HUMAN RIGHT JURISPRUDENCE & JUDICIAL ACTIVISM

YOGESH KUMAR SAXENA (ADVOCATE HIGH COURT)

The instrument of status quo upholding the traditions of ANGLO-SAXON JURISPRUDENCE and resisting radical innovations in the use of judicial power is no more in existence. Concepts such as "RULE OF LAW","SEPERATION OF POWER","INDEPENDENCE OF JUDICIARY","SUPERMACY OF FUNDAMENTAL RIGHTS OVER DIRECTIVE PRINCIPLE", NON ENFORCEABLE" FUNDAMENTAL DUTIES", were introduced by the passage of time. The "JUDICIAL RESTRAINS", "JUDICIAL PRECEDENTS"& "CERTAINTY OF LAW" were used conveniently to avoid and dilute the effect whenever it was so required. Thus the resultant legal culture was the same as we have in pre-independent days. The expansion of the Doctrine of LOCUS STANDI to the citizen and democratisation of remedies are not on speaking terms. Thus the role of Locus- Standi is required to be dealt with by Judicial activism by the courts dealing with the Constitutional rights. There are very less number of fundamental right & larger number of duties imposed in the chapter dealing with fundamental right in our constitution of India. Except the right conferred under Article 19, there is no individual fundamental right to the citizen . There are some collective right to the citizens . The rest of the Articles are the fundamental duties of the government towards its citizen .

The promised " TRYST WITH DESTINY" to achieve the change were determined on the interpretation of the constitution. The judicial power are often not represented in judicial forums and appears to be at the receiving end of mal-administration and subjected to exploitation for the litigant. The greatest contribution of judicial activism is to ensure the feeling in the mind of common citizen that he may represent in judicial forum.

IS IT DEMOCRACY

Napoleon Bonaparte said; "The crown of France was rolling inside the gutter, I simply picked up it, and put on my head". The religion and caste division amongst Hindu were being exploited by the invaders. British's sponsored the policy of divide and rule while politicians adopted a policy of the divide and spoil for their narrow gains inspite of the fact that it

may be a threat to the nations unity and integrity of our country. Now nobody is looking forward to the vast problems of poverty, ignorance and disease. The divisive it forces of caste & religion imbalances through strong and resurgent India.

Battle of Panipat and battle of Plassy were not fought due to such divisive forces on the caste line but they were conquered by making ourselves slave to our destiny by different dynasty. Excellence and social equality with greater attention to socially disadvantaged minority group was essentially required to be given pre- dominance to check up global economic scenario annual. There is no leadership of extraordinary commitment and alertness as in accordance with the changing emergence of technological and intellectual impact on our society, but there is role entrepreneurs invigourous wealth creation through a radical change inn our character . Let us be confined to a classless society in which there may not be any appeasement or reservation except the excellence in respect of our performance. Unfortunately the traitors inside the country has provided still worsted shadow of darkness by an eclipsed sun. The people of whole country was suffering from a poignant pain of agony. The universality of which carries in it a great dignity of consolation we have promulgated the undesirable elements in our population coupled with corruption, cruelty, callousness and a complete disregard of public welfare, which is flourishable poison in the air. With confounded speculation of India's starvation; a terrorist decade of oligarchy and anarchy having appeasement party politics as antithesis to creativity and potential, which has provided an obstacle to our inherited great stilled splendour intelligence with our super entrepreneurial spirit of cultural heritage to naught with intellectual apathy, I have risen to the occasion with profound bleeding at my heart to fight against compulsive gamble bent upon ascending our invaluable legacy providing to be caricature to our noble democracy. We the India's having 15%of world population and 54% of illiterate citizens of the world are having only 1.5% of world income going down word trend in the list of exporting country from 16th place to 45 place with less them ½ of world to list traffic after 50 years of independence. Despite best

ecological conditions and environment and natural resources we are amongst the 10th corrupt nations of the world. Scam of corruption, like Fodder Scam in Bihar, Harshad Mehta Scam, Cobbler Scam of Maharastra, Ayurvedic Scam in U.P., letter of credit Scam in Assam with 700 cases of corruption pending with C.B.I. is our identity. At least 40,000 criminal cases of kidnapping, murder, rape, gangsterism and Mafia Rule spreading the fear psychosis without having the printed proforma of F.I.R. and chargesheet are the glorious instances in one State of Bihar, which is spreading the fire of greed and fears psychosis upon its people. About 240 public sectors enterprises by Union Govt. And 700 public sectors by the State Govt, are providing black hole in National Economy. The money guzzlers are extracting an exorbitant prices for Indian doctrinal socialism. The State of mobocracy in the strife of moral decay with facet of indiscipline, corruption and castism divisiveness with communal hatred, linguistic fanaticism, regional fancy and caste loyalty have provoked the conscience of patriotism. About 120 millions cases pending in the different courts without any probable disposal, within a considerable time period may further provide the loss of country's valuable potential. 25 north country global phenomenon are having only ¼ of world's population having 70/ of wealth, 80/ of trade, 90/ of industries and 99/ of finest and most advanced research centre are having their vast potential. They started giving benefit of donation received through begging, but our country's politicians have set up to regeneration of corruption through these donations. Thus keeping away from realities in allowing to perpetuate the corruption by dishonest opportunity and with calibre are ruling over the nation. State Govt. was spending Rs. 1,11,96,000/- during Miss. Mayawati chief minister regime on the security of V.I.P. every month against whom the allegation of misappropriation of Rs. 5000 crores were levelled in one public interest Litigation which were published in News Paper. This is all just to provide and boost the political career by our politician.

The collusion Govt. of India and Govt. of U.P. having ideologically antagonistic with its alliance is a heterogeneous conglomeration of disparage and disparage interest designed mainly to hedge the

power against interest of common citizen. Our thrust with destiny as boosted by our leaders at the time of independence has now been scattered into pieces, sheltered into the extinction of hopes and abrogated and subjugated with the misfortunate scenario of our prophesier democratic set up of the Country. The doctrinaire ethics of democratic values and conceptual phenomenon of so called socialism and secularism being antithesis to social justice and religious sentiment has further deteriorated the very foundation of our country solidarity amongst the citizens. We have formulated utopian empire which is having no existence. This is on account of our character assassination which is resultant into a wild fire meant for destroying the very fabric of our integrity and existence. Can we claim to enjoy our independence.

Can we protect our nation from such anarchic situation. The answer convey the only recourse to be adopted i.e. the enforceable fundamental duties and strict discipline required to be implemented. Whether the army personnel deployed for protecting the Nation may not be assigned to fulfil the uphill task of providing a check to internal insurgency. Can still we enforce the necessity of maintenance of the strict discipline required to maintain by the Army personnel and not be our leaders, who have taken over the command like a diplomatic monarch in our country. Let us examine some of the drastic problem which has become the root cause of erosion of the traditional values of our culture.

Political parties are gripped to below with the wind and bend with the glass. The collusion Govt. emerged at the state level having the Jumbo size of the ministerial berth being occupied by Sri Markandey Chand having about 5 criminal cases, Sri Sardar Singh having about 6 criminal cases, Sri Hari Shankar Tiwari having about 25 criminal cases, Sri Shyam Sundar Sharma having about 18 criminal cases, Sri Raja Bhaiya having about 8 cases and Sri Shiv Pratap Shukla having detention under N.S.A. were assigned with the responsibility of Cabinet Minister by our Chief Minister Sri Kalyan Singh for remaining in power. The criminal cases are not of minor nature, but the same includes murder, dacoity with murder, ransom, kidnapping, rape and other physical assault

towards the innocent citizens. There are again Sri Rakesh Dhar Tripathi having 2 criminal cases, Sri Ran Prasad Kamal having 6 criminal cases, Sri Bhagwan Singh Shakya having 7 criminal cases, Sri Amar Mani Tripathi having 18 criminal cases, Sri Prem Prakash Singh having 15 criminal cases, Sri Vinay Pandey having 5 cases, Sri Rakesh Tyagi and Sri Ram Shankar having 6 criminal cases each, who were inducted as Minister for the State by Sri Kalyan Singh in his ministry. Recently the power exercised under Article 161 by Governor for granting pardon from the charge of the murder to Sri Doodh Nath Yadav has been found by the Hon'ble Supreme Court to be given by the Governor of Uttar Pradesh without application of mind and in the wholly arbitrary manner. The handing over the charge of the post of Chief Minister to Sri Jagdambika Pal by the Governor of U.P. Sri Ramesh Bhandari was considered to be a malafide exercise of power. This is the outcome of our parliamentarian democratic set-up of our Country.

Sri V.B. Gupta, special Judge of designated Court conducting the trial of politicians involved in HAWALA scam has honourably acquitted all the accused as he could not be prepared to get a remark that he does not know the elementary of basic law of evidence act in which there is no sanction recognising a document written in the code word to be admissible in the evidence. This is pragmatic approach in the matter relating to the crime committed by the guardian of our country. Can anybody may expect from these diplomatic personality dealing with the art of manoeuvring of the process to their own accountability that these parliamentarians including the Hon'ble minister will leave the clue of their identity while committing the crime and to get themselves involved in criminal offence. Our law has become too much unrealistic in its approach and Justice which is dependent upon such a rigmarole of the technicalities to vitiate the very foundation cannot be imparted in the present system. No fruitful result can be achieved by launching the mere prosecution against such politician. We the citizen are paying an exorbitant price of our doctrinaire Angle Saxon Jurisprudence and socialistic, secularists democratic parliamentarian set-up of our country. This is the drastic fate of giving us the freedom on

15th August, 1947 by the British's to whom we found for better than our politicians.

The legal interpretation may be demonstrated by two illustration i.e. (1) Delhi Govt. proposed to provide prosecution for committing an offence of eve teasing to the girls from distance of 10 Feet. The offender started eve teasing them beyond such distance and escaped from punishment. Then the question was posed by a girl. (a common citizen) that what it makes the difference that he committed the offence from distance of 10 feet or beyond it. It was the reply of the prosecution that you cannot expect to permit the girl, (the common citizen) to see beyond the limit of 10 feet. This is a fate of our citizen in the present Judicial set-up of our Country. The second instance is relating to taking inside the boy hostel a girl friend which was objected by the boys who have shown their resentment to the proctor. The proctor for being indulged in to such type of the scandal formulated a policy of getting the door remain open to 45 degree as the bed may be visualised from out side to the boys as they may not be inclined to know what is happening inside the room. In this process all the boys of the Boys Hostel started enjoying the company of their girl friend behind the 45 degree of the door pan, which remain open. This is how the legislature are enacting the laws from the parliament and legislative assembly. Can the minister are subjected to the prosecuting being the maker of the legislation?

Another instance regarding financial irregularities committed by our politicians can be visualise by the very reason that there is the exemption provided to the members of parliament and the legislative assembly from the Tax liability to the extent of Rs. 1,50,000/- for which the ordinary citizen is required to pay an exorbitant price of his hard saving. The list of the defaulters of Telephone bills which come into light when Sri N.P. Vashi Advocate Bombay High Court filed a Public Interest Litigation mentioning the name of alleged defaulter of telephone bill namely Sri Venkat Krishna Reddy M.P. having a defaulter of telephone bills the extent of Rs. 11 Lacs, Sri Ram Sunder Dass M.P. Rs. 11 Lacs. Sri M.M. HashimRs. 13 Lacs, Sri Ram Deo Ram Rs.9 Lacs, Sri M.S. Govil Rs. 11 Lacs. The further po;otoca; spectrum having dues with a sample

of names of Sri Raj Babbar, Samajwadi party Rs. 7 Lacs, Srimati Vijay Raja Scindiaa, B.J.P. Rs. 8 Lacs, SRI george Farnandis, Samata party Rs. 4 Lacs Sri Kalpnath Rai, Independent Rs.1.8 Lacs, Sri R. Jagannatham, A.I.D.M.K. Rs. 11 Lacs, Sri A.B.L. Gani Khan haudhari Rs. 42 Lacs, Sri Sunil Dutta Rs. 2 Lacs, Sri Jayanti Patnayak Rs. 3 Lacs, Sri Sathish Sharma Rs.1.5 Lacs, Sri C. M. Mohan Rs. 11 Lacs, SRI Mukul Washik Rs.2 Lacs. Those are the over and above 1 Lacs free calls pfree calls permitted to the members of Parliament annually. In this manner out of total arrears of revenue regarding the Telephone bills to the extent of Rs. 14,000 Crores inDelhi alone heads, the Country list of defaulters to the extent of Rs.2500 Crores and Rs.245 Crores are the dues outstanding towards our Politicians according to the data published in the 'OUT LOOK', Rs. 25 Lacs are the dues on the Congress Party.

Let us examine the statement of Sri Ram Jethmalani in another context who has said that "the Judges at the highest level were involved in lesser pursuit of propping unworthy appointment of bench". Sri Mulayam Singh Yadav has expressed that there should be the adequate representation of the Judges belonging to backward classes. Recently the C.B.I. seized 80 Gold Biscuits weighting 116 grams each the locker of Bhaskaran, a close relative of Shashi Kala. Km. Jayalalitha finds this an act of treachery. In whatever she propose to get a temporary reprieve in the legal quagmire by challenging the Constitution of the Special Court to try corruption cases against her by transferring Justice D. Raju as Chief Justice Himanchal Pradesh through her party colleague union Law Minister Thambidurar. Now the Chief Justice Mr. M.S. Liberan constituted the new bench alongwith Justice K. Govind Rahjan then he was also proposed to be transferred, but on account of pressure of legal fraternity of the Bar, the device could not be succeeded. Km. Jayalalitha closed inmate Dr. Subramanyam Swami has now been named one of conspirator alongwith Chandra Swami of committing the assassination of Rajeev Gandhi by providing the aid to the LITTE. The process of Judiciary is being circumvent by Km. Jayalalitha having her involvement in 46 cases of corruption in which three special Judges are hearing the trial and it has already been reached

beyond the stage of framing the charges. The 'The Tansi land deal' in which Jayalalitha ordered as Chief Minister for the sale of such land below the guide lines prices causing a loss of Rs. 3.13 Crores to the Govt. in favour of partnership firm namely Jaya -Jee publication in which Jayalalitha and Shashi Kala were the partner. The second case of Coal import case of Rs. 117 Crores by electricity Board is again traced to Jayalalitha who over ruled the findings of P.W.D. Secretary Sri V. Sundaram and asked them Tamilnadu electricity Board Chairman Hari Bhaskaran to go ahead. Jayalalitha is already declared guilty by Hon'ble Court inRs. 56.48 Crores S.P.I.C. dis-investment case. The Court has asked her to pay back Rs.282.9 millions to the Govt. and rest by the S.P.I.C. management. Justice Y. Venkatachalam observed if the such acts and conduct on the part of Jayalalitha are allowed to continue, it will not only create and indelible stigma on the system of flourishing democracy, but will also bomb bard. The economic structure of our country. Can Km. Jayalalitha is isolated example of committing Bombardment over the entire economic structure of our country or there are other politician except few of exceptions including new alliances which has bring back into the square one with Sri Mulayam Singh Yadav and Sri Lalloo Prasad Yadav having the Ayurvedic Scam and Rs. 920 Crores Foddar Scam to their credit resopectively. It was Jayalalitha who raised the demand to induct Dr. S. Swami as Finance Minister of our country. Can we survive under the guardianship of such type of politicians of our Country?

The President of India has referred a question to the Chief Justice of India regarding the correctness and the propriety of the power exercised by the Chief Justice of India after the 9 Judges Judgement in Supreme Court Advocate-on-record Association. The file of all such appointment which have been done from year of 1993 on ward has been summoned by Justice Dr. A S. Anand. Now presiding over the bench of 9n Judges of Supreme Court, It is in the context of remark made by Sri Ram Jethamalani, which was published in news papers on 29th July, 1998. Whether we are still in the process of searching of a system till the substratum of revival of the Country appears to be collapsed by out character assassination. There is

no revival of the hopes at this Juncture except by the enforcement of strict discipline upon such politicians and our guardian by the true patriotic sons either by giving the command in the hand of Army personnel or to impose an emergency by promulgation of martial law to take the command of our great nation. We are intoxicating the under ground water, the water of river Ganga and Jamuna, which are the source of our survival by flowing the toxic effluent inside such water for boosting our business dealing which is ultimately bound to effect the survival of the entire Country. It has been learnt through the reliable sources that the Chief of the some of kidnapping of innocent citizens and there after killing them with brutality, if the, demand of ransom may not be fulfilled by the victims of such crime.

The importance of justice is considered in our ancient time, which is evident by the chapters enumerated in the code of Manu as under ; There were the best possible rules to promote the interests of both the king and the subjects. The contraction of debt- dispute relating to lending and borrowing, deposit- a person's refusal on demand of thinks or money placed in his custody , Sale of property without ownership, illegal concerns amongst partners , resumption of gift , deduction or less payment of wages or salary , non performance of or acting contrary to agreement , disputes of transactions , dispute between the owner and the tender of cattle , contest on boundaries , assault or severe , beating, harsh language or slander, theft larceny robbery , tress-pass or acts of violence , adultery , alteration regarding the failure of duties as man and wife , disputes of inheritance , gambling or laying thinks or conscious beings at stake in play were the points of dispute for adjudication on rival contentions. The king after considering the contention of several persons was never partial to any body with reference to the ancient law. Even in that time there were uniformity of procedure and the decision after due hearing and collecting the evidence.

All the members of the court are considered as wounded, where justice is found wounded with inequity, and judges do not extract the dart of inequity from justice or remove its blot and destroy inequity, in other words where the innocent are not respected and the criminal are not punished.

A virtuous and just person should never enter a court and when he does so, he should speak the truth; he who holds his tongue on seeing injustice done, or speaks contrary to truth and justice, is the greatest sinner .

Justice destroyed, destroys its destroyer; and justice preserved, preserves its preserver. Hence, never destroy justice , lest being destroyed, it should destroy thee.

In this world justice or righteousness alone is man's friend that goes with him after death. All other things or companions part on the destruction of the body and he is detached from all company. But the company of justice is never cut off.

When injustice is done in the government court out of partiality, it is divided into four parts of which one is shared by the criminal or doer of injustice , the second by the witness, the third by the judges, and the fourth by the president king of an unjust court.

Legal justice , with a humane mission, must update itself to legitimise progressive urges, discern the reality of social changes and design its delivery system, so as to obviate the dominance of the Proletariat by the Proprietariat and accelerate people's access to effective., litigative justice. The contemporary command of social justice, which is also the socio-economic demand of the common people, is that the prevalent forensic astigmatism shall be corrected by sloughing off archaic, arcane authoritarian procedures which often spawn the paradox of a wealth of abuses and a poverty of access vis-à-vis institutions of legal justice.

The structure of the society rests on the foundation .We cannot escape the consequences of losing all access to abrader a vision It creates a narrow-mindedness in the prospects of a development .Few amongst the citizen, the masses

have the ever given any serious consideration to the problem of life. Thus the problem of life still remain unsolved. Let us discuss that why are not having the solid foundations without access for the broader vision having an extinction for our existence. Freedom from bondage is liberation there is a goal of life with and devotion. Our tryst with destiny has not brought any desired changes for wiping out the tears from every eye. There cannot any political will amongst the individuals who are craving to get power. The Political will is guided by our constitution of India and we find that it is not having strong hold to keep the nation intact, the society move and the country prosper. Some radical changes are needed to maintain country's unity and integrity .The prosperity of the citizen do not lies in the form of government, chosen by them but in the accountability and the stability in its precepts and practice . There is no representative Govt. but an equation of inducting themselves as the representative of the to form there govt. It is only the constitution which may provide a device to ensure a degree of self assessment .We want more stability and lesser responsibility upon these representatives chosen from amongst the people by the appropriate amendment in our constitution. There should be periodical assessment of the responsibility of executives .The present constitution is the reproduction of the Govt. of India Act,1935 and the combination of ideals of western liberal democracy nurtured to achieve the goal of our constitutional aspiration . The federal system is based on decentralisation and it is a system evolved of the governance of heterogeneous , diverse and plural society in a small country to have been based on the representative Govt. and not on the basis of indirect representation through parliamentarian democratic system .It leads to instability we should take notice ofd the expectations of the people who fought the battle of independence by adopting the policy of self realisation as being professed by our father of nation. Our constitution is based on the assumption of the authority where the entrustment of power is imposed by having the restriction upon the excessive power. Let us accept that it was weakness of the character of our citizens that Indian dominion has to live under the British sovereignty and we had to fight a struggle for

attaining the freedom. The need for imposing the restrictions are required to be done to keep the society intact from adjuring violence ,dealing with corrupt politicians and to control over burden some disastrous consequences .Let us examine how to fight against criminalisation, black-marketing ,essential service maintenance and law & order situation .There is a lake of political will in those are actively participating in service tom the nation ,they are being subjected to oppression and harassment .There is no place for benevolent honest citizen and those who are dishonest opportunist with a criminal background are seldom being respected by our citizens . The genesis of the character is based on the falsehood and in such circumstances until and unless accountability of the individual in public life is not fixed upon the representatives of the Govt. there is no hope for the revival of the nation .

The Prevention of Terrorism Ordinance, 2001- Dealing with the terrorist activities

The path to personal freedom is virtually impossible for most people, who do not want to expand their vision and contacts. The advisor is someone who tells to other without personally done any thing. Thus the slogan do not solve the problems, rather make them more complicated. Before accepting any advice, the recipient be first aware that from which quadrant, the advice is coming from. One did not to fear for being rejected. The long term commitment is to take part in discussion.

The prevention of terrorism ordinance, 2001 is for prevention of, and for dealing with the terrorist activities. There are the provisions for prevention of terrorist activities. The punishment is provided for not disclosing the information, which could prevent the terrorist act. There is also the power against official misusing the provision of terrorist act. The confession to be recorded by officers of S.P. rank or above. The process of terrorism means all kind of properties, which have been derived or obtained from commission of any terrorist act. Those who intent to threaten the unity, integrity, security or sovereignty of India, to strike terror in the people, destruction of property used, or intended to used for defense of India are not safe under the Act. Even for aiding or promoting any such act resulting to mass destruction and resulting in death of human lives are liable to punish under the Act. This includes the act raising funds

intended for the purpose of terrorism. Those who voluntarily harbours or conceals any terrorist is be members of terrorist gang or knowingly holds any property derived or obtained from commission of any terrorist act. The person receiving information believes to be of material assistance in preventing a terrorist act, except for legal practitioner who shall not bound by such information required for defending the accuse and thus is not bound to disclose and failure to furnish such information is not crime the S.P. supervising the investigation of any terrorist act may approve interception of nine, electronic or oral communication and refusal of bail to non citizen entered the country unauthorisedly, except in exceptional circumstances. The drawing of adverse inference against he accused person are some of the silent feature of act.

The cynic approach of criticism may be the misinterpretation to the provisions and to certain extend it may be politically motivated deliberate attempt to confuse the issue under TADA, the presumption in case of refusal to furnish photographs, hand writing ect. Even after the request is made from court, it was presumed that he was guilty, those provision exists U/S 113-A of Indian Evidence Act – to abatement of suicide by married woman U\S 113B presumption in case of dowry death and also in 114-A presumption as to absence of consent. These provision are prevalent in the prevention of corruption act assets found disproportionate to income under 123 of Custom Act – onus as to be not the smuggled goods shall be on person from whose possession, the goods have been seized.

Now the question arises that if the Income Tax, Custom Act and Excise Regulations are misused to extort money, does it mean that we should scrap away with these laws and the Regulations as well? The politicians routinely say as their Lawyers say even more frequently that false cases have been foisted on them. Many assert they have been implicated by even in Murder case. Then whether Income Tax. Custom law, prevention of conception Act, all these shall go to. The misinterpretation of section 21 (2) . The meeting with journalist should (1) to support terrorist a journalism (b) to further the activities of terrorist organization (c) to be address any person of terrorist organization. How does a journalist come under this provision. Like wise section 14 of P.O.T.O. is corresponding provision casting a burden as every person u/s 39 of Cr.P.C.. The court especially Supreme Court is vigilant enough to ensure that govt. do not misuse a provision of Article 19 (2)

to impose unnecessary restriction on free speech. You have to consider that a terrorist himself in thoroughly indoctrinated as methods gathering information. The observation made in Kartar Singh case (1994) 3 S.C.C. 569, per Hon'ble R.M.Sahai that the possession of arms and ammunition should be connected with use there of. The hierarchy of Police officer based on suspicion is the appearance of injustice that may be denial of Justice is taken into consideration. In Sanjay Datt Vs state 11 (1994) 5 S.C.C. 410, it has been laid down that the duty of comes to accept construction to clause –12 the object of legislation and the mere possibility of clause does not affect the constitutionally or construction, (purposive construction).
The terrorism may be deceived not merely the physical and mental damage of the victim but the prolong psychological effect having a potential of producing effect by endeavor to disturb harmony with a view to disturb even the tempo, tranquillity of the society. Thus the recovery of threatening letter for arson and extortion may also be a terrorist Act. Thus the Law requires to dealt with the situation created by the case of Gurdev Singh 1998 (4)(S.C.C.) 494 declaring the same as not a terrorist Act. There may be the protection to the innocent person by promulgation of more stringent law in India.

