them. Unfortunately the legal aid scheme as it functions today, pays to the lawyer a pittance. Legal aid is treated as "Charity", and not as a democratic right. Those who are committed to working for a cause are expected to perform "selfless service" and not ask to be paid. As one judge put it, remuneration paid for legal aid work is like "Dakshina a priest gets for worshiping the Allmighty. A true priest or worshipper will carry out the pooja with the same devotion unmindful of the amount paid to him".

So long as this attitude persists, the legal aid scheme will flop- no scheme can survive on spare-time operators, who worship at the altar of the rich 364 days of the year and set aside the 365th day for "Dakshina"

Litigants must have the right to lawyers of their choice. It would be oppressive and unconstitutional to thrust a government nominated disinterested lawyer on a litigant in the name of legal aid. In this respect also, the Act is wanting.

Indira Jaising

FROM THE LAWYERS COLLECTIVE

CONTENTS VOL. 2 NO. 9

Editor: *Indira Jaising*

LAW AND PRACTISE

Cover Photo : *Souheil Abbasi*

LETTERS

"Hope for Jilted Women"

We read with interest, the article entitled "Hope for Jilted Women" in the July-August issue of The Lawyers. Many young lawyers committed to working for women's rights have worked to support Prema in her fight for justice against exploitation. She approached the Legal Aid Committee for help but got none. In fact one of the members treated her in a very callous and indifferent manner. It is then that Deepak Thakkar came forward to take up her case and worked free of charge. We hope his work will serve as an example to other young lawyers to come forward and work for social justice and legal aid.

Parul **Mody**, *Advocate*
A/5, 1st Floor, Swastik Society
Navrangpura,
Ahmedabad 380 009.

Ed: The article by Nilima Dutta was compiled on the basis of information supplied by Parul Mody. She is an activist lawyer interested in setting up a Lawyers Forum through which committed lawyers can be helped to work collectively in the cause of social justice. All those interested may please contact her.

A Clarification

I am directed by the Principal Judge to inform you that an item appearing in the April issue of *The Lawyers* under the heading "Congragulations Chief Justice" is not correct. The party in question was the annual dinner of the judges of the City Civil Court and judges had contributed to it. The invitation of the dinner in question was extended and accepted by Hon'ble Mr. Justice Kania, before His Lordship's appointment to the Supreme Court of India was announced. It was a sheer coincidence that the announcement was made a few days prior to the party. It is true that the bill for the party was in the name of His Honour Judge Sonar since he is a member of the Club. The receipt for the expenses amounted to Rs.2985/- and not Rs. 10,000/-. Please clarify these facts to your readers.

P. M. **Deshmukh**
Registrar
City Civil Court

Ed: Our enquiries indicate that a large board was displayed at the entrance to the party saying "Sonars Party."

Shabby Acts of Thane Police

The National Campaign Committee of Trade Unions had called for a nationwide agitation including a rasta roko to be held on 3.8.1987, to protest against Rajiv Gandhi's Government's attempts to kill the militancy of trade unions by introducing a new Industrial Relations Bill. This agitation also contested the Government's attempts to replace the existing method of computing the D. A. index by a new system which will slash the amount of D. A. the worker will get in hand, despite the fact that, even today neutralisation is not 100%.

Thane based central unions such as CITU, AITUC, HMS, BMS, joined hands with other unions working at the state level like Sarva Shramik Sangh, led by the Lal Nishan Party, Kamgar Aghadi led by Dr. Samant, Contract Laghu Udyog Kamgar Union and many independent employees unions

The rasta roko was enforced at two spots on the National Highway. Nearly two thousand workers at Golden Dyes Naka and one thousand workers at Wagle Industrial Estate Naka gathered to stop traffic and court arrest. At Golden Dyes Naka everything proceeded peacefully as workers were herded into police vans and whisked away to the police station. However at Wagle Estate Naka the police were in an ugly mood and lathi charged the workers who were demonstrating peacefully.

In the ruthless lathi charge, Mr. Hariram Gupta of Hindustan Vegetable Oils Corporation received multiple fractures on his left leg. Mr. Dilipkumar Dubey of the same factory and Mr. Sanjay Singhvi a fulltime activist of the Contract Laghu Udyog Union were injured and are now admitted to the State Government Hospital at Thane. One does not know whether Hariram Gupta will ever be able to walk normally again. Once again a brutal lathi charge has exposed that workers in India are only second class citizens.

An Activist of the Sarva Shramik Sangh

Jagrut Goenkaranchi Fauz

Goa and Goans are facing an invasion of landgrabbers masquerading as 5-Star hoteliers. This has resulted in displacement and pauperisation of the toiling Goans living along the coastline; the restriction of access to the beaches; the vulgarisation and degradation of Goan hospitality and the creation of an ambience that facilitates breeding of drug addiction and sexual perversity. Besides, tourism has sapped our limited resources like water, electricity and essential food commodities.

In the face of these hardships and humiliations, Goans are suddenly faced with a monstrous conspiracy of the Government to systematically sell Goa's beaches to 19 Five Star Projects in collusion with national and multinational capital. This conspiracy is sought to be legitimised by the so-called "Master Plan for Tourism" floated by vested interests in Delhi regardless of its debilitating effects on Goa and its people.

In the light of this onslaught the "JAGRUT GOENKARANCHI FAUZ (JGF)" (Vigilant Goans Army) a united citizens front consisting of youth, workers, students, professionals and individuals has resolved to fight for the following demands:

1. A total ban on any new five star hotels.
2. A freeze on the expansion of the existing five star hotels.
3. The withdrawal of the declaration of tourism as an industry by the Government of Goa.
4. To prevent advertising Goa in a manner that is detrimental to Goan culture and women.
5. To stop the Government from sponsoring infrastructure required for five star tourism.

Sergio Carvalho.
Convenor, J.G.F.

Readers can send articles and reactions to us at:
THE LAWYERS
818, 8th floor,
Stock Exchange Towers,
Dalal Street, Fort,
Bombay 400 023.

Police Misconduct

The recent death of Mr. Rasheed, an advocate from Kerala, under mysterious circumstances has again brought into focus the widely prevalent malpractice of police misconduct. **Anand Grover** *argues that it is about time that a law be enacted for the right to compensation for victims of police misconduct and that an independent complaints procedure be set up to enquire into such cases.*

Mr. Rasheed was visiting Bangalore to plead for a client, who had applied for a medical college to be opened at Kolar. The application was rejected and decided in favour of a trust, headed by the Home Minister of Karnataka. Mr. Rasheed was arrested by the police for allegedly trespassing. He later wrote to the Bangalore Bar Association complaining that he had been mercilessly beaten while in police custody. Two days later, he was found dead in Salem, Tamil Nadu.

Only recently, the Supreme Court decided a petition on behalf of tribals from Rajasthan. The tribals had been arrested in a morcha demanding food and water. During the detention, the tribals had been brutally beaten. The Supreme Court, while directing their release, deprecated the malpractices on the part of the police.

The above mentioned instances reach the press because vocal groups can articulate their grievances. Yet the reality of police misconduct is such that it is widely accepted as normal practice, especially against the poor who form the bulk of 'criminals'. Ask any lawyer practicing in the criminal courts and he will tell you that for the vast majority of those arrested, the law practically does not exist. Arrests are recorded at the time the police choose thus circumventing production within 24 hours before a Magistrate; remand to police custody is granted for the asking, without (proper) application of mind; persons are kept in custody for unduly long periods of time; a blind eye is turned to torture inflicted in police custody. These malpractices though totally against the law are at best, tolerated and, at worst, accepted as part of the system.

India is a signatory to the International Covenant on Civil and Political Rights (ICCPR). Article 9 of the ICCPR deals with the rights of persons arrested. On the whole, India law encapsulates those principles. (See Box)

Police Powers

The powers of the police to arrest and investigate are laid down in the Code of Criminal Procedure (CrPC). Under the CrPC offences are divided into cognizable and non-cognizable offences and bailable and non-bailable offences, al set out in Schedule I to the Code. Whi : in cognizable and other specified offences under Section 41

CrPC the police have the power to investigate and arrest without a warrant, non-cognizable offences require the police to first obtain a warrant of the Magistrate to investigate and arrest. In bailable offences the accused is bound to be released on bail. In non-bailable offences the Magistrate has discretionary powers to release the accused on bail.

Information received in respect of a cognizable offence is treated as the First Information Report (FIR). The information is required to be given orally. It is reduced to writing by the officer concerned, read over to the informant and signed by him. A copy of the FIR is required to be given to the informant and the substance of it recorded in the crime register. In case of information relating to non-cognizable cases, the substance of the information is recorded in the non-cognizable (NC) register. The procedure of investigation in both cognizable and non-cognizable is the same, except that in the latter case, the Magistrate has to specifically authorise investigation and arrest.

In case of information relating to a cognizable offence, the Station House Officer (SHO) is required to send a copy of the FIR to the Magistrate forthwith and direct investigation. If the SHO considers that the case is not serious or that there is insufficient ground for proceeding, he may not investigate the case. However, he is bound to let the informant know of his decision and record his reasons for it. Malpractices by the police are of different types, viz. (i) not following the procedure at the time of arrest, (ii) violating the person of the accused by torture while in custody, and (iii) compelling the accused to give incriminating statements.

Arrest

Arrest is effected by touch unless the person submits to custody. If there is resistance the police is entitled to use all means necessary. The person arrested cannot be subjected to unnecessary restraint. Only that much restraint can be exercised which is necessary to prevent an escape. However, the police cannot cause death except in cases in which the person is accused of offences punishable with death or life imprisonment.

Causing death at the time of arrest is a regular practice by the police in certain areas. In Andhra Pradesh, 'encounter deaths', a term used to describe physical liquidation of political opponents, became so rampant that after the Emergency, the Government was constrained to appoint the Justice Bhargava Commission to enquire into encounter deaths. However, the encounter deaths have not abated. It

ppears that in 1984, 20 persons were illed in encounter deaths in Andhra radesh alone, while 64 were killed in he two years of 1985 and 1986.

But physical liquidation is not limited to political opponents. In Bombay, 'encounter deaths' of underworld persons have become notorious. The ase of Mehmood Khan is illustrative. Mehmood Khan was returning by a light after a visit to the Gulf, from Delhi to Bombay. Immediately after he cleared Customs and before he came out of the Bombay International Airport terminal, he was surrounded by police officers, escorted out of the terminal, dragged and then shot dead in broad day light. The police filed an FIR to the effect that they fired in self-defence. Repeated requests to the authorities by Mehmood Khan's wife had absolutely no effect. Ultimately, she has been constrained to file a private complaint in the Andheri Court against the police officers. The case is pending.

Informing Grounds of Arrest

Article 22(1) of the Constitution of India provides that no person who is arrested shall be detained in custody without being informed as soon as possible, of the grounds of arrest and shall not be denied the right to consult and or to be defended by a lawyer of his choice. Similarly, Section 50 CrPC provides that a person arrested must be informed of the grounds of his arrest and if the offence is bailable, inform him of his right to avail of bail and sureties.

Very rarely do the police inform a person of the grounds of his arrest. The normal practice is to take a person in custody and formally arrest him only when the police consider it convenient. The right to consult a lawyer implies access to a lawyer. This is invariably denied to the accused by he police. The accused is kept incommunicado if the police can help it. Only in cases of influential people, are these important rights observed. In case of the poor, no heed is paid to them at all.

The Supreme Court has held [*State of Punjab v/s Ajaib Singh,* (AIR 1953 SC 10)] that grounds of arrest need not be informed in cases of arrest by the police on a warrant of the Magistrate, since he is informed by the warrant of the grounds anyway. However, the grounds need not be set out in detail nor does it require the police to explain the grounds to the accused in the language he understands. The right to consult a lawyer of the choice of the accused commences from the time of arrest.

Search

If an accused is formally taken into custody, the police are entitled to take a search of his person. Women and female children are required to be searched by female officers, with strict regard to decency. They are also entitled to take into custody all the articles on him, except the clothing he or she may have. The police are bound to issue a receipt for the articles taken into custody. This apart from the recording of the arrest itself indicates the time of the person being taken into custody. However, in most cases the recording is done much later again at a time when the police consider it convenient.

Production before Magistrate

Article 22 (2) of the Constitution of India provides that every person who is

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

(India is a party to this covenant)

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours, excluding the time necessary for the journey from the place of arrest to the court of the Magistrate, and that no person shall be detained in custody beyond a period of 24 hours, without the authority of a Magistrate. Section 57 CrPC also contains similar provisions.

The police regularly circumvent these provisions by simply not recording the arrest or by not sending the FIR to the nearest Magistrate or by not taking the accused formally in custody. A large majority of persons are taken into custody on mere suspicion and non-credible information or out of pure vendetta. The police tend to want the accused to be interrogated and only after they get something out of the accused do they record his arrest. The temptation of not recording the arrest is very strong. Once the arrest is recorded the police are bound to produce the accused within 24 hours which might mean, given the state of investigative machinery, the accused being released on bail. As a result, there are a number of cases of accused being kept in detention for days together without being produced before a Magistrate. In a vast majority of such cases, the accused are poor and are unable to defend their rights. Even if they file complaints about such malpractices and misconduct, they are hardly believed, because it happens to be their word against that of a middle class police officer. The judges have no doubt [illegible] out whom to believe.

Remand to Custody

Under Section 167 CrPC if the in[illegible]vestigation cannot be completed with[illegible] a period of 24 hours and there [illegible] grounds for believing that the accu[illegible]tion or information against the perso[illegible] arrested and detained in custody [illegible] well founded, the SHO is required [illegible] forward the investigation diary contin[illegible] as well as to produce the accused be[illegible]fore the Magistrate to authorise further [illegible] detention. The Magistrate is then empowered, to authorise detention of the accused in custody, police or judicial, from time to time for a period not exceeding 15 days at a time. It is mandatory to have the accused before the

SUPREME COURT DIRECTIVES IN SHEELA BARSE'S CASE

In 1983, Sheela Barse,a well known free-lance journalist,addressed a letter to the Supreme Court complaining of custodial violence committed against women undertrials while they were confined in police lock-ups in the city of Bombay, based on her interviews with some female undertrial prisoners in the Central Prison at Bombay. The Court appointed Ms. Armaity Desai, then Director of the Nirmala Niketan College of Social Work, to conduct an independent investigation into these charges of torture and ill-treatment in police lock-ups by interviewing undertrials in the Bombay Central Prison. On the basis of Ms. Desai's report of her findings, the Supreme Court Bench consisting of Justices Bhagwati, R.S.Pathak and Amarendra Nath Sen, issued the following directions to the State of Maharashtra, which, if "caried out both in letter and in spirit, will afford considerable protection to prisoners in police lock-ups and save them from possible torture or ill-treatment."

(i) Four or five police lock-ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constables. Female suspects should not be kept in police lock-ups in which male suspects are detained.

(ii) The interrogation of female detenues should be carried out only in the presence of female police officers/ constables.

(iii) Whenever a person is arrested by the police without a warrant he must be informed immediately of the grounds of his arrest and informed that he is entitled to apply for bail.

(iv) The Maharashtra State Board for Legal Aid and Advice should bring out a pamphlet in Marathi, Hindi and English setting out the rights of an arrested person and copies of this pamphlet in all the three languages should be affixed in each cell in every police lock-up and should be read out to the arrested person in the language which he understands.

(v) The police should immediately intimate arrest of a person by them to the nearest Legal Aid Committee which must take immediate steps to provide legal assistance to the arrested person at the State Government's cost provided the detenu is willing to accept such legal assistance.

