

the territories of the other organs of the State. Even if that were to be true it was never on account of any intention on the part of the Judiciary to acquire to itself the powers which do not genuinely belong to it. In the ultimate analysis, even such rare instances have added to the Credibility of the concept of the rule of law at large and the institution of democracy. If more and more people are approaching the Courts claiming one relief or the other it is only a pointer to the reality that compared to the other organs of the State, judiciary has become easily accessible

and the hope of getting relief from it is relatively brighter.

It is for these reasons that the need to strengthen the judiciary has become more prominent. Let all of us rededicate ourselves to strengthen the judiciary and thereby the democracy of the country.

Thank you,

Thank you one and all.

Hyderabad.

Date 5-1-2006.

GOLDEN SERVICE OF THE HON'BLE HIGH COURT OF ANDHRA PRADESH TO THE CONSTITUTION

By

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The Hon'ble High Court of Andhra Pradesh after established its Court at Hyderabad as Andhra Pradesh High Court in 1956 has been rendering yeoman services to the Constitution during its Golden Jubilee Period by contributing enormously for the development of the Constitution.

The following few land mark citations which are some of the examples to show the same.

I. 1. Under Article 1(1) and Chapter XI of the Constitution where the disintegration of the state of Hyderabad and the validity of the State Reorganization Act are questioned in "*S. Srikishan v. The State of Andhra Pradesh*" reported in AIR 1957 AP 734, the Hon'ble High Court held by upholding the disintegration of the State of Hyderabad.

2. While deciding the question with regard to Local Government or Local Bodies whether they have any division of powers so

as to be a tier in the federal system by the Larger Bench of the Hon'ble High Court in "*Ranga Reddy District Sarpanches' Association and others v. Government of A.P. and others*" reported in 2004 (2) ALD 1, it was held that by introduction of 73rd and 74th amendments to the Constitution, the Local Bodies have not attained such a Constitutional status so as to attract the concept of federalism being the third tier apart from Union and States.

II. Under Articles 3, 4 and 368 of the Constitution and Andhra State Act, 1953 Section 53, the Hon'ble High Court while holding that the State Laws which were in force prior to formation of new States, the State Laws will be continued in force even after constituting separate States in "*Surya Rao v. Government of Andhra*" reported in ILR 1956 AP 448.

III. Under Article 12 of the Constitution of India the definition of the "State" has been defined as follows :

“Article 12 : In this part unless the context otherwise requires, the “STATE” includes,

- i. The Government and the Parliament of India;
- ii. The Government and the Legislature of each of the States;
- iii. All Local Authorities;
- iv. Other Authorities within the territory of India or under the control of the Government of India; and
- v. An instrumentality of a State;”

The definition of the “STATE” is defined under Article 12 of the Constitution of India for the purpose of application of the provisions contained in Part III of the Constitution.

But even though a body of persons may not constitute “STATE” within the instant definition, a writ under Article 226 of the Constitution may lie against such body or body of persons on non-Constitutional grounds or on grounds of contraventions of some provisions of the Constitution outside part III of the Constitution, where such body has a public duty to perform or where its acts are supported by the State or Public Officials.

1. In “*M.A.V. Prasada Rao v. Union of India*” reported in 1973 (2) An. WR 197 (F.B), it was held that the employees of LIC can file writ petition and the Life Insurance Corporation is a “STATE” within the meaning of Article 12.

2. In “*Vizag Port Trust Case*” reported in 1976 ALT 268 (F.B.), it was held that the Vizag Port Trust is an Authority within the meaning of Article 12 and it is amendable to writ jurisdiction.

3. In the Judgment decided in “*Y. Narender and other v. Central Bank of India*” reported in

1978 (2) ALT 48, the Division Bench held that the Central Bank of India is a “STATE” within in the meaning of Article 12 and writ of *mandamus* can be issued if proper case is made-out.