The Threat to Democracy

The threat to democracy

The threat to democracy lies in rigidity;
Not in revolutionary opinion;
It may seldom achieved by fore of violence;
The greatest danger of gradual invasion;
With the acquiescence of inert failure;
As the government cannot survive;
Where right guaranteed are not safe guarded;

The political arena has now witness a class politics not on the basis of the actual issues relating to the human problem, but on the caste basis by giving the go by to every ethic and logical perceptions simply on account of our caste affiliation. There are the instance when a person sitting on the top of the bureaucracy and occupying a constitutional post as the top most authority either in the political spare or even in judicial side, he is also

seen to be tempted with the sudden impulse of having the caste affiliation as a predominating factor in governing the Nation . We have not taken any lesson from our slavery administered by some alien forces governing the nation and still we are acting like a spoiled gambler, who has loosen every penny of his belonging and his reputation in the society, but still he is continuing to play the gamble with his life due to caste affiliation. There happens to be a tug of war between one force of identity based on religious compulsions as to demoralize the conscience of one person over the other individual. No one is having any concern with the plight of the citizen fighting against the factor relating and responsible for natural calamity, but every one appears to be interested in adopting any means; fair or foul and that too with a flavour of caste affiliation. Who has not become an intoxicant by tasting the juice of power but one should not consume the intoxicant under the garb of the caste affiliation as he may loose his own existence and thus be ruled out by some dictator for which the invaders have already made the prediction, while giving the power to these power intoxicant at the time of independence of our Nation. God give the good sense amongst our politician and the guardian of Hindu religion to wake prior to the time when it is not already too late.

No man can survive in isolation. There is a rule of give and take. The moment one person is inclined to accept everything as a matter of his right, the person who is inclined to give him his extra potential, withdraw the basic offer. This becomes the end of social collaboration. No country is able to survive except by the will of the people. The bitterness amongst the people may ultimately lead to a crisis on psychological level. Thus the country required the coercive method for the enforcement of law and order situation. This was on account of partition of India

In the present context of the political set-up of the country having certain global phenomenon regarding involvement of the politician at large in the nefarious activities by gaining

undue prominence without any moral obligation towards the citizens to protect their human rights , there should be the persistent efforts of the people for participating into political sphere as the article of perpetuating corruption by mediocrity and thereby earning enormous money and power to be restricted for which the person willing to sacrifice their future for the betterment of the human rights of the public may come forward . The choice of the people in political arena for launching any political party into the power is just like of patting the snake or Cobra . Destiny is the result of consequences reflecting through individuals action. An urge may lead to big surge . Hell and heaven both exists in a society only the truth remains without any virtue , not with any voice. It is said that where the science ends , religion begins ; where the religion ends spiritualism starts ; where the spiritualism ends , a reality survives. These are the realities of the life in the process of evolution . the creative acts of the genius are always remain the subject matter of criticism as they are usually confronted with optionally stupidity of other fellow citizens. There is a delicate balance between public duty and personal honour . The numerical majority leads to the destruction of benevolent leadership . The human progress do not originate in the composite brains , but it is by the wisdom of the individual personality . Thus in the search of the better human rights provided to its citizens , there is necessarily some impediments in process of evolution and advancement of society because the protection is at large in favour of those citizens who are involved through their activities towards their towards destructive approach for advancement of the society , which is detrimental to the interest of the superior in command . Still there may not be any compromise with the human rights conferred upon an individual.

Society is becoming more complicated. The democracy brings with it evils of its own system . It is difficult to search a really devotes person amongst the majority. Psychological reconciliation amongst fellow citizens to utilise every potential energy and to maintain co-ordination between fellow citizens. Civilisation begins in order , grows with liberty and ultimately perish in chaos , civil liberty are better and save as long as its enforcement do not bother others existence . Administrative system and judicial institutions are considered for vacillation of the purposes. There is always a conflict between opinion and rivalry of the interest. Time has come to expose the falsehood and fallacies through

discussions in order to avert its global devolution. The remedy is speech, not enforced silence. The ship of progress is equipped with moral strength. We cannot remain silent spectator by observing the gradual disintegration of every institution in a democratic society. However , our potential will prove the power to save them and to resist against evil disasters . There is no steady advance towards higher condition of progress. The opinion persists to subordinate personal interest to social interest as the vested interest are always motivated to usurp power through any means even at the cost of its own interest. Sincerity is now slave of destructive activities and human rights are passing through the state of psychological retardation. Attitude of the public is mainly consist of denouncing the receptive norms. Moral damage is more terrible. The individual human rights enforcement is inadequately persists and thus the existing remedies are required to fresh appraisal. The entire fabric of the society is scattered and shattered , which is existing with galloping corruption. The proper assessment of legal and social condition is essential. Reason obeys itself while ignorance submits to whatever is dictated to it . Freedom does not mean abuse nor liberty is a license . The survival of the human rights and individual freedom requires obedience, endeavour, honesty , truthfulness, sacrifice , discipline and character . Implementation of the strong idea requires steadfast wisdom. Such idea should burst every chain , which tends to paralyse its efforts to push forward. Most of the people tends to see nothing nor inclined to observe. They do not take the notice of evil consequences as the simplest and the cheapest attitude is apathy. The ensuring success is mostly understood at the beginning due to strong contrast of public opinion.

The concept of Human rights relates in its immemorial antiquity from the time of inception of the Human being .Human rights advocacy is not an encroachment upon the national sovereignty , but is an ultimate aim of state craft .The rights of men are assets to humanity and a liability of the State. Man has created the concept of state to preserve his natural rights.

The concept of fundamental law and fundamental rights are the of spring of the natural rights . This stands above the positive Las created by the political sovereign . The philosophical foundation of Human right has got tremendous power and vigour . Human rights is legitimacy of democratic political order which is enshrined in most of the constitution of different countries. Rene cassin at Colloguim has defined

Human rights as “the science of human rights relates in the light of human dignity for the full advancement and development of personality of human being . Thus the human rights are such written instructions which starts from Magna-Charta -1215 , Petition of rights -1688. The French declaration of rights of citizens -1989 proclaim the natural and imperceptible rights of Man’s liberty ,property, security and resistance to oppression.

The American declaration of independence -1776 ; “ All men are created equal” (in pursuit of the happiness as endowed by creator upon all men).The preamble of universal declaration of human rights may be summarised at this juncture ; “ Whereas recognition of inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom , justice and peace in the world ; “whereas disregard and contempt for human rights have resulted in barbarous acts , which have outraged the conscience of the mankind , and the advent of a world in which human beings enjoy the freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people ;whereas it its essential , if man is not be compelled to have recourse , as a last resort , to rebellion against tyranny and oppression , that human rights should be protected by rule of law; “whereas it is essential to promote the development of friendly relations between nations ;”whereas the people of the united nations have in the charter reaffirmed their faith in fundamental freedoms ;whereas member states have pledged themselves to achieve, in co-operation with the united nations , the promotion of universal respect for and observance of human rights and fundamental freedom; “whereas a common understanding of these rights and freedom is of greatest importance for the full realisation of this pledge.

HUMAN RIGHT IN INDIAN DEMOCRATIC CONTEXT

The concept of Human rights relates in its immemorial antiquity from the time of inception of the Human being .Human rights advocacy is not an encroachment upon the national sovereignty , but is an ultimate aim of state craft .The rights of men are assets to humanity and a liability of the State. Man has created the concept of state to preserve his natural rights.

The concept of fundamental law and fundamental rights are the of spring of the natural rights . This stands above the positive Las created by the political sovereign . The

philosophical foundation of Human right has got tremendous power and vigour . Human rights is legitimacy of democratic political order which is enshrined in most of the constitution of different countries. Rene cassin at Colloguim has defined Human rights as “the science of human rights relates in the light of human dignity for the full advancement and development of personality of human being . Thus the human rights are such written instructions which starts from Magna-Charta -1215 , Petition of rights -1688. The French declaration of rights of citizens -1989 proclaim the natural and imperceptible rights of Man’s liberty ,property, security and resistance to oppression.

The American declaration of independence -1776 ; “ All men are created equal” (in pursuit of the happiness as endowed by creator upon all men).The preamble of universal declaration of human rights may be summarised at this juncture ; “ Whereas recognition of inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom , justice and peace in the world ; “whereas disregard and contempt for human rights have resulted in barbarous acts , which have outraged the conscience of the mankind , and the advent of a world in which human beings enjoy the freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people ;whereas it its essential , if man is not be compelled to have recourse , as a last resort , to rebellion against tyranny and oppression , that human rights should be protected by rule of law; “whereas it is essential to promote the development of friendly relations between nations ;”whereas the people of the united nations have in the charter reaffirmed their faith in fundamental freedoms ;whereas member states have pledged themselves to achieve, in co-operation with the united nations , the promotion of universal respect for and observance of human rights and fundamental freedom; “whereas a common understanding of these rights and freedom is of greatest importance for the full realisation of this pledge.

LAW SHOULD LIBERATE, NOT ENSLAVE

Jurisdiction of court is like that of constructor of a buildir which has either perfection or many defects. The final word of posterity is dependent upon the skill and calibre of builder who may heartily desire to build up it like expert builders with architectonic virtues to amend or/and add some material both by method and uniformity and if the structure itself does not found

ventilation for the want of windows and lake of sufficient light or other deficiency in the architecture, whatsoever, then to demolis the existing structure, only than we may blessed the amending hand as if the trumpet idea gives an uncertain sound who shall prepare himself to the battle? Likewise justice should speak by tongue, word easy to understood, otherwise how a common man will understand and know what is spoken, if the justice shall be spoken into the air? There should not be such short sentences as we may forget the use of verbs which may reconcile the idea into action.

“The play is done : the curtain drops slow falling to the prompter’s bell. A moment yet the actor stops and looks around, to say farewell. The approving audience gives him cheer. He bow to them and says his say. Yet down his cheek there falls a tear from him. This is the ending of his days.”

Fragrances are more hypnotic , music more inspiring , food tastes better and the sense of touch is more intense. This is all because of human Aura, which is extending an outlining the head and body through spiritual cult in the form of twinkle blue, pale or gold and glitters through etheric world. The physical visio is usually peripheral with the third eye located as pineal gland. This is known as holo, which passes through legend, but graduall earthlings have lost the ability to see the Aura, the etheric or a holo except the few person, who have retain the gift in their present incarnation. This is of vital importance to the individual’s health, happiness and spiritual involvement. The esortic wisdom begins with the understanding of real existence. You can be able to see the etheric or human Aura and then your subconscious wil pack up the message for uplifting you to the higher self by using the crowded elevator. This overlapping and mixing of etheric self with crowded elevator creates tension and uneasiness except few extravagant personality. Every person in the world need a space. There are electromagnetic charged atmosphere, which may be washed out by taking a bath through shower. As those magnetic pits which may be picked up from others be washed off. Some of the animals have better sense of understanding the effect of Aur etheric and spiritual carving of individual through there perceptions.

Adversaries are the touchstone of brave mind. The spiritual way of living may only be adopted by taking the course its learning which the individual may incline, when he will procee further to learn in this regard. Since the necessity is the mother o invention as such without having any need for learning, one may not advance through this process, except in adverse circumstances. It is rightly being said that the bearer of the shoe knows as to where it pinches to such individual.

Let us start with physiology of human body which has the respiratory organ for breathing of the air. It provides the survival of the cells of the brain and the rest of the body is provided the air for nutrition and energy. The deep breathing indulges the individual through passing off the channel from the nostrils and comes in the contact the thin layer over brain where the fluid is filled up and is connected with spinal cord at its base. The “Kundanlini” in the individual contains the fluid which is sucked through suction force to the cells of the brain. In this process the potential to one’s perceptions in respect of his retention power inside the brain may directly be attributed to the individuals memory. This gives a personality cult of an individual to make the further advancement in life. In absence of such atmosphere, one may feel despotic isolation and thereby the stagnation to the process of evaluation may ultimately ruin the future prospective for progress.

The mind is the master of senses and the breathe is the master o mind. The mind cannot be restrained without restraining the breathe. Mental activities keeps pace and respiration. Thus the consultation is regarded to be the best source for all sort of management of human affairs. This may be in numerable form of philosophy. The philosophy of argument and the philosophy of th rule which capture the intellect in there nets and led it away from the true knowledge. The physical control is merely a preparation for mental control. When the mind is calm down, It is indeed the process of becoming one with reality begin. Only few dies of suffocation but rest of the death are caused as such person has not been breathing enough from years. Let us examine the existence of these principles which are necessary for the protection of the society in which the judicial discipline is the source of inspiration for protecting the fellow existence. The Hind mythology also based on the principle of separation of power. There are the different duties and role assigned to the omnipoten powers in the universe. Lord Brahama is considered to be the creator of animal existence and other human being in this world while the Lord Vishnu is considered to be considered to be the protector of the living creator while Lord Shiva is maintaining an equilibrium by imposing the appropriate punishment as to maintain the esteem of administration of justice. There is not eve an absolute power vested with the God itself according to our Hindu mythology. Thus the concept of legislation, executive and judicial power is embodied with separation of power.

The religious virtues are marked with ten characteristics viz. patience, forgiveness, self denial, honesty, purity, mastery over senses, sensibility, knowledge, veracity, and cheerfulness. The individual has not given an absolute power and likewise the

universe protects the existence of other fellow being to be ruined by the stronger as the lion and other carnivores animals may not destroy every healthy and vigorous animals. Thus the individual having the absolute power of government may not be allowed to rule the nation. The ruling body of the people may not be vested with the absolute power nor the person embodied with such powe should be allowed to delegate it to some other person otherwise the fate of the nation will be identical to the fate what we have visualised by giving the power of management to the British East India Company who had subsequently captured the full comman over the nation. The mutiny became the turning point for justifyin the rule by the British domination, as the nation was subsequentl came under the control and sovereignty of the British Empire.
The country must be free from enemies and for this purpose law and order situation must be effective in vanquishing the enemies and resisting their onslaught. For this purpose, the enforcement agency be admirable and efficient for becoming victorious throug benevolent rules and regulation. The law of punishment is the dispenser of justice. The theory of retributive justice must be implemented to wake the people who are fast sleeping. It is difficult to wake them by shouting a voice as those who are havin the intoxication by power, wealth and privilege may not rise to th occasion for the advancement of the country. This is important as the virtue of religion which is meant to preserve the justice and not to destroy it. The abortion of justice provokes the resentment of the people. Thus it is important that at least a person who is sitting on the seat of legislating the law and to deliver judgement may not be voluptuaries, malicious and if he has such disqualification, then the person occupying such position should be punished by retributive justice.
The justice is a very awful and majestic, It cannot be upheld by ignorance and non righteous person as the person who is not learned, untrained and block headed is never able to enforce the law with justice. Thus a wise man is only able to enforce the law i the strict sense. The decision of such judicial member may not be transgressed by any one. There were ten evils always recognised from ancient time which are arising from the love of pleasure; i.e 1) Hunting, 2) Killing of innocent animals, 3) Gambling, 4) Sleepin by day time, 5) Listening to love talks and scandals, 6) Excess wi women, 7) Use of intoxicant, 8) Singing in club, 9) Playing musica instrument in night clubs, 10) Useless strolling. These vices are now been accepted in the society as the necessary evil. Nothing can eradicate the prevailing maladies except by strict enforcement of the discipline which is not given the due priority i our country.

The government should watch if the justice is upheld in inflicting of punishment and no unjust punishment is inflicted. The treasury and the executive work must be in the hand of such responsible person who should be held responsible for the lapses and given deterrent punishment, in case they are found to provide the loss to the public exchequer. It is as fare if one hundred entrenched garrison soldier can resist the attack of ten thousand enemies, why not a patriot to this nation may be able to get the correct prospective of our system. Thus it is not only the punishment for reformation or censure is imposed but in the deserving case, the person deserving punishment may be provided with the exemplary punishment as no other person could dare to commit such wrong with the people. In case of violence, theft , adultery defamation, insult and assault, since these offences are usually being committed in secrecy, the onus is shifted on the accused person to prove his innocence.

The culture and heredity plays a vital role in governing the nation There should not be the denouncing to the existing values by invasion of encroachment over the existing set up. The attitude o the people is important and a governing factor to built up a socie otherwise the inglorious incidents shall take over the existence o the society. The capitalism approach of life with atrocities committed by the superior over the down trodden is required to b dealt with sever punishment as there is no protection to the poor class of citizen.

There is always a struggle for existence and it is understood that the survival of the fittest is the ultimate notion. Thus it is considered that a criminal coming in the public and getting ruthless shooting in discriminatory and mercilessly killing the innocent inhabitants in the society is seldom punished by the court of justice. He is evading his arrest and in case if he is being arrested, he may be bailed out easily and even in case of conviction, he shall rarely be confined in the four corner of the ja premises. This is the law of our nation.

Let us examine the aspect of putting a poor farmer inside the lockup for the reason that due to the natural calamity and ecological misbalance, he could not ripe the harvest in the seaso and therefore was unable to repay the loan which he had taken f the improvement of the land. It is well known that the state government is the absolute owner of the entire agriculture land and the farmer has got only the cultivators right and if something is done for the improvement of such land, how the poor farmer can be kept in confinement. There is only one reason that in the country of “Daridranaryan“, the poor person is subjected to suffe the atrocities of the superior person but the rich people are abov the law. One should not tolerate the injustice committed by the

wrong doer over the innocent person as it is generally understoo
that the robbers usually rob the rich person while the governme
robs the poor people and leave the rich people beyond the
clutches of law enforcement machinery.
There is another aspect of the picture that a bread earner, who is
knocked by a fast moving vehicle, may get some compensation
from the insurance company or from the owner of the vehicle
under vicarious liability but if the person is stabbed inside his
abdomen by the assailant, there is no compensation given to the
victim. In case of death out of onslaught by some criminal, there
neither the punishment for the crime nor the compensation to th
family of the victim citizen. How the government can claim to be
the representative of the people ? What is the justification of
saying that it is “We, the people” who are said to be the
government ? Can a country may survive in such a type of
anomalies and undisciplined atmosphere ?
“All the members of the court are considered as wounded, where
justice is found wounded with inequity, and judges do not extract
the dart of inequity from justice or remove its blot and destroy
inequity, in other words where the innocent are not respected an
the criminals are not punished.”
“A virtuous and just person should never enter a court and when
he does so, he should speak the truth; he who holds his tongue o
seeing injustice done, or speaks contrary to truth and justice is th
greatest sinner.”
“ All the persons in that court are dead, as it were, and none of
them is alive, where justice is killed by inequity and truth by
falsehood in presence of its courtiers.”
“ Justice destroyed, destroys, its destroyer; and justice preserved
preserves its preserver. Hence never destroy justice, lest being
destroyed, it should destroy the destroyer of justice.”
“ The learned regard him to be base caste who violates justice
which gives all wealth and showers all blessings. Therefor no man
should ever destroy justice.”
“ In this world justice or righteousness alone is man’s friend that
goes with him after death. All other things or companions part on
the destruction of the body and he is detached from all company
But company of justice is never cut off.”
Thus when injustice is done in the government and the Hon’ble
Court due to inadvertent do not dart injustice and may attribute
some partiality with underrepresented poor citizen and protect th
criminal or doer of injustice, there may not be such deserving
respect and it may circumvent the law with all inequity. Such a
situation is alarming in the nation as the law which is regarded to
make the citizen free from all side of encroachment, has itself is
making the people enslave. Let a situation be derived by breakin

the chain which is providing restriction to fight against the injustice. Although it is an iron curtain, but still one cannot blot al such hopes, as the hopes belong to a future. A single day light may shallow the darkness from our country.

Law, order, discipline and its enforcement in society

Laws are the aggregate of rules representing is the collective wisdom of community and therefore applied universally according to the circumstances and conditions and requirement of the nation universally for the common human benefit of people's welfare and therefore made applicable for the strict enforcement of justice with the changing requirement and sanctity of the rule of law. Doubt perishes the man while apathy to a particular situation ruin the civilisation.

Law in order to satisfy the needs of fast changing society has to be evolved in order to meet out the challenges instead of remaining static. Thus the judicial thinking to be constructed by reference which would adequately deal with the new problems and therefore we no longer need the crutches of foreign legal system. It has to be secured through the process of law. The collective interest of the community so that parties do not lose faith in the institution and thereby indulge in private retribution is the prime objective of the legal order. The procedural safeguards should commensurate with the sweep of power. The wider the power, the greater the need for restraint in its exercise and correspondingly, more liberal the construction of procedural safeguards envisaged by the statute .

An independent and honest judiciary is sine qua non for rule of law. It is imperative to protect the honest officers from motivated misconceived complaints made by unscrupulous litigants while on the other hand infallibility is an unreliable ideals, correctness is often a matter of opinion. Thus ability to anticipate the fallibility is the gift of a prophecy consideration of finality are subject to the paramount of justice but the remedial action must be appropriate upon which the administration of justice may rest. Thus the law can not afford any favourite other than truth. Life of law is not logic; it has been experienced however logic may not be ignored when experience is silent.

There has been erosion of faith in the dignity of the court and in the majesty of the law. The procedural wrangle is

eroding the faith in our judicial system and one must introvert turn the search light over the process of deterioration inwardly. Therefore, the law must be definite and such as basic postulate is the requirements of the consistency in judicial decision making process and at the same time, there is the need for foreign flexibility. No straight jacket formula can be laid down for judicial functioning. The concept of public accountability of the judicial system and the professional competency with ability to promote the justice is perhaps overdue and the courts are ill equipped to speculate and seldom at contrary to democratic principles. Values in public life have undergone serious erosion during last few decades what was unheard is a common talk of the day. The new value orientation has undergone in our culture and we are at the threshold of the cross roads of these values. This is a difficult situation.

One makes Law legal only by giving its operation . The consent of one's conscience. A moral obligation to disobey is not less compelling merely because an individual is powerless and that his disobedience may lead to punishment through powerful despotic monarch. It is always electoral of pre-medication to adopt justice as synonymous to law, which may be the command of the stranger, but the humanity and conscience will always be prone to launch a protest through expression against such command of law who has no sanctity of justice behind it. The problem of obedience of unjust law is the root cause for a right to right to rebellion and delicate balance is being observed in the history of civilisation. The position of soldier under section 41 of the Army Act, 1950 as making disobedience to unjust immoral offence is in practice difficult to tackle as being liable to be shot at by a court martial and if he disobeys to be hanged by a judge. There is a concurrent conflicting demands of choosing either of the two. The discipline and of supremacy of law. It is difficult to examine and being aware of a illegality of the order and therefore law contrives an objective test. The Nuremberg trial has further declared that Nazis law and order of dictator must confirm to minimum morality. If it does not stand this test, the disobedience to unjust command will not often the discipline and rule of law will prevail.

Resistance to oppression is the consequence of other rights. When the government violates the rights of the people, insurrection for the people and for each portion of the

people, the most sacred of all rights and the most indispensable of all duties. Abraham Lincon’s famous slogan “Government for the people ,by the people and of the people means that the people can exercise their constitutional rights and revolutionary rights to dismember and overthrow the government. Thus rebellion to tyrants is obedience to God. Whenever any government becomes destructive of certain inalienable rights of life, liberty and pursuit of happiness, the people have the right to alter or abolish it. The abuses and usurpation design to reduce the existence of the individual and to act like absolute despotism, it is the right and the duty to throw of such government and provide security to the citizens.

The rebellion against government is further justified when the majority of the people are oppressed by a despotic minority and then it becomes a moral duty of men who love liberty not to permit any moral rights to rebel against the majority. Practice of non-violent methods of rebellion as a means to end tyranny has been justified by our founder father but tyranny which makes reforms impossible is difficult to be tackled down and in that situation only the public opinion can safeguard the interest of the society. The obligation to obey the law is always linked with the question of justification for the natural outburst with the right to revolution. The ultimate raison de etre for you social discipline is reconcile apparently with conflicting claim of liberty and law. The justification to obey the law through civil disobedience involves conscious disapproval of government's action. The other factor of disobedience is through non-enforcement of the sovereign power of imposition of tax law and when ever the protest has the justification for not agreeable as unable to conscience to obey it. The peace and tranquillity of the realm is always supreme as such violent emotion is unwarranted by moral law .Socrates, who searched into things under the earth and in heaven and therefore the youth refused to hold his tongue and prepared that as he realised that law applies with equal force to all to maintain ordered society and in order to resist against. Unjust law are must not to being afraid of being incurred in punishment for disobedience, if his conscience permit him to do so.
Recent events have revealed the damage of letting ashore on body politics to fester for to long, the solution must be consistent with the unity of the country and national interest and not on as can result in claim of reaction detrimental to

those interest. Despite the enduring the assurance by every political party in the parliamentary democracy for country's stability progress and radical reform, there is a complete social disruption. Sometime there is ideological compatibility due to personality cult and dynasty rule over primitive society but when there starts inherent contradictions and ego concentric personality clashes, the country stability ,progress and radical reform comes to ignominiously halt. Socialism is to social justice , what ritual is to religion and Dogma is to the truth. Our present politicians has imposed so called mindless sociological arrangement on the nation under the garb of socialism which has held in thrall the people endeavour and enterprise resulting in the transfer of wealth from the honest to dishonest opportunist, merit to the demerit; quality with the quantity and justice with injustice in the guise of giving social protection. This is the reason that 231 public-sector enterprises run by Union government and 636 by the state government of extracting the material resources from public exchequer realising exorbitant price from India's doctrines socialism. If the politicians are actually concerned and they should have provided the financial security to the backward classes as to enable them to survive by distribution of resources with a logical distributive justice. There is only quantitative growth without quantitative developments. The influential politicians who preferred to let socialism remain the opiate the people and of whom it can be truly said that if the ignorance is the bliss they should be happiest men alive. Gandhi ji said "Economics that hurts the moral well-being of individuals or nation is immoral and therefore, sinful .True economics never militate against highest ethical standards, just as all true ethics to be worth of its name just at the same be also good economics. An economics that inculcates worship and enables the strong, to mass wealth of the expenses of the weak is a false and dismal science. It spell death true economics on the other hand stands for social justice, it promotes the good of all equally including the weakest and is indispensable for decent life. Gandhi ji told "I do not believe that multiplication of wants and machinery and contrives to supply them is taking the world single step nearer its goal ……a wholeheartedly detests with. This met desire to destroy the distance and time, to increase animal appetites and go to the ends of the earth in the search of their satisfaction. If modern civilisation stands for all this and I have understood to do so I call it Satanic" .