(vi) For the city of Bombay, a City Sessions Judge, and for each District, the District Sessions Judge, should [illegible] periodic surprise visits to the lock-[illegible] in order to provide the arrested per[illegible]sons with an opportunity to air their [illegible] grievances and to ascertain whether [illegible] basic facilities are being provided [illegible] the judge finds that there are [illegible] lapses on the part of the authorities [illegible] ese shall be brought to the notice of [illegible] Commissioner of Police or the Super[illegible]intendent of Police as the case may [illegible] and if necessary, to the Home Depart[illegible]ment and the Chief Justice of the High [illegible] Court.

(vii) The Police must obtain the [illegible] of a friend or relative of the arrested [illegible] person immediately after arrest, [illegible] the detenu would like informed [illegible] the Police should get in touch with [illegible] such relative or friend and inform [illegible] them about the arrest.

(viii) The Magistrate before whom [illegible] arrested person is produced should [illegible] quire from the arrested person whether [illegible] he has any complaint of torture or [illegible] treatment in police custody and inform [illegible] him that he has a right under Section [illegible] 54 of the Code of Criminal Procedure [illegible] to be medically examined. *Sheela Barse v/s State of Maharashtra* (AIR 1983 [illegible] 378)

Policing Lock-up Conditions

Police lock-ups are, proverbially, places where even angels fear to tread. The lock-up is a bare room with no piece of funiture at all, usually divided into two parts, the living area and the toilet area, separated from each other by a one foot divider. It is almost always a very poorly ventilated room with usually only one small window built close to the ceiling. There is never a fan in the cell. The lock-up is also poorly lit, usually by just one bulb for the whole room, which is never switched off. In lock-ups in the urban areas, the urinal area is usually enclosed, but without a door. There is normally no commode- just a pot in a corner which is cleaned out occaisonally. The water supply is unpredictable and intermittent at best. The stench is unbearable and flies abound. The undertrial is not provided with a change of clothes nor with soap, oil or toothpaste. No mats are provided for sleeping nor are coverlets supplied. The lock-ups are inevitably overcrowded, especially at night. From the uniformity in their filthy and overcrowded conditions, and in the brutal, dehumanizing treatment meted out by the police to their occupants, it seems lock-ups are specially built to oppress detenues and make their stay a type of deterrent to crime. The irony of it all is that jails, which were built to accomodate convicts- people charged, tried and convicted by the law, boast better facilities than lock-ups which accommodate undertrials only - people who are still considered innocent by the law as they have not been proven guilty.

This question was a moot point decided in an unreported judgement of Justice M.L. Pendse of the Bombay High Court in Kanan Srinivasan v/s State of Maharashtra, Writ Petition No.2496 of 1983. Here, the Petitioner was a free-lance journalist who, because he had actively intervened and tried to stop some police constables from beating up an old man at V.T. Station late one night, had been obliged to spend one night in the lock-up at V.T. Station. Here he met some undertrials who complained of having received third degree treatment at the hands of the Police. Srinivasan was so appalled at the filth and squalor of the lock-up and the alleged torture of the undertrials, that, on his release, he wrote a letter to the High Court about this, which was later turned into a petition. In this petition Srinivasan sought a declaration that the conditions of filth and squalor in which the undertrials were incarcerated in the lock-up constituted an infringement of the right to life and liberty.

With regard to the conditions in the lock-up, the State brought on record Paras 196 and 197 of the Bombay Police Manual, a very rare book which has been out of print for years. Para 196 stipulates that the number of prisoners in a police lock-up must not exceed the number for which there is sleeping accommodation, which should be calculated at 7 feet by 4 feet surface area of the floor of the cell, and this number should be inscribed on the door of the cell. Para 196 also states that the above number may be exceeded in the day as a temporary measure only in the case of real necessity, and then, too, an area of at least 12 square feet of that space should be allowed for every detenu.

Para 197 of the Bombay Police Manual states that "convicted prisoners in general and undertrial prisoners in particular, are held in custody as a sort of trust and they should not, therefore, be denied the urgent necessities of life" and goes on to stipulate that basic toilet facilities, and medical care to any extent and whenever necessary should be provided to them.

The Court went on to observe that, in principle, there is no distinction between an undertrial prisoner and a convict, and if any, it is the undertrial, not yet being either charged or convicted by law, who is entitled to better facilities. Consequently a direction was issued to the State and the Commissioner of Police to make available to detenues in lock-ups facilities in accordance with the Jail Manual.

Three years have passed since this order was given but there has been little, if any, improvement in the condition of the police lock-ups in Maharashtra. Constant vigilance by concerned citizens, and not just Police Officers, over lock-up conditions is needed if even basic necessities are to be ensured to the detenues.

Magistrate before he passes the order. Moreover, the accused cannot be kept in custody for more than 90 days pending investigation in cases involving an offence punishable with death, life imprisonment, or imprisonment not less than 10 years; and in other cases, not more than 60 days. The Magistrate is mandatorily required to go through the diary entries before passing his order, remanding the accused to custody or otherwise. In case the Magistrate authorises detention of the accused in custody, he has to record his reasons.

This is a crucial stage for the accused, since if he does not appear through a lawyer, there is every likelihood that the order of remand to police custody may be passed, and interrogation may continue with all its vigour. Normally, only a remand application is filed by the police but the supporting diary entries are rarely produced. The Magistrate, therefore, passes remand orders without taking into consideration proper records. Moreover, any person even vaguely familiar with magisterial practice will tell you that remand is granted in all cases where the accused is unrepresented, which is the case of the vast majority, the poor. Magistrates are thus practically rubber stamping authorities for remand applications.

The police rely heavily on third degree methods for investigation. As a re-

sult, the accused is put under tremendous pressure within the first 24 hours including assault and torture. Recognizing this danger, the Code under section 54 provides that when the accused is produced before the Magistrate or at any time during the period of his detention, the Magistrate, may either on the request of the accused, or when he considers it necessary, direct a medical examination of the body of the accused. In *Sheela Barse*, the Supreme Court held that the Magistrate should himself ask the accused whether he has any complaints to make about torture in police custody. This is rarely done. On the contrary, protests or complaints, as a rule, are ignored.

Interrogation And Self- Incrimination

Article 20(3) of the Constitution provides that no person accused of any offence shall be compelled to be a witness against himself. Moreover, Sections 25 to 27 of the Evidence Act guard against this danger. Section 25 provides that no confession made to a police officer shall be proved against a person accused of any offence. Section 26 provides that no confession made by any person while he is in the custody of the police, shall be used as evidence against him. However, Section 27 provides that when any fact is discovered in consequence of information received from an accused in custody of the police, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Locked up for Cleaning Lock-Ups

"We have all come here together, To clean the Dahanu Lock-up Whose horrible stench nauseates us When we come to give our men food..."

Thus went the song spontaneously composed by tribal women when they marched to the police lock-up in Dahanu in the Thane District of Maharashtra on February 8, 1987, to clean the filthy cells in which their men were being held for political offences. **Shiraz Bulsara** of the Kashtakari Sangathna recounts this episode.

The Dahanu lock up comprises three cells of 8 by 15 feet along the southern wall of the Dahanu Fort, constructed about a 100 years ago. These dark and dingy rooms sometimes lodge as many as 20 accused. The cell is divided into a living area and a toilet area. The latter is demarcated by a three foot high wall enclosing a 2 1/2 by 3 feet area. A large biscuit tin is placed behind this wall in one corner where the detainees are supposed to wash and relieve themselves. This tin is sometimes emptied once in two or three days as a result of which the urine and faecal matter often flows into the living area which is then stopped by a one foot high mud bund temporarily raised by the detainees. At present, a 3 by 8 feet area in every cell is covered with mud and putrifying waste matter.

The detainees have no bathing facilities either. Some of them are forced to remain without a bath for 15 days at a stretch. Repeated requests to maintain basic levels of human hygiene in the lock up meet with one stock answer from the executive magistrate - "For a bath or for toilet purposes, the undertrial has to be taken out of the cell. Who is responsible if he escapes? We can't take any chances".

The Kashtakari Sanghatna has consistently raised the issue of humanising lock-up conditions through various representations to the executive magistrate and the Judicial Magistrate First Class. Every time a hue and cry is raised, correspondence rushes between Dahanu and Thane, but besides the paper work the authorities have nothing to show for their efforts.

Therefore the women of the Kashtakari Sanghatana finally decided to personally volunteer to clean the cells when several Sanghatana activists were arrested and lodged there in February 1987. About 35 of us marched to the Dahanu Fort with brooms, spades and buckets and requested that the cells be opened so that we could clean and disinfect the place. Instead of appreciating our gesture, the executive magistrate ordered us to leave the premises immediately and summoned the police to drive us out. Taken aback by the executive magistrate's high handed behaviour, the women decided to offer peaceful resistance. This led to their arrest under sections 186 I.P.C. (preventing a public servant from doing his duty) and sections 120 (wilful trespass), 110, and 112 (misbehaving with intent to provoke a breach of the peace) of the Bombay Police Act.

The sight of 35 women with brooms and buckets in the Court premises created tremendous consternation. When presented before the Judicial Magistrate First Class, we pleaded guilty to having offered satyagraha when treated with brute force by the police, when all we were involved in was expressing a civic concern.

The Magistrate ruled "I have gone through their representation (to improve jail conditions) and several representations were moved previously too, but whatever averments are carried out are absolutely of a temporary nature. Therefore these accused had no alternative but to take up the cause once again with the Executive Magistrate ..... though these accused have committed offences in their technical meaning, in actual fact, they have not committed any offence, instead they have given rise to a just and natural cause... According to me there cannot be any other fit case than the one before me, for me to take an absolutely lenient view... instead of imposing any fine or sentencing them to jail I order to release the accused after due admonition..."

Article 20(3) can only be invoked if certain conditions are satisfied viz., (a) the person must be accused of an offence,

(b) he must be compelled to 'be a witness'

(c) must be against himself.

The person is supposed to be accused of an offence from the time a formal accusation is made against him. This implies, in case the FIR is lodged, naming a person in the FIR, and in a private complaint, being named as an accused in the complaint. However, the person must stand as an accused at the time when compulsion is used against him. Compulsion implies duress. Compulsion may be of a physical or of a mental nature.

In Oghad (*State of Bombay v/s Kathu Kalu Oghad*, AIR 1961 SC 1808) the Supreme Court held that merely because a person was in police custody when he made the statement does not amount to compulsion. A voluntary statement, though self-incriminating, did not violate Article 20(3). The Court, therefore, held that a self-incriminating statement without compulsion, leading to a discovery of fact, would not violate Article 20(3). However, in Nandini Satpathy (*Nandini Satpathy v/s P.L. Dani*, AIR 1978 SC 1025) Krishna Iyer, in his characteristic prose held that "compelled testimony" includes not only evidence procured by physical threats or violence but also "psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods and the like -not legal penalty for violation. So, the legal perils following upon refusal to answer cannot be regarded as compulsion within Article 20(3)". The Court held that, "if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect, but sufficiently substantial, applied for by a policeman for obtaining information from an accused strongly suggestive of guilt, it becomes compelled testimony under Article 20(3)". The Court also held that both under Articles 20(3) and 22(1), an accused had a right to have a lawyer present during interrogation. In most cases this is not permitted at all.

The conditions in the police lock-up have rarely been a subject matter of Court order. However, in *Kanan Srinivasan* the Bombay High Court has held that undertrials should at least be treated on par with convicted prisoners (see Box).

Torture Illegal

The Supreme Court has repeatedly held that torture is illegal and violative of Article 21.(See *Nandini Sathpathy*, AIR 1978 SC 1025; *Sunil Batra*, AIR 1978 SC 1678; *Khatri*, AIR 1981 SC 1068). Apart from that, it is a criminal offence. Despite this and despite the protection of the provisions of Article 20(3),and Sections 25 and 26 of the Evidence Act, why is it that infliction of torture is so rampant in police custody. On the question of forensic skill and technology, it is quite clear that the time-tested method of extracting confessions is still the easy way out. A confession, if a false one at the point of death, is easier to get than interviewing 100 people and painstakingly building up evidence. Moreover, according to the prevalent view only a thrashing will get you information from hardened criminals. It is a necessary evil, according to some. More importantly, the law gives you a way out, a practical sanction to torture. Under Sections 25 and 26 of the Evidence Act, no confession made by an accused to a police officer in police custody can be proved against him. However, Section 27 allows such portion of the confessions, and only such distinct portion which thereby leads to a discovery of fact, to be proved. In other words, if a person is tortured into giving a self-incriminating statement, a confession, in police custody, and if it leads to discovery of fact, then that portion which distinctly relates to the discovery of fact can be proved against the accused. Though Section 27 of the Evidence Act is a protection, it is a limited protection, leaving a legal way out for forced confessions.

Torture

On 26 June, 1987, the U.N. Convention Against Torture And Other Cruel, Inhuman or Degrading Treatment or Punishment came into force. Twenty States have ratified or acceded to the convention. Another forty or so States are signatories to the Convention. For the Convention to be enforceable, the State has to ratify or accede to the Convention. Merely being a signatory is not sufficient. Conspicuously, India is neither a signatory to nor has it acceded to or ratified the convention. Part I of the Convention contains definitions, liability for torture, defences and State jurisdiction and responsibility for prevention and punishment of torture. Part II establishes a Committee Against Torture, and an International Court of Justice for resolution of disputes under the Convention. Unlike Part I, Part II does not automatically apply to all States ratifying or acceding to the Convention. It requires a further declaration that the State will subject it to the Committee's jurisdiction. Article 1 of the Convention defines torture as "any act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person" for a coercive or discriminatory purpose by "a public official or other person acting in an official capacity" or at the instigation of such a person, or with official "consent or acquiescence". Articles 13 and 14 require that a State provide victims the right to file complaints with domestic authorities and an "enforceable right to fair and adequate compensation, including the means for rehabilitation."

Remedies

Remedies against police misconduct and malpractice are substantially the same as against any other wrongdoer. Against wrongful and/or illegal arrest, the person arrested has the remedy of approaching the Court for release on

bail or by a habeas corpus petition in High Court under Article 226 of the Constitution. However, belated release after illegal wrongful arrest and confinement is not sufficient.

Similarly, release of undertrial after being tortured in police custody does not afford an adequate remedy. Wrongful actions on part of the police give rise to both civil and criminal causes of action. A person who has been wrongfully confined or arrested or assaulted can lodge a complaint with the police. If that fails, he can file a criminal complaint himself under various provisions under Chapter XVI of the Indian Penal Code. Similarly, in cases of death, a complaint may be lodged or filed by other persons under the same chapter. Thus a person is entitled to maintain criminal prosecution against offences of State on a crime of assault (S.351), hurt (S.323), wrongful confinement (S.342) and death (S.302). However, the problem in these cases is that apart from the Complainant's oral evidence, proof is normally scant. Torture is administered in a manner that does not make the injuries apparent. Moreover, forensic medical experts are unavailable or very superficial in their examination to establish that injuries either were inflicted at all or were inflicted during the period of detention. Additionally in most cases, medical examination is done by government doctors who are not prepared to depose against the police. Thus the victim who is already heavily burdened to prove his case against the State finds nobody to help him. Rarely has a private complaint against a police officer succeeded.

Normally, in a suit on tort, damages can be awarded against a wrongdoer who has committed a tort of wrongful confinement, wrongful imprisonment, assault or battery. However, in cases against the State and its police officers the Supreme Court for a long time held that in acts arising out of sovereign functions of the State, which policing ultimately is, the State was immune from liability. However, the Supreme Court has been, in the recent past, treading a new path in respect of violation of personal liberty.

