Tagore once said : in unfortunate India the Social fabric is being rent into shreds by unseemly outbursts of hooliganism daily growing in intensity right under the very aegis of 'law and order'.

This diagnosis appears relevant yet again today. We lawyers must wake up to fight this rowing social ill and we would ignore it not at our peril alone but to the endangerment of constitutionalism.

I have been a witness to the constant complaint of lawyers being under prepared to meet the daily challenges of the Court. This too is easier said and often by those with short memories. I do not advocate in any manner a lawyer without preparation and in this context only feel that the challenge before the Honourable Judges is even greater. While we lawyers get away with what we say, Judges have les to say and more to write. Their task is more burdensome and we lawyers fail in our constitutional task if we fail to be proper *amicus* of the Court. We must therefore equip our defence not defined our equipment.

These are a few of the challenges we have. Surely there are some others too. As I said in the beginning today is a day of celebration and it is time we returned to the spirit of gaiety.

I thank you all for bearing with these thoughts and expression and would conclude with the words of *T.S. Eliot* who said : *To purify the dialect of the Tribe,*

And urge the mind to aftersight and foresight…"

Hyderabad
Dt.15-8-2009

D.V. Sitharam Murthy
Advocate-General

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LEGAL CONSIDERATION IN APPEAL AND REVISION

By

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HYDERABAD, A.P.

The matter which deserves serious thought in the consumer redressal cases is the consideration of the point raised by the party specially when legal proposition is advanced while in the arguments or in the complaint, appeal, revision *etc. etc.*

It has been found that the forum is not considering the points raised and basing their judgments on the facts appreciated by them which may not be in consonance with the allegations in the complaint/arguments. This indifference of the forum is resulting in chaos of the judgments and therefore grievance is felt by the litigant. It is also expensive to go into the National Commission which is situated at New Delhi which is far off place from the South India and as such even they will hold the revision as not tenable in view of the concurrent finding at the District Forum and State Commission. They even fail to note the arguments and citations so produced and pass an order which is not in consonance with the points raised in the revision *etc.*, merely because there is concurrent finding of the District Forum and State Commission, they dismissed the revision in view of the concurrent findings, this means wastage of the expenditure and time too, without getting any justice. The objects and reasons of enacting Consumer Protection Act is as follows :

"To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set up at the District, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give reliefs of a specific nature and to award, wherever appropriate compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided."

This proposition is also admitted by Hon'ble National Commission Reported in 1993 (1) CPR 107 in Para 16, between *Telecom District Engineer v. Pran Nath Mahajan,* but such an efficacy is not shown in all cases and there is no reference of the points raised and the Law cited therewith.

It is noticed that in case of RP No.3057/06 reported in IV (2008) CPJ 166 (National Commission) between *Surendrabala Sanghi v. G.M. Telephones*. Point was that a Telephone bill of a non-existing number was issued to the Complainant and when these points were raised, instead of following the Mandate of the Departmental Law and the rules of the telephone department, dismissed the complaint, believing that the phone number is probably not correct and ordered the amount shown in the bill to be paid. When the facts are that the complainant had paid the earlier bills and the bill contested was said to be an amalgamated of THREE cycles and when the amount is already paid for two cycles, the strange bill for THREE cycles cannot be raised by any imagination even. This point was taken up in appeal which is not considered and the appeal was rejected in consonance with the order of the District Forum. This procedure was also adopted by the National Commission.

The important facts as per the Department Circular No.4-59/85-TR Dated 9.4.1986, the department has to take advance action on noticing sudden spurt and not hushup and brush aside the complaints with superfluous reasoning and the circular, specifically ordinance. That investigation before raising the bill and by visiting the subscriber and afterwards should be as per the rules framed, but the said circular is not followed in its correct perceptives and mandatory directions. The department comes up saying that they EXAMINED the complaint and finds no merits but to colour their scheme they claimed to have investigated without producing any evidence whatsoever of their investigation and results obtained thereof.

(a) It was held in *Department of the Telecommunications v. Patel Dayabhai Bhikubhai*, 1993 (2) CPR 436 Gujarat, that the department did not establish whether the complainant had any connection with alleged recorded phone numbers.

(b) It was *held* in *Danji Bhai K. Patel v. Union of India II*, (1993) CPJ 875 Gujarat, that on receipt of complaint with allegation of department employee having hand in Glove, department to give satisfactory evidence as lines are open which can be taped and utilized by even a petty employee of the department.

(c) It was held in Para 24 *Telecom District Manager Department of Telecommunication v. Kamaljit Kaur, Principal* reported in 2000 (1) CPR 84 NC" If the telephone was in fact being misused genuinely being used by the subscriber. This action department was required to take in terms of the instructions issued in that regard, this was not done."

(d) It was held in *Accounts Officers v. Tapan Kumar Chowdary*, reported in 1999 (1) CPR 1 Calcutta Para, "Recording the calls and the same must be accepted, *cannot be legal argument*," and also "whether the calls which have been recorded are made by the complainant and also to see whether the complainant

is connected with the numbers which have been recorded by the department."

That after filing first protest letter on 15.1.1994, the complainant must have concluded that her telephone must have been put under observation and further use would have exposed her, during the next cycle from 15.12.1993, to 15.2.1994, again during this cycle S.T.D./I.S.D. calls were recorded has not been considered.

These were vital points in the arguments, and the National Commission did not referred to the series of lacunae in investigation and upheld the State Commission's order believing on what the State Commission said is truth, when there is no truth in the said dismissal of the appeal by the State Commission. Such glaring mistake has become common in the redressal Forums and is not seriously looked by the supervisory authorities and such mistakes are emerging every day.

The National Commission also did not consider that for a bill of about for Rs.15,000/, the complainant, in order to seek justice, has spent more than the bill amount.

The loss sustained by the party due to this indifference attitude of the higher Forum is costing a lot to the aggrieved person. This requires immediate attention to safeguard the validity and sanctity of the Forum.

COMPARATIVE STUDY OF THE EMERGENCY PROVISIONS

By

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The emergency provisions corresponding to those under Article 352 are discussed in comparison with the World Constitutions *viz.*, Constitutions of UK, USA and Australia.

I. Position in England :—In England there is not much emergency powers. Though the need for extending the powers of the Government in times of emergency of the self preservation of the common wealth has been acknowledged in England.

There is a gradual flow of power from the crown to the Parliament until assumption of more powers by the Parliament. Such extraordinary (emergency/war) powers were exercised by crown.

(a) War emergency : In the ship money case the majority of the Judges of the Court of Exchequer indeed uphold the claim of the King (Charles-I) that the King was sole Judge as to the existence of an emergency and also of the steps which are needed to be taken to meet the emergency.

However this power was declared void by the long Parliament in 1641. In modern times, however the powers to the executive in UK are enlarged not by royal prerogative but by legislation by Parliament which confer discretionary powers in executive.

(b) Internal Emergency : Executive is empowered to declare by way of proclamation a state of emergency, whenever situation threatening to create internal disturbance, such as threatening life.

II. United States of America : In the US Constitution there are no such emergency provisions at the Union level of State level corresponding to those