“A civilisation, in real sense of the term consists not in the multiplication but in deliberate and voluntary reduction of wants. “Industrialisation on a mast scale would necessarily lead to passive or active exploitation of the villagers as a problem of corruption and marketing come in. Nothing should be allowed to be produced by the cities which can equally well be produced by villagers. The proper function of the cities is to serve as clearing houses for village products. Here are more hands than required for the work and therefore the problem is how to utilise the idle hours, they will render unemployed. The concentration of production and distribution in few hands privilege oriented monopoly. The industrialisation must not deprive people from environment, must but must in village artisan to reduce his drudgery and improve his efficiency”.

This is the answer to the concentration industrialisation in the cities having no air to breathe at Delhi 460 S.P.M level ,Calcutta 460 S.P.M level 350 S.P.M level each. Justice H.R. Khanna, when appointed as commission of inquiry in the year 1967 in respect of the matter relating to the charge of corruption against the minister’s of Orrisa including three Chief ministers, one of whom was Biju Patnaik while dealing with 70 charges of corruption levelled against them, was faced a situation dealing with the arguments advanced on behalf of two ex chief ministers, that there was no prescribed code of conduct for the ministers to held them guilty of impropriety, that ministers cannot use their officer or allow them to be used for furthering the business interest of his family members to have commercial dealing with the State as they themselves never passed orders in respect of such transactions. Justice Khanna observed that a person on being a minister becomes the custodian of the public interest. Thus he should so formulate his politics and his activities that there is no possibility of the clash between his personal interest and the public interest. The role of minister has got to be that of pioneer rather than a pirate, of the public to sentinel rather than of self seeks of one dedicated to the public cause and not one obsessed with the desire of personal gain -- -- what is needed is a climate of strong public opinion where in none may dare to deviate from the path of rectitude . Law can punish only occasional lapses quoting a classic passage of judge hand. “ I often wonder whether we do not rest our hopes too much upon our constitution, upon laws and upon courts. These are false hopes liberty lies in the hearts of men and women. When it

dies there no constitution, no law, no court can do much is to help it while it lies that it needs no constitution, no law ,no court ", to save it. The question is whether the laws speaking through the authority of the courts to deal with such threat to the security of the state, shall be absolutely silenced and reduced mute spectator because of such threat. The answer has to be given to the public. A raise weary of its own blood shed and diversities should cultivate public opinion which may offer the only chance for the survival of the species. The best guarantee for such situation is good sense of those in power, the vigilance of the people and the pressure of the public opinion.

This is an alarming situation which spell out the gravity and further invite peoples co-ordination to formulate public opinion to fight through the policy of non- co-operation which has provided the independence from the British rule by our leader Mahatma Gandhi .

“Every day that comes and goes,
every mile the river flows,
says to me and say to you,
much there is to learn and do,
for the water and the day,
noise more will pass this way”.

Mankind has a habit of surviving worst catastrophes created by its own error or by violent turn of the nature and it must be so if there is any meaning in its existence, if its history and continuous survival is not the accident of a fortuitously self organising chance which it must be a purely materialistic view of the nature of the world. If man intended to survive and carry forward the evolution of which he is at present the head and to some extent of half conscience leader of its march , he must come out of this present chaotic life and arrive at the organised efforts. The ideal situation would be fulfilled by the accomplishment and preservation of the people from its own extinction by the folly committed by his own species.

Need for enforceable “fundamental Duties “in the constitution -as coexistence to national solidarity

India -A country having a constitution on which galaxy of fundamental rights to its citizens is now being ruled with governance through laissez faire, a policy with political set-up

having co-ordination with divisive forces for economic social and national oppression of the people at large where about 50% of the population are still illiterate after 50 years of independence. The people are enjoying the fundamental right without any enforceable fundamental duties.

There are virtually no individual fundamental right except the right conferred under article 19 of the constitution of India , rest are the fundamental duties of the state which are likely to be enforced for the protection of its citizen. By the gradual advancement of the judicial activism , the basic fundamental duties embodied in our constitution, have now been regarded as enforceable rights of the citizen without taking into consideration as to whether the person , who is coming forward for seeking the enforcement of such duties by the state , may actually deserve for such enforcement under an equitable discretionary jurisdiction of the constitutional courts in India. This is a basic flow in the process of judicial verdict. There is the need that the impact and implementation of the law which is primarily concerned with a social science , may be able to achieve its objective the concept and the guarantees enshrined under article 14 having two connotation ,i.e equality before the law and the equal protection of the law are not the same phraseology, although they appears to serve a common objective to eradicate the social evils of inequalities and discrimination. Thus Article 14 has a pervasive potency and a versatile quality, equilitarian in its soul, but allergic to discriminatory dictates. It is well known that equality is anti-thesis to arbitrariness. Since the licence may not be given to a blind man to drive a car, how worthwhile it may be to give the similar licence to a criminal to do every sort of atrocities being committed by indulging into the crime of the innocent people. There are inherent restrictions applicable for the enforcement of the individual personal right under article 19, which empowers the state to enforce reasonable restriction on the exercise of the right of the people in the interest of sovereignty , integrity of India security of the state, friendly relations with foreign state , public order , decency or morality etc. including the incitement to an offence pertaining to the reasonable restrictions regarding freedom of speech and expression , to assemble ,to form associations and freedom to reside and move freely throughout the territory of India. By the constitution (first amendment) Act 1951 ,there have been further restrictions to practice any profession , or to carry on any occupation, trade or business for professional or technical qualification as well as carrying on any occupation , trade or business by the state and its instrumentality to the exclusion , complete or partial , of citizens. Thus the question arises as to

whether there may not be a valid test of classification based on qualities or characteristics necessarily coupled with the object of legislation based on intelligible differential which has certain nexus with the realities of the time to dealt with the law and order situation by providing necessary restriction over the unchecked liberty granted to the individual detrimental to its integrity and sovereignty for prohibition to avail the benefit of equality clause by taking the rescue for forbid classification. . there cannot be any enforceable fundamental right to an individual for indulging in anti national activities .Thus the verdict given by the Hon'ble Supreme Court in Minerva Mills limited Vs union of India (1980 3 SCC 625 is required to be reviewed for effective enforcement of the duties caste upon the citizen by passing through the test of "Form and Object" and "Pith and Substance" to mould and replace by the test of "Direct and Inevitable" effect.

The farmer of constitution have miserably forgotten the basic and elementary principles of jurisprudence and legal theory; that "every night implies the forbearance on the part of others to perform his duty . Every right is correlated and coexistent with duty "The preamble of our constitution was not having the boosting prospects to its citizen of our constitution was not having the boosting prospects to its citizens for resolving India as "Sovereign democratic republic and for endeavour the unity of nation till 3rd January 1977.

These fundamental duties ten in number touch almost all important aspects of National life of an individual life of an individual as well as nation. These are true Magna Carta by adopting an adhering to which in our life. We can achieve the objective of an egalitarian society, free from corruption, oppression , favouritism and nepotism . Each of these duties, when decoded and dilated, will go to encompass, the various facet of human activity and behaviour ; a remedy to most evils plaguing our society -an educational institution ; a public undertaking etc. The present day crisis is the result of the phenomenon where tried to achieve right while forgetting corresponding duties as reciprocal to fundamental rights . We may get rid of the despotic and corrupt tendencies of authority in politics and administration having pressure groups ever hungry and lustful for privilege and power.

The chapter of fundamental duties in part (IV A under article 51 A has been introduced by our constitution (Forty second amendment) Act ,1976(w.e.f 3.1.1977). The insertion of new Article 31C i.e. saving of laws giving effect to certain directive principles , notwithstanding anything contained in the article 13 , no law giving effect the policy of state towards securing the

principles laid down in part IV shall be deemed to be void on the ground that it is in consistent with or takes away or abridge any of the right conferred under the Article 14 &19 of the constitution. The Supreme Court of Mineva Mills Ltd. Vs Union of India (1980) 3 S.C.C page 625 has laid down the same as unconstitutional holding “that it virtually tears away the hearts of basic fundamental freedom without which a free democracy is impossible. This is a charter of class legislation”. The Article 31 D pertaining to “ saving of the law in respect of anti-national Activities” has already been omitted by the constitution (Forty third amendment)Act 1977 w.e.f 13.4.1978. The other Article 39(f) providing “Protection to children” by giving them opportunities and facilities in healthy manner and in conditions of freedom & dignity and that childhood and youth are protected against moral and material abandonment” has been inserted w.e.f. 3.1.1977. Equal justice and free legal aid for securing justice to economically weaker classes and other disable down trodden citizens under Article 39 A is on account of 42nd constitutional amendment . The participation o workers in the management of industries and protection and improvement of Environment and safeguarding of the forest in wild life under Article 43 A and 48 A respectively have also been inserted by virtue of 42nd constitutional amendment, Act,1977 . We could not achieve to cherish the goal enshrined under Article 44 providing uniform civil court for the citizens, Thus till the situation has not become alarming and the Govt . Was not compelled to impose the emergency, the farmer of the constitution have neither given any heed for the insertion of the chapter of fundamental duties and directive policies for the uplift of the poor worker ,children and other disabled person . It is certainly a matter of grade disappointment that till date these fundamental duties and directive principles of state policy have still not been enforce as that of the fundamental rights of the citizens ,The country may be ruled down by functioning anarchy and oligarchy , but the prosperity ,integrity and solidarity ofd the nation is impossible without the enforcement of the duties assigned to its citizens.

Constitution (Forty Fourth amendment) Act,1978 has provided another directive principle under Article 38(1)&(2) that the state shall strive to promote the welfare of the people by securing and protecting a social order and to strive to minimise inequalities in income and endeavour to eliminate inequalities in status facilities and opportunities not only amongst individuals , but also amongst groups engaged in different vocations. How much reconciliation in practical implication of the ideals promulgated through the aforesaid directive principle of state policy may be seen by a simple instance that ion the state of Uttar Pradesh

according to then minister of Parliamentarian affairs Mr. Barkhoo Ram Verma , the state government was spending Rs 1,11,96,000/- per month on the Z-plus security of few persons .This is a single point formula of our politician , the custodian of the public trustee that now motivated for casting the vote bank in their favour. These directive principles for welfare of the people and protecting social order to minimise inequalities in status and opportunity may be good enough for theoretical purpose , but their enforcement is still a utopian empire to achieve in our so called welfare of the state. Law must be change according to changing circumstance is a means to an end . Law is only a part of human conduct and its character is its purpose. Law is required to govern the society. Its purpose is its essential mark. The purpose is to protect the interest of the society. The social impulses are the seldom to accord the selfish interest. When the selfish interest clashes with social purposes it has to be suppressed through Iron hand . Law is meant for our mean which is a social control , otherwise it will be lawless society. Every man is under legal obligations to impact certain duties which are coexistent for social solidarity , otherwise the idea of sovereignty is meaningless . Thus the essences of law is duty , not only rights to its citizens. All the rights guaranteed in our constitution can very well be safeguarded and enforced automatically if there are mandatory obligation caste upon the state and its citizens to endeavour , respect and obey certain fundamental duties. The reality is not in securing the rights , but to discharge certain duties by its citizens, if the property of the Nation is required by its citizens.

Professor Laski says “Govt. by the judges would logically, under is system be a final safeguard, insurrection apart, of the rule of law .Judges also may have their prejudices and limitations and that may lead to judicial despotism. The centre of legal solidarity lies not in legislation, nor in jurist’s science , nor in jurist’s decision ,but in society itself”. The first requirement of judiciary that it should correspond with actual feeling and demand of the life . Unfortunately we are still upholding the traditions of Anglo Saxon jurisprudence and resisting radical innovation in the use of judicial power to promote social justice under our constitution. Justice which has always been the first virtue of any civilised society is still required to be traced down the beating the sticks over the impressions left behind by passing through a snake of alien power ruling over the nation . Such traditions having the glimpse of slavery was least concerned with the relief to the litigants but continued to perform the deception by making the litigant as specimen in the process of advancement of the judicial system .There are conflicting decisions which were subsequently

overruled but by that time the cause of the litigant was decided on the wrong precedents.
We , the advocate could not even having the gut to renounce our black coat , which is reciprocal to the drudgery and a painful reminder of the traditions maintained through our slave mentality in the extremely warm environmental conditions of our country .We could not utilise our mother tongue in the process of legal , medical and technical science as the translation to the language of understanding to our citizen is still a task assigned to the future , But sill we can demonstrate with pride our solidarity to the mother tongue . The religion which is required to be adopted for maintaining a social condition is no more serving its objective and utility to the nation as the norms of our society have already been extinguished by our non productive activities and thus we can never give the prosperity , integrity and solidarity top our nation. Every one should now require to act in such a manner that we may be able to coexist with perfection of general condition by endeavouring the good wishes and brotherhood with freedom - a sum of total condition. This is required to elevate our character , integrity and solidarity to the product of human resources and thereby the growth of personality , only then the nation may survive from a complete disaster.

RELIGION AND THE NATION

My nation is my religion. Salutation to the nation is meant for social co-ordination and solidarity amongst the citizens and therefore it is regarded the greatest service of humanity. The controversy triggered off over the telephonic recital going patriotic on independence the my reading the callers with “Vande Mataram” being objected with the title Masjid Mein Vande Mataram”, by Mr Idirisi has hurt the sentiment of Indians. Any negative feeling is the feeling against the nation . It will be called as the saddest day for our hard one freedom. Those hundreds of patriots who sacrificed their lives by daring to get themselves hanged by chanting the slogan “ Vande Mataram” is now triggered off controversy of fanatic psyche “Vande Mataram is not a communal song ,but is a salutation to the nation including to the sentiments of the great poet Iqbal, who wrote “SAARE JAHAN SE ACHHA HINDUSTAN HAMARA”

Conscience is the inmost thought consciousness moral sense scrupulousness ,conscientiousness It means the freedom to

right or belief. To profess means to affirm one's faith in religion or God . In Shirur Muth case (A.I.R 1954 S.C 282) the Hon'ble Supreme Court said Religion is certainly a matter of faith with the individual or communities and it is not necessarily theistic. The well-known religion in India like Buddhism and Jainism do not believe in God or in any in the religion or in any intelligent first course. A religion undoubtedly has its basis in a system of belief or doctrines, which are regarded by those who profess that religion as conducive the their spiritual well-being.

In Bijoc Emmanuel vs state of Kerala (1986) 3 S.C.C p. 615 in which a state compulsion on an individual perform a secular activity was challenged to violate his religious conscience. The circular being contra sacramental by participation in singing national anthem before marching to the classes was under challenge. The Hon'ble Supreme Court held that the circular has no force of law and any compulsion to join in the singing despite genuine conscientious religion objection would clearly contravene the rights guaranteed by article 19 (1) (a) and article 25 (1) of the constitution of India. Can we survive without a nation? Whether the freedom of conscience is a perceptible aspect or abstract phenomenon. The conscientious objection may refuse to bear arms or an atheist may not be compelled to swell in the name of God. The national anthem and the national flag was dispensable in the face of religious objections. The Hon'ble Supreme Court while observing the need of enforceable fundamental duty under article 51 -- A (a) of the Constitution which provides for proper respect to our national anthem. It was observed that the mere executive or a departmental instruction cannot canton the dimension of free conscience clause of our Constitution and therefore the increased conscientiousness provides a constraint on the compulsory vaccinations and inoculation particularly during gigantic mass of congregation like Kumbha Mela and other religious fairs in our country.

The end of religion is beginning of spirituality; the end of spirituality is the beginning of reality and the end of reality is the real bliss. Instead of worshipping the great master, the omnipotent, ominous, omnipresent. We have started worshipping his servant and rather the place of worship is now regarded above to the religion. People are driven

through such faulty guidance and having the darkness in the self realisation. The goal of life is to achieve the greatest possible efforts towards the serious consideration to the problem of life. If we have no essence of vary life how we can achieve the freedom from bondage, which may provide salvation. Thus the religious sentiments are no where providing obstacles in the process of salutation to our nation. Rather the religion is based on the foundations of being a patriot first then to believe any dogma or rituals under the garb of the religion.

The state affairs in India without having the enforceable fundamental duties as we may resolved from a political situation having growing tendency towards moral, religious and social degradation, is rather deplorable. India does not hold any bright prospects with interruptions and spirituality compassionate to the animals and to protect the vegetation is the reciprocal obligation towards the God. Thus the respect contributed towards civilisation of providing solidarity and the integrity to the nation by salutation to our country is the fundamental principle of the religion. The consequences of the present drastic change in the mentality of the individual on the -- is alienating responsible for mobocracy which may lead to enormous blood shade all over the world as if the religion is not based on spiritualism which ultimately ruin our civilisation

This universe is a system of change and formation of energy for our living creative to an other. The energy which kinetic or magnetic or electrical is the basis of life. The vapours arising out of such energy is ultimately the source of our inspirations. The moments we kill our fallow inhabitants, the energy involved into the different formation, but it never extinguished, thus God is one and therefore the belief to adopt a particular religion should be founded on common foundation. God is perfect the universe is perfect but we're not perfect let our soul may appreciate it. The primary objective of the society is to do welfare of all human beings and when we inspite living inside the boundaries of our country may not provide salutation to that nation We have no right enjoy any right in such country.

Review of Constitution

A body of 292 people representing the different constituent in the representative capacity can hardly believe that their

voice was the voice of people .The ideals and aspirations which has given courage and inspiration for struggle during the British regime has been resultant for the enforceability of fundamental rights without enforceable fundamental duty ,which remains absent upto 3.1.1977 till Article 51-A was inserted in our constitution .The sentinel and custodian of public interest have completely forbidden that our constitution has must correspond to definite social relations for development of the country. The Constitutional provisions should adhere to the changing norms and values of the society ,as such there was need for retrospection and renovation. The society is surging forward to fulfil those ideals on which the country may progress. Duty to uphold and protect unity and integrity of our nation and to render national service to promote harmony and to abjure violence to rise with higher level of endeavour and achievement should be the primary consideration to built up a nation. These duties include preventing exploitation and and the monarchy by the ruler. Each according to his ability must be rewarded and assigned with the responsibility of work Democracy is not a mere slogan. Democratic values be confirm by the people. The concept of socialism is based on social justice where the “right to work” is an essential feature .Our constitution has become static achieve such changing norms.

The president should be assigned with arduous task of combining the ceremonial office of the head of the state with political head of the executive as the legislature ought to be trusted not be make bad laws. Essence of common brotherhood amongst all Indian is the principle, which may give unity and solidarity to the social life. Slogan do not solve the problem .The segmentation on the basis of caste and religionist are anti national .Agreement on the essence of the principle had broken down on each ideological front in our country. The ideological may lead to dictatorship form of government as the opportunist in the politics may preach well for popular sovereignty .The representative Govt. under the garb of conscious element imposes their vested political decision guided and emanated with the centralised organisation to the party leadership .This ultimately result in a special kind of representative Govt. where the political forces dominate the state.

The social order is essentially a system of class relating . The equality of all citizens is now replaced by division into leaders. It deduces the idea of man’s dignity and freedom,

the task of ensuring justice and existence of harmonious relation amongst the citizens.

Economic justice would mean the development of more productive economy which may lift the Indian people from extreme poverty to a level of living closer to the citizen of developed countries. Socialistic pattern of the society means that the extreme of the wealth would be reduced and the centres of the private power would be eliminated.

Justice Frank Rurter said “Every legal system for a living society even when embodied in a written constitution must itself be alive .It is not merely the imprisonment of the past ,it is also the unfolding of the future .A federal is most complicated and sublet .It demands the most flexible and imaginative adjustment for harmonising national and local interest.

A dynamic process having its application to a function of statecraft. The Constitution cannot be applied in disregard of the external circumstances in which men live and move aimed have their being. Justice Homles said ‘the provisions of the constitution are not the mathematical formulas having their essence in their form ; they are organic living institution. The significance is vital, not formal ; it is to be gathered not simply by taking words from a dictionary , but by considering their origin and the line of their growth .Justice Cardozo said ‘A constitution is the principle for an expanding future’

The courts instead of ascertaining the intent which these men voice with respect to the meaning of a constitutional clause in their own way , attempt to determine the intent which these men would presumably have held ,had they foreseen what our present condition would be. The judicial approach should be dynamic rather than static , pragmatic and not pedantic and elastic rather than resist. It must take into consideration the changing trends of economic thought the temper of time and the living aspirations and feeling of the people. The court while acting as sentinel on the qui-vive to protect the fundamental rights must try to strike a just an balance between the fundamental rights and the larger and broader interests of the society , so that when such a right clashes with the larger interest of the country, It must heeled to the later. (Pathumand vs State of Kerala A.I.R 1978 S.C page 771). In India the majority is not a political majority . There is difference between communal majority and a political

majority . A political majority is not fixed , but it is the majority based on conscience while the communal majority a permanent majority fixed in the attitude .One can destroy it ,but he cannot transform it. The politicians have objections to the political majority in these words. “DAMN YOUR SAVE GUARDS , WE DO NOT WANT TO BE RULED BY YOU”
The immunity granted to the M.P’s under clause (2) of Article 105 and to the members of the legislative assembly under article 194 (2)of the Constitution of India that they shall not be liable to any proceeding in any court in respect of ‘ANYTHING SAID’ or ‘ANY VOTE GIVEN’ is providing protection for entering into conspiracy for bribery and to commit the offence of violence for which these representative claims to exercise the privilege for a charter for corruption. Since they are public servants and there is no authority to remove an M.P. from his office in absence of such authority competent to remove and to grant sanction under section 19(1) of prevention of corruption act , 1988. The prosecuting agency dealing with JMM bribery case in respect of the offences under section 7, 10,11, 13and 15 shall obtain permission of chairman of Rajya Sabha /speaker of Lok Sabha and if they are not found competent authority to remove them , the president of India under Article 103 is not competent to remove a M.P. from his office and thus in absence of requirement of initiating proceedings in the court of the law , no prosecution under these provisions may be taken against M.P under Prevention of Corruption Act. P.V. Narsimha Rao vs State (CBI/SPE)(1998)4 SCC page 626)Similarly the designated court of Sri V.B Gupta Special Judge conducting the trial of politicians involved in Hawala scam has acquitted all the accused persons as the evidence Act does not recognise a document written in code words as admissible in evidence. This is pragmatic approach where the justice is dependent upon rigmarole of technicalities and our profest socialistic ,secularists ,democratic parliamentarian set-up of our country. Justice Y. Venkatachalam observed “If such acts and conducts on the part of Jaya Lalitha are allowed to continue , it will not only create indelible stigma on the system of flourishing democracy, but will also bombard the entire economic structure of our country” Erosion of credibility of judiciary in public mind may be the greatest threat to the independence of the judiciary. Eternal vigilance by the judge to safe guard against any such latent internal danger is therefore necessary lest we may suffer from self inflicted mortal wounds. Authenticity of judicial process rest on public

confidence and public confidence rest of legitimacy of judicial process. Sources of the legitimacy is distinguished from subjective moods. Predilections emotions and prejudices. Ultimately the judges have to suffer the consequences ofd injustice . In Indramani and others vs Mitheshwari Prasad and others reported in J.T 1996 (9) S.C page 135. The Hon'ble Supreme Court after recording regrettable circumstances has deprecate certain behaviour undermining judicial discipline of our Hon'ble court while in state of Rajasthan vs Prakash Chandra (1998) 1 S.C.C Page1 , the Hon'ble Supreme court has again depredated the lake of judicial restraint and abuse of judicial authority by disparaging and derogatory remarks by insinuation through reckless and irresponsibly discipline against judicial flavour and judicious propriety of puisne Judge of Rajasthan High Court. Still the judicial process cannot be abused to perpetuate such illegalities for which a totalitarian regime having dangerous consequences regarding rule of conduct has to be vanished. Mr. L.K. Advani said in the legal aid orientation ; Indian judiciary instead of being solution has become a problem itself , while Jethamalani in another context has observed that the judges at the highest level were involved in lesser pursuit of propping unworthy appointment of bench while Mr. Mulayam Singh expressed that there should be adequate representation of judges on the caste basis. Whether this is pragmatic approach into the matter which is based on the great ideals to our super entrepreneurial spirit of cultural heritage and intellectual potential ? The virtue of humanity in the judges and a constraint awareness and investment of power in them is meant for use in public interest and to uphold the majesty of rule of law , which would to large extent ensure self restraint in discharge of judicial and our constitution of India. Written By

_

The Rule of Law and Its Importance

Good afternoon. It's a great pleasure to be with all of you today. It seems that tickets to this conference have become a much hotter commodity than we expected. But I can assure you with absolute certainty that no one had to pay a bribe to get in.