In the Bhagalpur Blinding Case (*Khatri v/s Bihar,* AIR 1981 SC 1068), the Supreme Court raised the question of State liability to pay compensation for acts of its servants outside the scope of their authority and answered it in the affirmative saying that otherwise the guarantee of Article 21 would be a "mere rope of sand". In Rudul Shah (*Rudul Shah v/s Bihar,* AIR 1983 SC 1086), the Supreme Court awarded Rs.35,000/- as an interim measure in a writ petition under Article 32 for violating the petitioner's liberty by keeping him in in custody for 14 years after he was acquitted. The petitioner was given liberty to file a separate suit for compensation. In *Sebastian Hongaray v/s Union of India,* (AIR 1984 SC 1026), two persons had disappeared and the Court had ordered their production on a habeas corpus petition. On the failure of the State to produce them, the Supreme Court ordered Rs.2 lakhs to be paid by the State as 'exemplary costs'.

However, in none of the above cases, has a clear liability for State to pay compensation to the victims of police misconduct been laid down. The right to compensation for acts of misconduct of the State officers, which is required to be laid down both under the International Convention of Political and Civil Rights and UN Convention Against Torture shows no signs of becoming a reality in India. This is despite the fact that the Law Commission in its First Report (Liability of State in Tort) had recommended the relaxation of the rule of Government immunity.

Apart from this, there is no complaints procedure (independent or otherwise) statutorily enacted, which would entertain the grievance of victims of police misconduct. In England the Director of Public Prosecution is empowered to maintain prosecutions against individual police officers of the State on complaints received from the victims or the public. Moreover, there is an internal enquiry procedure of the police to enquire about police misconduct. Nothing of that sort exists in India.

What is urgently required is a statutory enactment of the right to compensation against wrongful acts of the officers of the State and an independent grievance procedure statutorily enacted subject to the writ jurisdiction of the High Court to enquire into police misconducts.

Continued from page 17

The Supreme Court has already held in *Pradeep Jain's* case [A.I.R. (1984) 1420] that so far as super-specialities are concerned there should be no institutional preferences at all. This obviously means that 100% of these seats ought to be kept open for everyone, irrespective of the institution he belongs to. The problem facing the Bombay High Court in this case was that though the petitioners, Dr. S. V. Sathe and Dr. M. A. Siddique had moved the court early and obtained a stay order, the stay was only for their speciality i. e. cardiology. The rest of the January 1987 batch seats were all filled up on the basis of institutional preferences to B.M.C. applicants: With this difficulty the High Court had to adjust equities which is why for the July 1987 batch, all the seats i.e. 100% have been kept open for the statewide entrace exam. Ordinarily even for the January 1987 exam, 100% of the seats ought to have been on the extrance exam basis, but the High Court has envisaged the possibility of a further extension of time to hold the All- India entrance exam. (due to be held in July 1987). This proved to be correct, since in August 1987, the Supreme Court has in fact directed that the All-India entrance exam be held by June 1988. It is because of this that for January 1988, 50% of the seats may be kept on an institutional basis.

This is strictly a temporary arrangement to try and balance and adjust competing claims till January 1988. The All-India entrance exam is scheduled for June 1988. The super-speciality seats will be thrown wide open i.e. 100% and on an All-India basis.

The phrase "equal opportunity" is certainly being activated by the High Court. It remains to be seen how the authorities gear up to the task. To repeat, it is certainly high time the requisite advertisement is issued since the judgement was delivered on 3 July, 1987.

Rustom Bhagalia is an advocate practicing in Bombay.

NOTICE BOARD

THE EQUAL REMUNERATION (AMENDMENT) BILL, 1987

Bill No. XXI of 1987 *A BILL to amend the Equal Remuneration Act, 1976*

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

1. Short title

This Act may be called the Equal Remuneration (Amendment)Act, 1987.

2. Amendment of Section 5

In the Equal Remuneration Act, 1976 (25 of 1976)(hereinafter referred to as the principal Act), in section 5, after the words "work of a similar nature", the words "or in any conditions of service subsequent to recruitment such as promotions, training or transfer," shall be inserted.

3. Amendment of section 10

In section 10 of the principal Act

(a) in sub-section (1), for the words "with fine which may extend to one thousand rupees", the words "with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both" shall be substituted;

b) in sub-section (2), for the words "with fine which may extend to five thousand rupees," the words"with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall be not less than three months but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences" shall be substituted.

4. Substitution of new section for section 12

For section 12 of the principal Act, the following section shall be substituted, namely:-

12. Cognizance and trial of offences:

1) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

2) No court shall take cognizance of an offence punishable under this Act except upon- (a) its own knowledge or upon a complaint made by the appropriate Government or an officer authorised by it in this behalf, or

b) a complaint made by the person aggrieved by the offence or by any recognised welfare institution or organisation.

Explanation - For the purposes of this sub-section "recognised welfare institution or organisation" means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

5. Substitution of new section for section 15

For section 15 of the principal act, the following section shall be substituted, namely:-

"15. Act not to apply in certain special cases

Nothing in this Act shall apply,-

(a) to cases affecting the terms and conditions of a woman's employment in complying with the requirements of any law giving special treatment to women, or

(b) to any special treatment accorded to women in connection with

(i) the birth or expected birth of a child, or

(ii) the terms and conditions relating to retirement, marriage or death or to any provision made in connection with the retirement, marriage or death."

Statement of Objects and Reasons

The Equal Remuneration Act, 1976 (25 of 1976), provides for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.

2. The Act, while requiring equal payment to be made to men and women doing the same or similar work and stipulating that no discrimination should be made between men and women in recruitment does not specifically state that discrimination should not be made between men and women while in employment. This is a lacuna which can enable an employer to discriminate against women in matters like promotions, training, transfers, etc. It is, therefore, proposed to modify section 5 of the Act to prohibit discrimination against women not only in recruitment but also in relation to conditions of service subsequent to employment such as promotions, training, transfers, etc.

3.Inspite of the Equal Remuneration Act having been passed more than 10 years ago there are several employers who continue to pay lower wages to women. One of the reasons for this is that the penalty laid down is not sufficiently stringent. The penalties fixed under section 10 are therefore being enhanced.

4. Inspite of the known prevalence of disparity in wages between men and women, there have not been many reports of violations of the Act. It is therefore, proposed to permit voluntary organisations, in addition to the inspecting staff to file complaints regarding violations of the Act.

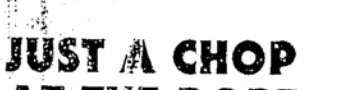
5. Section 15 of the Equal Remuneration Act is also being amended to specifically provide that it cannot be used to justify discriminatory practices against women workers.

6, The Bill seeks to achieve the above objectives.

NEW DELHI
The 11th May, 1987.

PURNO A. SANGMA

JUST A CHOP AT THE ROPE COULD MEAN A DOWNSLIDE



A few strands going awry could make everythging go haywire. The total weight comes rolling down, progress is at a standstill and development goes downhill. Unified strength is the only way up.

A nation is not merely a geographic entity but a mas of men and women endowed with equality and a strong will that forever strives for soliderity. Togetherness makes a nation great.

Directorate General of Information & Public Relations, Government of Maharashtra

MONTHLY UPDATE

CONSTITUTIONAL

Equal Pay for Equal Work

In the Union territory of Delhi there are two main civic bodies, the New Delhi Municipal Committee (NDMC) and Delhi Municipal Corporation (DMC). The NDMC, a compact unit, divided its entire work into various wings. Apart from non-technical staff, it also employed technical staff for the electricity and water wings which formed a uniform cadre on a common seniority with liability to transfer. The DMC, established under the DMC Act, had three wings, electricity, general and water, sewage and disposal, the electricity wing being designated as Delhi Electricity Supply Undertaking (DESU), governed by an independent budget and with a separate General Manager.

On the basis of the Shiv Shankar (SS) Committee report, DESU technical and non-technical employees were granted higher wage scales than others who were paid salaries of pay in accordance with the Third Pay Commission Report. The NDMC also resolved to give its employees in the electricity department the same scales of pay as DESU employees in accordance with the SS Committee report. Two employees outside the electrical wing of the NDMC filed a writ petition for quashing the resolution. The High Court decided that the resolution was discriminatory. The NDMC then modified the resolution excluding the non-technical staff from the benefits of higher scales of pay. These employees then filed a petition, which was disposed off on the assurance that the NDMC would consider everything afresh. The NDMC then resolved to constitute a separate electricity wing. The posts in this wing were to be filled by ministerial staff on rotation from all departments on the basis of seniotity-cum-option and deputation for a period of three years. During that period they would be entitled to SS Committee scales of pay. Some of the employees filed petitions in the High Court contending that the resolution was violative of Article 14. The High Court, while upholding the resolution, did away with the rotational system and directed that vacancies in the electricity wing be filled on the seniority-cum-option basis. Appeals were then filed in the Supreme Court.

The Supreme Court decided that ministerial staff in the NDMC was a unified cadre transferable from one department to another. All of them had to be treated alike. DESU in DMC was a separate and independent unit while NDMC was an integrated whole. To treat only the electricity wing on separate basis was not permissible. [*R. D. Gupta v/s. Lt. Governor, Delhi Administration*, 4 JT 1987 (3) SC 259.]

Equality In Pensions

In 1950 R.L. Marwaha was appointed on a temporary basis in the Government of India. In 1953 he was appointed to the Indian Council of Agricultural Research (ICAR) as a fresh entrant. The post in the Government and the ICAR were pensionable posts. On his retirement in 1980 he argued before the authorities that his pension in respect of the service with the Government should be counted for determining pensionary benefits. In 1984 the Government issued general orders to the effect that service rendered in the Government or autonomous bodies could be continued for pensionary benefits. However, the orders applied to pensioners who had retired on or after the date these orders were notified. Marwaha filed a petition in the Supreme Court arguing that the Government could not deny benefits of revised orders to persons who had retired earlier. Otherwise it would violate Article 14 of Constitution.

The Supreme Court decided that ICAR, though an autonomous body, was sponsored, financed and controlled by the Government. The object of the orders was to allow benefit of service rendered in the autonomous bodies for pensionary benefits. There was no justification in denying this benefit to persons who retired earlier than the date when the orders were notified, and the classification on that account was unconstitutional. The Government and ICAR were directed to give to Marwaha pension after computing the service rendered for the Government. [*R. L. Marwaha vs. Union of India* 4 JT 1987(3) SC 292.]

CRIMINAL

Court Martial

An Army Major lodged a complaint before a Magistrate that a Colonel had assaulted him , thus committing an offence under Sections 323, 352 and 355 of the Indian Penal Code (IPC) and that his superior, a Brigadier, was trying to protect him, thus committing an offence under Section 217 IPC. On applications by the Army authorities and the Government of India that the Colonel be dealt with under the Army Act and the case be handed over to the Army authorities, the Magistrate, while partly allowing the applications, directed that court martial be held within his jurisdiction, the progress of the case be reported to him every two months and that the final result be also intimated to him for further orders. Further applications by the Government to review and cancel the earlier order and to hand over the records to the Army authorities, on the ground that it was not mandatory to hold a court martial in every case involving disciplinary action, were rejected by the Magistrate. While rejecting the revision petition of the Government, the High Court directed that only the result of the court martial need be intimated. In a special leave petition, the Government raised a further contention that the Army authorities could ignore the direction of the Magistrate and hold an enquiry themselves to determine whether a case existed for a court martial or not.

The Supreme Court decided that once summons had been issued under Section 204 Criminal Procedure Code (CrPC) the Magistrate was, under Section 475 CrPC, entitled to direct that a court martial be held against the person charged. Moreover, the rules under Section 475 CrPC mandatorily required the Army authorities to inform the Magistrate about the progress of the case. Therefore, the Army authorities were not entitled to ignore the direction of the Magistrate. [*Union of India v/s S.K. Sharma*, 1987 3 SCC 490].

Dowry Death

Neelam, a young married girl, was alleged to have been murdered. Her body was burnt after she died. The cremation took place without her relatives being informed. On coming to know of the death, her father lodged an FIR against the in-laws, but the police took no action. The father then filed a private complaint but the proceedings were stayed as the police informed the Magistrate that investigation was going on. Later,

the police filed a challan (charge sheet) in the private case against the mother-in-law and the Magistrate commmitted the matter to the Sessions Court. The mother -in-law moved the High Court and got the Session case stayed. The father's application to start the private case in the Sessions Court failed as did his application under section 482 CrPC to the High Court. He then filed a special leave petition to the Supreme Court.

The Supreme Court decided that in such cases it must be influenced by a sense of justice rather than technicalities of law. It directed the Sessions Judge to call the records of the case pending before the Magistrate (police case), proceed with case committed to him (private case) and then try the police case and pronounce judgement on both together. [*Lakhi Ram v/s. Sita Devi & Ors.* (1987) 3 SCC 555].

EDUCATION

Medical Admissions

By an order of 22 June 1984 the Supreme Court had directed that a scheme be formulated for admissions to medical colleges on the basis of an All- India entrance examination to be operative from the year 1985-86. The scheme which was formulated together with the objections was dealt with by the Supreme Court by an order dated 21 July 1986. It approved a syllabus for the course, directed that reservations be reduced to 15% and directed that Central Board of Secondary Education would be the agency for the All-India examination. The revised scheme was to then operate from 1987. On 4 August 1986 when the matter next came up for confirmation of the revised scheme, a number of States filed objections. The entrance examination was postponed and the matter was kept for final order in July 1987. Most States requested for time to switch over to the new system.

The Supreme Court rejected this, pointing out that all the States had four years notice to change over. The Court also rejected the reluctance of some of the States to change-over on the ground that a regional language was a necessary qualification. The Court therefore directed that the scheme shall be operative from June 1988, entrance exams for which will be held between 16 and 31 May 1987, and the results notified between 15 and 20 June 1987. [*Dinesh Kumar & Ors. v/s. Motilal Nehru Medical College, Allahabad & Ors.* 4 JT 1987(3) SC 228.

LABOUR

Union Activities

K. Ramchandran was employed in Pan American World Airways (Pan Am) in various capacities as a workman. He was an active member and an office bearer of the union of Pan Am employees. On his being promoted to the managerial cadre, the management objected to the continuation of his union activities. They offered him reversion to the status of a workman to continue union activities. He refused. Ultimately because of his trade union activities he was terminated. In the adjudication on reference the Labour Court held that the dispute was not maintainable as he was not a workman. He filed a special leave petition to the Supreme Court.

The Supreme Court decided that he should be reinstated and a fresh option given to him to revert to the status of a workman. [*The Workmen of Pan American World Airways v/s. The Management*, 4 JT 1987 (3) SC 320.]

Appropriate Government

Samarjit Ghosh was employed as a working journalist in the Calcutta office of M/s Bennet Coleman and Co. (the Company). He made an application for recovery of unpaid portion of his salary to the Labour Department of the Government of West Bengal under the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955 (the Act). Conciliation proceedings were initiated by the Government. Ghosh was then transferred to the Pune office of the Company. The Conciliation Officer submitted a failure report and the Government of West Bengal referred the matter for adjudication to the Labour Court. An objection by the Company that the West Bengal Governor was not competent to make the reference was rejected by the Labour Court, the Single Judge and the Division Bench of the High Court. The Company filed a special leave petition to the Supreme Court.

The Supreme Court decided that Section 17 of the Act read with the Rules made under it indicated that the State Government before whom the application for recovery is made is competent to make the reference. [*Samarjit Ghosh v/s. M/s Bennet Coleman & Co.* & Anr, (1987) 3 SCC 507].

