

# SUBORDINATE JUDICIARY – ITS ROLE AND TASK IN JUSTICE DISPENSATION\*

I gratefully acknowledge the gratitude of Mr. Justice Dalveer

Bhandari, the distinguished Chief Justice of Bombay High Court, Shri J.R. Deshpande, the District Judge, Kolhapur and the President, the Secretary and all the learned members of the Bar Association of Ichalkaranji and District Kolhapur, for giving me this unique opportunity of inaugurating the newly constructed building of the Court of Additional District & Sessions Judge and Civil Judge, Senior Division, Ichalkaranji. I have always believed the court to be a temple of justice. The judge sits therein as representing the Almighty and the Goddess of Justice. He is assisted by the members of the Bar who are known as officers of the court. They assist in performing the worship of the Goddess of Justice. The judgment is *prasadam* which is enjoyed by the one on whose side lay the truth.

I am happy to note that the members of the subordinate judiciary are present here in good number, apart from the members of the Bar and others concerned with the administration of justice. I wish to avail this opportunity for sharing with them, my views about the concept of justice relatable to subordinate judiciary.

Subordinate judiciary is the bedrock on which stands the edifice of justice. It is the foundation of the judicial system. The subordinate judiciary is the real judiciary for a majority of people of this country, for whom the subordinate judiciary symbolizes the epitome of justice. Not all can afford to go in appeals and revisions and even if they do, I do not think the quality of real justice which can be delivered by the subordinate judiciary can be substituted by any other forum.

The subordinate judiciary is situated at the grass-root level of the society. It is accessible to all. If the quest for justice is a journey for pilgrimage, it begins by knocking at the doors of the subordinate judiciary.

The significance of subordinate judiciary in the justice delivery system is well made out in the procedural and the substantive laws. Great weight is attached to the findings of fact, arrived at by the trial court. Though the first appellate court can reverse the findings of fact nevertheless it is ordained to attach great weight to the findings recorded by the trial court. The first appellate court may not interfere with those findings unless there is such an element of improbability, arising from proved circumstances which in the opinion of appellate court would outweigh the great weight to be assigned to the finding of the trial court.<sup>1</sup> The findings of fact, arrived at by the trial court and confirmed by the first appellate court become almost conclusive and may not be amenable to interference by any superior forum. Even on questions of law, the findings recorded by the first appellate court, which is mostly the district court, are final and even a finding on question of law is not liable to be interfered with by the High Court unless the question is a substantial question of law. There

is, thus, a very heavy load on the conscience of a member of a subordinate judiciary who must be extra cautious and careful in recording findings while writing judgments.

My dear young judges! You can legitimately feel proud of being a judge. To be a judge is a matter of great privilege. The seat of justice is a divine seat. Even the God does not sit in judgment over the deeds and misdeeds of His own creatures until the end of their lives. However, a judge has been conferred with the power of sitting in judgment over the fellow human beings in their lifetime. The task of a judge must, therefore, be performed by treating it as a sacred duty. Every case brought before a court, whether in civil or criminal jurisdiction, is a story of injustice, done by one human being unto another fellow being. The judge has to sift the grain from the chaff, which he ought to do impartially and with objectivity by exercising the best of his ability, wisdom, talent and conscience. If he fails in doing so, then he himself commits a sin which would never be pardoned. On the other hand, a judge who faithfully discharges the duties associated with his office, earns *punya* and blessings of God, without going to a temple or mosque.

Having highlighted in a few words, the enormous task which you as a member of subordinate judiciary perform every day, I may give you a few tips, based on my understanding and experience as a lawyer and as a judge.

The Goddess of justice symbolises the concept of justice. We all and, in particular, the members of subordinate judiciary ought to know what the concept of justice is and what the Goddess of justice means and communicates to us. Even if we already know, there is no harm in refreshing our memory. It is interesting to learn that the portrait of Goddess of justice, which we are ordinarily used to seeing, is blindfolded. But the Goddess of justice, as she is symbolised in Indian *Dharma* and jurisprudential concept, is not blindfolded. In the building of the Supreme Court of India, there is a beautiful mural wherein the Goddess of justice is shown seated in *padmasana* (crossed legs) but is not blindfolded. The inscription below in Sanskrit reads '*Satyamevoddharmyam*' which means 'Truth alone I uphold'. The Goddess of justice is on the right side of the rectangle, in white robes and wearing a crown, holding a balance, with scales in one hand and a book in the other. Her eyes are not blindfolded. On the left side of the rectangle, Mahatma Gandhi appears and below his figure are two *charkhas* (small spinning wheels).