We've been talking the last couple of days about the importance of fighting corruption and the many benefits that accrue from that fight. But I want to talk today

about a broader theme -- that of the rule of law and its importance.

No anti-corruption strategy, no matter how well-designed and well-intended, can succeed without a broader commitment to two over-arching requirements: The first is an independent judicial system based on a rule-of-law regime. And that includes the concept of due process and the principle that the rule of law applies equally to everyone -- from the poorest and least-privileged among us to the highest echelons of government and society. The second requirement is a government that is open, accountable, and transparent. Here in the United States we often refer to this idea as "government in the sunshine."

Some of you may be familiar with the International Crime Control Strategy that President Clinton released last year. The President spelled out a series of very specific goals, one of which is to "foster international cooperation and the rule of law." I want to talk a little about that today, because it really defines my agenda -- my marching orders, if you will -- as the Under Secretary with responsibility for our rule-of-law policies.

The President's strategy spelled out three objectives for furthering the goal I just mentioned.

One, we should try to establish a commonly accepted code of global standards for fighting international and transborder crime. And once it's established, we should very actively encourage compliance with it.

Two, we should improve our bilateral cooperation with foreign governments by increasing the quantity and quality of our collaborative law enforcement efforts with them -- and the training and technical assistance that we can offer them.

And **three**, we should strengthen rule of law's position as the foundation of both democratic governments and free markets that are, if not free of corruption, at least well-insulated against it. That means, among other things, that court systems must be able to function independently so that all people can be confident of fair and equitable treatment. They won't get off, maybe, but they'll get a fair hearing.

This third objective is, perhaps, the most important one, particularly as it applies to newly emerging democracies or countries trying to rebuild their democratic

institutions in the aftermath of civil conflict. These countries, as we have seen, are particularly vulnerable to corruption and transborder crime.

There is a common theme that runs through all these objectives: it is that erecting laws and institutions as barriers against corruption is not in itself enough. Laws and institutions can't work very well in a society that doesn't also have a culture of trust and an atmosphere of openness and accountability.

Here in the United States, we've been working at this for better than 200 years. Certainly, no one would say that we've got it just right. But we do have two centuries of experience, and we're eager to share it with countries that share our commitment to the rule of law.

To that end, my friend and boss, Madeleine Albright, has made rule of law an integral part of her agenda as Secretary of State, a commitment her predecessor, Warren Christopher, articulated, and that she has made a central feature of U.S. foreign policy.

Secretary Albright's interest in this derives from two sources. First, she understands the centrality of the rule of law to so many of our most important foreign policy goals: promoting democracy and human rights, building free and fair markets, fighting international crime and terrorism. Second, she and Attorney General Janet Reno saw that a growing proportion of our international assistance was going toward rule of law objectives -- training law enforcement agencies, assisting with judicial reform, providing advice on legislation -- but without a coherent strategy for applying this assistance.

So, with that in mind, the Secretary this year created a new position in the State Department that of the Senior Coordinator for the Rule of Law. And we have filled that position with a highly qualified, highly capable gentleman by the name of Joe Onek, who is here today and whom I encourage all of you to get to know.

Joe's role here has several parts. One is that he will pull together and coordinate the rule-of-law efforts of the various bureaus here in the State Department and other U.S. Government agencies. The goal is eventually to produce a blueprint that all U.S. government agencies can refer to as they work on our international rule-of-law programs.

Second, he'll develop our rule-of-law strategies for a few specific countries, with the goal of helping this government focus its scarce resources where they can do the most good. And lastly, Joe is our principal liaison to the NGO community and to businesses and governments that share our goals. Obviously, he's a very busy guy, so don't be offended if he doesn't return your phone calls right away.

I don't want anyone to think that our appointing a Rule of Law Coordinator this year means we weren't already working on rule of law issues. In fact, we've been quite active on this front for decades all over the world.

In some Latin American nations where, historically, a lot of crimes have simply gone unpunished, we have actively supported governmental efforts to make their criminal justice systems more aggressive and more punitive. Needless to say, a laissez-faire approach to crime and punishment has a terribly corrosive effect on citizens' confidence in their leaders. So we're quite pleased about the progress that governments in this hemisphere have made.

Earlier this month in Guatemala, for example, three men were sentenced to 28-year prison terms for an atrocious attack on a group of American college students just a year earlier.

In 1996, the Organization of American States oversaw the adoption of the Inter-American Convention against Corruption, which, among other things, requires its signatories to criminalize cross-border bribery of public officials. Twenty-five countries have signed the convention and 13 have ratified it. President Clinton submitted it to the Senate last year, and we're hoping for ratification very soon.

Then, at last year's Summit of the Americas in Santiago, heads of states from throughout the Americas put together a clear and comprehensive "Plan of Action" for stamping out corruption in our hemisphere.

In the new independent states of the former Soviet Union and the former Eastern Bloc, where organized crime has taken root and flourished, we have put in place several rule of law assistance programs.

In Romania, we're working with the government to design and implement a long-term, anti-corruption

strategy and to strengthen its capacity to fight organized crime.

In Bosnia, the United States has contributed 200 police officers to a UN police task force that monitors the work of local police and teaches them how to use democratic police procedures. I cannot overstate the importance of this. You know, for the average citizen, the cop on the street is his first and maybe only point-of-contact with government. If that cop is crooked, if he's mean, if he's unfair or just uncaring, then that citizen may well adopt a very grim and cynical view not just of that officer, not just of the police department, but of the whole system of government.

Before I conclude, I'd like to leave you with some questions to ponder in your panel discussions this afternoon. As you talk about corruption in the context of the military, the judiciary, law enforcement and other organs of government, I'd ask you to consider the following:

- How can we, as governments, join forces to bring about change? What can we do together, bilaterally and multilaterally?
- What are some concrete steps we can take after we leave here today?
- And how do we, each of us, address corruption at both the domestic and international levels?

So, with that, I'll say thank you again for coming and enjoy your lunch.

The Story Of Independence

Deep needs to express thought;
Profoundly sickening to compel;
Remain silent at expression;
Limitation of freedom of thought;
Is attack on social rights;
As spiritual force is stronger;
Than any material force;
As thought leash to average conscience;
By the necessities of fatal policy;

SOVEREIGN IMMUNITY RESTS ON TWO PRINCIPLES

Sovereign immunity rests on two principles. The one expressed in maxima par in parem non habet jurisdictionem is concerned with the status of equality. The other principle on which immunity is based is that of non-intervention in the internal affairs of other States. In the days of trade and commerce, international interdependence and international opening of embassies, in granting sanction the growth of a national law in this aspect has to be borne in mind.

. Immunity of foreign States

The interpretation of the provisions of Code of Civil Procedure must be in consonance with the basic principles of the Indian Constitution. . Immunity of foreign States to be sued in the domestic forum of another State was and perhaps still is part of the general international law and international order and it is not necessary for the present purpose to consider its origin, development and the trends in different countries. As Professor H. Lauterpacht writes in "The British Yearbook of International Law 1951" (Volume 28) on "The Problem of Jurisdictional Immunities of Foreign States" at page 230 that the assumption of jurisdiction over foreign states by the domestic court was considered at one point of time to be contrary to the dignity of the foreign states and as such inconsistent with the international courtesy and the amity of international relations. This has been in the past a persistent theme of judicial decisions. It may be noted that in so far as the doctrine of immunity owed its acceptance to the decisions of the courts of the United States it is explained to some extent by the fact that it was by reference to dignity of the states of the Union that their immunity from, suit was urged insistently and repetitiosly. During the debates preceding the adoption of the Virginian Convention in 1978, John Marshall stressed the element of indignity inflicted upon a state by making it a defendant in an action. (Elliot, Debates - 2nd Ed. 1836, page 555). It may be of historical amusement specially in the context of Indian Constitution and the growth and the history of the Indian Constitution to note that in the leading case of Chisholm v. Georgia, (1793) 2 Dall 419, 425 the main argument for the defendant state was that it was a 'degradation of sovereignty in the states to submit to the supreme judiciary of the United States. The courts of the United States have gone to the length of relying on the argument of dignity in the matter of immunity of foreign states from taxation. In England, 'dignity', coupled or identified with 'independence', played an important part as an explanation of the doctrine of immunity of foreign states.

Righteousness never leaves man's side

I joined the legal profession in June 1974, Earlier I was supervising my landed property in district Mainpuri as there was no one to look after the property after my father's death in 1971.

Since I have seen the miserable conditions prevalent amongst the farmers I have always wanted to work for the downtrodden.

The jurisdiction in the courts is like the construction of a building: it is eitherperfect or has many defects.The final word of posterity depends on the skill and calibre of the builder. He may desire to build like an expert builder with Architectonic viruses to amend and add some material both by method and uniformity .But if the structure itself lacks ventilation and wants in windows and sufficient light carries any other deficiency then it will ultimately collapse .

Likewise justice should speak in a language that is easy to understand .The common man needs to understand and know what is spoken .He cannot understand anything if the language is not cut out for him.Lastly, I quote a verse from Manusmriti and other scriptures:'all the members of the court are considered as wounded, where justice is found wounded with inequity, and judges do not extract the dart of inequity from justice or remove its blot and destroy inequity'. In other words if the innocents are not respected and criminals not punished justice will not play its given role.

In this world, justice and righteousness alone are a man's friends. These go with him after death. All other things or companions part with the destruction of the body and he is detached from all company. But the company of justice is never cut off.

An Equation of Life and it's religion

This universe, in truth, is nothing. There were no heaven and no hell, nor the same in existence at present. Thus it is the creation of our senses. It is regulated by the universal truth. The creation of life and action thereafter are symptom of its existence. Every action has it's own repercussion. Thus what we feel is not a symbolic representation regarding the existence of universe.

This was the comedy of the error with an amplifier, having the co–incident, that the life is originated in this universe. There was no sign of existence after the creation of earth.

The sun was having its radiation on the newly created planets after disintegration. Thus the earth was also having the turmoil of uncertainty in the process. Gradually the heat transmitted in the atmosphere. There was the creation of the gases. The nitrogen, helium and ozone gases were emitting from the earth. There was the nuclear fusion and nuclear fission. The molecules were disintegrated into the hydrogen particles and likewise there was also the creation of oxygen from the ozone gases. After unification of the molecules of oxygen with hydrogen, the water came into existence in the form of the gases. There was a period of transmission of energy in the atmosphere. However, gradually the preservation of the heat could have only been regulated. The coverage was provided to the universe from the outer periphery of ozone layer on the outer side of the atmosphere. Thus by getting the protection through the outer radiation from the infra red and ultra violet rays, there was the cooling effect in the atmosphere. This process has gradually converted the steam of the water particles situated in the atmosphere to the condensation process. By having the rain of the water and other chemicals from the internal surface of the atmosphere, there was the accumulation of the water every where. However, subsequently due to the emission of the particles from the lower surface of the earth, there was again the vapor formation. These processes remain operative for thousands of millions years before when as a mere co-incidence, the water was accumulated in the ocean of the earth. There was no such rain as were in existence, but the mountains started from where the process of evaluation generated. There was the alga formation on the mountains and ridges and similarly there was a jelly formation in the water due to friction of the molecules. Thus the live molecule was created in side the jelly like substance in the water and thereafter the formation of the amoeba taken place on this earth. The theory of evaluation of life is the subsequent process.

The vital question for consideration for our human being is to the effect as to whether the same process is a mere co-incident at the time of the birth of an individual. There is the generating of the heat in the process of life when the idea is exchanged. These ideas ultimately become the process of reproduction. There is the combination of the molecule again in the similar process. Thereafter the creation of the zygote inside the ovary of the female. Thus if we consider the life being originated from the ocean, whether the penetration of the sperm in the egg is also the starting point

of the theory of reproduction. Ultimately the life is converted into a reality when the living organism took place in the process. We forget that the existence of our life is similar to the creation of the universe. Thus we start thinking for our survival. The struggle is of no significance because it continue for some period and thereafter it vanishes from its origin and thereafter the human being realises that his existence is for the time being.
This was a mere co-incident that a particular 'Y' chromosome was penetrated in the egg and meet with 'X' chromosome. Thereafter the process of life started. The shape and the identity of the person are concentrated on particular genes. When our existence is of such a small molecule from where we can get ourselves being recognised with some identity. This is the illusion of life when we claim for the recognition of our existence. The creation of the false existence is a direct assault on the identity of the power that has created our life. Even if we deny taking into our identity, the very existence of God, but still the value of the life cannot be put to any doubt for always being a controlling factor over the living being.

This is the starting point of our wisdom. The moment we give up to our intelligentsia through logical perceptions by converting it from analysis by observation, the reality of truth comes to the memory. This process ultimately lead to an individual from committing any sin as the repercussion of the same may be detrimental to one's own existence. No body will like to loose his own existence for the mere satisfaction of his egoistic nature. Thus ultimately we use to connect ourselves from some controlling power and thereafter the existence of God comes to our conscience. This is the ultimate truth of life.
History of man is one long search for God. However, we cannot subscribe to the theologian's theory of God. Life is the image of God, which is essentially a spiritual being. If the equation of life is taken into consideration, there can be no doubt that the man cannot eternally remain forgetful of his spiritual nature. Then he will find out his self.

Time is having three-dimensional Picture, in which, there are certain memories of the past having it's permanent impact on the way of thinking; the present as we have visualised it from such angle; and the future with our expectation to be fulfilled. Thus in this process, we may side-tracked from our inherent characteristics and may start challenging the time-

honoured customs. The reckless spirit of defiance of well-established sacred principle becomes the way of life. There is the open crusade against the religion. There is no religion equal to it's potential, in which, there may be compassion for the animals and birds, truthfulness in the behaviour and love for the fellow being. Thus the religion is based on the philosophy of brotherhood and spiritual cult of life. The places, where there is the program organised to slaughter the animals, as that of giving the sacrifices to the deity, these are not the places of religion but these are slaughterhouses.

I have known the truth, but you can not know it. This is the preaching of every prophet. There lies their greatness. Thus they bring down the highest truth to the door of every man but never allow it to reach to such man. This is the religion of life. The true religion, which may be achieved through spiritual knowledge, seeks the truths of the inner world. Bondage is of the mind, and freedom also is of the mind. A man is free if he constantly thinks and feels: I am a free soul. Life and death are in the mind of the man. Thus one should have a burning faith in God. He may feel that he has no bondage .He will fellow the instruction of the God.

THE PURPOSE OF LAW?

The purpose of law is to serve the society. In absence of fulfillment of the requirement of the public at large, the enforcement of the legal provisions are of no consequences. It should serve for the advancement of harmony and social coordination. The rigmarole of technicalities may not come into the way to defeat the vary purpose for which the law has been enacted by the representatives of the peoples. The institutions of legal enforceability can only be run by the strict enforcement of liability and obligation. Thus in the present circumstances when we have completely lost our grip on the foundation of the implementation to the provision of law, we cannot claim ourselves to be a society equipped with the law and order situation. The criminal law is completely inapplicable for the vary reason that the law enforcement agencies who were seldom considered to be acting for oblique motive, usually dragged in the process as the destroyer of the provisions in the respect of its implementation for the advancement of the society.

In such circumstances, judiciary which is enshrined with a power of judicial accountability has proven to be of significant use for the implementation of the provision of law.

If the accountability of the administrative authority are given to judicial officers, there are every possibility of mis-utilization of the judicial power. Thus a system is required to be evolved in which the erring official dealing with quashi-judicial powers may be made accountable for the abuse of discretionary power by the enforceability of the verdict preannounce by the court of law and if it is found that the decision is vitiated on account of colourable exercise of power, the disciplinary action may be recommended against such officer by the superior authority. In such circumstances, there is again a possibility of making an abuse of the power conferred with the judicial authority. Thus in order to make a respectable balance by check and powers, the guidelines are given by the constitutional courts.

That the subordinate judiciary is recommended by the nomenclatures of the judicial officers, presiding officer prescribed authority and judges but by the same time the judges of the High Court and Supreme Court are represented as the justices. This has been done purposely in order to provide a harmonious infiltration of the legal provision with the justifiability of the circumstances in according with equitable jurisdiction conferred upon the constitutional courts. However by the efflux of time, the apex court has experienced the power conferred upon the Hon'ble justices of the High Court for fixing accountability is not in public interest and rather there are possibility of misusing the judicial power. Thus the judicial institution have also faced the similar difficulty what the administration was facing in dealing with the unsocial elements in the society.

This is virtually a paradox of the situation that every pillar of the judicial verdict is founded on the basis of the public opinion and once the public may start losing its trust in the system, no one can save the judicial institution from further deterioration and ultimately it is bound to collapse by its own weight. This is the high time for revival of the reputation of the judicial institution by having a new era of the set-up with the changing circumstances of the social coordination. The law and justice may not be allowed to become in mute spectator.

There is an alarming situation in dealing with the law and order by the administration. The old ideology that right is might, is prevalent in the present circumstances. It is an irony of the circumstances that in the proceeding for keeping

peace and good behavior by the public and also in respect of a dispute likely to cause the breach of peace, the title of the immovable property is seldom taken into consideration by the Magistrate but the paramount consideration is given for the determination of the possession. This power is seldom misused by the person having predominating muscle power for his assistance to usurp the property of the innocent citizens but the law remain silent spectator of the situation in which the actual owner is deprived of his valuable property right by the stronger person. Thus there is a requirement for having some spontaneous changes in the provision dealing with the situation regarding apprehension of breech of a peace by the Magistrate. Now coming to the other side of the picture, the law has been formulated in order to put a restrictions on the power of the Magistrate to decide the factotum of the title but the power has been deled with determination of right by the court of civil jurisdiction. This is a hobson's choice. There is a counter productivity in every exercise of power and as such the law has tried to make a check and balance. The practical approach is neither in demoralizing the innocent public from the external aggression of the unsociable element through the production of legal provision and the interpretation thereof but to dealt with the circumstances as actual justice may be imparted in favour of the genuine person. The matter has been left over to the Hon'ble court of the judicial hierarchy to provide a bonfide use of the power in dealing with the circumstances of the case. The mere infraction of the provision of law may not be sufficient for envoking the jurisdiction of the constitutional court, but an endeveour is required to be seen as to whether the technicalities of the legal provision are not creating a bar to provide substantial justice to affected person in respect of the enforceability of his legal right.

The proceedings of the mutation meant for recording the name of an individual for realization of the revenue by the government and as such the same are considered as the summary proceedings. This is a matter of astonishment that the immovable property may be recorded in the name of stranger other than the owner but the law may not provide any assistance to the actual owner. The remedy to the true owner is by way of filling a suit of declaration or injunction as the case may be but the revenue courts dealing with the power of recording the name of the tenure holder are not empowered to look into the title and there by to decide the

rights in respect of recording the name on the basis of title. Thus in case of transaction of the property usually made after due verification of the person recorded in revenue record or before records maintain by the municipal board but in case if the title is not vested with the person executing the sale deed than the true owner has to file a civil suit for taking the possession back from the person in whose favour the land or the property has been disposed of by the pretender/ rank usurper.

The land is acquired and the person recorded as the tenure holder may be entitled to get the compensation. The money in lieu of the value of the land is deposited in the name of the person in whose favour the land was directed to be recorded in the mutation proceedings. The only recourse open to innocent owner for realization of the money of compensation is by filling a suit of declaration for entitlement of such amount of compensation from the person in whose favour the land acquisition authority have handed over the money. This is very strange situation to an individual having the actual ownership and the title in the said property.

The law of adverse possession is further having a disastrous implication to the rights of the actual owner who is occupied in respect of his job or limitation dealing with the responsibility of a professional and the service class by deprivation and rather the surrender of their property rights. This is again leading to the unwanted litigation to the innocent citizens. However the law of adverse possession is still being respected by the protector of the law enforcement agencies meant with the power of maintaining the tranquillity in the public administration. This is unnecessary a dragging of the actual owner to the unwanted litigation.

It is further a conflict by the cantina of judgement on the point of realisation of the insurance coverage to the dependent of the person after the death of the assured individual under a Life Insurance Policy. According to the section 39 of Life Insurance Act, the nominee may withdraw the amount of compensation but the same is attributed to legal heir and representative of the diseased. Thus after the death of the husband, if the sister remain the nominee even after the marriage of the assured person having the insurance coverage, the compensation may be awarded by L.I.C to nominee sister and in case of strange relationship

between the sister of the diseased husband and the wife of the diseased than the wife has to file to civil suit for realization of the amount of compensation. This is wholly impractical approach as the person in need of assured amount may wait for an indefinite period to taste the fruit of the assured amount for bringing up the dependent children by the wife after the death of her husband.

A person walking on foot as pedestrian or riding through the cycle is hit by a vehicle driven rashly and negligently, then the compensation may be given to the dependent of the diseased. However, somebody intentionally commit the murder of such person by the hit of the same vehicle intentionally to kill him, then no compensation is awardable under motor-vehicle Act. There are the cases of custodian death and the pre-planned murder but no compensation is awarded by the State Government to the dependent of the diseased. On the other hand the criminal case triable by the court of session or even before the Magistrate may be withdrawn unilaterally under the provision of section 321 Cr.P.C. This is very strange that in case of intentional killing there is no responsibility upon the invader of the law by a criminal but in case of accident the liability for payment of compensation is attributed upon the owner of the vehicle. The insurance company may be assigned with vicarious liability but there is no safeguard provided to a citizen from murder. Thus the concept of sovereignty as dependent upon the maxim of saying that the interest of the society is a paramount consideration of the law is completely absent in the present atmosphere of our country.

The Chapter III of the constitution of India is dealing with the fundamental duty of the State Government except certain individual rights conferred under ‘Article 19 of the constitution and collective right of conscience, faith and religion under Article 25 of the constitution of India. Although the violation of any such fundamental duty of the citizen may give them a power to file a writ petition under Article 32 and Article 226 of the constitution of India, but whether the law has made any accountability with such authority who is indulged for bypassing the law. Thus everywhere against the arbitrary, discretionary, whimsical action of the officer dealing with the State responsibility, the option open to an innocent citizen is to resort the protection of law by filling the suit, writ petitions and other representation as the case may be. The concept of the

sovereinity vested with the State is not so wider as to drag the innocent citizen unnecessarily for the infringement of their valuable rights and a there is a reciprocal obligation upon the State to fix the responsibility of their officers if there are violation of the principle of equitable justice and the provision of law. It is very strange that if an officer is guilty of committing any subordination to higher authority, he may be punished by the appointing authority in the disciplinary proceedings but there is no punishment for violating the law against such officer. Thus in India here is no Rule of Law but the Rule of Leizure-feir, privilege orientation an the ruthless power conferred to the politician, bureaucratic and also to the criminals . The criminal laws are explicit for the purposes of demonstrating the bonafide of law enforcement agencies. The principle of reformation of the criminal is of no resort to check the client. There should be a fear in the mind of the invader of the crime not to repeat the similar act as the consequences are much severe then the benefit for commission of the crime. The victim of the crime is innocent person and as such the revenge from the accused person by the victim or the dependent of the victim, even though it may be wicked, it is of natural consequences. We can not shut our eyes on the reality of this aspect of the picture. The purpose of law is to provide substantive protection to the society and the social justice within empowerment of the remedy to the people at large. Let us examine the legal history for getting the answer of these melodies.

The enacted statutes are derived from the mass of custom and traditions. The judge made maxims are known as common law. The other set Rules of consists of convention, understanding habbit, practice and culture which are regulated by the conduct of several factors accumulated in nature of human being in associations with sovereign powers. Initially the British Authority in India was established through East India Company which got charter on 31st December 1600 from Queen Elizabeth. The company was initially empowered to formulate the reasonable laws and also to execute them to punish those criminals who violet them. However the victory of Lord Clive in the battle of Plasi in 1757 laid down the foundation of the British Empire. Thus the year of 1765 makes a turning point in Anglo-Indian history which may be treated as commencing the period of territorial sovereignty by the East India company. The regulating act set up by the government of

Bengal consisting of a governor-general and four other councilors in whose power the whole civil and military government of presidency of Bengal and also the government of territorial accusition and revenue in the kingdom of Bengal, Orissa was the beginning of the British Rule in India. The presidency and concil of Bombay and Madras were subordinate to the Governor-general and the councils of Bengal which was considered to be the supreme government. Although the civil jurisdictions of the court was extended to all the British subjects in the three provinces but the employees of the company were sued in Bengal to Governor-general and its council were empowered to enact the rules, ordinances and regulations for maintaining the good order but simultaneously and gradually after achieving the absolute power, they have also started misusing their powers for enactment of law. Although in the act of settlement of 1781, many changes were made in regulating the law and order situation the exemptions granted to the public servant from being protected in respect of their action in due discharge of his duty is still recognized after gaining the independence from the system of tyranny and invasion of the British Empire. We have to get a retrospection's on such custom and tradition after independence.

The accused person named in the F.I.R has no right to challenge the lodging of the report in the police station. There is no anticipatory bail granted to an accused person in State of U.P. In absence of the defence amenable to innocent person against the false concoction in a crime may lead to an irreparable loss to the reputation of a citizen. The law recognizes the right of hearing even in certain administrative actions affecting the privilege of an individual and are having civil consequences. There is a thin line of demarcation between the administrative and quasi-judicial action and in such case arising of summary proceedings, the opportunity of being heard is provided but an innocent person falsely implicated in an artificial crime may not be permissible to take the defense of being an alibi at the time of commission of the said crime. The maxim "Falsus in uno ; falsus in omnibus". Despite knowing this fact that the police is corrupt in our nation on account of hierarchy of the beurocrates ruling upon them, no protection has been given to an innocent person against the atrocities committed by the ruthless administration of criminal justice by the so called guardian and protector of the public at large.