Termination Without Enquiry

Makhan Singh was employed as the Secretary of Narainpur Co-Operative Agricultural Service Society Ltd. (the Society). On account of an illness the Society passed a resolution terminating his services. In the dispute referred to the Labour Court, the Society argued that Makhan Singh had gone on strike and embezzled funds of the Society. The Labour Court decided that as he had committed embezzlement and remained absent without leave, the termination was justified. The writ petition filed was dismissed by the High Court. Makhan Singh then filed a special leave petition to the Supreme Court.

The Supreme Court decided that the termination was without holding an enquiry, the evidence on embezzlement was scrappy, and that no question of permission for leave arose in case of strike. It set aside the order of termination and ordered reinstatement with full back wages.

Governor's Powers

S.C.Tiwari was employed as a Section Officer in the U.P. Public Services Commission. Certain charges were levelled against him, an enquiry was held and he was found guilty. In appeal, the State Government decided that Tiwari was not given proper opportunity to cross-examine witnesses or produce evidence from his side. The Commission was directed to reinstate him and to hold a fresh enquiry. On the Commission declining to comply with the the order, the State Government filed a writ petition in the High Court, which allowed the petition. The Commission then filed a petition in the Supreme Court. The Commission argued that the State Government was not competent to hear the appeal, which could be heard only by the Governor himself and not by Governor under the advice of the State Government.

The Supreme Court decided that though the Commission was an independent constitutional authority under Article 318 of the Constitution, by virtue of the fact that under the Central Civil Service Rules the State Government was entitled to call for the records and confirm modify or cancel orders passed by the Commission, the Governor under Article 163(1) of the Constitution had to act on the advice of the Council of the Ministers. Therefore, the State Government was competent to dispose of the appeal. [U.P. Public Services Commission v/s. S.C.Tewari 4 JT 1987 (3) SC 243].

The Crime of Defamation

Although defamation attracts most publicity for the fabulous sums sued for in civil suits, defamation is also a crime. ***P. M. Bakshi*** *elaborates on the provisions of the Indian Penal Code pertaining to defamation.*

The criminal law of defamation in India is codified, and is enumerated in section 499 of the Indian Penal Code. Besides this, defamation is a civil wrong. An aggrieved person has both the remedies civil and criminal. (*Asoke Kumar v/s. Radha Kanto*, AIR 1967 Cal. 178, 183, para 20). He is not compelled to make a choice between the two. If he has filed a criminal prosecution, he can still file a civil suit for damages for defamation, even though the prosecution is still pending. In fact, if he waits too long, the civil action may become time-barred. Withdrawal of a criminal complaint on tender of apology is no bar to civil action for libel, unless there is a specific agreement barring a civil action. [(*Govinda Charyulu v/s. Seshagiri Rao*, A.I.R.1941 Mad. 860, 861) (*Mohinder Singh Saluja v/s. Vanson Shoes* (1987) 1 Reports Delhi 455, Issue No. 11, M. K. Chawla, J. Judgement of 31.10.86, Civil suit pending no bar to criminal jurisdiction].

Definition of Defamation

Defamation as an offence is dealt with in section 499 of the Indian Penal Code. The main paragraph of the section defines what is "defamation". In essence, it is an act causing harm to the reputation of a person, by making an imputation.

Coming to the definition of defamation, a person commits defamation when, by words either spoken or intended to be read, or by signs or by visible representations, he makes or publishes any imputation concerning any person, intending to harm or knowing or having reason to believe that such imputation will harm, the reputation of such person - unless the case falls within one of the exceptions. In civil law, the tort of defamation consists in the publication, without lawful justification, of a false statement, tending to lower a person in the estimation of right thinking people generally, or tending to make them shun or avoid him; briefly, defamation is a statement tending to bring a person into hatred, ridicule or contempt. (The element of "ridicule", though not mentioned in the main paragraph of section 499 of the Indian Penal Code, is dealt with in the fourth explanation to the section).

Deceased Persons

Imputing anything to a deceased person may amount to defamation if it would harm the reputation of that person if living and is intended to be hurtful to the feelings of his family or other near relatives. An imputation concerning a company or an association or collection of persons as such may also amount to defamation.

The imputation regarding a deceased person must not only harm the reputation of the deceased person concerned if living, but must also be intended to be hurtful to the feelings of the members of his family or other relatives. [*N. J. Nanporia v/s. Brojendra Bhowmick*, (1975) 79 C.W.N. 531, Section 499, First Explanation].

Harming Reputation

The meaning of "harming a person's reputation" is explained in the fourth explanation to section 499. The imputation must directly or indirectly, in the estimation of others - (a) lower the moral or intellectual character of that person, or (b) lower the character of that person in respect of his caste or his calling, or (c) lower the credit of that person, or (d) cause it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful. The meaning of this explanation was spelt out in a Calcutta case by Mr. Justice Lahiri as under: [*Debajyoti Burman v/s. The State*, I.L.R. (1957) 2 Cal. 181, 191.]

"In my opinion this explanation does away with much of the fine distinctions under the English law and seems to imply that what constitutes defamation has to be determined not upon an interpretation that may be found for a word by a laborious research in a court of law, but upon the meaning that might be conveyed by the word to a reasonable and fair minded man. I am prepared to concede that a meaning that might be conveyed to a morbid or suspicious mind cannot be taken into account for this purpose. The word 'others' in the explanation refers in my opinion to a reasonable and fair-minded man and not to a man with a morbid or suspicious mind."

The explanation speaks inter alia of "caste". So long as caste prevails, an attempt to minimise or ignore existing sanctions is contrary to the public good. [*Umed Singh v/s. Emperor*, A.I.R. 1924 All. 299, 301 (per Walsh, J.). (Case of slander)].

Concept of Good Faith

Coming to the exceptions to section 499, the first observation to be made is that most of them require "good faith". The definition of "good faith" (Section 52, I.P.C.) in the Indian Penal Code provides that nothing is said to be done or believed in good faith which is done or believed without due care and attention. The definition in the Code seems to superimpose the concept of due care and attention on that of honesty of purpose. In other words, honesty of purpose is certainly required. In addition, due care and attention must also be present in order to constitute good faith. The element of "good faith" is of particular importance to persons in the media. To illustrate this, two decisions may be cited. In a case which went upto the Privy Council, (*Channing Arnold v/s. King Emperor*, A.I.R. 1914 P. C. 116) the accused, the editor of a newspaper, published an article alleging that the district magistrate, in discharging a military officer for the offence of rape, had committed a breach of trust and was unworthy of the position he held. In fact, the Lieutenant Governor of the Province had exonerated the district magistrate; and the editor did not produce any fresh information on the basis of which he made made the allegation. Hence the plea that the publication was made in good faith did not succeed. In the second case, which is comparatively more recent. (*Sahib Singh v/s. State of U.P.*,. A.I.R. 1965 S.C. 1451, 1467, para 11) there was a reckless comment in a newspaper article that "the prosecuting staff at Aligarh" was corrupt. No instances of bribery had been cited, and good faith was, therefore, held to be absent.

Another general point concerning the exceptions to section 499 must be noted, namely, that the exceptions are exhaustive and no exception derived from English law or from any other source may be engrafted thereupon. (*Satish v/s. Ram*, A.I.R. 1921 Cal. 1) Of course, besides the specific exceptions given in

the section, account must be taken of the general exceptions to criminal liability given in the Code. (Sections 76 to 106 of the I.P.C.). For example, if a person is, by threat of instant death, forced to make a defamatory statement, he is immune from criminal liability under one of the general exceptions. (Section 94, I.P.C.) An important exception, previously dealt with in a Central Act which had a fluctuating history and which is now incorporated in the Constitution, protects statements made by way of publication of proceedings of Parliament and state legislatures, provided there is no malice. [Article 361A, Constitution of India, inserted by the Constitution (44th amendment) Act with effect from 20 June, 1979].

Parliamentary Proceedings

Further, the Constitution of India, in articles 105 and 194, protects statements made by members during the course of proceedings in Parliament or legislatures. [Cf. *Tej Kiran v/s. Sanjiva Reddy,* (A.I.R. 1970 S. C. 1573, 1574)]. Malice does not take away this protection for members of Parliament, etc. But it would take away the protection for publication outside Parliament, etc. of the concerned proceedings, since the protection for such publication is, under the Constitution, dependent on absence of malice. (Article 361A, Constitution of India).

Exceptions

The ten exceptions to section 499 of the Indian Penal Code, protect certain classes of statements from criminal liability for defamation. They are briefly stated and analysed below:

First exception: True statement made or published for the public good. (Good faith is not required under the first exception, but truth is; contrast the ninth exception, where truth is not required, but good faith is).

Second exception: Opinion expressed in good faith respecting the conduct of a public servant in the discharge of his public functions or respecting his character, so far as his character appears in that conduct, and no further.

Third exception: Opinion expressed in good faith respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Fourth exception: Publication of a substantially true report of the proceedings of a court of justice or of the result of any such proceedings. (Such publication may, however, constitute some other offence under a statutory provision regulating the reporting of judicial proceedings).

Fifth exception: Opinion expressed in good faith respecting the merits of any case decided by a court of justice or respecting the conduct of any person as a party, witness or agent in any such case or respecting the character of such person, so far as his character appears in that conduct, and no further.

Sixth exception: Opinion expressed in good faith respecting the merits of any performance which its author has submitted to the judgement of the public or respecting the character of the author, so far as his character appears in such performance and no further.

Seventh exception: Censure passed in good faith on the conduct of a person by a person having authority over him (conferred by law or arising out of a lawful contract) where the conduct is in matters to which such lawful authority relates.

Eighth exception: Accusation preferred in good faith against any person to one who has lawful authority over that person with respect to the subject matter of the accusation.

Ninth exception: Imputation on the character of another made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good. (Truth is not required, but good faith is; contrast the first exception.)

Tenth exception: Caution conveyed in good faith to one person against another and intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

In India, in criminal cases, questions of privilege (in a prosecution for defamation) are determined exclusively by the provisions of the Indian Penal Code. Accordingly, an oral statement made by an accused person before the court carries only a qualified privilege under the ninth exception to section 499 of the Indian Penal Code. (*Champa Devi v/s. Pirbhu Lal,* A.I.R. 1926 All. 287).

Belief in the truth of a statement factually inaccurate is not a basis of privilege. For example, exception 9 to section 499 cannot be read as meaning that if the person making the imputation believes in good faith that he has been acting for protecting his interest, then he is not liable. The interest must exist, objectively and not merely in the mind of the accused. The expression "good faith" used only once in the exception is used in connection with an act. (*Bhola Nath v/s. Emperor,* A.I.R. 1929 All. 1, 8).

Retention of Criminal Liability

The question whether criminal liability for defamation should be retained has been widely debated in the United Kingdom; but ultimately the offence of criminal libel, in so far as it punishes defamatory libel, continues to be punishable in the United Kingdom. It may, of course, be mentioned that in the United Kingdom where a newspaper is proposed to be prosecuted for libel, it is necessary to obtain the permission of the judge in chambers by virtue of a specific statutory provision meant for newspapers. (Section 8 of the Law of Libel Amendment Act, 1888). Lord Shawcross has been one of the strong advocates of abolishing criminal liability for libel altogether, or of allowing a right of appeal against the decision of a judge to grant leave for a libel prosecution against a newspaper. (Lord Shawcross, article in *The Times,* 26th May, 1977). But no such amendment of the law has been carried out. In fact, strong views have been expressed in the United Kingdom against proposals for abolition of the offence.

In an editorial in the London Times, [leading article, *The Times,* 15 May, 1977, referred to by J. R. Spencer, "The Press and the Reform of Criminal Libel", in Glazebrook (Ed.), Reshaping the Criminal Law (1978), pages 266-284], it was suggested that criminal libel ought to be restricted to cases where it creates a risk of breach of the peace. But the suggestion has not been accepted in the United Kingdom.

Fact and Comment

The second, third and sixth exceptions concern fair comment. Comment must be based on fact. This implies that the facts alleged must be true. It follows that any allegation of fact imputing an act of misconduct remains unprotected by the defence of fair comment, although the plea of truth can be taken if the allegation can be proved to be true. (Nadirshaw v/s. Pirojshaw, 15 Bom. L.R. 130, 169 (1913). This is illustrated by a Calcutta case, which held that imputing to a person the commission of a criminal offence does not fall within the range of "fair comment". [Barrow v/s. Lahiri, (1908) I.L.R. 35 Cal. 495].

The comment, of course, must be relevant to the subject matter commented upon. [See Iyer, Torts (1975), para 41]. The epithet "fair" embraces the meaning of honest, and also the aspect of relevance. The view expressed must be honest and must be such as can fairly be called criticism. [*McQuire v/s. Western Morning News*, (1903) 2 K.B. 100, 109, 110 (Collins, M.R.)]. Mere honesty of purpose would be of no avail if the words exceed the proper limits. (*Union Benefit Guarantee Co. v s. Thakorlal*, A.I.R. 1936 Bom. 114, 120].

Public Interest

It is also necessary that the comment must relate to matters of public interest. In the very nature of things, there can be no definition of "matter of public interest". Such matters are numerous, and usually grouped under certain heads; but, generally speaking, they are matters which invite public attention, and which are open to public discussion or criticism. (*Mitha Rustomji v/s. Nusserwanji*, A.I.R. 1941 Bom. 278, 282. The following instances, collected by Iyer [Iyer, *Torts* (1975), pages 245-246, para 40] and based mostly on case law would be helpful for understanding the wide scope of "matters of public interest":

(i) proceedings of public bodies;
(ii) proceedings of courts (subject to the law of contempt of court);
(iii) administration of government departments;
(iv) administration of public charities;
(v) administration of public companies;
(vi) proceedings of public meetings or local authorities;
(vii) published works;
(viii) advertisement of a new company, scheme or charity;
(ix) controversy carried on in the public press;
(x) character and qualifications, even the private life, of persons seeking a public office or position.

Of course, there is no definition in the books as to what is a matter of "public interest". To quote Lord Denning's observations as to the scope of public interest:

"Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or others; then it is a matter of public interest on which everyone is entitled to make fair comment".[*London Artists Ltd. v/s. Littler*, (1969) 2 All E. R. 193, 198 (C.A)].

Newspapers

In theory, newspapers are subject to the same rules as other critics, and have no special right or privilege as such. But, in practice, they do enjoy considerable latitude so far as the defence of fair comment is concerned - a fact noted in a perceptive passage by Iyer. (Iyer, page 27, para 42). This had been noticed earlier by Lord Haldane in an obiter dictum. [*John Leng v/s. Langlands*, (1916) 114 L. T. 665, 667, referred to by Iyer]. In theory, the journalist's right to comment on matters of public interest is the same as that of an ordinary citizen, so that writers in newspapers have no special privilege of making unfair imputations or comments. [*R. K. Karanjia v/s. K.M.D. Thackersey*, A.I.R.1970 Bom. 424]. But, in practice, so far as allegations made against public men are concerned, the courts tend to be liberal and they seem to tolerate very strong attacks. "You cannot meet a whirlwind with a zephyr" - an observation of Justice Darling [*Crossland v/s. Farrow Times*, Feb. 7, 1905, See Iyer, page 248, fn. 12] whose approach seems to have been followed in India also. [*Narayanan v/s. Mahendra Singh*, A.I.R. 1957 Nag. 19]. A Madras case [*Madras Times Ltd. v/s. Rogers*, 30 M.L.J. 294] on the subject is usually cited on the point. The newspaper involved was the Madras Times. It had described the secretary of an association of railway workmen as "a mischievous agitator with overweening egotism misleading the men and fomenting a strike for selfish objects." The criticism was held to be within the limits of fair comment.

