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Chief Patron

Hon'ble Mr. Justice
M. M. Kumar
Chief Justice

Judge-In-Charge

Hon'ble Mr. Justice
Mansoor Ahmad Mir

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Topic of the Month

What is judicial independence? It is independence from politics. It is independence not only from the legislators and the executive, but also from the pressures of organized interest groups and popular sentiments. It must be borne in mind that love for justice is rare - what most people seek is justice which favours them. The Indian Constitution aims to create checks and balances of its three main objectives - parliamentary democracy, separation of powers and judicial review over legislation - the first two are bound up with judicial independence. Although the character of independence differs among common and civil law countries, most Constitutions stress the need for judicial independence. According to Nani, independence of the judiciary is the cardinal principle of our Constitution. The case for promoting judicial independence is necessary to secure civil and democratic rights. Judicial independence has a complex interrelationship with discretionary power. Courts need structural mechanisms that protect judges from internal and external pressures. Courts cannot be made instruments of State rule.

The evolution of judicial reasoning and a professionalized system of law makes it possible for judges to insulate themselves against clientelism, nepotism and political cronyism. Judges in every legal system need discretion to reconcile the gap between legislative rhetoric and reality. Statutes alone cannot provide solutions to every problem. We must keep in mind that Courts, particularly higher Courts in India, under our constitution are often required to enforce counter-majoritarian views. Independence of the judiciary is the constitutional right of all Indians. Judicial independence enables judges to follow facts and law without fear or favour, so as to uphold the rule of law,

preserve the separation of powers and promote the principle of reasonableness.

Coming to the question of accountability, one must keep in mind the conceptual difference between judicial independence and judicial accountability. Judicial independence is a value which underlies the existence of a rule of law, breach or infringement of which gives rise to a cause of action whereas accountability is a form of action and not a cause of action. Judicial accountability is a facet of judicial independence. I agree with Ronald Dworkin "Law is not separate from morality, law is department of morality". Morality must enter legal Reasoning. The concept of "reasonableness" does not exclude notions of mortality and ethics, though on the basis of morality law cannot be struck down.

In all democratic systems accountability has always been of prime importance. Institutions, including business, government and the judiciary, are expected to carry out their roles and responsibilities with integrity and efficiency in the public service. At the same time, there is also recognition that "accountability" is a context driven concept. It is generally agreed that corporate directors owe legal, moral and social duties of various kinds; they have responsibilities to the company and to its shareholders, its employees, its creditors, consumers and the public generally. The formal mechanism to enforce duties of directors is established by legislation. However, different rules of accountability must apply to MPs/MLAs. They are accountable to the people who elected them. The same holds true for the judiciary. The question is "accountability to whom?". So much of the criticism directed at Judges and courts these days is predicated on a distorted concept of accountability. Well funded and organized interest groups are campaigning to convince the public that judiciary is no different from the political branches of the government. This is a universal phenomenon. With the judiciary no

longer sitting on public pedestal or enjoying the kind of societal esteem that sustained it in the past, one needs to consider various accountability mechanisms which prevail in various other jurisdictions across the globe. While doing so, one must keep in mind that courts are considered crucial to economic development not only because they resolve commercial disputes, but also because they allow citizens to bring actions to check bureaucratic and legislative powers. We need judicial reforms to build institutional capacity and increase judicial independence. Judgments create losers. Attacks on courts are, therefore, inevitable. The constitutionalization of rights increasingly implicates the courts in a broad range of policy issues.

[Excerpts taken from Ninth Nani A. Palkhivala Memorial lecture titled 'The Tails Side of the Judicial Independence - Judicial Accountability Coin' delivered in Mumbai by Hon'ble Mr. Justice S.H. Kapadia, Chief Justice of India on 14th January, 2012]

ACADEMY NEWS

In a simple but impressive function, Jammu and Kashmir State Judicial Academy, High Court of Jammu and Kashmir under the guidance and instructions of Hon'ble the Chief Justice (Chief Patron, State Judicial Academy) and Hon'ble Shri Justice Mansoor Ahmad Mir, Judge Incharge, State Judicial Academy held oath taking ceremony and distribution of Advocates' license in the High Court complex, Srinagar for the new entrants to the legal profession.