There are the precedents of overruling the previous law after interpretation of the provision contain therein. The decision of the Supreme court is having a binding effect but even the legislation has got the power to over-rule the said precedent. Sometime on account of various consideration and the ideology of an individual judge assigned with the responsibility for having an interpretation to the provisions of law, may be swept away by the impulsive arguments for declaring ratio-descend which is alter after the efflux of time and during the intervening period number of the cases are decided on the wrong judgement having the foundation of incorrect notions leading to miseries of number of the litigated but the system has yet not been evolved to provide a check and balance by the judicial system. Here are the instances of formulation of the larger bench not only in case of the conflict of the decision but by the gradual advancement of the general law in respect of its enforceability in a particular situation. The case of Sampat Kumar was overruled in L. Chandra kumar case after a gap of about ten years leading to a situation that this period the basic feature of the constitution of India empowering and individual for approaching the Hon'ble High Court for challenging the judgement of C.A.T remained unassailable by the poor litigants serving before the Central Government.

The substantial question of law and formulation thereof is a further dimension for imposing the restrictions upon the power of second appeal before the High Court. It is seldom found that in concurrent finding, there is substantial injustice suffered by the litigant. The judgement is not vitiated on the legal issues but such issues are dealt with contrary to the pleading on record. Thus when there is a malafide intention of the subordinate court to dealt with the issue involved in a civil case, it is very difficult to get the substantial justice. It is said that fraud and justice do not dwell together as fraud neither defend nor create any right. In such a situation, the justice is far away from the approach of the poor litigant who has come forward for the protection of his right before the court of law. There are so many obstacle in the process wherein even if it is found that there is the infraction of valuable rights conferred upon a citizen but in absence of the remedy due to the rigmarole of technicalities of limitation, an other procedural justice, he is helpless to get the enforcement of such rights from the court of law. There

should be a system in which one may espouse his cause by laying the security to certain extent for adjudication of his cause. The maxim that if there is a right, there should be a remedy for the enforcement of such right through the process of law may be made applicable in such circumstances.

That a poor person is dying through starvation and also on account of inadequate medical facility which are inherent rights conferred to a citizen under Article 21 of the constitution of India by implication. On the other hand, a criminal under preventive detention is provided every sort of the luxury on the cost of the public while he is confined in jail for violating the law. If the government is incapable to provide the minimum guarantee of food and shelter and also to the employment to a qualified citizen in service, there is no justification, which may permit the State Government to invest exorbitant expenditure for maintaining the criminal through such protection. Thus an existing structure of the society is based on the orientation of such policy which are artificial for demonstration but such policy are not meant for the protection of the citizen.

The State Government is seldom found for promulgation of the ordinance to defeat the right of the public protected through the verdict of the court of law. There are the instances of accumulation of the disproportionate assets with the officer empowered to issue the permit, licenses and quota while having the distribution of the restricted/ essential commodity. The moment, the citizen is not amenable to grease the palm by illegal gratification to the officers assigned with the responsibility of distributing the permit/ licenses and
And thereafter if per chance, verdict of the court is delivered in his favour then the ordinance is issued by the respective secretary in the state government just to defeat a crystal clear right in the favour of the innocent citizen. There is nexus between the politician and bureaucrats for the distribution of the disproportionate assets amongst themselves without having any proper vigilance over
such pathetic situation prevalent in the country after the independence.

The public good is above the consideration of the individual rights. There is a delicate balance between the rights and duties and the fundamental right are only enforceable to the

extent that they may not effect the society leading to public inconvenience . In the recent case the dimension of administrative or quasi-judicial functions were transcribed in respect of the dimension given to Article 14 and 19(2) to 19(6) of the constitution of India. (Consumer Action Group v State of Tamil Nadu 2000 S.C.C (7) 425.) There is also are gradual relaxation of the rigour of the rule of natural justice in Aligarh Muslim University v Mansoor Ali Khan 2000 S.C.C (7) 529.

That the Hon'ble Supreme Court has provided a dimension to the different articles in order to provide a guidelines for effective administration of justice. It has been held that no religion prescribes that the prayer are required to be perform through voice amplifier or beating of the drum and use of microphone for the purposes of attending the religious ceremonies has been prohibited in Church of God (Full Gospel) in India v K.K.R Majestic 2000 S.C.C (7) 282. Thus despite the mandate by issuing the writ of mandamus by the Hon'ble Supreme Court to the administration at large in the public interest litigation's through judicial activism, nothing has been taken as granted to the public even after declaring the same as the law of the nation. Thus the judicial procedure, which is based on a tedious process is required to be provided by fool prove system for the benefit of the public. The comedy of error does not lie in our celebrated principles but since there is a complete erosion of the fear from the mind of the citizen indulge in violating the law and there is no machinery to make a control upon the simple invasion of such right, the public is bound to adhere what is given to it by the grace of the public servant.

The other aspect of the picture is that the officers in the public administrations have become so privilege oriented that they have forgotten that they are the servant of the public. They are the incidents which were highlighted during the reign of British Empire when the Indians were treated as the slaves but still there was the respect to the right of the Indians in respect of enforcement of their privilege conferred in accordance with law. There was I.C.S officer namely Lobho Prabhu posted as D.M., who was assigned with the responsibility to get the recruitment over the land of the farmer betaken away from the clutches of Jamidaar in the area. The D.M. used to visit on the site of the encroachment and it was only there after that the actual verdict is pronounced in presence of the affected parties in presence

of public at large and nobody was supposed to carry on an illegal occupation. The grounds of appeal were limited only to extent of malafide intention of the judicial officer in carrying on his duties and as such there was an allegation labeled against such I.C.S officer to the extent that since he has accepted the feast given in the honour of the officer by the poor farmer by offering the Rohu fishes and as such the verdict given In the case in vitiated. The defense taken at privi council of England that since the public is the subject of the crown and the I.C.S officer is the servant of the crown and as such it was not within the power of servant even to provide sentimental breakdown to the public. The mere allegation of accepting the post decisional bribe in the form of the feast was nothing else then to protect the sentiment of a poor litigant who was given substantive justice after a prolonged litigation against the Zamindar. Thus there is the definition of the judicial functioning of the British period which is completely changed in the present atmosphere after the independence of our country.

The people are scared to make a contact with a police officer as there is a fear in the mind of the public that in case if they proceed to approach a police officer, this may ultimately by resultant in implication of the false case of criminal nature and there after an association with the harden criminals if they are send to the jail. This phenomenon is sufficient to drag an individual in the esteem of crime once the hesitation in particular from remaining aloof from the realm of criminal activities is taken away from the psychology of an individual.

The system of criminal trial based participation of the witness is also full of contradiction to provide substantive justice to an innocent person from the court of law. It is totally dependent upon the dimension of the evidence adduce before a court of law that the punishment is awarded to a citizen sometime even on the sole testimony of a witness. Can we trust a system where the crime is committed in the complete animosity at the dead of night when no one has actually seen the commission of the crime. The police on the basis of mere suspicion and sometime on the basis of the information received from the public/ informer may get an innocent person dragged in the crime. There is no other criteria left open for the police when the entire burden is casted upon the prosecution to prove a crime and onus is seldom shifted upon the accused person to prove his innocence. Can the police administration assigned

with the responsibility may discharge such duties without having a fool proof machinery to dealt with the criminal. In absence of having a drastic measurement for adopting the deterrent theory of punishment, there will be no fear in the mind of the criminal and the crime will continue uninterruptedly without any check by the present administration of justice. The system of punitive theory of punishment with the better responsibility of the citizen indulged in the crime is required to be administered in the society.

Thus the eradication of the prevailing melody is not dependent upon any set principle of law, nor the same could be given effect by the enactment of further stringent provisions of law but the same is required to be implemented by a major overhauling of the system. Till a determination of the iron will of the society and the administrator is not sound enough to override the personal benefit sacrificed for the benefit of the society, there can not be any change by the mere enforcement of the provision of the

“He who having sworn by solemn oath at his coronation to protect the people from wrongful operation , fail to do so should be slain as a mad dog --- Mahabharat

Leave this chanting and singing and telling of beads whom dost thou worship in this lonely dark corner of a temple with all doors shut ? He is there where the tiller is tilling the hard ground and where the path maker is breaking stones. Put off the Holy mantle and even like him come down on the dusty soil.

The distress of Mahatma Gandhi on the wake of partition of Indian continent may still be heard from a distant voice calling to the people to unite and the unity in diversities may provide India’s survival as a nation before partition which depends on a wider vision of unity based on inter-dependence based on the sub continents and secularism and social justice. Let us try to hear again how distressed Mahatma ji was at the turn of events on the wake of partition:

“ So far it was my desire to live upto the age of one hundred and twenty five years , but now I have no such desire . The objective before me was not just to attain freedom , but also to remove all the social ills in the society which had pestered during the 200 years of the British Rule. They have practically divested us of our traditions of tolerance and

harmony and instead fomented hatred and discord through their communal policies . I had thought that we could change the entire system and the people of this country and would live together as brothers in love, harmony and peace, so that coming generations may be blessed with all of that , which we have been deprived of. Therefore in addition to the freedom of my country , the primary objective of my life was maintenance of cordial relations between Hindus and Muslims since I could not attain my objective , this freedom has become tainted .Today when I see Hindus and Muslims separated with more or less permanent gulf , I feel politically and spiritually defeated . I have no desire to live any longer .....when I cannot remove this mutual hatred and ill will between Hindus and Muslims , and cannot create feeling of love peace and harmony in name of God and religion , you tell whether there is any point in my living any more ? I would prefer death to this kind of life."

amoeba has taken place the birth on this earth.
the theory of evaluation of life is the subsequent process.
the vital question for consideration for our human being is to the effect as to whether the same process is a mere co-incident at the time of the birth of an individual. there is the generating of the heat in the process of life when the idea is exchanged. these ideas ultimately become the process of reproduction. there is the combination of the molecule again in the similar process. thereafter the creation of the zygote inside the ovary of the female. thus if we consider the life being originated from the ocean, whether the penetration of the sperm in the egg is also the starting point of the theory of reproduction. ultimately the life is converted into a reality when the living organism took place in the process. we forget that the existence of our life is similar to the creation of the universe. thus we start thinking for our survival. the struggle is of no significance because it continue for some period and thereafter it vanishes from its origin and thereafter the human being realizes that his existence is for the time being.
this was a mere co-incident that a particular 'y' chromosome was penetrated in the egg and meet with 'x' chromosome. thereafter the process of life started. the shape and the identity of the person are concentrated on particular genes. when our existence is of such a small molecule from where we can get ourselves being recognised with some identity. this is the illusion of life when we claim for the recognition of our existence. the creation of the false existence is a direct

assault on the identity of the power that has created our life. even if we deny taking into our identity, the very existence of god, but still the value of the life cannot be put to any doubt for always being a controlling factor over the living being.

this is the starting point of our wisdom. the moment we give up to our intelligentsia through logical perceptions by converting it from analysis by observation, the reality of truth comes to the memory. this process ultimately lead to an individual from committing any sin as the repercussion of the same may be detrimental to one's own existence. no body will like to loose his own existence for the mere satisfaction of his egoistic nature. thus ultimately we use to connect ourselves from some controlling power and thereafter the existence of god comes to our conscience. this is the ultimate truth of life.

history of man is one long search for god. however, we cannot subscribe to the theologian's theory of god. life is the image of god, which is essentially a spiritual being. if the equation of life is taken into consideration, there can be no doubt that the man cannot eternally remain forgetful of his spiritual nature. then he will find out his self.

time is having three-dimensional picture, in which, there are certain memories of the past having it's permanent impact on the way of thinking; the present as we have visualised it from such angle; and the future with our expectation to be fulfilled. thus in this process, we may sidetracked from our inherent characteristics and may start challenging the time-honoured customs. the reckless spirit of defiance of well-established sacred principle becomes the way of life. there is the open crusade against the religion. there is no religion equal to it's potential, in which, there may be compassion for the animals and birds, truthfulness in the behaviour and love for the fellow being. thus the religion is based on the philosophy of brotherhood and spiritual cult of life. the places, where there is the program organised to slaughter the animals, as that of giving the sacrifices to the deity, these are not the places of religion but these are slaughterhouses.

i have known the truth, but you can not know it. this is the preaching of every prophet. there lies their greatness. thus they bring down the highest truth to the door of every man but never allow it to reach to such man. this is the religion of life. the true religion, which may be achieved through spiritual knowledge, seeks the truths of the inner world.

bondage is of the mind, and freedom also is of the mind. a man is free if he constantly thinks and feels: i am a free soul. life and death are in the mind of the man. thus one should have a burning faith in god. he may feel that he has no bondage .he will fellow the instruction of the god.

_

_

THE SPONSORING OF STRIKE BY ADVOCATES.

The litigant engages an Advocate for sponsoring his cause and thus the advocates are held responsible for non-appearance solely to a strike call. The Hon'ble Supreme court has laid down "when the advocate engaged by a party is on strike there is no obligation on the part of the court either to wait or to adjourn the case on that account. Time and again the Hon'ble Supreme Court has said that an advocate has no right to stail the court proceedings on the ground that advocate have decided to strike or to boycott the courts or even boycott any particular court."

This view has been expressed by several times and it has been reiterated in Raman Service Pvt. Limited vs. Subhash Kapoor 2001(1) SCC Page 118.

The purpose of the Bar Association is to sponsor the cause which may provide the glorified status to the identity of an Advocate. There were the consistent struggle between the individual cause and the cause of the society. Ultimately on every juncture the society got the upper hand instead of the selfish individual gain at the cost of the society. Since the unscrupulous elements associated with the organization have taken over the command, the benevolent causes are sacrificed. The glorified traditions which the Allahabad High Court Bar Association was maintaining from a long period, there were the alarming situation of perpetuating the cause of the individual person. The seasoned members of the Bar were facing difficulty in tackling with the situation. Thus the creation of Advocate Association, High Court, Allahabad has come into existence in the year of 1993. No one can ever imagine that in the later period, the motto behind creating the dual Bar Association within the campus of Allahabad High Court , will swept away with the same trend as witnessed at the time of creation of the Advocate Association.

The office-bearers of the Advocate Association have the responsibility to behave in a decent manner and they may not let down the image of the glorious tradition maintained at the Bar Association. This was the spirit behind the purpose when I contested the election of the Vice-President of Advocate Association. After having the responsibility of the

office-bearers in the aforesaid capacity, I realised that every thing is not working according to the wishes of the masses of the Advocates. I found with a profound sorrow to witness that those Advocates who are sponsor to raise the cause of the litigants, have failed to sponsor their own cause of maintaining the high tradition of the Bar Association. This was also the reason for joining as Vice-President that at least now I will have my say in the activities detrimental to the activity of the Bar Association. Unfortunately I could not able to do the needful in this regard.

This was the first meeting at the residence of senior Advocate Sri Ravi Kiran Jain, the member of governing body of the Advocate Association of High Court Allahabad. I was having my reservation for such meeting at the residence of some Advocate. However, on being invited by the President to decide the future course of strike. This was done immediately after the call of the strike within a very short period. There was no occasion to take a descending note on the issue as to whether the Hon'ble Law Minister Sri Arun Jaitely is making a correct statement regarding consultation with the Hon'ble Chief Justice of Allahabad High Court before creating the Bench/ Circuit Bench of High Court at Allahabad. Although I have my reservation on such type of the question to get them answered without looking into the provisions of the statute and the case law on the aforesaid point, but when the draft was prepared by Sri Jain criticizing the Hon'ble Law Minister I requested the senior Advocate not to raise such issue in the meeting of the office-bearers of Advocate Association of High Court Allahabad. I requested that after the decision of Supreme Advocate on record Association case reported in 1993 (4) SCC 441 and Supreme Court Bar Association Case 1998 (4)SCC Page 409, the decision even if it is related with the entry made in the union list of the seventh schedule of our constitution entry no. 78 and 79 of list-1, the formation of the circuit bench may not be done without taking the consultation/consent from the respective High Court. Since the Hon'ble Chief Justice and the other Hon'ble Judges represents the High Court, the question of formation of a circuit bench may be done only after taking such consent which has yet not given by the Hon'ble High Court. I also made a reference to the case law of Federation of Bar Association in Karnataka vs. Union of India reported in A.I.R. 2000 S.C. 2544, but Sri Ravi Kiran Jain has declined to score out such delicate issue from the resolution of the Advocate Association. Ultimately I made a contact with senior Advocate Sri A.D. Giri who has been

assigned as a chairman of action committee and is whole to sole along with two other senior Advocates to nominate the President of the Advocate Association. I said that it is my duty not to get such type of resolution being passed with the manner treating the resolution of the responsible body of Advocate Association, but he enquired that why he has been contacted by me on telephone. He said that he is not even the office-bearer of the Advocate Association. Since I was considering it to be a serious matter and as such I said that since he remained on the prestigious post of Solicitor General of India and as such no such resolution may be given effect without conducting a debate in the issue and it may be placed before the General House for approval. Since there was counter reaction on my proposal, I contacted the General Secretary of Advocate Association to convey my opinion. He said that he is against any such resolution, but since Sri A.D.Giri has sent it for taking his signature and as such he has signed the aforesaid resolution. Ultimately the said resolution was declared to be passed by the Advocate Association under the authority of the President of the said Association.

I have a profound bleeding at my heart to see the situation that how the other Advocates like me have been treated and manhandled even for presentation of the cases in person by the litigants themselves. The entire strike is politically motivated by so called guardian of the Bar Association. It has affected number of the litigants, Advocates and the staff associated in the process of presentation of the matter before the Hon'ble Court. The mental agony is multiplied by looking into the fact that few seniors Advocate associated on account of some political motivation, due to their personal vendetta and on account of their superiority complex is crucifying the interest of so many litigants and associated members by continuing the strike. It is seldom taken into consideration that a camel may be passed through eye of needle, but you can not search a devoteous person in the majority. The same situation, likewise is apparent within the campus of the Hon'ble High Court. Some of the Advocates have swept away on account of their impulsive attitude without knowing as to what will be the consequences of keeping on the strike for such a long period. I have strong appeal to mourn on the issue of strike and get the strike be lay inside its grave for ever and the Advocates of this High Court may not sponsor such strike and be adhere to the norms prescribed under the noble profession of Advocate.

Plight of living Ghosts in India

(One Lal Bihari who was declared deceased in 1976 has tried his best by agitating his grievance before the revenue authority of District Azamgarh saying that I am here , I am alive but the reply came that according to land registry office you are dead by unruffled officials .Lal Bihari sought his arrest , tried to run for parliament , kidnapped the child and stolen the property , threaten murder , insulted judges through leaflets listing his complaints at legislatures of U.P State assembly and demanded widow's pension for his wife . Each time he was beaten up by police or rebuked for wasting officials time . Unable to make headway , Lal Bihari , the dead , sought the company of other ghost in Uttar Pradesh a dozen of these ghost demonstrated outside the U.P assembly to publicise their fate but nothing in last 18 years to get his life . Ultimately sue motto notice was taken by the High Court Allahabad which was highlighted in Times magazines and finally the matter has been refereed to National Human rights Commission by Allahabad High Court by its judgement dated 7.1.2000 in writ petition no 29806 of 1999 which is reported in Selected Allahabad Cases to which I am an Editor of the aforesaid journal .)

The Times Magazine , Asia Edition July 19th ,1999 published an article that "Bribe an official in eastern fringes of India's state of Uttar Pradesh and declare the owner of the Land dead and transfer his land to your name . Our constitution which is considered with its gospel to achieve and resolve through its processor of therapeutic justice to escalating Psychosomatic melodies and explosive rights without enforceable duties to its citizen is generating spiralling delinquencies as envisaged in an Article " Constitutional resurrections " published in view point of a newspaper on 3rd May 1998 by Yogesh Kumar Saxena practising at Allahabad High Court has something to express on this aspect as to why the quest of mankind is to grasp the fundamental truth , the tenacity without even the least touch of faith in reality which has diminished the entire surroundings and undergone a radical transformation to the point of extinction under our constitution . For further details, you may see the extract of the interview taken with Yogesh Kumar Saxena ,a constitutional Lawyer by Manisha Parikh for India World .co. in in Samchar .com with reference to a judgement in reference to Writ petition no 29806 of 1999 Association of Dead People and another Vs State of U.P decided on

7.1.2000 and published in (2000) 1 selected Allahabad Cases page 374 to which Mr. Saxena is an Editor .

Question: What do you think about the aforesaid verdict in which a living farmer who have been declared as deceased by unscrupulous people and he (Shri Lal Bihari) and he contested his case from 1976 to seek a declaration as to be still alive and whether our judiciary conferred with the power of judicial review under our constitution has been successful to deal with the plight of living dead ?

Answer :The constitution is supreme and all the three pillars functions under its strict supervision . the supremacy of the parliament and the power of the Hon'ble Constitutional Courts in India have gone through a consistent efforts for providing a harmonious construction to build up a foundation on which our country may survive . The doctrine of immunity from legislation against the enactment through legislation has undergone a great struggle whenever the Hon'ble Constitutional Court found the infringement of fundamental rights of the citizen . However on account of excessive burden and the need for securing the effective exercise of the judicial review by the Hon'ble Constitutional Courts even with regards to Administrative action , there is an unchecked flow of litigation for every invasion of the right under the garb of the infringement of the fundamental rights.

Question .Whether you speculate in this process any tough battle for securing the basic structure of our constitution with the doctrine of Supremacy of the parliament and how far it is important for the healthy growth of our welfare state .

Answer The rigours to demotion of judicial writ power by some of the constitutional amendments like 42nd Amendment has been declared ultra virus in Minerva Mills Case (1980) 3 S.CC 625 , Waman Rao case (1981) 2 S.C.C 362 and in L. Chandra Kumar case (1997) 3 S.C.C 261 reaffirming the majority verdict of the landmark judgement of Keshavananda Bharti case of 13 judge constitution bench of the Hon'ble Supreme Court . The jurisdiction conferred upon the Hon'ble constitutional Courts including the High Courts under Article 226 and Article 227 has been held as a part of the basic structure of the constitution. Thus not even the power of legislative enactment but also the power conferred under Article 368 to Amend the constitution may be subjected to judicial review by the Apex Court .

Question Whether you think that in this process the expression "Procedure established by Law " as enshrined in Article 21 has now been replaced by "due process of law" as evident in American Constitution ?

Answer: Article 14 has two concepts which is a unique feature in Indian constitution. Most of the constitutions of the world either speaks of "equality before the law" or the "equal protection of the laws". Both these concepts although appears to be the same are not actually the same . The equality before the law refers as to providing the equality before the substantive laws of the nation as illustrated in Article 15 to 18 and also under Article 38, 39, 39A, 41and 46 of the constitution . The connotation equal protection of law contemplates for minimising the inequalities and for eliminating the inequalities in status , facilities , opportunities , values of lives with social care towards educational and economic interest not only amongst citizen but also amongst the group of the citizens. This Article forbids class legislation except being founded on an intelligible differential and to have a rational relation to the object sought to be achieved by the statute in question . The test of classification must be rational . However by the efflux of time , Article 21 which is couched in negative language by the framers of our Constitution has undergone the major change by interpretation through its positive angle having the inhibition contained therein i.e. "life " as synonymous to "livelihood" by taking into consideration that by abrogation and subjugation of the means of the living there shall be no life . This was done to get the rid of the radical innovation providing an instrument of status quo upholding the traditions of Anglo-Saxon jurisprudence and resisting radical innovation in the use of judicial power to promote social change by the so called judicial activism . The other concepts such as "Rule of Law" , "Judicial restraint" , "Separation of power", supremacy of fundamental right s over directive principles and "Procedure established under Law" conveniently to avoid change whenever possible through the assistance of two concepts of Article 14 as whenever required delete it and whenever inevitable dilute it as far as practicable and thus the discretionary powers were exercised in the different manner by inviting the diversities in the opinion of the constitutional Courts while dealing with Quasi judicial actions .

Question : Thus you mean to say that Article 21 of the constitution is not a fundamental right of the citizen as is being dealt with by the Hon'ble Supreme Court and has been included in the chapter of fundamental rights ?

Answer True , Article 21 has been included in the chapter of fundamental right under our constitution but the same is a fundamental duty of the government as to provide

protection against depriving any person of his life or personal liberty . There is only one individual fundamental right of the citizen i.e Article 19 . Article 25 and 26 is a collective right to the freedom of conscience and right to profess , practise and propogate religion and also to manage religious affairs . Thus every fundamental duty casted upon the government which is providing the protection to the individual may be read with the reasonable restrictions as contemplated in sub articles (2)to (6) of Article 19 of our constitution thus the constitution has provided a "check and balance" over the power of the Hon'ble Courts and the duties casted upon the government . In this manner the Hon'ble Courts while interpreting these Articles of fundamental rights may dealt with the individual as to whether the right which implies the forbearance to perform the duty by the Government has got the qualification prescribed in the yard stick of the reasonable restrictions or the constitution with the galaxy of so called fundamental right may be ruled in respect of its governance by the political set-up having co-ordination with divisive forces to the oppression of the people at large which has not been done after independence.