P. M. Bakshi is a former member of the Law Commission of India.

Workmen's Compensation Act, 1923

The Workmen's Compensation Act, 1923 lays down the law regarding compensation to workmen for accidents arising out of and in the course of employment. **D.S. Chopra** *elaborates on the provisions of this important act in a two part article.*

Employer's Duty at Common Law

At common law the master is under a duty to use reasonable care to ensure that his employees enjoy safe working conditions. The employers cannot divest themselves of that duty though they perform it through an agent. [*Lochgelly Iron & Coal Co. Ltd. v/s. M. Mullan*, 1934, A.C.I]. The obligation is three-fold- the provision of a competent staff of men, adequate material, and a proper system and effective supervision. [*Wilsons and Glyde Coal Co. Ltd. v/s. English*, (1937) 3 All E. R. 628, H.L.]. The employer must provide safe plant and appliances to fulfil this duty. [*Davie v/s. New Merton Board Mills Ltd.*, (1959) 1 All E.R.346]. The system of working must be safe and sound. [*General Cleaning Contractors Ltd. v/s. Christman*, (1952) 2 All E.R. 1110 H.L.]. The employer must also have a place of work and safe access to it. [*Braithwaite v/s. South Durham Steel Co.*, (1958)3 All E.R.161]. He must also provide a competent staff of men. [*Hudson v/s. Ridge Manufacturing Co. Ltd.*, (1957) 2 All E.R. 229].

At common law, an employer is bound to take reasonable care in the choice of his servant. He shall secure and maintain a plant, appliances and machinery in the proper shape for the work to which they are to be used and he must combine the personnel, plant, equipment and machinery in a safe system of working. It is absolutely essential that the master provides a competent staff. It is his primary duty and failure to discharge such of his servants as are incapable will amount to actionable negligence in the event of others being injured.

As a general proposition it may be said that the duty owed by an employer to his workmen is one of reasonable care. [*Latimer v/s. A.E.C. Ltd.*, (1953) 2 All E.R. 449 H.L.].

Exceptions

The first exception to these rules is the doctrine *volenti non fit injuria,* i.e. the employee voluntarily assumed the risk. The employer must show that the workman undertook that the risk should be on him. It is not enough that whether under protest or otherwise he obeyed an order or complied with a request which he might have declined as one which he was not bound either to obey or comply with. It must be shown that he agreed that what risk there was should lie on him. *[Bowater v/s. Rowley Regis Corporation,* (1944) 1 All E. R. 465, *Imperial Chemical Industries v/s. Shatwell,* (1964) 2 All E.R. 999 H. L.]. The employer must show that the accident arose out of a risk necessarily incidental to the employment of which risk the servant was aware of and which he voluntarily accepted as a part of this employment.

Second, contributory negligence on the part of an employee will reduce the damages awarded to him. *[Stavley Iron & Steel Co. Ltd. v/s Jones,* (1956) 1 All E.R. 403 H.L., *Stapley v/s. Gypsum Mines Ltd.* (1953) 2 All E. R. 478 H.L.]. This can happen in cases where both the employer and the employee are at fault. But if in such a case the negligence of the employer and the employee can be segregated, the courts would apportion the damages according to the measure of the fault of the employer and the employee. Third, the employer can get away from this common law liability by insuring the employees voluntarily or compulsorily under a statute.

Statutory Liability

Section 3 of the Workmen's Compensation Act, 1923, deals with the employer's liability for compensation for injuries suffered by a workman due to an accident arising out of and in the course of his employment. It provides that if personal injury is caused to a workman by an accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II of that Act.

Personal injury means physical injury or hurt; however it does not mean that actual physical hurt must appear in order to make an injury compensable. It does not exclusively mean blow to the human flesh only. *[Indian News Chronicle Ltd. v/s. Luis Lazares,* 3 F.J.R. 190]. The word personal injury has also been defined as including any disease and any impairment of a persons physical or mental condition.

Accident when used in its popular and ordinary sense means a mishap or untoward event not expected or designed, *[Fenton v/s. Thorley & Co. Ltd.,* 1903 A.C. 443; *Bai Shakri v/s New York Chowk Mills,* A.I.R. 1961 Guj. 34; *Laxmibai v/s. Bombay Port Trust,* A.I.R. 1954 Bom. 180; *Parvatibai v/s Rajkumar Mills* A.I.R. 1959 M. P.281.] i.e. an event not expected or designed from the workman's stand-point; it is not enough that others would have expected it. *[Clover Clayton & Co. v/s Hughes,* 1910, A.C.242].

The term 'accident' would also include occurences intentionally caused by others, such as murder of bank cashier *[Nisbet v/s. Rayne & Burn,* (1910) 2 K. B. 689] or murder of school master by pupils. *[Trim Joint District School Board of Management v/s. Kelly,* 1914 A.C. 667].

Key Phrase Interpreted

The words "arising out of and in the course of employment" are most material in determining the liability of the employer. Identical words also appear under the relevant English statute (now Section 1) National Insurance (Industrial Injuries) Act, 1965. These words have been subjected to so much of judicial scrutiny that Lord MacMillan has observed that-

"Few words in the English Language have been subjected to more microscopic judicial analysis than these and in an effort to expound them many criteria had been proposed and many paraphrases suggested. But it was manifestly impossible to exhaust their content by definition, for the circumstances and incidents of employment were of almost infinite variety. This at least however could be said that the accident in order to give rise to a claim for compensation must have some relation to the workmen's employment and must be due to risk incidental to that employment as distinguished from risk to which all members of the public were alike exposed". [*McCullum v/s. Northumbrian Shipping Co. Ltd.,* (1932) 147 L. T. 361].

Lord Wrenbury on the other hand was more candid in saying that "the decisions upon it are such, that I have long since abandoned the hope of deciding any case upon the words "out of and in the course of" upon grounds satisfactory to myself or convincing to others". *[Armstrong Witworth & Co. v/s. Redford,* 1920 A.C. 757, 780]. The Calcutta High Court also spoke in the same vein while expressing the difficulty in construing these words. It observed that "there is hardly any general principle which can be evolved to explain and define the phrase arising out of and in the course of employment, but attempts have been made to explain it by classification viz., to the nature of conditions, obligation and incidents of employment..... I doubt if any universal test can be found. Analogies not always so close as they seem to be at first sight are often resorted to, but in the last analysis each case is decided on its own facts." [*Golden Soap Factory Ltd. v/s Nakal Chandra Mandal,* A.I.R. 1964 Cal. 217.]

Causal Connection Necessary

The words "in the course of the employment" mean "in the course of work which the workman is employed to do and which is incidental to it." The words "arising out of employment" are understood to mean that "during the course of employment injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have sufferred". There must be a causal relationship between the accident and the employment. If the accident had occurred on account of a risk which is an incident of the employment the claim for compensation must succeed unless of course the workman has exposed himself to an added peril by his own imprudent act. [*Mackinnon Mackenzie & Co. v/s Ibrahim Mohammed Issack,* A.I.R. 1970 S.C. 1906 (1970) I.L.L.J. 16; 1970 Lab. I.C. 1413; (1970) 1 S.C.R. 869. *Lancashire and Yorkshire Rly Co. v/s Highley,* 1917 A.C. 352; 86 L.J.K.B. 715]

There must be some causal connection between the death of the workman and his employment. If the workman dies as a natural result of the disease from which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of his employment, no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but the disease coupled with the employment then it could be said that the death arose out of the employment and the employer would be liable. Even if a workman dies from a pre-existing disease, if the disease is aggravated or accelerated under circumstances which can be said to be accidental, his death results from injury by accident. [*Mackinnon Mackenzie & Co. v/s. Rita Fernandes,* (1970)1 S. C.W.R. 83].

When Employment Commences

Normally it can be said that an accident is in the course of employment if it arises during the period between commencement and termination of employment. Employment commences when the employee reaches his employment and terminates when he leaves it. An accident is also deemed to have arisen in the course of employment if the employee travels as a passenger of any vehicle with the express or implied permission of his employer. [*B.E.S.T. Undertaking v/s. Agnes*, 25 F.J.R. 66; (1963)II L.L.J. 615; *Saurashtra Salt Mfg. Co. v/s. Bai Velu Raja*, A.I.R. 1958 S.C. 881]. A reasonable interval is also allowed before the work commences for determining whether a person has already commenced his work. A workman sustaining injuries after having been discharged to receive his wages was acting within the course of his employment. [*Riley v/s. Holland*, (1911)1 K. B. 1029]. So also an employee who arrives earlier than the time he is expected to commence his work shall be deemed to be in the course of employment if he is doing something for the benefit of the employer which is not necessarily connected with his work. [*Sharp v/s. Johnson & Co.* (1905) 2 K. B.139].

Compensation Disallowed

The Appellant was an omnibus conductor standing in uniform on the platform of his bus. He was injured when assaulted by a gang of youth who made it a habit to assault people. The appellant claimed disablement benefit under the National Insurance (Industrial Injuries) Act, 1946. However it was held that he could not recover because though the injury was sustained "in the course" of his employment it did not arise "out of" the employment. The attack on him was made as a person in the street and the appellant was not singled out by reason of any particular circumstances connected with his employment, such as his wearing uniform or as he might have money on him. [Ex parte *Richardson*, (1958) All E.R. 689].

Lord Goddard has explained the position clearly. In the case of an accident in the course of employment, if there is no other evidence, then it is to be deemed that the accident arose out of the employment. If, however, the facts which are in evidence before the commissioner can amount to evidence to the contrary, then the presumption disappears, and it is then for the applicant to prove that the accident did arise not only in the course of, but also out of his employment.

Decisive Test

The test therefore is:

(a) If the injured person is exposed to risk as a result of his employment, and an accident occurs, he will be entitled to claim benefits, but

(b) if the risk is one that the public generally, is exposed to, and an accident occurs, he will not be entitled to claim benefits, unless the claimant can show that there was a causal relationship between the accident and the employment. [A.I.R. 1956 Pat. 299].

The words "arising out of and in the course of employment" need to be deleted from the section and words establishing a causal connection of the employment with the accident should be introduced.

No Liability

In certain cases the statute itself protects the employer from liability. Proviso to Section 3(1) states that the employer shall not be liable:

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days.

The period of three days prescribed in the proviso is called the waiting period.

(b) in respect of any injury not resulting in death, caused by an accident which is directly attributable to-

1. the workman having been at the time thereof under the influence of drink or drugs, or

2. the wilful disobedience of the workman to an order expressly given or to a rule expressly framed for the purposes of securing the safety of the workmen; or

3. the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purposes of securing the safety of workmen. Ahmed J. in Bhurganga Coal Co. v/s. Sahabejan, (A.I.R. 1956 Pat. 299) said that "in my opinion proviso (b) of section 3(1) applies to only those cases of injuries which do not result in death. Where therefore the injury has resulted in death the question as to the disobedience of any rule or order is not material at all so long as it can be reasonably held that the accident arose out of and in the course of employment".

The fact that the workman is drunk at the time of the accident does not necessarily prevent the accident from arising out of the employment. If however the accident was due solely to workman's drunken condition and not to any risk of the employment compensation is not payable.

In Shamber Nath v/s. Jagdish Prashad, (A.I.R. 1961 All 89) it is laid down that "if a workman establishes a case for compensation under section 3, the onus of proving facts which will disentitle him to compensation under the proviso is on the employer.

In *Bhurganga Coal Co. v/s Sahabjen*, it was held that the following conditions would have to be fulfilled to bring a case under Section 3(1)(b)(ii)-

1. an order or rule was in fact in force at the time when the accident happened;

2. the substantial purpose of that rule was that of securing the safety of the workmen;

3. the wording of the rule or order clearly indicated that purpose;

4. the terms of the order were brought to the notice of the injured workman;

5. the order was disobeyed by the workman;

6. the disobedience of the rule was wilful and deliberate and not due to negligence or mistaken belief;

7. the accident was directly attributable to the aforesaid disobedience.

In Bhutnath Dal Mills v/s. Mistry, (1 F.J.R. 154) Harries C. J. said: "It is to be observed that to come within the provisions of this Act the workman must be in wilful disobedience of an order. Mere disobedience is not sufficient. Disobedience may be a result of forgetfulness or the result of impulse of the moment. Such would not be sufficient as the statute only exempts the employer from liability when the disobedience is wilful i.e. deliberate and intended."

Doctrine of Added Peril

Section 3(1)(b)(iii) embodies in effect what is commonly known as the doctrine of "added peril". In the *Bhurganga*

Coal Co. case Justice Ahmed after discussing the English cases observed: "The principle of added peril contemplates that if a workman while doing his master's work undertakes to do something which he is not ordinarily called upon to do and which involves extra danger, he cannot hold his master liable for the risk arising therefrom. This doctrine comes into play only when the workman is at the time of meeting the accident performing his duty."

Added peril was defined by Lord Haldane in *Lancashire & Yorkshire Railway Co. v/s. Hightey,* (1917 A. C. 352) as a peril voluntarily superinduced on what arose out of his employment to which the workman was neither required nor had authority to expose himself.

Occupational Diseases

Section 3(b) refers to three classes of diseases namely those specified in parts A, B and C of Schedule III of the Act. These have been called occupational diseases and they have been given special protection by the provisions of the Act. Diseases not falling under the diseases enumerated in Schedule III would not entitle the workman to claim this special protection. He would have to in those cases full back on sub-section (1).

The contracting of any disease enumerated in Part A of Schedule III is sufficient to fix the liability upon the employer as an injury by accident arising out of and in the course of the employment.

As regards diseases mentioned in part B of Schedule III, the liability of the employer is fixed where the workman had continuously served the particular employer for a period of at least six months in that particular employment. The period of service under other employers in a similar employment cannot be tacked together as the clause refers to cases under a single employer.

Part C of the Schedule contemplates service in the same kind of employment either under a single employer or under more than one employer. The period of service is to be fixed by the Central Government and is not the six months fixed under Part B of the Schedule.

The next clause lays down that such diseases are to be treated as an injury by accident within the meaning of this section while the last clause enacts a rebuttable presumption that such accidents arose out of and in the course of the employment.

The first proviso enacts that in a case where the period of service is less than the period specified by the Central Government and if the workman proves that the occupational disease which he has contracted has arisen out of and in the course of his employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of the Act. This proviso relates to only diseases covered by Part C of Schedule III only.

The second proviso relates to cases where a workman contracts an occupational disease as described in Part B or C after the cessation of employment. In such a case he must prove (1), that he had served for the required length of service, (2) the disease was contracted while in employment and not out of it.

Sub-section 5 of section 3 imposes restraint on the recovery by the workman of compensation twice over for an identical injury. The workman cannot have the best of both worlds and put the employer in double jeopardy. It protects the employer not only against double payment but also double proceedings.

Under clause (5)(b) of section 3 an agreement arrived at out of court for payment of compensation can be enforced, and it operates as a rule of estoppel.

(The concluding part of this article will appear in the October issue of *The Lawyers).*

D. S. Chopra is an advocate practicising in the Bombay High Court.

These Grey Pages are a regular feature of the magazine. They have separate running page numbers. At the end of the year they will be compiled and indexed allowing the reader to use them as a ready reference.

In order to cater to the readers needs, we will be carrying articles in these Grey Pages on topics specially suggested by the readers. Would you like any particular topics of law to be discussed in the Grey Pages?