4. In “*V. Hassan Ali Khan v. Director of Higher Education, A.P. and another*” reported in 1987 ALT 378 (L.B), the Larger Bench of the Hon’ble High Court of A.P. held that, the private college registered under the Societies Registration Act and receiving substantial financial aid from Government and under the control of the Government falls within the words “Other Authorities” in Article 12.

5. In A.I.R. 1981 AP 125 (F.B), the Hon’ble High Court held in respect of “*A.P. Irrigation Development Corporation*” and “*A.P. Leather Industries Development Corporation*” though incorporated under Companies Act can be termed as Instrumentalities or Agencies of the State so as to fall within definition of “STATE”, writ can be issued to these corporations.

6. While a question arose whether writ can lie against a Co-operative Society. The Hon’ble High Court in its judgment in “*Sri. Konaseema Co-operative Central Bank Ltd. v. N. Seetha Rama Raju*” reported in AIR 1990 AP 171, the Full Bench held under Para-51 of the judgment in detail about maintainability of the writ petition against Co-operative Societies which cannot be characterized as a “STATE” or which can be characterized as a “STATE” within the meaning of Article 12 of the Constitution.

7. The same view was expressed by the Hon’ble Supreme Court in another judgment decided in “*U.P. State Co-operative Land Development Bank Ltd., v. Chandrabhan Dubey and others*”, reported in 1999 (1) SCC 741 = 1999 (1) ALD (SCSN) 20, while observing the judgment of the Hon’ble High Court of A.P. reported in AIR 1990 AP 171, at Para-26 of the Hon’ble Supreme Court judgment.

IV. Under Article 14 of the Constitution of India.

EQUALITY BEFORE LAW

1. In "*The State of Madras (Now Andhra) v. Venkata Durga Prasad Rao*" reported in AIR 1956 AP 675, the Division Bench of the Hon'ble High Court held that the classification between Officials and Ordinary Private Citizens in respect of issue of notice under Section 80 of CPC does not offend Article 14.

2. In "*Thota Pichayya v. Government of A.P.*" reported in AIR 1957 AP 136, it was held that the difference of classification to same class of persons it offends Article 14 of the Constitution.

3. While deciding the imposition of Sales Taxes on the varieties of Tobacco, the Hon'ble High Court of A.P. in "*Gorentla Buchayya Chowdary v. State of A.P.*" reported in AIR 1958 AP 294, held that the Taxation Laws must also pass test of Article 14. The same was confirmed by the Hon'ble Supreme Court on appeal in the judgment reported in AIR 1962 SC 1733.

4. While dealing with another case in respect of classification based on Ayacuts under the provisions of A.P. Land Revenue (Additional Assessment) and Cess Revision Act, 22 of 1962 as amended by Act 23 of 1963, it was held by the Division Bench of the Hon'ble High Court in "*State of A.P. v. Nalla Raja Reddy*" reported in 1965 (2) ALT 297. The view expressed by the Hon'ble High Court in the above judgment was confirmed by the Hon'ble Supreme Court in the judgment reported in AIR 1967 SC 1458.

5. While deciding the classification of local and non-local candidates held to be non-discriminatory and not violative of Article 14 which was confirmed by the Hon'ble Supreme Court in "*Dr. Fazal Ghaffoor's Case*" reported in AIR 1988 SC 2288.

V. Under Articles 15 and 16 of the Constitution of India :

1. In "*V. Narayana Rao and another v. State of A.P. and another*" reported in AIR 1987 AP 53, while dealing with the validity of the appointment of the Muralidhar Rao Commission and raising of reservation from 25% to 45%, held that the validity of G.O. Ms. No.167 dated 15-7-1986 is upheld but Clauses 13, 14, 15 and 18 of G.O. Ms. No.166 dated 15-7-1986 are struck down as violative of Articles 15 and 16.

2. Similar view was expressed by the Hon'ble Supreme Court while dealing with "*Indra Sawhney's case*" reported in AIR 1993 SC 477 at Para 94A of the judgment while referring the Full Bench judgment of the Hon'ble High Court reported in AIR 1987 AP 53.