The function was presided over by Hon'ble Shri Justice Mansoor Ahmad Mir, Judge Incharge, State Judicial Academy. Before delivery of enrolment certificates (Advocate license) to the 14 Advocates of Kashmir Province, they were administered oath by Shri Abdul Wahid, Director, State Judicial Academy.

This is for the first time in the history of High Court of Jammu and Kashmir that under the directions of Hon'ble the Chief Justice (Chief Patron) and Hon'ble Mr. Justice Mansoor Ahmad Mir, Judge Incharge, State Judicial Academy, such a function of oath taking ceremony and distribution of enrolment certificates has been organized for the new entrants to the legal profession.



Hon'ble Mr. Justice Mansoor Ahmad Mir delivering enrolment certificate to the Advocate after oath ceremony

In his address, Hon'ble Shri Justice Mansoor Ahmed Mir congratulated newly enrolled advocates and welcomed them to the fraternity of legal profession. His Lordship enlightened them on the professional ethics and conduct. His Lordship told the newly enrolled Advocates that they must know that Advocacy is the process of standing alongside an individual who feels to have been disadvantaged and speaking out on his behalf in a way that renders the fullest assistance to the Court to reach at a just conclusion in the case and at the same time, represents the interest of his client.

His Lordship said that life of an Advocate appears to others to be very cut and dry. One popular image of a lawyer is someone very learned in the text of law who spends time immersed in ancient books searching for arcane points of law emerging only to win in the Court room by outwitting

the opponent. I am sure, young friends, you have been drawn to the legal profession in the hope of earning a decent living and gaining enviable social status. You must genuinely have love for law. I may tell you, it is a wonderful life. You must know, legal profession has pleasure and thrill of its own. It invites challenge; it makes you proud to be the best friends of the society you live in.



Newly enrolled Advocates taking oath

His Lordship said that an Advocate is not a free man to do whatever he likes after obtaining license to practice. There are certain duties and responsibilities cast upon him by the statute as to the manner in which he should conduct himself as a professional, His conduct, discipline, rights and duties are regulated by a Statute known as Advocates Act, 1961 and the Rules framed thereunder. I am sure, as students of law you must have already gone through the provisions of the said Act and the Rules framed thereunder and got a glimpse of your rights and duties.

In his concluding remarks Shri Abdul Wahid, Director, State Judicial Academy said that His Lordship's advice, words of wisdom and suggestions would go a long way in making the enrolled advocates good professional lawyers. He said that henceforth such functions under the directions of Hon'ble the Chief Justice would be regular feature where newly enrolled Advocates will be delivered Advocate's license after administration of oath.

SC: Cops, doctors accountable for probe and post-mortem

The Supreme Court has decided to make investigating officers and doctors, who play crucial roles in criminal cases involving injury or murder, accountable for their decisions if it appears that there was a deliberate attempt to derail the probe or prepare false medical reports.

While issuing notice to Uttarakhand's Director General of Police and Director of Health Services to trace the Sub-Inspector who investigated a 27-year-old murder case and the doctor who conducted the post-mortem for action against them, a Bench of Justices Swatanter Kumar and F.M.I. Kalifulla said, "The Investigating Officer as well as the doctor who are dealing with the investigation of a criminal case are obliged to act in accordance with the police manual and the known canons of medical practice."

Justice Kumar, writing the judgment for the Bench, said, "An Investigating Officer is completely responsible and answerable for the manner and methodology adopted in completing his investigation. Where the default and omission is so flagrant that it speaks volumes of a deliberate act or such irresponsible attitude of investigation, no court can afford to overlook it, whether it did or did not cause prejudice to the case of the prosecution."

The Bench refused to give benefit to the accused of the deliberate mistakes committed by the investigating officer and the doctor in his post-mortem report and said, "It is possible that despite such default/omission, the prosecution may still prove its case beyond reasonable doubt and the court can so return its finding. But, at the same time, the default and omission would have a reasonable chance of defeating the case of the prosecution in

some events and the guilty could go scot-free."

The case in hand pertained to a murder in a village in Udham Singh Nagar district in December 1985. The trial court and the High Court ignored the deliberate mischief by the investigating officer and the doctor and convicted the accused. The Apex Court too dismissed their appeals but decided to take action against the Sub-Inspector and the doctor. It asked the Uttarakhand and U.P. Governments to trace them and report to court what action had been taken against them.