If you have any suggestions, send them to us. We will make sure that your needs are served, and the topics you suggest are covered.

COMMENT

Problems in Motor Accident Litigation

Thousands of motor accident victims who throng the Motor Accidents Claims Tribunals present a heart rending sight as their quest for compensation is frustrated by interminable delays, complicated procedures and inefficiency by the Tribunal Officers. ***A. R. Kudrolli*** *traces the history of the tribunals, the problems faced by litigants and makes suggestions for reform.*

Rapid industrialisation, urbanisation and mechanised transport have brought in their wake a greater incidence of accidents involving death and bodily injury to persons. The Bhopal tragedy has focused world attention on the disaster potential of the chemical industry. Chernobyl has sounded the warning bells that disasters do not remain confined within the narrow parameters of national borders.

But the vast majority of accidental deaths and injuries occur on the road in urban areas. Motor vehicles which traverse the roads swiftly and silently are things that are dangerous in themselves. The innocent people who get killed and maimed do not have time to get out of the way. Their safety instead depends on the split second decision which the driver may make when the emergency arises. When the victim dies no other witness may be left. Even if there is a witness he may have caught a brief glimpse of some little part of what happened, and by the time the trial gets under way he may reconstruct in his own mind, not what he did see, but what he thinks he saw.

The common law principle of vicarious liability which made the owner of the vehicle liable for the tortious act of the driver engaged in driving the vehicle was a search for wider pockets to satisfy the liability. The provision for compulsory insurance of motor vehicles against third party risk similarly provided a wider pocket which the third party could probe and which simultaneously indemnified the owner of the vehicle.

Origin of Tribunals

The realisation that the victim of road accidents were mainly from disadvantaged sections of society and with their limited means were experiencing difficulties in preferring claims in civil courts for recovery of damages, necessitated the establishment of Motor Accidents Claims Tribunals initially in the metropolitan and urban areas and later on to cover even the rural areas where motor vehicles caused devastation on the highways.

These Tribunals were intended to provide cheap and expeditious reliefs. Cheap because the punitive court fees levied in civil suits were not chargeable on these applications and expeditious because being Tribunals they were not intended to be fettered by rigorous and intricate procedural laws. These hopes were soon belied, as ad-valorem court fees, though on reduced scales were imposed in some states and stringent rules of procedure and evidence had made backdoor entries on account of the strict application of these rules by the judiciary and by virtue of some of the rules framed under the Motor Vehicles Act.

Delays Backlogs Inefficiency

That the system has failed is evident from the large number of claims of these helpless victims which add to the backlog of pending cases and the considerable delay in adjudicating these claims. The innovation of disposing off these claims before Lok Adalats which are held from time to time is an open admission of the failure of the system itself. By no stretch of imagination can the Lok Adalats which are conciliatory in nature replace the Tribunals.

The delay in disposal of claims on account of the ad-hocism in the appointment of judicial officers, their insufficiency, inefficiency etc. are common to the entire judicial system and need not therefore be dealt with within the narrow confines of this article. But the special reasons which if analysed and removed would eliminate or at least mitigate the debilitating delay in disposal of the Motor Accident Claims can be studied in depth.

Procedure for Application

The claim for compensation, if one goes strictly by the provisions of the Motor Vehicles Act, is made simply by making an application in the form prescribed under the Rules. The application has to be made to the Claims Tribunal having jurisdiction over the area in which the accident occured. On receipt of such an application, the Tribunal after giving the parties an opportunity of being heard is required to hold an inquiry into the claim and thereafter if it so decides to make an award determining the amount of just compensation. It is further provided that subject to the rules that may be made, the Tribunal may follow such summary procedure as it thinks fit. The intention of the legislature was to give ample powers to the Tribunal to follow a summary procedure to achieve the primary objective of providing cheap and quick relief to the victims. It is not intended to suggest that the Tribunals should exercise arbitrary power. But so long as the Tribunals follow the rules of natural justice, there should be no cause for complaint on the ground that the rules of evidence and procedure were not strictly followed. It is also evident that the proceedings before the Tribunal are not strictly of an adversary type and the Tribunal itself to some extent enters the dust of the battle to render quick justice and to ensure that just compensation is awarded.

Fetters on Tribunal Powers

The Rules framed under the Act by some state governments, however, have imposed unnecessary fetters on the unlimited powers of the Tribunal. To illustrate, Rule 310 of the Bombay Motor Vehicles Rules 1959, in force in the State of Maharashtra and Gujarat has applied most of the provisions of the Code of Civil Procedure to the proceedings before the Claims

Tribunal and has further provided that the provisions of the Code in its entirety shall apply to these proceedings. It is obvious that the rule framing authority opted for an easy option instead of framing an independent set of rules which would have removed the obstacles and hurdles which plague ordinary civil litigation. But by virtue of these rules, what ought to have been a summary inquiry before a special tribunal, has become a long drawn out trial entangled in the cobwebs of outdated rules of evidence and procedure. The claims are inordinately delayed and at times defeated by application of rules of pleadings and by insistence upon formal proof of each and every face and scrap of paper. If the rules had been framed authorising the Tribunals at their discretion to admit without formal proof documents such as First Information Report, panchnama, sketch of the scene of the accident, the post mortem report, inquiry certificate, medical reports, cash memos and vouchers for expenses incurred etc., most of the delay and harassment to the parties could have been avoided.

The next important cause of delay is the substantive law itself. In granting compensation, the Tribunals are required to apply the usual law of torts which is a product of English common law. By Act 47 of 1982, a new provision for liability without fault was introduced for the first time requiring the owner of the vehicle to pay a sum of Rs.15,000/- in a case of death and Rs.7,500/- in a case of permanent disablement. The change is welcome. However, for recovery of adequate compensation the victim has still to litigate and in order to succeed the application must contain a clear plea and averment of negligence on the part of the driver setting out the full particulars thereof and thereafter he should lead evidence and establish negligence. He does not succeed by merely proving that he himself was not negligent. The view taken by a Division Bench of the Bombay High Court that the compensation was recoverable under the provisions of the Motor Vehicles Act on the mere occurence of an accident did not find favour with the Supreme Court.

No Fault Compensation a Must

To require an injured person to prove fault results in the gravest injustice to many innocent persons. In the present state of motor traffic, the person who uses the dangerous instrument on the roads should be liable to make compensation to anyone who is killed or injured in consequence of its use. It is but logical to assume that the use of such potential weapons of death on public streets can be authorised only on condition that the people who were injured by their use should receive compensation.

Even in England, the country whose laws we have copied, a large section of public opinion does not see any reason in principle for retaining liability only for negligence. The view is gaining ground that fair compensation has to be granted for the injury suffered. The alternate view is that liability for negligence should be retained and those who could prove negligence should be allowed to prove it, which would enable them to recover a much higher sum as damages than compensation available from the no-fault fund. The latter point of view has relevance if the amount of no-fault compensation is fixed at a lowly figure as has been done in our country. But if the compensation for no fault liability is fixed more realistically taking into consideration the age, earnings, dependency etc.., in fatal accidents and the nature of injury, medical expenses incurred, degree of liability, loss of earnings and such other factors in cases of bodily injury there will be no need to retain liability for negligence. Such a system of granting compensation without proof of fault would drastically cut down the cost of litigation and more importantly expedite assessment and grant of compensation.

The delay in grant of compensation is a great source of worry and distress to the victims of road accidents. It is linked with the medical condition sometimes known as "compensation neurosis". The unpredictability of the result of cases based upon fault liability also puts the claimants under pressure to settle their claims for amounts lesser than they would otherwise receive.

In this connection mention may be made of the far reaching change brought about by the scheme operating in New Zealand. The origin of the scheme is the Report of the Woodhouse Commission and most of the propsals were implemented by the Accident Compensation Act 1972. It provides for an all embracing no fault system of compensation and the rights of action in tort are abolished. The compensation paid is related to loss of earning capacity and in case of fatal accidents a widow gets one-half of the compensation which would have been paid to the deceased husband if he had been permanently and totally disabled and a totally dependant minor child gets one-sixth of such amount.

Framing a scheme as is prevailing in New Zealand may be the final solution, but for the present at least, no-fault liability introduced under section 92A if made more realistic will go a long way in expediting the disposal of these claims.

A. R. Kudrolli is an advocate practicing in Bombay.

Errata

Table II in the article 'Original Civil Litigation': P. 27 of the July-August issue is incorrect. The correct table is given below:

Institution, Disposal and Pending Cases in the City Civil Court in 1986

Pending in January 1986	: 49,937
Instituted in 1986	: 12,771
Disposed in 1986	: 10,874
Pending in December 1986	: 51,834
Net increase in 1986	: 1,897

COMMENT

Equal Opportunity for Medical Students?

A recent judgement of the Bombay High Court augurs well for achieving equal opportunity to applicants seeking entry into the highest echelons of the field of medicine. **Rustom Bhagalia** *reports on this judgement.*

On 3 July 1987, Justice Dharmadhikari and Justice Sugla delivered the judgement in the case of Dr.S.V.Sathe and Dr.M.A.Siddique v/s. The B.M.C. and Others and the connected group of petitions. The judgement which passed unnoticed by the general public, has radically altered the system of admissions to super-specialities in the field of medical education.

After acquiring an M.B.B.S. degree there are two specialised courses for those who want to study further. The first is the post graduate course which results in an M.D. or M.S. degree. After this comes the post doctoral course or to put it simply, a course for acquiring a doctorate in a highly specialised branch of medicine, called a super-speciality. It is only after acquiring an M.D.or M.S. in the concerned subject that one can become eligible to try for a super-speciality.

B..M.C. Students Privileged

These super-speciality courses are by and large not run in most colleges in Maharashtra. Even in the whole of India there are only a few selected colleges that run these courses. In Maharashtra itself it is only the three colleges affiliated to the Bombay Municipal Corporation (B.M.C.) that run most of these super-speciality courses. It is thus no exaggeration to say that by and large Bombay is the focal point for super-speciality courses in all of Maharashtra. Add to this the intricate labyrinth of rules and regulations for different Universities, different eligibility criteria for the pre and post graduate medical courses each intent on safeguarding and promoting the interests of their alumni. As also the fact that in Bombay itself, the B.M.C. frames its own rules for admission to various courses at it's three medical colleges, which rules are not always on par with the rules framed by the State Government.

The net result so far has always been this-whether by accident of birth or quirk of fate or even by hook or crook, an admission to the M.B.B.S. course at a B.M.C. run college was the key for everything. Subject to his merit a B.M.C. student had admission for post graduate and super-speciality courses for the asking. And his merit need not necessarily scale the peaks since the competitive field was severely restricted.

In fact as far as super-specialities went, a preference rule guaranteed that a B.M.C. alumnus with even mediocre marks had the chance of being a neuro surgeon or a cardiologist. It mattered less that there were gold medallists and top notchers knocking for an entry into these portals. Their cardinal sin was that they were gold medalists from Pune, Nagpur or some other University in Maharashtra. Even a gold medallist from the Bombay University who was not an alumnus of a BMC college was doomed as far as first preference rights to claim admission to a super-speciality course was concerned. The ridiculously absurd equation that passed off for "merit" was this... a rank failure with even border line passing marks who was an alumnus of a B.M.C. college was given a chance to be a neuro surgeon or a cardiologist even though a gold medallist from the same University but not belonging to one of the B.M.C. colleges was available. If this gives you second thoughts about consulting a cardiologist or neuro surgeon from Bombay, the less said the better about how "just-"such a system worked in practise.

Students from other Universities in Maharashtra, were the worst hit. As far as they were concerned, it was a dead end. No student from any other University in Maharashtra had any chance whatsoever to be considered on a first preference basis for any super-speciality course at any B.M.C. college. If there were no such courses being run at the colleges from where they passed out,it was just their bad luck. The constitutional guarantee of equal opportunity lay impotent and sterile for these students.

Death Knell of Discrimination?

To the extent that the Bombay High Court breaks away from this ludicrous system it is certainly most laudable and a boon to applicants from the rest of Maharashtra. The High Court has directed that the first entrance exam for admission to super speciality courses in Maharashtra be held for the July 1987 batch. Since these directions of the High Court are of extreme importance and relevant to every eligible applicant in the whole of Maharashtra, it would be helpful to have a look at some of the salient features of the impending entrance examination.

1. For the July 1987 batch there will be no institutional preference at all for B.M.C. applicants. The erstwhile automatic selection of B.M.C. students on first preference basis will not be done for this batch.

2. The authorities will shortly advertise the new scheme for the entrance examination through newspapers and/or college notice boards, when all eligible may apply. In fact at the time this article is being written (i.e. in August 1987) there do not appear to be any signs of the exam being held soon.

The above directions are basically for the July 1987 batch only. In January 1988 the super speciality seats could be filled partly (50%) on institutional preference basis and partly (50%) by holding an entrance exam.

Continued on page 10

BOOK REVIEW

VIOLATION OF DEMOCRATIC RIGHTS IN INDIA

ited by A.R.Desai, Popular Prakashan, Bombay, 1986. Review by : Anuradha Ghandy Price: Rs.35

ecently the anti-terrorist Act was given a fresh lease of life as an dinance with even more stringent visions, enhancing the minimum nishment under the Act from three rs to five years. This action of the ntral Government went by almost questioned, jeopardising even ther the state of civil liberties in the ntry. The ease with which such iconian legislation is accepted in dia reflects the lack of a civil liberties sciousness even among the urban ucated, and it is to this sciousness that civil liberties and mocratic rights organisations have en appealing. A. R. Desai's book, olation of Democratic Rights in dia, is a contribution to this vement against the repression of the lian State.

This bulky 650 page book is the first a two volume work which brings ether articles, reports and estigations on the violation of nocratic rights in India since 1970. R. Desai, a well known sociologist scholar, has undertaken this work, with official sponsorship, but due his interest in and love for the ggle of the people to assert their its.

he book divided into four parts s with (1) the UN Declaration of nan Rights and related Covenants, the Indian Constitution and emoractic legislation, (3) Reports neAmnesty International on India, Government Violence of the People uding police atrocities,'encounter' nga, andd the situation in areas red as 'disturbed' like the th-East, Punjab and Andhra lesh.

last part of the book covers a ty of issues with reports of the ession and atrocities faced not only eople and organisations struggling equality and justice, but also nary citizens. The book includes les on the repression on the ant movement in Andhra Pradesh (almost 25 lakh people are living in a state of emergency in the disturbed areas of the state), the prolonged detention of over 20,000 Naxalites during the 1970s, the murder of political activists in the guise of encounters, the mass arrests and torture during the Emergency and the death of ordinary petty criminals in police custody (Arun Shourie investigated the death of 45 ordinary accused in police custody, the APCLC investigated 35 deaths in police custody from January 1984 to Jun 1985), and the political condition in Bihar and Tamil Nadu. This part alone is enough to awaken even the most insensitive into the reality of Indian democracy, the two levels at which it operates: that of papers and that of fact.

The Indian government is a signatory to the International Covenant on Civil and Political Rights. Yet report after report of the Amnest International points out that it has violated almost every provision of this Covenant. The Indian Government's objection to Article 9 of the Covenant is significant. As Padmanabhan and Mukhoty's articles on the Indian Constitution reveal, articles 'guaranteeing' fundamental rights are rendered meaningless in the face of a provision for preventive detention in the very chapter on fundamental rights. Unfortunately this provision was upheld by the Supreme Court in 1950 itself (*A. K. Gopalan v/s. State of Madras*) and it has played a pivotal role in the State's repression against its political opponents.