"The idea of a deity, representing justice, was part of the ancient tradition of India, as was also the case in Greece, Rome, and elsewhere. According to the Vedic sutras, the deity of justice *does not close her eyes* but allows the graceful rays, flowing from her eyes to illumine the administration of justice. The deity is seated in *padmasana* (crossed legs) on a throne, and has four arms like other deities in the Hindu tradition. On the right, one hand lifts a sword while the other holds a whip. On the left, one hand holds the book of *dharmasastra* while the palm of the other, faces downwards which signifies the offer of total knowledge of *dharma* to one and all. The upper garment worn is a white shawl which exemplifies peace and purity and the reddish-yellow clothing (*kashaya*) up to the waist denotes renunciation. Among other ornaments, the deity wears a crown which destroys *adharma*. Behind the head, rays of light are visible which signify the name and fame of the deity, whose pleasing expression is intended to inspire pleasant thoughts. The deity's long ears can hear the woes of the people. It is to be noticed that *dharma* in the Indian tradition is broader than the concept of justice and lays greater emphasis on duties prescribed by the Vedas rather than rights." However, I

hasten to add that the Goddess of justice in Europe, particularly, in the north was depicted as being blindfolded. There is no contradiction; there is only a difference in manifestation of concept. The most beautiful description of the blindfolded Goddess of justice is to be found in Cesare Ripa's *Iconologia* of the sixteenth century. It reads:

"The personification of Justice is a blindfolded woman, robed in white and wearing a crown. She supports a pair of *scales* in her lap, with one hand. Her other hand holds a bared upright sword; and rests on a bundle of lectors' rods (*fascies*), from around which a serpent is unwinding. A dog lies at her feet. On the table are a sceptre, some *books* and a skull.

She is robed in white, for the Judge must be without moral blemish which might impair his judgement and obstruct true justice. She is *blindfolded*, for *nothing but reason, not the misleading evidence of the senses*, should be used in making judgements. She is regally dressed, for justice is the noblest and most splendid of concepts. The *scale*, used to measure quantities of material things, is a metaphor for *justice*, which sees that each man receives that which is due to him, no more and no less. The sword represents the rigour of Justice, which does not hesitate to punish. The same meaning is embodied by the lectors' rods, the Roman symbol of Judges' power to punish and even to execute. The snake and the dog represent hatred and friendship, neither of which must be allowed to influence true justice. The sceptre is a symbol of authority; *the books, of written law*, and the skull of human mortality, which justice does not suffer, for it is eternal."

I have quoted both these descriptions from a very learned research article titled as – 'The Goddess of Justice: the Constitution and the Supreme Court' authored by Shri M. Jagannadha Rao, Former Judge of the Supreme Court of India and presently, a second-term Chairman of Law Commission of India. The article is contained in the book 'Supreme but not Infallible: Essays in Honour of the Supreme Court of India' which was published in the year 2000, marking the celebration of the Golden Jubilee of the Supreme Court of India.

Never betray the trust which has been reposed and vested in you, by virtue of your having been appointed as a judge. You are a judge by option. You could not have been appointed a judge unless you had desired to seek such appointment. It is a natural urge of every human being to rise as high as he can. If you wish to earn the recognition of being a good judge – an excellent judge, it should be your inner urge to strive for excellence. On your transfer, which is a necessary incidence of service, lawyers and litigants of the place where you have served, may feel sorry about your leaving them and those at your new place of posting may welcome you with open arms. Uninfluenced by all these, your journey towards excellence, with the motto that every next day is a better opportunity for service, should continue.

I had declared the year 2005 to be the 'Year of Excellence in Judiciary'. Speaking on the Law Day, *i.e.*, 26th November, 2004, at Delhi, I had said that Excellence consists of five Is. (i) Initiative – We shall not be satisfied with doing just what is our duty. Each one of us shall exert to do better than his contemporaries or predecessors, going beyond the goal of duty and continuously strive to be better than himself; (ii) Intelligence – None of us shall feel satisfied by mediocrity, *i.e.* by just being average; (iii) Industry – Each one of us shall exert to put his competence and capability to their maximum utilization; (iv) Integrity; (v)

Inobtrusive personality, *i.e.* modesty and humility. With initiative, intelligence, industry and integrity imbibed into an inobtrusive personality, what has been achieved is just what is the basic requirement of the personality of a Judge. Such achievements should not be a reason for developing any egoistic attitude. Ego is the first enemy of learning and progress.