(TOI/8-08-2012)

Illegal arms cases should be dealt with sternly: SC

Expressing serious concern over proliferation of arms and ammunition vitiating law and order situation in the country, the Supreme Court has ruled that courts cannot impose lesser sentence than the minimum prescribed under the law for a convict.

"Proliferation of arms and ammunition, whether licensed or not, in the country disrupts the social order and development, vitiates law and order situation, directly contributes towards lethality of violent acts which needs to be curbed," said a Bench headed by Justice K.S. Radhakrishnan.

"We are sorry to note the law enforcing agencies and to certain extent the courts in the country always treat the crime lightly without noticing the havoc they can create to the ordinary peace loving citizens of this country...", the Bench observed.

Allowing an appeal by Madhya Pradesh government, the court imposed three years imprisonment to a man who was found in illegal possession of a country-made gun, two round bullets and 50 grams of explosives.

The trial court had sentenced the man to one year jail, while the minimum sentence was three.

The High Court, however, went a step ahead and let off the convict stating he had already had spent substantive sentence in jail, while the man was in prison for only seven days.

Setting aside the HC verdict, the court slammed the judiciary for its casual approach in the case.

“High Court has committed a grievous error in not awarding proper sentence after having found the accused guilty. Error is apparent on the face of the high court's order,” the court observed.

The Bench noted since legislature had prescribed the mandatory minimum sentence of three years under Arms Act to curb unauthorised access of arms and ammunition, it was necessary for a convict to undergo the same.

(HT/30-08-2012)

Drunken driving is a menace, says SC

Terming drunken driving a “menace” to society, the Supreme Court has said that people driving vehicles under the influence of alcohol should not get away with minor punishment and fine. “Every day drunken driving results in accidents and several human lives are lost; pedestrians in many of our cities are not safe. Late night parties among urban elite have now become a way of life followed by drunken driving,” Justice S. Radhakrishnan said.

The court's made the critical remarks in its verdict in the infamous BMW hit-and-run case, convicting 34-year-old, Sanjeev Nanda under the stringent provision of culpable homicide not amounting to murder for mowing down six people, including three

policemen, with his car on Lodhi Raod in South Delhi in 1999.

Justice Radhakrishnan said such incidents are bound to increase as there is no safety for pedestrians on roads.

“Punishment meted out to a drunken driver is at least a deterrent for other such persons getting away with minor punishment and fine,” the court.

The court also said that hospitals situated near highways should be equipped with all facilities to tackle emergency situations and to provide immediate medical attention to road mishap victims.

(HT/04-08-2012)

LEGAL JOTTINGS

Legal briefs from High Court of J&K

[Case: LPANo. 78 of 2010

Hotel Palace v. State of J&K & ors.

Date of decision: 02.07.2012

Division Bench: Hon'ble Mr. Justice M. M. Kumar, Chief Justice and Hon'ble Mr. Justice Hasnain Massodi, Judge

(Per Chief Justice)

Subject Index: J&K Registration of Tourist Trade Act, 1978 - Ss. 10, 39 and 27 Registration of Hotel - Entry of particulars of the Hotel in the register maintained for the purpose - Addition of rooms and Halls to the Hotel - Registration in respect of additional block Granted - Revision by rival group of hotelier before the J&K Special Tribunal Ground taken that additional block raised without BOCA permission and Notice for demolition also issued - Revision allowed Order of the Tribunal Challenged in Writ Petition - Writ Petition allowed Order of

Tribunal Quashed - LPA - Plea that it would adversely affect his business - LPA Dismissed.

Held: There is in fact a doubt whether the appellant has any *locus standi* because if he has a right to set up his business, Respondent No. 6 would also be equally entitled. It may result into stiff competition and loss of business of the appellant, but damages so suffered would not arm the appellant with a cause of action, because legally speaking no injury has been caused. Thus '*damnum sine injuria*' would apply. Of course, if there is no illegality committed in raising construction by respondent No. 6 then the matter has to be considered by the appropriate authority.

[Case: LPA Nos. 46 and 08/2011

Divisional Commissioner, Kashmir v. Ghulam Nabi Bhat & Ors.