The book is not easy reading. It serves a more useful purpose as a reference work. The book gathers together articles and reports which would have been lost to history, but could have done with more systematic editing. In many cases information is repeated in different sections. In many cases, the source of the article and the date of its publication have not been given. Besides, there are many broader questions to which one expects a scholar like A. R. Desai to address himself. The continuity in the structure of law from the colonial period to the present, the distinction between civil liberties and democratic rights and the significance of this distinction for a country like India, the causes for a lack of democratic consciousness in India are important questions. But this will have to wait for the second volume which also addresses itself to the historical aspects of the movement for democratic rights. Inspite of these weaknesses, the book is valuable for all those concerned with the nature of politics in India. The price of the book makes it beyond the reach of most people interested in these issues, but the book is a necessary addition to libraries, especially of courts and colleges.

In 1977, the Indian Government was the chief sponsor of the UN General Assembly Resolution calling on member states to reinforce their support for the 'Declaration against Torture' and in 1979 the Indian Government made such a unilateral declaration. The Government can get away with these pious declarations as long as the press writes about the need to "intensively grill" the Sikh terrorists and the public approves of these methods. The point that A. R. Desai's book is making is precisely this. As long as we approve and justify the violation of human rights for a section of the people whom we feel deserve no better, we are preparing the ground for the same treatment being meted out to others. Justifying the brutal repression in Punjab on the grounds of curbing terrorism, or the open Army rule in the North-East on the grounds of crushing insurgency is inviting trouble. And Desai's book is a grim reminder of just how much this trouble can be.

Anuradha Ghandy is a civil liberties activist in Nagpur, Maharashtra.

WARR

Terr

Preventive democrac the growing li Bill.

On August passed th *Disruptive Act Bill, 1987.* On A approved by the now awaiting P least as far as concerned, the the country furth the British-ruled This Bill comes Essential Servic and the National the Special C applicable to area affected, and the Disruptive Activi In 1985, all of sweeping and preventive detent

The question t was the need fo Terrorist Bill justification g P.Chidambaram, of State for H previous Acts, ha rate of acquittals. new Bill can be de the outset, sin established to fran is so sweeping his/her chances of impossible.

You Shall Not

The crucial aspe which provides 'convicting power Acts had is wi 'confessions' of co-accused. If the before the design confession, then t no option but to accused is guilty proved. Fundame criminal law are reversed with dras consequences

Terrorism Of The Legal Kind

*Preventive detention ironically has come to be accepted as an integral part of India's version of democracy. The Terrorist and Disruptive Activities (Prevention) Bill,1987 is yet another addition to the growing list of legislation permitting arbitrary preventive detention . **Susan Abraham** dissects the Bill.*

On August 24, the Lok Sabha passed the *Terrorist and Disruptive Activities (Prevention) Bill, 1987.* On August 26, the Bill was approved by the Rajya Sabha and it is now awaiting Presidential assent. At least as far as civil liberties are concerned, the Act effectively drags the country further back in time than the British-ruled Rowlatt Act days. This Bill comes on the heels of the Essential Services Maintenance Act and the National Security Act in 1980, the Special Courts Act (1985) applicable to areas declared as terrorist affected, and then the Terrorist and Disruptive Activities (Prevention) Act in 1985, all of which give the state sweeping and arbitrary powers of preventive detention.

The question therefore arises: What was the need for a freshly enacted Terrorist Bill this year ? The justification given by Shri P.Chidambaram, the Union Minister of State for Home, was that the previous Acts, had resulted in a large rate of acquittals. By that criterion, the new Bill can be declared a winner from the outset, since the procedure established to frame and try an accused is so sweeping and arbitrary that his/her chances of acquittal are next to impossible.

You Shall Not Be Pardoned

The crucial aspect of the present Bill which provides it with more 'convicting powers' than the previous Acts had is with regard to the 'confessions' of an accused or a co-accused. If the police can produce before the designated court such a confession, then the court is left with no option but to presume that the accused is guilty till the contrary is proved. Fundamental principles of criminal law are thus completely reversed with drastic and far reaching consequences

Section 27 of the Indian Evidence Act, ensures that statements recorded by the police have no evidential value in a judicial trial. The notoriety of the Indian Police in the use of third degree and other forms of torture have been sufficiently documented. The new Bill sees to it that the trial of an accused hinges wholly on the confessions recorded by the police.

Section 21 of the Bill further sees to it that in the light of such 'confessions' the designated courts have to assume that the accused is guilty of the 'terrorist' or 'disruptive' act and he/she has then to prove innocence. This again reverses the constitutional principle that an accused has to be deemed innocent till he/she is proved guilty.

Powers of arrest, investigation and prosecution have been conferred on not only police officers but any Union government officer as well. The Bill is "loudly" silent on the need to record the arrest of an accused and procedures to be followed while extracting confessions. To the credit of Shri Chidambaram, he expressed the fond hope that convictions will not be meted out solely on the basis of confession. But where are the safeguards against this? The new Terrorist Act will surely usher in an era of "confessional jurisprudence", a term astutely coined by a "Hindustan Times" correspondent.

Further in the section on definitions, the term "disrupter" has been lumped together with the much dreaded "terrorist". Thus the law can effectively frame and detain the participants of a strike, a morcha or a rasta roko when the government so desires.

Safeguards

While the Bill provides all the safeguards to the arresting, investigating and prosecuting agencies of the State to ensure the successful detention and conviction of the accused, no such safeguards are provided to the latter to obtain either a fair trial or his/her liberty. The Bill clearly contravenes the constitutional test that a law taking away 'life and liberty' must be "fair. just and reasonable." The concept of 'in-camera' trial has been accepted in the earlier Acts and incorporated in the new Bill. A closed and secret trial will inevitably stand to the disadvantage of the accused.

No provisions exist in the Bill of criterion for selection of judges to preside over the designated courts, though again the Law Minister "hoped" that they would be Sessions or Additional judges with great experience in trials. Similarly, anyone who has served for seven years in a Union or state government post requiring special knowledge of law is eligible for appointment as a Public Prosecutor in the designated courts

The operation of designated courts have been further refined in the Bill providing for the Union Government to supersede State designated courts. The shifting of cases from one designated court to another is also permissible with the concurrence of the Chief Justice of India. They obviously imply more centralised powers to the State.

The only safeguard for the accused is that the decision of the designated court is appelable, both on facts and law, to the Supreme Court. Here, at least sittings are public and Supreme Court rules require the judgements to be made in public. However, this too is a skimpy safeguard, since the Supreme Court remains inaccessible to the average citizens of this country.

Susan Abraham is an activist lawyer in Chandrapur, Maharashtra

Muscling out Tenants

Can landowners or developers take the law in their own hands and use force to evict their tenants without seeking recourse to the courts? Yes, decided the Malaysian Supreme Court on 27 April 1987. **Nirmala Bhat** *comments on this decision that could disastrously affect the lives and livelihoods of millions of tenants.*

The decision was made in the case of Mr. Poh Swee Siang, a farmer in Thean Teik Estate, a rich vegetable farmland in Penang against the owners of the farmland, the trustees of the Leong San Tong Khee Kongsi and the developers of Thean Teik, Perumahan Farlim in Malaysia. Mr. Poh had been a tenant of a 6 acre piece of land in Thean Teik Estate since 1950 .He had built up his farm and had become a successful farmer, with several vegetable plots, many chicken co-operatives, a hatchery, a pigsty and other facilities like a water sprinkler system and a mechanised feed-mill mixer.

Thean Teik Estate stands on 142 hectares of first-grade land owned by the trustees of the Leong San Tong Khoo Kongsi, a registered society of clansmen formed in 1834. For several decades, the land has been rented out to farmers, consisting of more than 400 families with a total population of 12,000. This Estate is of vital social and economic importance to Penang, supplying much of it's food and fruit requirements and also meat, eggs and milk. The trouble began in January 1982 when the landowners asked a developer, Perumahan Farlim to develop Thean Teik into a housing estate, comprising of more than 4000 houses. The developer had offered a flat unit of 630 square feet area to each affected household and compensation for loss of crops and farmland. However, this offer was rejected because these tiny, crowded flats would be of little use to the farmers who would be deprived of their very source of livelihood.

Prosperous Estate Destroyed

In the case which Mr. Poh first brought up to the Penang High Court, he had sued the landowners and developers for entering his farm with bulldozers to destroy his vegetable crops and water-sprinkler system, without first obtaining a court order and in using force to evict him from his farm. During this incident in October 1982, one of Mr. Poh's farm workers, Madam Tan Siew Kee, 33, was shot dead and some other farmers were seriously injured.

Being a tenant of more than thirty years' standing, Mr. Poh disputed the right of the landlord to terminate his tenancy by a mere one month notice and claimed that they ought to go to court to determine whether they were legally entitled to take possession and to get a court order to recover possession (under the Malaysia Specific Relief Act, 1950, which is quite similar to our own). Mr. Poh also contended that the landowner or developer who had terminated his tenancy could not evict him from the land by force by himself as this would amount to taking the law into his own hands. Several previous legal cases decided in India and the Privy Council in London were cited to show that this should be the law to prevent a breach of peace and to rule out chances of clashes between landlords and tenants. He also maintained that the affected tenant could sue the landlord to be put back on the land under the provisions of the Malaysian Specific Relief Act.

The Judgement

The Supreme Court decided that the landowner and developer did not need to go to court first before evicting tenants. They can choose whether to seek the court's permission or evict the tenants themselves. The Supreme Court also decided that the landowner could use "reasonable force" in order to evict tenants as long as "no more force than is reasonably necessary" is used. By doing so, the landowner would not be committing a criminal act and cannot be successfully sued in a civil court.

The judges ruled that the landlord had only to give his tenant a reasonable notice to quit (one month in Mr. Poh's case). This applies to all tenants, irrespective of how long the tenant or his family have stayed in their farm or house, unless the house or building came within the protection of the Control of Rent Act, 1966. Otherwise the owner is entitled to take the remedy into his own hands.

It is heartening to note that the Indian Supreme Court has interpreted the provisions in the Indian Specific Relief Act to mean that a landowner must seek a court order before evicting a tenant. And this decision has also been supported by the Privy Council. But the Malaysian Supreme Court judges stated that they could not fathom the logic of these Indian decisions and awarded to the landowner, the right to use 'self-help' measures to evict the tenant himself.

The Malaysian Supreme Court, therefore, ordered Mr. Poh to leave his farm and house within three months from the date of judgement, without any compensation. The Court also slashed the $ 327,000/- in damages granted to Mr. Poh by the Penang High Court on 10 March 1986 to only $ 23,000/-. This substantially reduced amount in damages was $ 20,000/- for the sprinkler system and $ 3,000/- for the loss of the vegetables destroyed. To add to this list of multiplying miseries, the court also directed Mr. Poh to pay to the landowners the damages suffered and costs incurred by them in this case.

Implications

The Supreme Court verdict raises rather disturbing questions. How much protection do tenants have under the law? Are people with no homes of their own to live in constant insecurity, never knowing when they would be asked to leave? If the law is so flexible that the landowner can use "reasonable force" (his own private police force) to evict his tenants with little notice and niggardly compensation, and if the courts rule such action as just and legal, what can the law's promise of

protection and relief mean to any citizen?

Principally, the ruling seems to be in contradiction with the principles of equity and justice. To the millions of people involved, it can cause loss of access to land, loss of jobs and income, increased housing problems, a deterioration in their quality of life, greater poverty, imbalances and inequalities in society. This, in microcosm, is what will be happening on a vastly expanded scale with a snowballing effect.

The law, as it now stands, seems to offer very little protection to the tenants and gives rise to rather disturbing implications. A tenant has to vacate when the landlord gives him a "reasonable" notice (provided the premises have not been built before 1948 or he has some equity in the building/land). One month as a period of notice is considered "reasonable" even if a tenant farmer has been renting land for over 30 years. If the tenant refuses to leave, the landlord can evict him using "reasonable" force even without going to court first, which may lead to violent clashes between landowners and tenants as in the case of the Thean Teik estate. Thus, the law diminishes the court's role in preventing disturbances of peace. Also, there is no obligation upon the landlord to compensate the tenant-farmer for his loss of livelihood. Moreover, if the tenant sues the landlord for re-entry, he runs the risk of being burdened with costs and damages. This would, in future, discourage a tenant from going to court even justifiably.

The Thean Teik issue and its ensuing repercussions in the whole of Malaysia can produce gigantic human and social problems. There are, currently in Malaysia, an estimated one million small rubber holders and their families and thousands of other agricultural tenants or sub-tenants. Apart from these, there are around five million house tenants and thousands of small businessmen and traders renting shophouses. Many of the farmers have laboriously developed and invested in the land and improved upon it with the permission or encouragement of the landowner. Hence, they have an equitable interest in it and are entitled to compensation for the loss of future income due to inability to continue farming the land.

In the event of evictions by landlords, there could be tremendous loss of livelihood as well as dislocation of houses in the case of farmers. Alternative jobs are scarce due to recession and also due to the rapid increase in population which limits agricultural jobs. Unemployment would lead to a break-up in community life and other sociological problems.

In the context of social and economic development, prime agricultural land will be converted into housing or commercial land which is a hindrance to any economy whose primary function is to attain self-sufficiency in food production. Yet, ironically, this is exactly what would happen. According to a Malaysian newspaper report, reduced food production in the face of increasing population has already led to shortages in food items, steeply rising inflation and hefty increases in the country's import bill year after year, adversely affecting Malaysia's trade position and balance of payments with other countries.

Vocal Opponent

The Consumers' Association of Penang (CAP) which has been the foremost and most vocal opponent of the judgement, has invited the wrath of the Supreme Court in the form of contempt action against the CAP chief, Enick Idris. The CAP and the Thean Teik Estate Residents' Association had issued two press statements in April 1987 to focus public attention on the need to reform tenancy laws in the light of the recent Supreme Court judgement. The statement lucidly enumerated the human and social problems in the Thean Teik case and also stated the adverse effects on the economy and society as a whole. If landowners and developers resort to "self-help" measures against their tenants under the new ruling, it pointed out that the law gave little protection to the tenants while vesting unlimited power in the hands of landowners.

The CAP appealed to the government to review the existing laws and to introduce new legislation protecting the rights and interests of tenants. This should include provisions for security of tenure to tenants, setting out in clear-cut terms, the procedure for termination of tenancies and settlement of disputes and the provision of compensation in case of tenant farmers. Until such a new Act is enacted, the government should make efforts to prevent landowners from using force to evict tenants themselves.

The CAP also exhorted the state authorities to take all steps to settle all disputes between the landlords, developers and residents in a peaceful and amicable manner, possibly through setting up a Tenancy Tribunal headed by a High Court judge and based on the principles of equity and social justice.

Nowhere in the statements was there any criticism levelled against the Supreme Court itself nor were any insinuations made about the bias or impropriety on the part of the court. The CAP had only tried to deduce the possible deleterious consequences that could arise if the landowners or developers would use force to evict tenants as allowed by the ruling.

Yet, within a month of the statements being published in the press, the Supreme Court allowed contempt action to be taken against CAP President Enick Idris and the Thean Teik Estate Residents' Association Chairman Ooi Chan Seong and gave leave for an application to be made to commit them to prison for criticising its judgement in the Thean Teik Estate case.

Will the Govt. Act?

What can be done to break this iron triangle of landowners, developers and residents, before violence escalates and results into chaos? Obviously, there are enough legal provisions and precedents to bring about a long-term solution, feels the CAP. Such a solution lies ultimately with the government being willing to intervene upon a subject that could be politically sensitive especially since the powerful developers and landowners lobby is involved. But keeping in mind the gravity of the problems of the vast multitude involved, inaction or even delayed action would only seem like rubbing salt on a festering wound.