The way to achieve excellence is simple. Every evening, having wound-up the day, at the bed time, you must sit for five minutes exclusively and all by yourself, for introspection. Having cast a glance over all the events of the day, ask a question to yourself – Is there a thing done by you which could have been done in a better way than it was done; and the next day in the morning, make a determination, that on that day you shall exert your best to do everything, in a way better than what you are accustomed to doing. Excellence lies not necessarily in being better than others; excellence lies in being better than yourself, that is, being, every next day, better than what you have been on the previous day. This simple exercise which may not cost more than ten minutes out of your precious 24 hours of day and night, would bring wonders in your life. Try it just for 7 days and see the results for yourself.

I do not propose to tender any advice like a philosopher. As a sincere friend of yours or as an elder in the judicial family, whichever way you may like to treat me, I wish to give you a few practical tips. The twenty first century has posed several new challenges before the justice delivery system of the country. We have to prepare ourselves to meet such challenges.

A mere knowledge of law will not do. You must develop an interest in science and technology and other branches of human sciences. It is not difficult. Law itself is a science and, therefore, though a judge, we are also scientists as we have learnt the law. Globalisation, commercialisation and unprecedented advancements in the field of science and technology, have given rise to unprecedented complexity of problems, arising for judicial adjudication. You need continuing judicial education and training.

As I have said, discharge of judicial function is itself a sacred duty and, therefore, has to be religiously performed, consistently with the principles of ethics and morality. Research has made us familiar with genes, DNA, stem cells and so forth. The concept of paternity, maternity, marriage and family relationship may soon be outdated. Serious questions of confidentiality, morality and ethics are sure to arise which would be incapable of being decided by any judge who himself is not possessed of ethics and morality as an inseparable part of his personality.

We are heading towards paperless offices, bookless libraries and wireless communications. The court rooms, in which we sit today, may soon become relics of past and be consigned to museums and are sure to be replaced by electronic courtrooms. Knowledge of computers and latest advancements in information and communication technology is a must for everyone, including the judges.

Develop a hobby. The job of a judge is highly demanding and indeed strenuous. It requires concentration with long sittings. Unless you divert yourself, for a while, to games and sports or to a fine hobby, you may be rewarded by a nervous breakdown. Take care.

I am a strong defender of the independence of the subordinate judiciary. In the matter of: '*K' – A Judicial Officer*' – (2001) 3 SCC 54, I have said:—

“A Judge, entrusted with the task of administering justice, should be bold and feel fearless while acting judicially and giving expression to his views and constructing his judgment or order. It should be no deterrent to formation and expression of an honest

opinion and acting thereon, so long as it is within four-corners of law that any action taken by a subordinate judicial officer is open to scrutiny, in judicial review, before a superior forum with which its opinion may not meet approval and the superior court may upset his action or opinion. The availability of such fearlessness is essential for the maintenance of judicial independence. However, sobriety, cool, calm and poise should be reflected in every action and expression of a Judge.”

I do not appreciate the higher courts, while hearing appeals or revisions against judgments and orders of the members of subordinate judiciary, making uncalled for observations or unduly and harshly criticising judgments or orders or conduct of the subordinate judges, in their judgments. I have said:—

“The primary purpose of pronouncing a verdict is to dispose of the matter in controversy between the parties before it. A Judge is not expected to drift away from pronouncing upon the controversy, to sitting in judgment over the conduct of the judicial and quasi-judicial authorities, whose decisions or orders are put in issue before him, and indulge in criticising and commenting thereon unless the conduct of an authority or subordinate functionary or anyone else than the parties, comes of necessity under review and expression of opinion thereon, going to the extent of commenting or criticizing, becomes necessary as a part of reasoning requisite for arriving at a conclusion, necessary for deciding the main controversy or it becomes necessary to have animadverted thereon for the purpose of arriving at a decision on an issue involved in the litigation. This applies with added force when the superior court is hearing an appeal or revision against an order of a subordinate judicial officer and feels inclined to animadvert on him.

Again, derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary, for the decision of the case, to animadvert on their conduct.”

With these few words, I declare the new court building inaugurated. I hope that sitting in this court building, the members of subordinate judiciary would be able to impart quicker and speedier justice of excellent quality. The learned members of Bar who would be practising in this court must make a determination, today, that it shall be their primary duty to assist in the cause of justice and that they shall never create any obstruction therein. If the judges and members of Bar in Ichalkaranji can do this simple little thing, they can set an example before the country and I would feel that all my efforts in coming to Ichalkaranji have been amply rewarded.

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\* Speech delivered on the occasion of Inauguration of New Court Building at Ichalkaranji, Kohlapur, on 19th June, 2005.

1. Shri B.K. Mukherjea, J. in *Sarju Pershad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh*, AIR 1951 SC 120.