Date of decision: 17.07.2012

Division Bench: Hon'ble Mr. Justice M. M. Kumar, Chief Justice and Hon'ble Mr. Justice Hasnain Massodi, Judge

(Per Chief Justice)

Subject Index: State Land Acquisition Act, 1990 (AD 1934) Ss. 3(a), 11(4)(ii), 11(A), 18 Acquisition of Land Award announced for land only Trees and super-structures not assessed Refusal by landowners to accept the compensation Addl. Deputy Commissioner recommending additional assessment at Rs.40,18,639 Order by Divisional Commissioner rejecting the recommendation Grounds of rejection Inapplicability of Section 11(A) and expiry of period of limitation Deputy Commissioner following the order of Divisional Commissioner Landowners held not entitled to compensation for trees and super-structures - Writ petition Allowed - Orders of Divisional Commissioner and Deputy Commissioner quashed - State and Union of

India went in Appeal before the Division Bench - Both LPAs dismissed.

Held: "The approach of the Divisional Commissioner as well as that of the Deputy Commissioner in the impugned orders is wholly oblivious of law because announcement of supplementary award would not amount to rectification of the award by correcting clerical mistake. Therefore, the recommendations of the Additional Deputy Commissioner dated 02.04.2004 require to be considered as per the law.

Further Held: "[T]here is no impediment for payment of compensation by the State by publishing a supplementary award in respect of the trees, super-structure and machinery, if the same has been omitted in the original award. It is further clarified that payment of compensation in respect of the super-structure, trees and machinery would not result into lapse of proceedings having gone beyond a period of two years".

Apex Court judgment in 'Mohanji and Anr. v. State of UP and Ors', JT 1995 (8) SC 599 relied upon.

[Case : Criminal Appeal No. 26 of 2009

Vijay Kumar v. State of J&K

Date of Decision : 12.07.2012

Judges : Hon'ble Mr. Justice J.P. Singh and Hon'ble Mr. Justice Muzaffar Hussain Attar]

Subject Index : Evidence Act - Dying Declaration - Test of the credibility thereof - Appellant convicted u/s 302 RPC and 498-A RPC by Sessions Judge, Kathua relying upon the dying declaration made by deceased - Conviction challenged Held : that for placing implicit reliance on dying declaration, court must be satisfied that the deceased was in a fit state of mind to narrate the correct facts of the occurrence - If the capacity of the maker of the statement to narrate the facts is found

impaired, it will be highly unsafe to place reliance on such statement - while appreciating it from all the corners, the Hon'ble Court found it unsafe to rely on the dying declaration so made in the case as the evidence produced by the prosecution failed to prove the deceased to be in a fit and proper state of mind on the day when the said dying declaration was purported to have been made - Appeal allowed - Conviction set aside.

[Case : OWP No. 1468/2011

Nabla Begum v. Union of India & ors.

Date of Decision: 03.04.2012

Bench: Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge]

Subject Index: Constitution of India - Art. 226 - Writ petition - Maintainability - Plea of availability of efficacious remedy - Held: Petitioner has been ill advised to file the instant petition;

- Prevention of Money Laundering Act Ss. 3, 5(1)(4), 8, 26, 42 read with Notification No. GSR.441(E) dated 01.07.2005 - Provisional attachment order of House Property Allegation of money Laundering - Petitioner's son holding Current Account with J&K Bank Investigations revealed Rs.1,00,00.00 received in the Account from one Javed Iqbal of Italay - Pretext that the amount was sent by friend Aijaz Ahmad of POK - Transactions in the Account - Found to be proceeds of crime - Current Account provisionally attached u/S 5(1) - Cash Credit Facility Extended by the Bank from Rupees 01 Lakh to Rs.07 Lakh - Against security of the House Property - Corrigendum to Provisional Attachment of Account issued by respondent no.3 with respect to the House Property - Attachment challenged in writ petition Dismissed.

Held: [I]n terms of Section 5(4) of the Act the person interested cannot be prevented

from enjoyment of immovable property attached under sub-section (1); therefore, there is no imminent threat as against the right of the petitioner to enjoy immovable property provisionally attached.