Nirmala Bhat

PRISONER WITHOUT A NAME

This month we do an interview with a convict released after having served his term of 4 years. He will remain unnamed, for what he has to say could be any prisoners story. Although the Supreme Court in several judgements has affirmed that prisoners do not lose their rights behind prison bars and has created several opportunities for them to ventilate their grievances, these rights remain mainly on paper. Inside the jail, it is the writ of the Superintendent, the Jailor or the Matron of the ward that runs the jail and not the Supreme Court. Prison rights remain an illusion for most prisoners as this interview shows. We hope this interview, a voice from within the prisoner will help in the process of making prison rights a reality for those thousands of undertrials and convicts forgotten behind the bars.

Q. *Can you give us your impressions of conditions in Prison?*

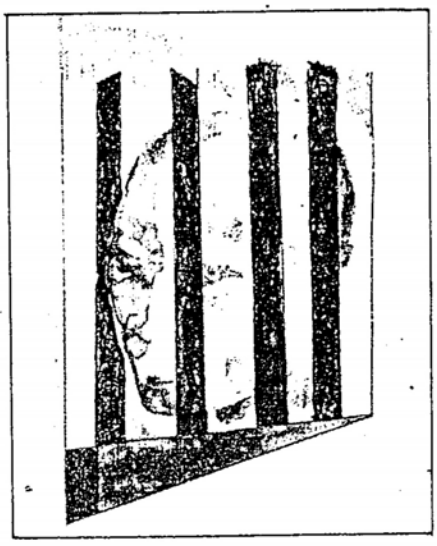
A. The most difficult thing about imprisonment is the fact that you have no occupation. Prisoners are confined in barracks with 80 to 100 others. These barracks are overcrowded. The barracks open at 6.00 a.m. in the morning. After the counting of prisoners is over, rice or wheat kanjee is served for breakfast. Lunch is at 10.30 a.m. At about 4.00 p.m. it is dinner time. There is a gap of about 18 hours between the dinner and the morning lunch. This long period without food is unbearable. Therefore to avoid being hungry, we keep the food with us in the barracks and eat it cold, later at night. There is no reason why this routine cannot be changed so that there is a reasonable gap between meal times. If the timings of dinner cannot be changed, prisoners should at least be provided with heaters to warm up the food.

Q. *What about cleanliness and hygiene in the prison wards?*

A. There is a great shortage of water supply in most of the prisons in Maharashtra. Most of the barracks are filled with bed-bugs, lice and mosquitoes. Pesticides are not sprayed in the wards for years. Due to over population of inmates in the barracks, there is wide-spread disease. Clothing and bedding supplied is not washed properly. Washing soda-ash is not enough and those who wish to wash their linen have to put it in one single drum of soda-ash water, in which bedding and clothing is washed. The prisoners suffering from contagious and infectious diseases are not handled in time or kept segregated.

Q. *What are the common diseases in prison?*

A. Scabies, jaundice, T. B. are very prevalent amongst prisoners.



Q. *Do you get proper medical attention?*

A. No. Medical facilities are poor. The doctors on duty never care to check the sick prisoners. Some standard medicines are given without examining the patient. Drugs are adulterated e. g. benzene benzonate is originally as thick as honey but what the prisoners get is practically water. Other better quality medicines are smuggled out by the hospital staff and also used by the prison staff.

Q. *Are the prisoners paid for the work extracted from them?*

A. Yes. The prisoners are paid for the work at the rate of 0.70 paise to 1.40 paise per day and that too if the task given to them is completed. In the handloom section, a prisoner preparing cloth of 26" has to prepare 22 metres per day and only then he will be given wages of Rs.1/- per day. The maximum wages that are earned by prisoners in the factory section comes upto Rs.36/- per month.

Q. *Is the amount you get by way of wages sufficient to meet your bare necessities?*

A. No. The amount is not at all sufficient to meet our day to day needs. The prices of the articles sold at the canteen are going up day by day but the rates of the wages have not been revised. Only 15 gms. coconut oil and soda-ash is provided to a prisoner once a week, free of cost. A prisoner has to buy his own toilet soap, washing soap, tooth brush, tooth-paste from the coupons he gets. Tea is also not provided and if we want it, we have to purchase it at the rate of 30 paise per cup from our earned wages. We also have to purchase our own writing material. Our earnings are not enough to buy soap and tooth paste to keep ourselves clean. The monthly requirement of bathing soap and soap for washing clothes would be Rs.11/-. Tooth paste would cost about Rs.5/-. Thus, just this basic expenditure exceeds what we earn. How can the prisoners keep themselves clean and free from disease?

Q. *Do prisoners face ill treatment from the prison staff?*

A. Sometimes the prisoners do have to face ill treatment from the prison staff, who demand bribes for granting facilities to which they are entitled.

Q. *Can a prisoner approach the Superintendent if he has a problem?*

A. The process of meeting the Superintendent is a lengthy one. The prisoner first has to meet the circle jailor or the welfare officer and tell them his problem. If they deem fit, only then can the prisoner meet the Superintendent.

Q. *What kind of corruption exists in the prison?*

A. There is a lot of corruption in the prisons. Right from undertrials to the convicts and life termers, everyone has to pay the officials for getting their work done in time, such as at the time of release of an undertrial on bail or on acquittal, at the time of release of a convicted prisoner, for family interviews, supply of home food for undert-

rials, preparing fourteen years report of life convicts, at the time of parole or furlough and also in many other ways. Even lawyers sometimes have to pay the officials for getting legal interviews, attesting of vakalatnamas etc.

Q. *Is there a library in a prison ? For whom is it utilised and are newspapers supplied?*

A. Each prison has its own library. The library books are only meant for convicts sentenced for more then six to nine months. Most of these books are old and no additions are made to the library. Newspapers are only provided for convicts ,that too ,one newspaper for thirty prisoners.No newspapers are bought for undertrials. Hence there is a great shortage of newspapers which in any case are censored and news items cut out.

Q. *Are you allowed to keep books with you ?*

A. Prisoners are only allowed to keep one library book in their possession. Although the Maharashtra Prison Manual provides that a convicted prisoner is allowed to keep in his possession 10 books, two religious books and one library book, the prison officials never allow the prisoner to keep them.

Q. *Were you permitted to keep books?*

A. I had books with me when I was in Bombay and was harassed and not allowed to keep the books. I had novels, the Constitution of India, a Criminal Manual consisting of Cr.P.C., the I.P.C. and the Indian Evidence Act which I always needed for helping the inmates to know their legal rights. These books were confiscated by the Superintendent during the search and were never given back to me.

Q. *Is there a grievance box for the prisoners ?*

A. Yes, but only in rare cases, do prisoners use these grievance boxes, but the grievances are never attended to by anyone. Since the keys of these grievance boxes are in the custody of the Senior Jailor, he opens them, removes the grievances and destroys them before the Advisory Board Committee appears.

Q. *Do the prisoners know their rights and the facilities available to them ?*

A. The prisoners have no knowledge about their rights. Neither the Welfare officer nor the Circle Jailors bother to inform the prisoners of their rights and facilities. During the time when Shri Ram Belavade was the Inspector General of Prisons he had published books about the rights and facilities available to prisoners but these books were never given to the prisoners. They were kept in the library to rot and be eaten by ants. Only false records were shown that these books were issued to the prisoners.

Q. *Is there any effort for a reformatary programme for convicts ?*

A. The rules provide for reform programmes, but the prison officials make no effort to reform and rehabilitate a prisoner. One of my friends had applied to the Government for my premature release, reformation and rehabilitation in 1985, but the application was turned down by the Government. A prisoner always wishes to reform, but it is the machinery of the government and the police department which comes in the way. I have noticed in Pune, when prisoners are released after serving their imprisonment, they are taken to the Commissioner's office by the Detection of Crime Branch staff who wait for the release of the prisoners outside the main gate and arrest them again under section 110 of the Bombay Police Act. Their cases are not even tried for more than 3 to 6 months by the Courts in Pune.

Q. *On being released after serving the term of imprisonment are you issued with the certificates of the work you had done during your imprisonment ?*

A. No certificate of work done is issued to a prisoner,. This creates a problem in getting a job ?

Q. *Even if you had a certificate would it help you in getting a job ?*

A. No. This is because nobody wants to give a job to someone who has been convicted. That stigma stays with you for the rest of your life. The State Government can do something to remedy the situation. They could offer jobs in appropriate trades, but they will never do this. There is neither any effort for reformation nor rehabilitation.

Q. *What are your recommendations to improve prison conditions ?*

A. Improving prison conditions only will not be sufficient. The machinery has to be changed. Proper remedies have to be evolved by the Government for reformation and rehabilitation of prisoners. Private institutions should also come up with this programme. The institution should not be treated as a prison but as a reformatory institution. The post of Welfare Officers should not be from the Jailor's cadre but should come up from other private institutions. They should not be on the establishment staff of the prisons. District Probation officers should also be given more powers for reformation and rehabilitation of the prisoners. At present, the same person holds the position of the Inspector General of Prisons and Director of Correctional Services. The Director of Correctional Services and its department should be separate from the prisons as their functions are completely different. A statutory department should also be put up by the government which should programme reformatory and rehabilitation activities. Prisoners serving more than 5 years imprisonment and other deserving prisoners should be given jobs after their release. The Inspector General and the regional Deputy Inspector General should pay surprise visits at least once a month and look into the grievances of the prisoners in person. The Board of Visitors and Magistrates on their visits should personally approach the prisoners and see if they have any grievances, which should be attended to by an independent committee. Cultural and recreational activities should be increased. The Superintendent should appoint experienced cooks (holding degree/diploma) in order to improve the quality of the food which is presently provided to the prisoners. Smuggling of narcotics and arms which is continuing on a large scale must be stopped. Prisons should be equipped with X-ray machines to detect these articles which are smuggled in by the prisoners with the connivance of the staff. Prison industry should be modernised in keeping with the outer-world industry which will give a great scope to prisoners to learn new trades. In one case, the Sessions Court, Thane while sentencing a prisoner to life imprisonment ordered that the government should arrange for his reformation and rehabilitation after release. This direction should be given in all cases.

ADAALAT ANTICS

Postal R.No.:
MH-BY-SOUTH-38

Language Disputes

Justice Chandurkar of the Madras High Court, on a flying visit to Bombay on the completion of 125 years of the High Court, complained bitterly that he had problems understanding the language in Tamil Nadu. He was dependent, he said, on his colleagues and "subordinates" to comprehend what was going on. Language difficulties have then become the major reason for opposing the policy of transfers. Of all the reasons offered to oppose the transfer of judges, this is surely the least convincing. The very judges who complain bitterly about their language difficulties were quite happy to sing the praises of the British judges who once adorned the benches on which they today sit. If British judges could dispense justice to the natives without complaining of "language difficulties", how come the "natives" are complaining about their inability to comprehend a foreign tongue? Obviously, language has its own political use. And ironically, this was an occasion when the judges, met to sing the praises of the glorious traditions of our High Court which included its colonial origins and British judges dispensing justice in a foreign tongue.

Games Lawyers Play

M. P. Narayanan had committed offences under the Customs Act and Import and Export (Control) Act, 1947. He was convicted by the Chief Metropolitan Magistrate and sentenced for one day and a fine of Rs.75,000 was imposed on him. The State of Maharashtra appealed to the High Court to enhance the sentence. This appeal was admitted by Justice R. A. Jahagirdar and Justice Mehta on 6.4.1987. As the Respondent was in a hurry to get the appeal heard, he applied for an early hearing and on 24 June 1987, Justice Mehta and Justice Tated fixed it for final hearing on 2 November 1987. One would have thought that the Respondent would have waited his turn to be heard on 2 November, 1987. But obviously, he and his lawyers had other plans. Madhu Patel, Advocate for Narayanan, on 10 August 1987 applied to Justice Kotwal and Justice Kolse-Patil for fixing a date for hearing. Why was the application made to them when the appeal had already been fixed for hearing by another bench? Why was it made on 10 August to this specific Bench when they were sitting only for those two days for admission? After some discussion between the two judges, the case was adjourned for final hearing to 18 August 1987. It was expected to be placed for hearing before the regular bench. For mysterious reasons, the appeal came up for hearing before the very same judges again on 20 August 1987. This time, Justice Kolse-Patil demanded to know from the court clerk why and how the appeal came up in their court instead of the regular court to which it ought to have gone. At this, Justice Kotwal got up from the courtroom and walked out leaving his Brother-Judge Kolse-Patil high and dry. Left with no choice, Justice Kolse-Patil also left the Court. Later, the two judges met again in Court and passed an order which said "This court is preoccupied with old and part-heard matters and as such it would be difficult to hear new matters, especially when the assignment is likely to change within a short time. There is also no pressing urgency in the matter". With this the curious history of the M.P. Narayanan appeal has come to a temporary halt.

Several interesting questions arise from this episode - why did Madhu Patel apply to Justice Kotwal and Justice Kolse-Patil for fixing a date for hearing when they were not the regular bench? Why was the application made at all when another Bench had fixed it for hearing on 2 November 1987? Why did the appeal appear on Board before Justice Kotwal and Justice Kolse-Patil when they were not the regular Bench? Who was interested in the matter being heard by that Bench alone and no other?

A Gift of 20 Lakhs

Acting Chief Justice S. K. Desai announced that the State Government has made a grant of Rs.20 lakhs on the occasion of the completion of 125 years of the High Court. What a paltry sum! At least the High Court should have insisted on Rs.125 lakhs, one lakh for every completed year of existence. However, now that the gift has been made, how is it going to be spent? If the 'celebrations' of 14th August 1987 are any indication, we will be bored to tears with speeches by judges, past, present and future of their glorious traditions, with felicitations and parties etc. etc. etc. Instead, why can't the money be spent on improving services for litigants and lawyers. Why not spend it on photocopying machines to be installed in curtial departments so that certified copies can be promptly obtained? Why not on more benches for litigants to sit on? Why not on better library facilities? Why not on legal aid? Lets get together and demand accountability for the way the 20 lakh rupees are to be spent.

Readers can send articles and reactions to us at the following address:

THE LAWYERS
818, Stock Exchange Tower,
Dalal Street, Fort,
Bombay 400 023.

A Reception in Vain

When L. M. Singhvi made a guest appearance in the Bombay High Court, everybody was bending over backwards to please him. Why? D. R. Dahanuka and K. K. Singhvi sent out special cards to felicitate him. The Advocates Association of Western India had a meeting at which he spoke of the 'Independence of the Judiciary'. On a subject so sensitive he took care to criticise neither the judiciary nor the executive. According to rumours making the rounds of the corridors of power, Dr. L. M. Singhvi is trying very hard to fill the vacant post of Law Minister which A. K. Sen quit and which is currently occupied by Shiv Shankar. May be that is why Dr. Singhvi wanted to play safe and not criticise either politicians or judges. According to another report, he is hoping to become a judge of the Supreme Court. But looks like he won't make it to either. Rajiv Gandhi is quite pleased with Shiv Shankar and Chief Justice R. S. Pathak is reported to be very much against appointing anyone to the Supreme Court directly from the Bar.

Devil's Advocate

Edited by Indira Jaising. Printed and published by Rabindra Hazari for the Lawyers Collective. Produced for the Lawyers Collective by Satyajit Bhatkal. Printed by West Coast Litho Systems (P) Ltd., 24/26, Bomanji Lane, Bombay 400 001, INDIA.