Question: What was the need of introducing Article 51A when already there were fundamental duties of the Government ?

Answer: Every right implies the forbearance on the part of other to perform his duty as right and duty is co-related and co-existent. After independence our country has been ruled with governance through laissez faire and the citizens have miserably forgotten there duties under the spirit of availing an aspirant cherished freedom . Thus the chapter of unenforceable fundamental duties was introduced with effect from 3.1.1977 by 42nd amendment .

Question : Why there is a pendency of number of litigation before the Constitutional Courts in which the case of the living people who have been declared as dead people in the official records have not been dealt with in time .?

Answer The right of the people has been considered in the different dimension against every atrocities committed by the administration in discharge of their duty as the custodian of the public trust . The concept of public trust doctrine was developed by the Constitutional Courts to provide the safety to an individual as susceptible to abuse in discharge of the role by our Constitutional courts as a sentinel on quivive . The maxim of "ubi us ibi remedium" (where there is a right , there is a remedy) was sparingly applied in respect of administrative action without considering as to whether the same is quasi judicial or not . The separation of power which

was embodied to certain extent in our constitution and having its elasticity to provide pervasive potency and versatile quality has been diluted in absence of any accountability towards administrative action. Thus there was a flow of litigation before the constitutional Courts even in respect of violation of every right for which the administrative authority were responsible to exercise their power as the custodian of the public duty .Thus due to paucity of time , the genuine litigation was circumvented by unscrupulous litigation and there by suppressing the fundamental right of a bonafide citizen .

Question: Do you think that the present system can be rectified by enacting more legislation by the parliament or it may be left to the Constitutional Courts to eradicate the prevailing maladies ?

Answer There must be an accountability fixed with every officer and bureaucrats in the society regarding there abuse of power and judicial review which comprises the power of judicial superintendence over every sub-ordinate authority may be necessarily applied by the higher judiciary .There is a requirement of complete separation of power between three institutions on which our democratic set-up is dependent the adequate punishment be implemented in the deterrent and punitive manner as to create an example to the other wrong do-er specially under the circumstances when the integrity and the prosperity of the nation is involved. In case of malafide exercise of power not only the action which is done contrary to the object may be rectified but there may be a judicial scrutiny for recommending the departmental disciplinary proceeding against the official who has passed such order with extraneous considerations. There should be the limit over the privilege conferred with every public servant who is not only a custodian of the power but also owe the duties towards the citizens who are considered in our constitution as the sovereign of the sovereignty .

Question: What do you think to be the source of the power of judicial review ?

Answer :It may be traced to the classic enunciation of the principles laid down by the Chief Justice John Marshall of U.S Supreme Court in Marbury Vs Madison (1 Crunch : 2 L Ed 60 (1803)) as the origin of this power is never attributed to one source alone . It has been laid down that the judiciary dealing with interpretation of Law is duty bound while expounding and interpreting the Law and to see as to whether the Law is repugnant to the settled norms of the constitutions otherwise the same be declared as void .In

America where the Supreme Court has assumed extensive power of reviewing the legislative Acts while in our constitution this power is conferred by the expressed provision contained in Article 13 of the constitution of India . Thus the power of judicial review has now considered to be an integral part of our constitutional system .

Question: What do you think to be the role of the Advocates in the process of judicial discipline and thereby providing a check and balance over mis utilisation of the judicial and quasi judicial power by the public servant ?

Answer : In America the Lawyers may conduct the investigation in respect of the wrong committed with the people through their own investigation agencies and there is there is the power vested with every officer to deal with the mis use of power by any person without taking the accent from the higher elechon in the hierarchical set-up of superior authority in some of the European countries .However in India we have no such power to fix an accountability towards a public wrong by an Advocate and also by any honest official as there is a vicious circle in our Bureaucratic set-up where there is larger privilege and lesser responsibility. Thus we have become a silent spectator of the situation which is going to be the worst by the process of time . The apathy of the intellectual echoes back into a vacuum which has neither any ventilation for providing the fresh air to our people . Till such time when the intellectuals in the society may not be allowed to run the public administration nothing can be achieved in our nation.

Justice is the end of government just to enjoy the peace of mind. Law is a means to an end. The essence of law is duty. It is a result of constraint struggle; an struggle of conflict with a view to attain peace and order. Law is the guaranty of condition of life in society assured by the state‘s power constrain. Thus the legal institution may provide the stability in the political sphere ,if we start thinking in the process of rectification of the present problem enunciated by theoretical approach and by the correct analysis of the sociological jurisprudence to promote sociological study in connection with the legal study is the fundamental right for preparation of legislation , which may improve by intelligent effort discovering the best means of furthering and directing such efforts . Thus it is very essential to learn the basic principle of jurisprudence and adopt a positive approach for imparting the justice to the individual litigant in the society.

Jurisprudence means systematic knowledge of the law .It is known as science of law Thus the jurisprudence may be considered to be systematic arrangement of the principle of the law the principle of the law, the principle duly recognised or enforced by the public and legal institution in the administration of the justice .The general rule of external human action enforced the sovereign political authority in the common law . Jurisprudence is concerned with fundamental conception , the sovereignty does not reside in the legislatures or executives ,but in the total aggregate of persons , who are members of state and are primarily represented by the existing body of electors. The instrumentality of sovereign is endowed with powers to be exerted with on behalf of the legislature cannot invoke the sovereign power of the people to override their will . Thus the sovereignty is vested in the people and not with the government to exercise their sovereign powers . If the government ignores the protection of social interests of the people then it has no authority to discharge its sovereign powers. Thus one has to find that the sovereign power is exercising its functioning in the ultimate interest of the people , which may attribute sovereignty to that entity .

Jurisprudence is the eye of law. It is innovation of the legal invention for protection of Human behaviour, which maintain intense relationship for advancement of mankind . Thus the jurisprudence is the wisdom of law , which is the ultimate purpose in pursuit of the advancement of Human conduct , If we are not aware with the realities of the life and the problems of the society , we may not be discharging the duties of sovereignty . The legal institution may not serve its purpose if other considerations have the over riding effect and there after the habitual obedience from bulk of human society will completely be vanished . Thus there should be the attempt to change the law within a reasonable living stream , but it may not become stagnant pool of conflicting precedents. If the subject of the law is the science of the man to the political ethics , the legislation may perfectly regard to discharge its duty in the strictest sense The science is not limited to the study of external conduct. Thus the first requirement of law is to correspond with the actual feeling and demand of community . The guardian of the law have made no serious efforts to curb the number of cases and they could not be worked out inspite several assurance of the Hon’ble Court.

The Hon’ble Supreme court in the S.P. Sampath Kumar Vs Union of India 1987 (1)SCC Page 124 , while dealing with the

provision of section 28 of the Administrative Tribunal Act , 1965 , laid down that the exclusion of the High Court jurisdiction under the Article 226 and 227 of judicial review in service matters It was held by the five Hon'ble Judges of the Hon'ble Supreme Court concurring judgement that the said act would not be rendered unconstitutional .It was held that Article 323-A authorising exclusion of the jurisdiction must provide for an effective alternative institutional mechanism or authority for judicial review . The supreme Court has referred the decision of Minerva Mills Ltd. Vs Union of India A.I.R 1980 S.C Page 1789 wherein it was held that the judicial review is the basic and essential feature of the constitution and if the power of judicial review is abrogated or taken away the constitution will cease to be what it is. However it was held that if the power of the high court are curtailed from judicial review and it is vested in any other institutional mechanism or authority , it would not be violative of basic structure doctrine.

The central administrative tribunal was given the jurisdiction parallel to the jurisdiction vested under Article 226 and 227 of the High Court. By virtue of such power it was held in the case of union of India Vs Paramananda A.I.R 1989 S.C Page 1185 that " we must unequivocally state that the jurisdiction of the tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction . The tribunal cannot interfere with the finding of the enquiry officer or competent authority , where there are no arbitrary or utterly perverse . It is appropriate to remember that the power to impose penalty on a delinquent officer , is conferred on competent authority either by Act of legislature or rules made under the provision of article 309 of the constitution . If there has been an enquiry consistent with the Rules and in accordance with the principles of natural justice , what punishment would meet the ends of justice is matter exclusively within the jurisdiction of the competent authority or the penalty can be lawfully imposed and is imposed on the proved misconduct , the tribunal have no power to substitute to his own discretion for that of the authority .This principle was consistently followed in Govt. of Tamilnadu Vs A Raza Pandian A.I.R 1995 S.C.Page 561 ,State of Tamilnadu Vs S . Subramanian A.I.R 1996 S.C Page 1232 and state of Tamilnadu Vs Thiru K.V Perurmal A.I.R1996 S.C page 2474 .

The supply of th ecopy of the enquiry report to the delinqent seeking his explanation against the proposed action was considered after the case of Union of India Vs Ramzan Khan

J.T 1990 (4) S.C page 556 , in the case of Managing Director ECIL Hyderabad Vs B.Karunakar reported in J.T 1993 (6) S.C page 1 was considered that it is the right of the employee to have the report to defend himself effectively and he would not know in advance whether the report is in his favour or against him . It will not be proper to construe his failure to ask for the report ,as waiver of his right .However , this precedent remain valid upto the period when the supreme court in the case of S.K.Singh Vs Central Bank of India 1996 (6)S.C.C page 415 has laid down that the non supply of enquiry report is in consequential if no prejudice is caused. The Hon'ble Supreme court in the case of State Bank Patiala Vs S.K. Sharma reported in A.I.R 1996 S.C page no 1669 has laid down that an order passed imposing a punishment on an employee consequent upon the departmental enquiry ,while dealing with such case ,.The Hon'ble Court in case of a procedural provision mandatory in character if found to have waived or in such situation where the rule of Audi -Alteram partem has not been applied ,then the order of punishment cannot be set-aside on the ground of said violation until the test of prejudice may be called to the delinquent. Thus ultimately further curtailing the scope of judicial review as was being exercised by the central administrative tribunal was visualised during the course of arguments and in getting the judgement from the Tribunal to the delinquent Govt. Servant was visualised during this period .

The Hon'ble Supreme Court in the judgement reported in 1997(3) S.C.C page 261 L.Chandra Kumar Vs Union of India consisting of seven Hon'ble judges has now over ruled the earlier judgement of five Hon'ble Judges constitutional bench in Sampath Kumar case. It has been laid down on the basis on the basis of Keshavanand Bharti case decided by the power of judicial review vested in the High Court under the Article 226and 227 is part of the basic structure of the constitution . Judicial review comprises of three aspects ;Judicial review of legislative action , Judicial review of judicial decisions and judicial review of Administrative action tribunal is not a substitute for the high Court .Thus section 28 of the Administrative tribunal Act divesting the jurisdiction of of the High Court in relation to the service matter and article 323-A and 323-B of the constitution of this extent are unconstitutional . The Hon'ble Supreme court has laid down that until a whole independent agency for administration of all such Tribunals may not be set up and the entire system may not be languished and ultimate consumer of the justice under the supervision of the

Administrative function may not be formulated by the Union of India .The system may carry on and the tribunal will continue to act like courts of first instance in respect of the areas of law which they have been constituted .Thus the tribunal on account of this judgement instead of exercising the power of judicial review as is being exercised by the High Court under Article 226 and 227 of the constitution of India is conferred with the jurisdiction of the court of first instance in respect of areas referred under sec 14 and 15 of Administrative tribunal Act , 1985

Now the question arises what is the significance of judicial accountability in respect of conflicting judgement of the Apex court which are meant to exercise the jurisdiction as that of the law of the nation. The first requirement of a sound body of law is that it should be correspond with the actual feeling and demand of the community. A law embodies beliefs that has triumphed in the battle of ideas and then translated themselves into action . The legal Institution of the knowledge of jurisprudence and the social requirement of imparting justice to the litigants requires that the exercise of the judicial precedents may not be top harror and unconscionable as it may loss site from the very basis for which the law is meant for we cannot confine ourselves to the formal legal; materials ,but we have to go beyond to find out now people actually live in the society . The centre of gravity of legal development lies not in legislative nor jurist's science nor in judicial decision but in society itself . If we want the real law regulating the people , we have to become aware with the hardships suffered by the litigant people and for now the same is being is ignored as what is in actual practise governing the relations of the employer and employee , some limit has to be drawn because otherwise jurisprudence will dissipate its energy over too widen area .

The requirement of the society in the present political set-up is not mere formality , but it requires an accountability of each and every public officer who are exercising their powers through quasi judicial functioning vested with them in dealing with the departmental proceedings against the delinquent employee. Till suitable restrictions in exercise of such discretionary powers vested with the superior authority may not be enforced through the proper legislation or administrative instructions and punishment of warning . Adverse entry, censor and stoppage of the increment may not be imposed against the superior officers exercising his power by making an abuse of misuse of his discretionary power, may not be imposed in the case of failure to

discharge such obligation, when the Hon'ble Court or the administration found the lapses and dereliction of the duties on their part , the justice cannot be given to the delinquent ,simultaneously for frivolous litigation should also dealt with exemplary cost against the fraudulent litigants as fraud and justice never dwell together and fraud and deceit defend or excuse no man .The Hon'ble Supreme Court in the cases of S.P.Changalvaraya Naidu (dead) by L.R Vs Jagan Nath (dead) by L.R repoted in A.I.R 1994 S.C 853 ,inre, Indian Bank Vs M/s Satyam Fibres J.T 1996 (7)S.C. 265 and in the case of Municipal Corp. of Delhi Vs Kamla Devi A.I.R 1996 S.C page 1733 has dealt with this aspect and found such proceedings by way of sharp practice , which are designed to abuse process of law and impose exemplary cost against the litigants . It its the need of the time the very public office should have its accountability in respect of discharging its legal obligations and for that purpose , there should be the appointments of the officers and the legal experts instead of leaving the matter to the discretion of the administration only then the justice may be realised to the individuals from the courts of law. Mankind must either give themselves a law and regulate their life by it or live no better than to limit natural liberty of a particular man such a manner as they might not hurt anyone. A herd of wolves is quieter and more reasonable than the mob for one reason or other . According to Hindu Mythology , it is meant to regulate the human conduct amidst diversities of inclinations and desire so as to reconcile harmonically to the wishes of the individual wityh the interest of the community , while according to Mohhmadden law the purpose of the law is to promote welfare of he man , the improvement of morals by keeping the preservations of the life ,property and reputation. Its purpose is to encourage obedience by offer of reward and to discourage obedience by imposition of severe penalty . Thus the object of the law according to Hindu mythology in not to the punishment of the sins, but to prevent certain external results , while according to Mohammedan law , it is the obedience by offer of the reward and as such even the capital punishment is regarded appropriate in certain cases .

The importance of the justice is the wisdom of the law , as the law is without doubt a remedy for greater evils , yet it brings with it evils of its own . The object of the criminal justice may be referred from the angle of its implementation in the society . The deterrent aspect ofd the punishment is to protect society .According to Hindu Mythology penalty keeps

then people under control , penalty protects them , penalty remains awake when people are asleep , so the vice have regarded the punishment as the source of righteousness. The preventive aspect concentrates on the prisoners to prevent them for offending again in future . The retributive theory is considered to allow the victim to take the revenge . Plato was the supporter of his theory to quote him ; “ If justice is good the health of soul as in justice is its disease , chastisement is its own remedy” Judicial punishment are serve as a mean ---- good for the society . Everyone gets what is his due according to his deeds. The re-affirmative theory with the object to bring the moral reform of offender which unfortunately has been adopted as that of criminal justice has assume undue prominence on the other aspects of the criminal justice . This is the reason why the crime has now perpetuated in every sort of walk of life.

Let us examine the actual purpose of the legal institution in the context of providing justice to the individual . Society has now emerged with a complete deteriorated conditions of life. The existence of the individual citizen is on the stake in every walk of life . If we forgot the realities and start building the new structure on the basis of hypothetical presumptions ,we are bound to fail in administrative of justice . Now a day every proceedings based on the basis of evidence and what to say about the evidence when the very existence of the individual citizen is in itself deceptive. If we start adjudicating the cause on the basis of false evidence , the legal institution is bound to collapse . The custodian of the public interest are now playing the role of pirate . The robbery is committed with a licence by the Govt. servant . In such situation one should realise that it is only the accountability of the individual official in respect of his function , only then the society can survive . If we keep on having the expectations without rectification of the prevailing maladies , where the litigation are instituted with the falsehood and there is no accountability of the erring individual in such process by imposition of the proper punishment , justice can never be imparted from the court of law .There happens some shock thrilling experience in day to day life as that of every individual happens to think over the present set-up of the parliamentarian democracy in the context of the law enforceable agencies , who have become the pathetic observer of the surrounding over them . The day light robbery is committed of the passengers travelling inside the bus and when they proceed in the direction to lodge the report in the competent Police Station then the robber again

enter and return back the looted articles under the protest that the valuable are of the lesser value then they ought to provide to the concern Police Officer as to get exoneration from the punishment . If the miscreant are threatened with the toy automatic Rifles and per chance the threatening is succeeded then next repercussion happens by the unwarranted query from the police officer regarding the factum of unauthorised weapon in the custody of the house keeper and thereafter on relieving the substance of the truth in respect of false threatening given by him , the police department from the scene and miscreants again comes and kill the house keeper , who is the informer ?If the execution of the crime is on the behest of the police then how the society may be protected and what the legal institution will help to solve the basic problem . Thus it is only the deterrent theory of punishment , which can provide protection to the society .

India -A functioning anarchy

The birth of a socialistic pattern of society and mixed economy in the first decade of independence without any priority to defence production and for sound economy provided initially to confounded speculation about India's starvation . There was settling down to take in its stride by the super nations, but their apprehension was belied by emergence of Shri Lal Bahadur Shastri as Prime minister . His favourite virtue of simplicity , outstanding characteristics of singleness of purpose and basic idea of rectification of wicked evils of exploiting the resources has converted the country revolution and simultaneously boosting the moral of our Army gave the success in 1965 Pakistan's aggression and thereby capturing a vast territory of enemies land has provided the moral damage to the aggressors ambitions . Indira Gandhi vanquishing the predatory neighbour Pakistan for ever as the hesitant dictator , but her wrong diplomacy survived the terrorist decade of a fighter . Thus the first face of India's socialism was replaced by populism replacing ideology and also absorptive nationalism and by embracing popularity oriented party policy . It began with profit oriented private and a quality unconscious public sector with narrow vision to make India a global economic power , but this utopian empire has been completed vanished in view of different conflicting ideological political differentiation due to parliamentarian system in the post independent era of our country .

Our potential of unlimited reservoir of skilled labour and abundance trader's skill for investment of capital have been submerged with diversification of vested political ambitions . This has provided an obstacle to our inherited great skilled splendered intelligence and our super entrepreneurial spirit to naught. The unified political entity under British rule is now ahead to further split due to regional based political conception . The constitution of India designed to equip with substance to meet the challenges of the future in its spirit is now playing a role like a compulsive gambler bent upon ascending our invaluable legacy providing to be caricature of noble democracy . The spirit of social justice has been given up with no chance of its revival through shells of socialism making this preposition as fraud with people . This has provided the provided the transfer of material resources from honest to dishonest opportunists instead of poor people.

There are 240 public sectors enterprises by union Govt. and nearly 700 by the state Govt , which are the black holes ; the money guzzles and they have been extracting an exorbitant price for Indian doctrinal socialism .

The most persisting tendency in India has been to have to much Govt. and too little administration , too many laws , too little justice , too many public servants and too little public service, too many controls and too little welfare.

The great mistake initially was to start with Adult Franchise . This should have been started with restricted system franchise and to make citizens graduated to Adult franchise and they may be worthy of discharging their duties through some value based education . The result is that our half of the population is literally illiterate . This is a state of mobocracy in the strife of moral decay with the facts of in-discipline , corruption and castism , divisiveness with communal hatred , linguistic fanatism regional fency and caste loyalty are growing at the vitals of the unity And integrity of country. Interfaith and harmony and consciousness and essential unity may stop growing army of terrorists and professional terrorists , professional hooligans in order to save fellow citizens . The profound shells of culturally a kin , ethically identical , linguistically knit and historically related may remain intact , if we acquire a inner sense of national identity . We can only gain the wisdom of charish its priceless heritage and create a cohesive society, if we adopt the ideas for implementation in correct prospective instead of talking more about them.

The power entrusted under the rule of law with the authority dealing with Govt. business is required to be discharge truly , objectively ,expeditiously with personal responsibility and it should not be leisurely taken due to obvious considerations , otherwise there may be the imposition of the costs for committing public injustice and to give the manipulators an opportunity to compound the camouflage and it may become counter productive with for reaching affect on public Administration exchequer deflecting the course of justice . Now Bureaucracy is only accountable to the political executives and hierarchical responsibility is inbulit discipline .Thus there must be judicial accountability and review over the quasi judicial decision taken by the executive with proper accountability by imposition of the punishment and personal costs against the erring officers responsible for such injustice . The other factor requiring attention is for having a single window system in every public office with a senior officer found responsible in case of undue harassment to the public .It is high time to dealt with criminal activities with a presumption of guilt against the accused person as the plea of innocence is in contradiction of making arrest of individual involved in the crime .The fake entry in the revenue record , illicit means of registration , unauthorised possession land grabbing with the connivance of police officer are discontent strife for the commission of crime . The annihilation of the department record vested with property right is another source of providing resentment to the actual owner Vs ostensible possesors raisins construction. Thus these atrocities committed by the public authorities should be dealt with a exemplary punishment like that of the crime of financial irregularities and embezzlements. Our political master subverted the freedom of bureaucracy and moral values gradually disappeared . The greater the power vested in politicians, there is danger of becoming intolerant and authoritarian .There is gradual deterioration of extra-ordinary sagacity and wisdom with the custodian of public trust .There are dark cloud over our independence of judiciary . The Solomon’s throne representing to the judicial system is now supported by two lions representing the legislature and executives on both the sides . Although lion is still under the throne as it may not oppose the point of sovereignty vested in the rule of law , but still the Solomon’s conscience may be priced by sitting on chair of handicapped sub-silent instead of its own and thus the

separation of power is the utmost consideration for the democratic values , for which the superior courts may play an active role to eradicate the evil of corruption . The solution lies in gradual transformation of power from the authoritarian type to the benevolent use of power by our politician . There must be an assurance for the right to work to every citizen .There should be the transparency in the funtioning of ther department dealing with the people in exercise of their duties in the welfare state. The barriers providing the restriction in dealing with the distribution of essential commodities which are perpetuating corruption should be dealt with appropriately as it may repose the confidence of the people in the present system and there by avoid them from suffering unnecessary harassment . This can be done by fixing the accountability in every system and against such individual who is vested with the power to dealt with the public otherwise the country may collapse by its own pressure . The system of caste , money power and criminalisation of politics has further provided the electoral system to a naught and it has been ridden with corruption without fulfilling the aspiration of the electorate and as such there is desirability for changing the present parliamentarian representative form of government to a responsible government which may have is wise for uplifting the cause of downtrodden in the society but may seldom exploit them to use for its own benefit .Thus the country may be saved from its own peril.

India- A Nation of impoverished, downtrodden, land less labours and agriculturists is now characterised by internal instability, political uncertainty, foreign invasion and a serious set back to the creative genius of citizen. Parliamentarian system has been primarily concerned with the governance of the Country through a policy of laissez faire in different with its growth for the fate of the helpless millions, over whom they rule with village oriented industrialisation, as admired by Mahatma Gandhi, has completely been vanished through transitional period followed by diversification of economic structure. This has resulted in an increasing pressure of population in metropolitan cities and declination of productivity per person engaged in agriculture. What has happened to our Country’s would oldest civilisation with recorded history of 2500 years of matchless affluence and creative. Which sprung great wealth, great ideas, great skills and the glimpse of our traditional cultural heritage? According to the estimated date during British Raj, between the year of 1800 to 1900 more than thirty two millions Indian

died of starvation. There were thirty famines in 90 years from 2857 to 1947 and the last being the one in Bengal in 1943, which took toll of three millions lives. Now a vast majority of Indian lived below the subsistence level. Many of them could hardly afford even two square meals a day. There consumption of cotton cloth is not more than 15 yards per head per year of they live on the discarded garments of the civilian population. Clean drinking water is luxury and public health facilities are rare and that too beyond the capacity of majority of the people. Even if they are available to them.

By the population growth for 30 crores in 1890 to nearly 35 crores sin 1947, it is now more than 90 crores, which saw the steep fall in the value of money and monstrous inflation. This has further resulted into sub- division of strips of poor peasants. They fell victim more easily into debt and plugged their land recklessly and thereby encouraging the growth of un-production class of money lenders. Indian entrepreneurs are pitted against serious odds. They have e shown little enterprise of their trading pursuits. The creation of infra structure particularly in the area of Rail transportation and education has certainly broken the provincial isolation to certain extent and help in creation of unified internal cohesion and integrity of the Nation. The spread of English education and creation of westernised Indian elite is due to our wrong policies of education. There has not been the translation of English literature relating to medical, technical and legal subjects even after 50 years of independence. According to Maculae's famous Book written in 1835 namely :Minute of Education", the real aim of British ruler was to from a class, who may be interpreters between English people and millions governed by them, a class of the opinions in morals and in intellect to envisaged a class submissive political lackeys clerks and interpreters faithfully carrying out the order of their British master. The spread of English education ultimately facilitated the incursion of technology and liberal political ideas into intellectual ferment of intense nationalists, who re-discovered their own culture and history and started struggles for independence. The effect of new education was inconsequential, but enough to provide pressure for greater Indian participation in administration and politics. The Education remain more scarce and exclusive to 15% of population at the time of independence. It has provided fresh stratification in the society, which was already split by caste and religion. The hearts of sensitive Indians by presence of all pervading poverty and misery with profound anger and irritations at

being in bondage of system in now led by a sense of frustration at not being able to do any thing to mitigate, curb and cure the hard ship of fellow citizens. Our traditional value of freedom struggles and aspirations to attend the eradication from the bondage combined with natural desire of the people to live with freedom in every set of life has resulted into resentment at the cost of humiliation. We are still in the bondage and as such there are certain question marks relating to the present scenario of political set up and as such it requires revival and reassessment of the prevailing maladies by cultivation of positive opinions.