Legal briefs from Supreme Court

(Case : Civil Appeal No. 5946 of 2012)

Devinder Singh v. Meenakshi Nangia

Date of Decision: 22.08.2012.

Judge(s): Hon'ble Mr. Justice Altamas Kabir and Hon'ble Mr. Justice J. Chelameswar

Subject Index: Hindu Marriage Act, 1955 - section 13-B - divorce by mutual consent the Ld. Court below fixed the date of the 2nd motion after six months- appeal filed contending that since more than 18 months had elapsed since the original petition under Section 13 have been filed, the said period could be counted towards the cooling period of six months stipulated under Section 13-B material on record showed that within 3 months of the marriage the petitioner filed a petition for a decree of nullity of the marriage. Thereafter, they lived separately for more than 1 year the pending proceedings under Section 12 of the Act, 1955, converted into one under section 13-B and a decree of mutual divorce granted to the parties appeal allowed.

(Case : Cr. Appeal No. 1712 of 2009 with Cr. Appeal No. 1706 of 2009)

Pathan Hussain Basha v. State of A.P.

Date of Decision : 16-08-2012.

Judge(s): Hon'ble Mr. Justice Swatanter Kumar and Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla .

Subject Index: Indian Penal Code, 1860 sections 304-B, 498-A dowry death',

'cruelty upon women by her husband and his relatives' conviction and sentence of the appellants for commission of the offence under appeals against the accused persons used to harass the deceased primarily for non-payment of the amount of dowry, as a result of which, she was forced to commit suicide evidence on record clearly showed that the dowry demands were being raised by the accused persons persistently from the family of the deceased and for that they even harassed the deceased, by beating and abusing her. She had informed her parents of the ill-treatment and the cruelty inflicted on her for non-giving of dowry the accused did not care to explain as to how the death of his wife occurred the prosecution by reliable and cogent evidence established the guilt of the accused conviction order maintained while quantum of sentence reduced appeals partly allowed.

Case : Cr. Appeal No. 1089 of 2010 with Cr. Appeal No. 1224 of 2012)

Subhash Krishnan v. State of Goa

Date of Decision : 17.08.2012.

Judge(s): Hon'ble Mr. Justice Swatanter Kumar and Hon'ble Mr. Justice F. Mohamed Ibrahim Kalifulla .

Subject Index: Indian Penal Code, 1860 sections 120-B, 302 r/w section 34, 342, 364 conviction and sentence of the accused-appellant for the alleged abduction, wrongful confinement and killing the deceased appeals against apart from PW-2 who was the author of the complaint and also eye witness, there were nine other witnesses in the case who fully supported the case of the prosecution the complicity of the appellant in the commission of the crime fully established by the prosecution there was a clear cut evidence of PW-21 owner of the Maruti van whose evidence was not controverted in any manner relating to the fact that it was the appellant who took the Maruti van from him which was

used for the crime PW 14, 33, 16, 23 and 27 made specific reference to the overt act played by the appellant in the assault on the deceased with a big knife (talwar) the appellant was identified by two witnesses PW-14 and 33 in the TIP overwhelming evidence on record to prove the alleged participation of A-2, appellant in the offence appeals dismissed.

**(Case No: SLP (Crl.) No. 6467 of 2012)
State of U.P. versus Sanjay Kumar
Date of Decision: 21.08.2012.**

Judge(s): Hon'ble Dr. Justice B.S. Chauhan and Hon'ble Mr. Justice Swatanter Kumar.

Subject Index: Indian Penal Code, 1860 - sections 376, 302 - punishment of rape and murder - the order of the High Court commuting the death sentence awarded to the respondent by the Sessions Court, in life imprisonment in challenge - whether the direction of the court, that the convict has to serve a particular period of sentence before his case for premature release is considered, infringes upon the clemency or other statutory powers of the executive - whether such an order can be said to have been passed under Article 142 to consider life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years, rather it always meant as the whole natural life. The punishment so awarded would be subject to any order passed in exercise of the clemency powers of the President of India or Governor of State, as the case may be the Supreme Court held that the pardons, reprieves and remissions are granted in exercise of prerogative power. More so, not being in contravention of any statutory or constitutional provision, the orders, even if treated to have been passed under Article 142 of the Constitution do not deserve to be labelled as unwarranted petition dismissed.