In such an environment, there could be little desire for change, little incentive for progress as a result, the condition in the country side, where more than 80% of Indian people lives has now deteriorated sharply. The new pressure generated by growing un-employment, increasing taxes heart mainly to the small citizens and reduces them to the state of perpetual indebtedness and ultimately robbing many of the farmers of their land. The rate of agricultural production has been reduced to the lowest in the world. This has ultimately led to an almost permanent scarcity of food stuff.

The challenge posed after independence to put an end to poverty, ignorance and inequalities as to built up a social order by the formidable task of “thrust with destiny” as professed by Mr. Nehru through socialism was contrary in its implications to the concept of social justice. The service of India means service of millions, who suffers, it means the ending of poverty, ignorance, disease and inequalities of opportunities by boosting their capabilities at larger level and not to create a social structure, where the dishonest opportunists may get undue protection in getting the preferential treatment with the honest meritorious individual. You can not make every individual having poverty and ignorance to be a dishonest opportunists. Thus it was required to make them competent to fight in the open competition and provide the endeavour for a classless society. The ambition to wipe every tear from every eye may be beyond imagination, but as long as there are tears and suffering of the individual citizen, so long our work will not be over. This ambition has now been completely vanished from the horizon of our Indian infra- structure.

The transfer of power from British’s gave rise to communal violence and mitigation of the millions of displaced person posing a threat of serious repercussions. This communal disturbance caused indescribable mental anguish to Mahatma Gandhi, who placed to end communal madness and

disturbances. The power intoxication to contemporary leaders before independence had ultimately led to the partition of Indian subcontinent. There was out burst against leaders of having betrayed the Hindus on Pakistan side. The official statement put the killing at half a million citizens and uprooting the people at 20 millions. The British's diplomacy for this tragedy was to blame for advance date of politician from, 6, 1948 to August 15, 1947. People did not give enough time to plan their migration.

The beginning of hostility between Pakistan & India after partition of subcontinent was gradually evading by passage of time. Pakistan Chief Martial Law Administrator General Mohd. Ayub proposed on 29 April, 1959, just three and half years before the attack by China, to have a joined defence against external aggression. Mr. Nehru refused by saying- "Defence against whom"? This was the beginning of lasting friendship which ended with hostility. Few month later to Chinese aggression, China becoming Pakistan's ally and India's main rival due to the resift attitude of our prime minister.

Mr. Muneer Ahmed has been charged with a sedition case for his writing a book in Pakistan namely "Will Pakistan Break up". It displace the role of inter services intelligence (I.S.I.) and Intelligence Bureau of Pakistan on political side. This has further highlighted the role of Army and I.S.I. in political instability. The president of Pakistan namely Sri Gulam Ishak Khan in July, 1993 had furiously rebuked Mr. Nawaz Sharif for involvement of I.S.I. in Bombay Bomb blast in March, 1993. The president Mr. Gulam Ishak Khan on denial by Mr. Sharif regarding his involvement insisted that "Mr. Prime Minister do not try to convince me, the I.S.I. is behind these blasts and I have got the proof of it. If United State declare us a terrorist state, you will be responsible for that". The book further discloses that Mr. Sharif gave signal for these blasts to I.S.I. Chief Lt. Gen. Zaved Nasir. There are proof to show that how to Maman brother's were kept in Karachi at Govt. Guest and how they were brought to Pakistan and they transported to Dubai. The book displaced that Mr. Sharif has assigned I.S.I. Chief Mr. Zaved Nasir and I.B. Chief Brigadier Imtiyaz to prepare the task of assigning responsibility on India just to pacify the quarry made by President Mr. Gulam Ishak Khan rejected it. The United States denounced the similar version placed by Minister of states for foreign affairs. Mr. Shadik Kanzoo. There was further apprehension in the mind of the ruler at Pakistan and specially to foreign secretary Mr. Shaharyar that India may become so angry that it might

attack Pakistan’s Kahuta plant and lay seize of it Navy. The President Mr. Gulam Ishak Khan has advised Mr. Sharif to do something to prevent the disaster and suggested to make a contact with Mr. P .V. Narsimha Rao on telephone, but Mr. Nawaz Sharif did not do so despite the president reminder. Army chief Gen. Abdul Wahid persuaded both president and Prime Minister to resign and make way for fresh election.

The intelligence agency in India strongly feel that the recent bomb blast is the handy work of I.S.I. based Khalistan Kashmir International, an out fit recently formed by Pak based militant organisation Lashkar-E-Taiba and International Sikha Federation headed by Lakhveer Singh rode. There were about 16 explosions in Delhi and the kind of explosive material and splinters used in these blasts bear a similarity. The similar explosive devices have been used in Haryana in Punjab. These blasts create disturbance in Northern India by using Pakistan agents, who has successfully settled in different states under false identity. They have been also taught Punjabi and basics of ‘Gurumukhi Scripts’. They would get married here and would start some business to cover their under ground activities. According to a senior official, it has been said that one main operator is Abu Shahid alias Zunaid resident of Jehlum in Pakistan, who has been working with some sympathisers in Delhi for the past many years. He has not married and has set-up a S.T.D . P.C.O. which is most probably located in Sadar Bazar or Jama Masjid area. His associates, who have also Darshan Lal, Abu Ibad, Abu Qasha and Abu Saifullah Dar. The official said that the group is working in tandem with Abu Kashim alias Abdul Qudoos Sulfi a resident of Ghaziabad (U.P.), who is now settled in Pakistan and reportedly absconded after the arrest of his accomplice Dr. Jalish Ansari by the CBI in a number of bomb blasts in Mumbai, Delhi and U.P. and also in Delhi bound trains coincidentally with the anniversary of demolition of Babari Masjid. Abdul Karim a master mind to the plan infiltrate Lashkar-E-Taiba operative in India is said to be an expert in handling and manufacturing improvised explosive devices (I.E.D.S.) using conventional explosive like Ammonium Nitrate, Urea, potassium chlorate and sulphuric acid. Recently Abu Ibad visited Delhi and conducted a detailed survey of Bara Area near Sadar bazaar and a bank situated in this crowded area was reportedly chosen as the target. He alongwith his associates had also study some multi-storey buildings and basements in posh shopping area of Connaught Place for demolition, but having a detail dassier of the suspects. The plan was not carried out. There are several

sympathisers and as such they are not in hurry to carry out blast and look for right opportunity and after carrying out an operation they lie dormant for several months. This is the atmosphere prevailing inside our Country with the ostensible support of sympathisers? The traitors , betrayers and anti nationals. Whether identification is required or they have already been recognised, but our political co-ordinations does not allow to disturb them in their government of the fact, who is ruling our Nation. Unlike the terrorists activities in the capital, the militants in Kashmir are re-assaulting to the Bomb explosions in the licked Govt. Buildings or houses belonging to non-Muslim Kashmir's to maintain a psychosis of fear amongst the Indian citizens.

Mr. Nawaj Sharif suggestion at U.N. General assembly session- I offer India today from this rostrum to open negotiations on the treaty of non-aggression between the two countries. It has been profess from a long time by our country part of subcontinent namely Pakistan that we have a little progress on every front in comparison to global expansion of economic resources. There may be a possibility for realising the mistake committed in partition of the subcontinent, but till there is some understanding in keeping out the hostilities, insurgency and terrorism as the strategic weapons, while grappling with such issues of non-aggression, nothing can be achieve for the prosperity of both the Nations. The Pakistan slogan by making the issue of Kashmir regarding insurgencies and violation of human rights before the other nations are based on falsehood in context with his country productivity to create the disturbance over the Indian soil of non-violence policy. There may be a serious consideration over the divert these funds for the prosperity of the Nation and eradication of illiteracy, but till there may not be the purity of idea demonstrated in action by the ruler of Pakistan, there cannot be any solidarity tranquillity peace and stability in the subcontinent.

WE THE PEOPLE

Conquest of India buys nothing of any natural superiority on the part of conquerors, but it is due to lack of character and indiscipline in Indians, who were subjected by exploiting the spirits with division and jealousies between fellow citizens. It

is difficult and impossible to conquer a Nation having intelligent approach, different religions and language form its invaders. Spain could not be able to conquer. Dutch province with their petty population remained unfallable. The same is the glory with Switzerland and Greeks in old ages. Israel and Vietnam are the recent examples of solidarity. India on the other hand was conquered by an Army consisting of its own inhabitants and a small fraction of 1/5th Army at the average of these invaders. Thus India can hardly be said to had been conquered at all by the foreign invaders, she was rather conquered herself. The truth is that there is no India in political and scarcely in any other sense. It is a Geographical expression. The invaders had subjugated and abrogated the resource of this country due to its weakness. They have adopted the policy of “Divide and Rule”.

Alexander invaded the country and defeated King Porus with the help of Indian rulers. Since the time of rise of Mahmood Ghazni a steady of invasion has poured in India. The tie of Nationality has now been broken resulting the integrity and jeopardise the national disrespect towards the existing system which our politicians have borrowed in succession from the wake of partition. British’s have derived a system based on two Nation theory, but Mr. Nehru in order to gain the political superiority had accepted the same and be fooled the Nation bylaming Mr. Jinnah who was actually aspirant to get the electorate representation of Muslims in proportionate on theory of Fundamental principle that we are all citizens and equal rights to them be given to rule the Nation. The objective to attain freedom and to remove social evil in the society fermented hatred and discord through communal politics. The freedom has become tainted with a permanent gulf between Hindus and Muslims. The feeling of love peace and harmony in the name of God and religions has ultimate outcome of sudden and radical change which has diversified effect and impact on religious fenaims of Muslims and Hindus. The political game of British’s has succeeded in high pitch of communal frenzy. The fate of real victims has been forgotten. Now the communal hatred, madness and barbarism had its free hand both in Pakistan and in India.

We fought the battle against the crusaders of independents like Neta ji Subhash Chandra Bose who sacrificed has life for independence. He was subjected to humiliations even after electing as president of National Congress after defeating Gandhi ji in 1939 due to nefarious planning of aspirant politicians to ruin the Nation. Churchill has characterised Indians as primitive due to such disgraceful anti National

feelings. The historical change in the process of accession of Nation by the British's was due to such shameful characteristics of the opportunists. Since the time of acquiring power by Bahadur Shah Zafar in 1837, the British's have always recognised him as their emperor from the time of Lord Aukland upto the period of George Allenbro, but Lord Hasting then Governor General had diverted from maintaining such Traditional resumplance of his Majesty and Dynasty and wrote a confidential letter to his Ambassador Metkaph stating that the emperor Grace and his authenticity command has now vanished and the grace of Emperor which embraces the proud of identifying him with Taimur dynasty is on more in existence. The gifts which were offered to commander in chief by the Governor General are no more required to moulded with identity and title of the emperor. The Governor General is no more required to pose as the servant of the king and now there is nothing to require in order to represent Governor General as Subordinate to the Emperor. This historical change was not witnessed in a single day which was in the process of accession of Nation from the shameful defeat of Nawab Shahzadulla in the battle of plassey from Clive in the year of 1757.

Let us remember 12 June 1757, when British Army collided with Chandra Nagar Army and leaving behind only 150 British soldiers at Chandra Nagar, Clive with an Army of 650 English soldiers, 150 Artillery, 50 Navy and 2100 Indian soldiers on the invitation of Traitor Meer Zafar. He marched to Morsidabad to fight against an army consisting of more than one Lak (1,00.000) soldiers of Nawab Shahzadullah. There was a long distance from Calcutta to Morsidabad. In between Hoogly and Kotaya were the strong fortress under the domination of Nawab but Hoogly had surrendered voluntarily, while in Kotaya Clive had not only succeeded by victory, but also with a huge stock of rice which of one year. Meer Zafar, Sadar Wazir of Nawab on being assured to become Emperor, for which Jagat Seth Amirchand was given bribe of Rs 30 Laks, who had collided with commanders namely Ram Durlabh and Yar Lateef in conspiracy to give this Banquest of flower with victory to clive in the battle on 21st June 1757, Clive received the invitation from Meer Zafar to invade the Army of one Lak soldiers with only 3,000 soldiers, in which patriot Meer Madan fought a fearless battle on 23 June 1757, but he was injured and withdrawn. Maharaja Mohan Lal who fought with the troops upto the deciding hour of victory, was withdrawn on persuation of Meer Zafar. Meer Madan had informed Nawab Shahzadullah in respect of conspiracy of

Meer Zafar, has put his crown on his feet and persuaded by administering oath in the name of Allah not to betrayal during the struggle, after withdrawing Maharaja Mohan Lal from battle field, Zafar conveyed the message to clive to attack at Midnight and ultimately Nawab Shahzadullah ran away from battle field of plassey to Morsidabed and Meer Zafar having 45,000 soldiers surrendered before the Clive. This was the reason of calling the Indians as cowardice, selfish and primitive by the Churchill at the wake of Independence and partition of India.

We are 15% of world population and having 1.5% of world's income. We are 54% of all illiterate of the world. In 1950 we were ranking at 16th place in the list of exporting countries, now we are ranked at 45th place. In 1950 we had 2.2% of export of world market today we stand at 0.45%. The population of Hong Kong is 0.7% and its land is 0.03% of India yet it has almost three times the trade of India. India has less than half of one percent of world's tourist traffic. North has 1/4th of world's population and it has 70% of wealth and 80% of trade. It has 90% of Industry, 99% of finest and most advanced centres of learning and technology. In North, the total weight of their mile power which is surplus as one million ton while the butter is 1.5 million tons. There is 20 million tons of surplus fedo . Our political set up regenerates the corruption to prevent the benefit of donations received through begging and other aids from trackling down the requirement of down trocdens. Since all aid goes into the private pocket of yes men of politician as such North has now stopped all such assistance which they virtually find as surplus in their countries. It is interesting that politicians ask another country to finance the corruption in their own statel.

We are still like a cavemen with our backs turn to light watching the shadow on the wall. The politicians have imposed mindless socialism which held in thrall the people endeavour and enterprise resulting in transfer of potential from the honest bonavelent to the dishonest and foreign ambitions. Politicians acts in nefacarious designs with impunity. Political parties motivated with vested interests are dancing to usurp power through any means fair or foul even at the cost of sacrificing the Nation's existence to personal interest. Party systems has pushed to advance its own schemes upon the ruin of the rest. Our politicians are mafia dons next to the invaders. Robbers have generally plundered the rich who are seldom subjected to punishment but the politicians having the will of our regislation always plunget the common citizens and protect those mafia dons under the

phraseology of “law making sovereign power” having the connotation “procedure establish under law to be cherished instead of due process”. There is always and excuse for tyranny and maladministration which has degenerated the national character. The power given need a safeguard from such arbtitrary power and unfair exercise. In present set up freedom has become an abuse and liberty as license. Therefore the moral damage is more terrible. Abn oppressive system is more to be teared than a Tiger.

Mr Chandra Shekhar, then Prime Minister who also held charge of Home Ministry himself, transferred Shri N.K.Singh then joint director of C.B.I. who was conducting inverstigation into st. Kitt’s forgery committed by controversial mafia don chanaraswami when he refused to drop the investigation. The transfer, which was manifestly for killing the investigation was challenged before central administration Tribunal. The tribunal pronounced that a civil servant however highly placed is bound to implement the policy decisions and directives given by the minister concerned. It was observed that a posture in public by a civil servant by showing his disagreement with the directions given by minister concered is untenable in an constitutional scheme, under which the minister concerned is accountable and answerable to their ministers. The tribunal declared :- “The concept of indispensaility of and individual officer, however upright, honest and efficient he may be, is unknown to good administration under any legal system. A civil servant trying to uphold the public and preserve and protect public interest against the decision and directions of his own minister who are the political maters, is also alien to our legal system”.

This fatal doctrine enunciated by the tribunal even in the light of criminal politicians nexus was upheld without comments by the Apex Court. However it was reiterated that the officer, a man of undoubted competence, integrity, uninhibited acknowledgement and acclaim of his calibre and credentials even by respondents accompanied with future promotions earned by Mr N.K.Singh in due course are recognition of his merit that his needless excursion into the arena of litigation to challenge a mere transfer not detrimental to his career prospectus has fortunately not had any adverse influence against him. Hon’ble Supreme Court has adviced to leave the matter to those in public life who felt aggrieved by his transfer to fight their own battle in the forum available to them. The result is that the directions of ministers which are manifestly intended to kill the investigation against the mafia king has to be carrying out by the civil servant as a

member of discipline force and he should not take upon himself the task of safeguarding the public interest.

This was completely forgotten that the criminialisation of politics is well known and has deep rooted linkage between mafia dons, crime syndicates and this network is virtually running parallel government. These gangs enjoy the patronage of local level politicians, cutting across party lines and protection of government functionaries. Bombay Blast in March 1993 has proved the activities linkages of the Dawood Ibrahim gang leading to establishment of Maharashtra Govt. The vohra penal report has found that all over India crime syndicates have become a law unto themselves. Hired assassins have nexus between criminal gangs, police, bureaucracy and politicians. Mafia is virtually pushing the state apparatus into irrelevance. Their modus operandi may shift to narcotic drugs, weapon smuggling, and established narco-terrorism network. The Indian underworld had been exploited by Pakistan I.S.I. and its network to cause sabotage, subversion and communal tension.

What has happened to the Nation after decision in Mr. N.K.Singh case. Even after four and half years, of the investigation conducted by Mr. singh nothing has come out from inverstigation in st. Kitt's forgery committed by Chandraswami, but it has resulted in assassination of Rajiv Gandi with the cloud of uncertainty in identifying real culprit to the people i.e. whether he is Chandraswami, Miss Jayalalita or Mr. Chandra Shekhar Ex. Prime Minister or some alien Nation? The kidnapping and plundering in U.P. and Bihar and Samajwadis as state apparatus and judiciary with impunity avoiding the glaring facts of judicial accountability. These instruments of breaking the back of civil servant and police administration by politician affiliation are arbitrary against which every citizen is supposed to have the protection but the courts have still to pronounce the guidelines to the people, the common man with common cause, felt aggrieved to fight the battle in what forum available to them? Subsequently there was malafide and manifestly illegal transfer and suspension of Mr. M.Shankaranarayanan the distinguished chief secretary of Karnataka by Mr. S.Bangarappa, C.M. to protect the liquor lobby of Chandraswami's mafia don for the public.

The citizens, "we the people" contemptlating of the infringement of the indefeasible rights cannot be told for tolerating infreaction or invasion of their rights anymore, which is guaranteed enough to relegate at the dawn of human rights jurisprudence fromulgated by judicial activism

to fight their own battle in the forum available to them under social action litigatiuon. The Hon’ble Supreme Court has put an end to instrument of status upholding the traditions of Anglo Saxon jurisprudence and resisting radical innovation as honest in the use of judicial power to promote social justice. Nothing rankless more in human heart than in justice. Access to justice is basic human right on which is dependent other rights relating to equality. Justice has always been the first virtue of any civilised society. Life of law is a mean to serve the social purpose and felt necessity of people. Affirmative action promotes maximum well being for the society as a whole and strengthens forces of National integration. The purposeful role for more active creative in deciding it by the court of law is by not “what has been” but “what may be”. This is the role and purpose of law for the sovereign power of “we the people” as enumerated in our preamble constitution of india.

Mankind has a habit of serving the worst castrophes created by its own error or by violent turn of Nature. There is no meaning of life in its existence without self restraint and self organising capacity, if man is intended to survive. Conscienceness must come out of this chaotic life for ideal human conditions and unaccomplished gospel and its preservation which can only provide a chance for survival and success.

Implementation of strong ideas for betterment of mankind required steadfast wisdom. Such new and triumphant ideas should burst every human chain which tends to paralyse its efforts to push forward. Most of the people tend to see nothing or, to be more correctly stated, not inclined to observe and take anything in notice because this is simplest and cheapestattitude to adopt. The ensuring success are mostly least understood at the beginning because they are usually in strong contrast public opinion.

The nature of prevailing maladies and inadequacy of existing remedies also requires a fresh apprasal. A lack of sense of duty and dedication towards public service and reluctance towards one’s own behaviour to be accepted arms of honesty and probity in public life is the root cause of such disharmony. This picture of disharmony in the epic of progres never imperilled the fundamentals of duty and obedience which the basis of social discipline. If honesty is considered to stupidity, nothing can be achieved for eradication of corruption. The entire fabric of Indian society is

saturated with gallopir corruption which if not checked with iron hand, will definity ruin the very structure of country’s basic foundations, resuing into its collapse in all spheres of Mankind

THE EFFECT OF GLOBLISATION ON LEGAL SYSTEM

YOGESH KUMAR SAXENA, Advocate , High Court

"Many Voices. One World" a publication of UNESCO which contains the Final Report of the International Commission for the Study of Communication Problems, presided over by Sean MacBride, emphasizes the importance of freedom of speech and press in the preservation of human rights in the following terms:

. Democratization of Communication. Human Rights

Freedom of speech, of the press, of information and of assembly are vital for the realization of human rights. Extension of these communication freedoms to a broader individual and collective right to communicate is an evolving principle in the democratization process. Among the human rights to be emphasized are those of equality for women and between races. Defiance of all human rights is one of the media's most vital tasks. We recommend:

All those working in the mass media should contribute to the fulfilment of human rights, both individual and collective, in the spirit of the Unesco Declaration on the mass media and the Helsinki Final Act and the International Bill of Human Rights. The contribution of the media in this regard is not only to foster these principles, but also to expose all infringements, wherever they occur, and to support those whose rights have been neglected or violated Professional associations and public opinion should support journalists subject to pressure or who suffer adverse consequences from their dedication to the defiance of human rights.

The media should contribute to promoting the just cause of peoples struggling for freedom and independence and their right to live in the peace and equality without foreign interference. This is especially important for all oppressed peoples who, while struggling against colonialism, religious and racial discrimination, are deprived of opportunity to make their voices heard within their own countries. Communication needs in a democratic society should be met by the extension of specific rights such as the right to be informed, the right to inform the right to privacy, the right to participate in public communication - all elements of a new concept, the right to communicate. In developing what might

be called a new era of social rights, we suggest all the implications of the right to communicate be further explored.

The story of mankind is punctuated by progress and retrogression. Empires have risen and crashed into the dust of history. Civilizations have flourished, reached their peak and passed away. "and yet time has his revolution, there must be a period and an end of all temporal things, an end of names and dignities, and whatsoever is terrene."

The cycle of change and experiment, rise and fall, growth and decay, and of progress and retrogression recurs endlessly in the history of man and the history of civilization. T. S. Eliot in the First Chorus from "The Rock" said :

"0 perpetual revolution of configured stars,
0 perpetual recurrence of determined seasons,
0 world of spring and autumn, birth and dying!
The endless cycle of idea and action,
Endless invention, endless experiment".

The law exists to serve the needs of the society, which is governed by it. If the law is to play its allotted role of serving the needs of the society, it must reflect the ideas and ideologies of that society. It must keep time with the heartbeats of the society and with the needs and aspirations of the people. As the society changes, the law cannot remain immutable. Sydney Smith, said, "When I hear any man talk of an unalterable law. I am convinced that he is an unalterable fool." The law must, therefore, in a changing society march in tune with the changed ideas and ideologies. Legislatures are, however, not best fitted for the role of adapting the law to the necessities of the time, for the legislative process is too slow and the legislatures often divided by politics, slowed down by periodic elections and overburdened with myriad other legislative activities. A constitutional document is even less suited to this task, for the philosophy and the ideologies underlying it must of necessity be expressed in broad and general terms and the process of amending a Constitution is too cumbersome and consuming to meet the immediate needs. This task must, therefore of necessity fall upon the courts because the courts can by the process of judicial interpretation adapt the law to suit the needs of the society.

"It is something to show that the consistency of a system requires a particular result, but it is not all. The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-

men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been. and what it tends to become. We must alternately consult history and existing theories of legislation. But the most difficult labor will be to understand the combination of the two into new products at every stage. The substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then understood to be convenient; but its form and machinery, and the degree to which it is able to work out desired results, depend very much upon its past."

The framers of our Constitution did not, however, want to frame for the Sovereign Democratic Republic, which was to emerge from their labour, a Constitution in the strict legal sense. They were aware that there were other Constitutions that had given expression to certain ideals as the goal towards which the country should strive and which had defined the principles considered fundamental to the governance of the country. They were aware of the events that had culminated in the Charter of the United Nations. They were aware that the General Assembly of the United Nations had adopted the Universal Declaration of Human Rights, for India was a signatory to it. They were aware that the Universal Declaration of Human Rights contained certain basic and fundamental rights, appertaining to all men. They were aware that these rights were born of the philosophical speculations of the Greek and Roman Stoics and nurtured by the jurists of ancient Rome. They were aware that these rights had found expression in a limited form in the accords entered into between the rulers and their powerful nobles. For instance, the accord of 1188 entered into between King Alfonso IX and the Cortes of Leon, the Magna Carta of 1215 wrested from King John of England by his barons on the Meadow of Runnymede . He was compelled to- affix his Great Seal on a small island in the Thames in Buckinghamshire - still called Magna Carta Island, and the guarantees which King Andrew 11 of Hungary was forced to give by his Golden Bull of 1822. They were aware of the international treaties of the mid-seventeenth century for safeguarding the right of religious freedom and the rights of aliens. They were aware of the full blossoming of the concept of Human Rights in the writings of the "philosophers" such as Voltaire, Rousseau, Diderot, Rayal, d'Alembert and others,

and of the concrete expression given to it in the various Declarations of Rights of the American Colonies (particularly Virginia) and in the American Declaration of Independence. They were aware that in 1789, during the early years of the French Revolution, the French National Assembly had in "The Declaration of the Rights of Man and of the Citizen" proclaimed these rights in lofty words and that Revolutionary France had translated them into practice with bloody deeds. They were aware of the treaties entered into between various States in the nineteenth century providing protection for religious and other minorities. They were aware that these rights had at last found universal recognition in the Universal Declaration of Human Rights. They were aware that the first ten Amendments to the Constitution of the United States of America contained certain rights akin to Human Rights. They knew that the Constitution of Eire contained a chapter headed "Fundamental Rights" and another headed "Directive Principles of State Policy". They were aware that the Constitution of Japan also contained a chapter headed "Rights and Duties of the People". They were aware that the major traditional functions of the State have been the defiance of its territory and its inhabitants against external aggression, the maintenance of law and order, the administration of justice, the levying of taxes and the collection of revenue. They were also aware, that increasingly, and particularly in modem times, several States have assumed numerous and wide-ranging functions, especially in the fields of education, health, social security, control and maintenance of natural resources and natural assets, transport and communication services, and operation of certain industries considered basic to the economy and growth of the nation.

That Section 8 of Article 1 of the Constitution of the United States of America contained "a welfare clause" empowering the federal government to enact laws for the overall general welfare of the people. They were aware that countries such as the United States, the United Kingdom and Germany had passed social welfare legislation.

The framers of our Constitution were men of vision and ideals, and many of them. had suffered in the cause of freedom. They wanted an idealistic and philosophic base upon which to raise the administrative superstructure of the Constitution., They, therefore, headed our Constitution with a preamble which declared India's goal and inserted Parts III and IV in the Constitution.

"It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws."

When our Constitution states that it is being enacted in order to give to all the citizens of India "JUSTICE social, economic and political", when clause (1) of Art. 38 of the Constitution directs the State to strive to promote the welfare of the people by securing and protecting as effectively as it may be social order in which social, economic and political justice shall inform all the institutions of the national life, when clause (2) of Art. 38 directs the State, in particular, to minimize the inequalities in income, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Art. 39 directs the State that it shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood . The operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. There should be equal pay for equal work for both men and women, it is the doctrine of distributive justice which is speaking through these words of the Constitution.

. Every person is entitled to life as enjoined in Art. 21 of the Constitution and in the facts of this case read in conjunction with Art. 19(1)(d) of the Constitution and in the background

of Art. 38(2) of the Constitution every person has right under Art. 19(1)(d) to move freely throughout the territory of India and he has also the right under Art. 21 to his life and that right under Art. 21 embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. These propositions are well-settled. We accept the proposition that there should be road for communication in reasonable conditions in view of our constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution. To the residents of the hilly areas as far as feasible and possible society has constitutional obligation to provide roads for communication.

"The functions of Government under our system are apportioned. The legislative department has been committed the duty of making laws; to the executive the duty of executing them : and to the judiciary, the duty of interpreting and applying them in cases properly brought before the Courts. The general rule is that neither department may invade the province of the other, and neither may control, direct, or restrain the action of the others." It is also well to remember that freedom depends upon the separation of three organs of the State.,, Each must function within its own domain and remain distinct.

On this aspect, it is appropriate to recall what Montesquien in 'The Spirit of the Law'

"Democratic and aristocratic States are not in their own nature free. Political liberty is to be found only in moderate governments; and even in these it is not always found. It is there only when there is no abuse of power. But constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go. Is it not strange, though true, to say that virtue itself has need of limits?. In every government there are three sorts of powers : the legislative the executive in respect of things dependent on the law of nations and the executive in regard to matters that depend on the civil law..

The political liberty of the subject is a tranquillity of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another. When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative. the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.
There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."
. Judicial review of the administrative action or inaction where there is an obligation for action should be with caution and not in haste. Its sense of priority it has determined, there may have been certain lethargy and inaction. It has been said by Adam Smith in his 'Wealth of Nation' that whenever you see poverty widespread rest assured that either of the two causes must have operated, either energy has not been applied or energy has been misapplied.
"The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life." Wide enough in all conscience is the field of discretion that remains."
. It is not necessary to express our opinion in this case whether our Constitution is truly based on Montesquien system of separation of power. We accept the position that Court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. Judicial review of administrative action depends upon the facts and circumstances of each case. Its dimension is never closed and must remain flexible. But in this case the order of the High Court in the light we have read it, does not exceed that parameter.
Our Constitution does not use the expression 'freedom of press' in Art.19 but it is declared by Supreme Court that it is included in Art.19(1)(a) which guarantees, freedom of speech and expression. In todays' free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large

scale particularly in the developing world, where television and other kinds of modern

Freedom of expression has four broad social purposes to serve : (i) it helps an individual to attain self fulfilment, (ii) it assists in the discovery of truth, (iii) it strengthens the capacity of an individual in participating in decision-making and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others. In sum,the fundamental principle involved here is the people's right to know. Freedom of speech and expression should, therefore receive a generous support from all those who believe in the participation of people in the administration..

Article 19 of the Universal Declaration of Human Rights, 1948 declares : "Every one has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

"The objection that our judicial institutions lack the political power and prestige to perform an active role in protecting freedom of expression against the will of the majority raises more difficult questions. Certainly judicial institutions must reflect the traditions, ideals and assumptions, and in the end must respond to the needs, claims and expectations of the social order in which they operate. They must not and ultimately cannot, move too far ahead or lag too far behind. The problem for the Supreme Court is one of finding of the proper degree of responsiveness and leadership or perhaps better, of short-term and longterm responsiveness. Yet, in seeking out this position the Court should not under-estimate the authority and prestige it has achieved over the years. Representing the conscience of the community" it has come to possess a very real power to keep alive and vital the higher values and goals towards which our society imperfectly strives Given its prestige, it would appear that the power of the Court to protect freedom of expression is unlikely to be substantially curtailed unless the whole structure of our democratic institutions is threatened"

"Court reiterated that the freedom of speech and expression guaranteed under Art. 19(1)(a) of the Constitution includes that freedom of press i.e. the freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. Liberty of circulation is as essential to that

freedom as the liberty of publication. Central to the concept of a free press is freedom of political opinion and at the core of that freedom lies the right to criticise the Government, because it is only through free debate and free exchange of ideas that Government remains representative to the will of the people and orderly change is effected. When avenues of political expression are closed, Government by consent of the governed would soon be foreclosed. Such freedom is the foundation of free Government of a free people. Our Government set up being also limited and responsible we need requisite freedom of any animadversion for our social interest which ordinarily demands free propagation of views. Freedom to think as one likes and to speak as one thinks are as a rule indispensable to the discovery and separate of truth and without free speech, discussion may be futile."
"We feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law. The facts and the position in law thus clearly are (1) that the buildings constructed on this piece of Government land did not belong to Government, (2) that the petitioners were in possession and occupation of the buildings and (3) that by virtue of enactments binding on the Government, the petitioners could be dispossessed, if at all, only in pursuance of a decree of a Civil Court, obtained in proceedings properly initiated. In these circumstances the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion of the executive of peaceful possession of property."

The Constitution enshrines and guarantees the rule of law and the power of the High Courts under Art. 226 (which is equally true of Art. 32) is designed to ensure that each and every authority in the State, including the Government acts bona fide and within the limits of its powers and that when a Court is satisfied that there is an abuse or misuse of power and its jurisdiction is invoked, it is incumbent on the Court to afford justice to the individual. The Court further observed that in such an event the fact that the authority concerned denies the charge of mala fide, or asserts the absence of oblique motives or of its having taken into consideration

improper or irrelevant matter, does not preclude the Court from inquiring into the truth of the allegations made against the authority and affording appropriate relief to the party aggrieved by such illegality or afuse of power in the event of the allegations being made out.
There is a growing body of authority, attributable in large part to the efforts of Lord Denning, to the effect that in some circumstances when public bodies and officers, in their dealings with a citizen, take it upon themselves to assume authority on a matter concerning him, the citizen is entitled to rely on their having the authority that they have asserted if he cannot reasonably be expected to know the limits of that authority; and he should not be required to suffer for his reliance if they lack the necessary authority."

In the context of our national dimensions of human rights, right to life, liberty, pollution, free air and water is guaranteed by the Constitution under Articles 2.1, 48A and 51 (g), it is the duty of the State to take effective steps to protect the guaranteed constitutional rights.
There is yet another aspect "which needs consideration by the Government and the Parliament. Industrial development in our country and the hazards involved therein, pose a mandatory need to constitute a statutory "Industrial Disaster Fund", contributions to which may be made by the Government, the industries whether they are transnational corporations or domestic undertakings, public or private. The extent of contribution may be worked out having regard to the extent of hazardous nature of the enterprise and other allied matters. The Fund should be permanent in nature, so that money is readily available for providing immediate effective relief to the victims. This may avoid delay, as has happened in the instant case in providing effective relief to the victims. The Government and the Parliament should therefore take immediate steps for enacting laws, having regard to these suggestions, consistent with the international norms and guidelines contained in the United Nations Code of Conduct on Transnational Corporations

The greatest virtue of Law

The greatest virtue of Law is in its adaptability and flexibility. Law made for the society and there fore it has to be applied ,

depending upon is situation , for the benefit of society (Balbir Kaur vs . steel authority of India) ,(2000)6 SCC 493.

“Law is a social engineering to remove the existing imbalance and to further the progress , serving the needs of the Socialist Democratic Bharat under the rule of law. The prevailing social conditions and actualities of life are to be taken into account in adjudging whether or not the impugned legislation would subserve the purpose of the society. (Ashok Kumar Gupta vs State of U.P., (1997)5 SCC (L&S)1299:.

“Law is a means to an end and justice is that end. But in actuality, law and justice are distant neighbours; sometimes even strangely hostile. If law shoots down paralyses development, disrupts order and lawlwssness paralyses development, disrpts order and retards progress. High Court of Judicature at Bombay v. Shirishkumar Rangrao Patil, (1997)6SCC339: 1997 SCC (L&S)1486: AIR 1997 SC 2631: (1997) 4 SLR 321: (1997) 2 LLN 470:

“Law has been variously defined by various individuals from different points of view and no wonder there is no unanimity of opinion regarding the real nature of law, by various writers.”

‘’A law is a rule of conduct, administered by those organs of a political society which it has ordained for that purpose and imposed in the first instance at the will of the dominating political authority in that society in pursuance of the conception of justice which is held by that dominating political authority or by those whom It has committed the task of making such rules’. (Keeton)

“A set of rules imposed and enforced by a society with regard to the distribution and exercise of power over persons and things”. (Vinogradoff)

“Law is the command of sovereign, containing a common rule of life for its subjects and obliging them to obedience”. (Erskine)

“Law is the body of principles recognized or enforced by public and regular tribunals in the administration of justice.” (Pound)

“The law of the state or of any organized body of men is composed of the rules which the courts-that is, the judicial organs of that body- lay down for the determination of legal rights and duties”. (Gray)

“Law is that portion of the established thought and habit which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of Government”. (Wilson)

“Law is the system of rights and obligations which the State enforces”. (Green)
According to Salmond,” Law may be defined as the bdy of principles recognised and applied by the State in the administration of justice”. Courts may misconstrue a statute or reject a custom. It is only the urling of the curt that has binking force as law. The highest court of a State wilfully misconstrues an Act of the Legislature, the interpretation put on the Act would be law as there is no higher judicial tribunal with jurisdiction and authority to reverse it. The result is that the true test of law is enforceability in a court of law”.
According to Justice Holmes,” The life of law has not been logic. It has been experience. The law will become consistent when it ceases to grow. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious; even the prejudices which judges share for their fellowmen have had a good deal more to do than the syllogism in determining the rules by which man should be governed. The law embodies the story of a nation’s development through many centuries and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been and what and what it tends to become”. Again, “Logic gives science of law resides in the elegantia-juries or logical cohesion of part with part. The truth is that the law is always approaching and never reaching consistency. It is for ever adopting new principles from life at one end and it always retains old one from history at the other. It will become entirely constant only when it ceases to grow”
The fast changing scenario of economic, social order with scientific development spawns innumerable situations which the legislature possibly could not foresee.The delegate is entrusted with power to meet such exigencies with in the in built check or guidance and in the present case to be with in the declared policy. So the delegate has to exercise its powers with in this controlled path to sub serve the policy and to achieve the objectives of the Act . A situations may arise, in some cases where strict adherence to any provision of the statute or rules may result in great hardship, in a given situation, where exercise of such power of exemption is to remove this hardship without materially affecting the policy of the Act, viz., development in the present case then such exercise of power would be covered under it. All situations cannot be culled out, which have to be judiciously

judged and exercised, to meet any such great hardship of any individual or institution or conversely on the interest of the society at large. Such power is meant rarely to be used. (Para 18). Consumer Action Group v. State of T.N.,(2000) 7 SCC 425.

“In the interpretation of the Constitution, words of width are both a framework of concepts and means to achieve the goals in the Preamble. Concepts may keep changing to expand and delongate the rights. Constututional issues are not solved by mere appeal to the meaning of the words without an acceptance of the line of their growth. The Judges, therefore, should respond to the human situations to meet the felt necessities of the time and social needs; make meaningful the rights to life nad give effect to the Constitutions and the will of the legislature. The Supreme Court as the vehicle of transforming the nations life should respond to the nation’s needs, interpret the law with pragmatism to further public welfare to make the constututional animations a reality and interpret the Constitution broadly and liberally enabling the citizens to enjoy the rights. (Ashok Kumar Gupta v. State of U.P., (1997)5 SCC (L&S)

The principle is that all statutory definitions have to be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a some what different meaning in different sections of the Act depending upon the subject or context. That is shy all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely” unless there is anything repugnant in the Act where the meaning may have to be departed from on account of the subject or context”. Thus there may be sections in the act where the meaning may have to be departed from on account of the subject or context in which the word had been used and that will be giving effect to the opening sentence in the definition section, namely “unless there is anything repugnant in the subject or context”. In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words “under those circumstances”. Whirlpool Corpn.v. Registar of Trade Marks,(1998) 8 SCC1.

“By interpretation or construction is meant”, says SALMOND,”By which the courts seek to ascertain the meaning of the Legislature through the medium of authoritative forms in which it is expressed”.
“Interpretation differs from construction in that the former is the art of finding out the true sense of any form of words; that is, the sense which their author intended to convey; and of enabling others to derive from them the same idea which the author intended to convey. The drawing of conclusions, respecting subjects that lie beyond the direct expression of the text from elements known from and given in the text; conclusions which are in the spirit though not with in the letter of the law.” (AIR 1963 SC 1760,p. 1794)
“In common usage interpretation and construction are usually understood as having the same significance”.(211 US 370,p.386)
“The duty of judicature is to act upon the true intention of the Legislature-the men or sentential legis”. (AIR 1966 SC 346 ,p.348)
“The function of the courts is only to expound and not to legislate. The numerous rules of interpretation or construction formulated by courts are expressed differently by different judges and support may be found in these formulations for apparently contradictory propositions.”
“The Legislature can no doubt amend or repeal any previous statute or can declare its meaning but all this can be done only by a fresh statute after going through the normal process of law making “.
“Surprise to find that an open platform having no all or roof is a building”.(AIR 1966 SC 991)
“ The building of High Court is a ‘structure’ may itself be debated. Unsuccessfully argued in the House of Lords that a large substantial permanent two stereo building was not a structure.(AIR 1921 PC 240)
“The question is essentially one of degree and that it is impossible to fix any definite point at which ‘maintenance’ ends and ‘repair’ begins”. There is no possibility of mistaking midnight for noon; but at what precise moment twilight becomes darkness is hard to determine.” With in or outside the purview of the relevant words of the statute, after laying down a working line or more appropriately some general working principles. (AIR 1960 SC 610)
Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. Information derived from past and present experience. It

may also be designed by use of general words to cover similar problems arising future.

“If the word used n a fiscal statute is understood in common parlance or in the commercial world in a particular sense, it must be taken that the Excise Act has used that word in the commonly understood sense. That sense cannot be taken away by attributing a technical meaning to the word. But if the legislature itself has adopted a technical term, then that technical term has to be understood in the technical sense. In other words, if in the fiscal statute, the article in question falls with in the ambit of a technical term used under particular entry, then that article cannot be taken away from that entry and placed under the residuary entry on the pretext that the article, even though it comes with in the ambit of the technical term used in a particular entry, has acquired some other meaning in market parlance.(AIR 1997 SC 3414)

“The judiciary can never regain its lost respect and esteem if faith in judiciary can never regain its lost respect and esteem if faith in judiciary is forfeited. The conduct of every judicial officer should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity. If he tips the scales of justice, its rippling effect would be disastrous and deleterious. High Court of Judicature at Bombay v. Shirishkumar Rangrao Patil.(AIR 1997 SC 2631)

“The theory of Sovereign power which was propounded in Kasturi Lal’s case (AIR 1965 SC 1039) has yielded to new theories and is no longer available in a welfare State. It may be pointed out that functions of the Govt. in a welfare State are manifold, all of which cannot be said to be the activities relating to exercise of Sovereign powers. The functions of the State not only relate to the defense of the country or the administration of justice, but they extend to many other spheres as, for example education, commercial, social, economic, political and even marital. These activities can not be said to be related to Sovereign power.” Smt. Hanuffa Khatoon, who was not the citizen of this country but came

here as a citizen of Bangladesh was, nevertheless, entitled to all the constitutional rights available to a citizen so far as "Right to Life" was concerned. She was entitled to be treated with dignity and was also entitled to the protection of her person as guaranteed under Art. 21 of the Constitution. As a national of another country , she could bot be subjected to a treatment which was below dignity nor could she be subjected to physical violence at the hands of govt. employees who outraged her modesty. The right available to her under art. 21 was thus violated. Consequently, the State was under the constitutional liability to pay compensation to her. The judgement passed by the Calcutta High Court, therefor, allowing compensation to her for having been gang raped, cannot be said to suffer from any infirmity."

"Rape was committed on a woman by railway employees and a practicing advocate of a High Court filed a petition under Art. 226 which included not only the relief for compensation but many other relief's as, for example, relief for eradicating anti-social and criminal activities of various kinds at Howrah Railway Station and the true nature of the petition, therefore, was that of a petition filed in public interest, the writ petition was maintainable. In such a case, it could not be said that she could not file that petition as there was nothing personal to her involved in that petition."

It has been held in case of Chairman, Railway Board v. Chandrima Das (AIR 2000 SUPREME COURT 988)- "The employees of the Union of India who are deputed to run the Railways and to manage the establishment, including the Railway Stations and Yatri Biwas, are essential components of the Govt. machinery which carries on the commercial activity. If any of such employees commits an act of tort, the Union Govt., of which they are the employees, can, subject to other legal requirements being satisfied, be held vicariously liable in damages to the person wronged by those employees. It was so when instant case was case under Public Law domain and not in a suit instituted under Private Law domain against persons who, utilizing their official position, got a room in the Yatri Niwas booked in their own name where the act complained of was committed.

However in case of Hussain v. State of Kerala, (2000) 8 SCC 139.The appellant is unlawfully deprived of his personal liberty for such a long period of 5 years on account of inadequate legal representation andWrong conviction and thereby overlooking the aforesaid facts and the legal position. We acquit the appellant and direct him to be set at

liberty forthwith. In this case, we are not considering the question of awarding compensation to the appellant but he is free to resort to his remedies under law for that purpose. Similarly in case of death by electrocution, the Maintainability of the writ petitions is denied on the ground of Disputed questions of fact involved in case reported in (2000) 4 SCC 543.

In the book written by our Uttaranchal Pradesh chief Justice Ashok A. Desai namely " Justicing the people "- "Judiciary is independent. It does not mean judges are equally independent. They are bound by the limitations of law . Common man may not be able to see it. The judicial system has to maintain certainty and uniformity in the discharge. If the judges are allowed to settle the extent of justice according to their notion, or concept, then the system cannot achieve either of them. Intellectualism has more diversity. With the Judicial Activism, justice will vary according to the concept of individual Judge. That will cause a severe damage, not only to the system, but also to very foundation of justice. It will also create difficulty in guiding the Society. Law is always notified for the guidance of public but notions of justice of a Judge are not visible. This creates jeopardy. It would lead to, not only the Government by judiciary but by the Judges. The Democratic Society will never approve this."

<u>LAW, JUSTICE, FUNDAMENTAL RIGHT AND DUTY IN OUR CONSTITUTION AND ANGLO-SAXON JURISPRUDENCE IN PRESENT PARLIAMENTARIAN DEMOCRATIC POLITICAL SYSTEM</u>

~: Written by :~
YOGESH KUMAR SAXENA
(Advocate, High Court)

A COLLECTION OF ARTICALS PUBLISHED IN EDITORIAL COULUM OF DAILY NEWSPAPERS -

(1) 1LAW SHOULD LIBERATE,NOT ENSLAVE
(2) LEGAL ETHICS, PROFESSION AND ADVOCATES
(3) SUPERIOR'S COMMAND VS. RIGHT OF REBELLION-A FACE IN THE CROWD
(4) THE RIGHT OF DUTIES

(5) BOOK REVIEW- JUSTICING THE PEOPLE- WRITTEN BY HON'BLE JUSTICE ASHOK A. DESAI
(6) WHO IS AFRAID OF ART.21 ?
(7) CONSTITUTIONAL RESURRECTION
(8) HUMAN RIGHTS IN INDIAN DEMOCRATIC CONTEXT
(9) LEGAL INSTITUTION & JUSTICE
(10) OMBUDSMAN INSTITUTION OF ACCOUNTABILITY.
(11) LEGAL INSTITUTION,POLITICS AND JUSTICE
(12) INTELLECTUAL'S APATHY TO POLITICS ECHOES BACK
(13) IS IT DEMOCRACY ?
(14) FALSEHOOD BEYOND TRUTH
(15) AMBIT & SCOPE OF ARTICLE 21 COUCHED IN NEGATIVE LANGUAGE.
(16) PARLIAMENTARIAN DEMOCRACY UNDER ANGLO SAXON JURISPRUDENCE.
(17) SUPIRIOR'S COMMAND Vs RIGHT OF REBELLION.
(18) WE, THE PEOPLE .
(19) INDIA - A FUNCTIONING ANARCHY.
(20) VIBRATION FROM GANDHI'S GRAVE.
(21) PARTITION OF INDIA - A PURE POLITICAL GAME.
(22) PARLIAMENTARIAN'S POLITICS AND CORRUPTION.
(23) PARLIAMENTARIAN'S ATTACK ON JUDICIARY.
(24) 50 YEAR OF OLIGARCHY.
(25) STEADFAST WISDOM AND THOUGHT MEDITATOIN.
(26) VANDE MATRAM.
(27) BHARTIYA YOG THERAPY HEALTH & MEDITATION CENTRE ALLAHABAD.
(28) LEGAL ETHICS , PROFESSION AND ADVOCATES.
(29) REVIEW OF CONSTITUTION.
(30) INDIAN SUB-CONTINENT - POLITICAL NEED FOR FUNDAMENTAL UNITY WITH EMOTINAL INTEGRATION.
(31) BLACK MONEY AND ITS IMPACT ON SOCIETY.
(32) INDIAN CONSTITUTION AND OUR CULTURAL HERITAGE.
(33) OUR PARLIAMENTARIAN DEMOCRACY - AN ASSESSMENT OF PREVAILING MALADIES IN RETROSPECT AND PROSPECT.
(34) THE BANE OF OUR SOCIETY.
(35) BANE OF RESERVATION IN PROMOTION.
(36) OUR ELECTION PROCESS WITH GRADUAL DETERIORATIOM OF DEMOCRTIC VALUES.
(37) CRIMINALSISATION OF POLITICS.
(38) BHARTIYA PRAJATANTRA.
(39) ANUSUCHIT JATI TATHA JANJATI KO NAUKARION MAIN ARAKSHAN KA UDDESHYA DHARMANIRAPEKSH PRABHUSATTA SAMPANN BHARAT.
(40) VAN SAMPADA KE KHANAN KA ADHIKAR KISEE KO NAHIN.

(41) MINING PERMIT TATHA PATTE KE BINA JAMIN KHODANE KA ADHIKAR KISEE KO NAHIN.

(42) FREEDOM OF PRESS Vs RIGHT TO INFORMATION.