3. While dealing with the reservation for Muslims, the Larger Bench of the Hon'ble High Court decided in "*T. Muralidhar Rao v. State of A.P. and others*" reported in 2004 (6) ALD 1, held as opposed to Articles 15(1) and 16(2) of the Constitution.

4. While dealing with the Ordinance No.13/2005 (now enacted as Act No.21/2005) issued by the Government with regard to providing 5% reservation to Muslims under BC – E category, the Larger Bench of the Hon'ble High Court in W.P. No.13832/2005 and batch, dated 7-11-2005 (reported in 2005 (6) ALD 582), struck down the Ordinance itself as illegal and Un-Constitutional being violative of Articles 15(4) and 16(4) of the Constitution. (The SLP is moved by the Government of A.P. before the Hon'ble Supreme Court and the same is pending).

5. In "*Toguru Sudhakar Reddy and others v. Government of A.P.*" reported in 1991 (3) ALT 173, while dealing with nomination of two women members to the Managing Committee of a Co-operative Society under

Section 31(1) of A.P. Co-operative Societies Act, 1964 was held valid and within the parameters of Articles 15(4) and 16(4) of the Constitution. The same was confirmed by the Hon'ble Supreme Court in the judgment reported in AIR 1994 SC 554.

VI. Under Article 19 of the Constitution of India :

PROTECTION OF CERTAIN RIGHTS
REGARDING FREEDOM OF SPEECH,
TRADE ETC.

In number of cases the Hon'ble High Court of A.P. decided cases on this issue :

Few judgments are cited below :

1. "*The Commercial Tax Officer, Hyderabad and others v. M.M. Sadiq*" reported in AIR 1960 AP 246.

2. "*K.V. Ramanaiah v. Special PP*", reported in AIR 1961 AP 190.

3. The Full Bench of the Hon'ble High Court reported AIR 1981 AP 109, while dealing with Freedom of Expression and Freedom of Press, it was held that though the G.O. Ms. No.572 G.A. (I.P.R) Dept. dated 10-8-1979 is not violative of Article 19(1)(a), but the conditions contained in clauses (iii), (v) and (vii) in the guidelines are violative of Article 14.

4. While dealing with the validity of A.P. Co-operative Societies Amendment Act, 1 of 1987 in respect of introduction of Single Window System and reorganization of Credit Societies, it was held that the Act is not violative of Articles 14 and 19(1)(c) of the Constitution reported in AIR 1989 AP 81.

VII. Under Articles 20 and 21 of the Constitution of India :

1. In "*M. Suryanarayana v. Vijaya Commercial Bank (In Liquidation)*", reported in

AIR 1958 AP 756, the Division Bench while dealing with the proceedings under Section 45-G of the Banking Companies Act, it was held that it does not include civil proceedings which might at a future date expose that person to criminal prosecution.

2. While dealing with curtailment of personal liberty *vis-à-vis* protection guaranteed under the Constitution, the Division Bench of the Hon'ble High Court made certain observations in "*Smt. P. Shyamala v. S.V. Prasad*" reported in 1993 (1) ALT 567.

3. In "*Nallapareddy Prasanna Kumar Reddy v. State of A.P.*" reported in 1994 (1) ALT 684, the Division Bench while dealing with under Article 21 held that FIR should not be quashed in every case and directions are issued to follow the guidelines mentioned by the Hon'ble Supreme Court in AIR 1979 SC 1360.

4. While dealing with assignment of lands to weaker sections, the Larger Bench of the Hon'ble High Court held that the conditions imposed in the patta are held to be violative of Articles 21, 14 and 31-A decided in "*LAO cum RDO, Chevella Division, Hyderabad and others v. Mekala Pandu and others*" reported in 2004 (2) ALD 451 (SLP filed by the Government in the Hon'ble Supreme Court and stay is granted and the said SLP is pending).

VIII. While dealing with the levy of tax on non-agricultural land under AP Non-Agricultural Land Assessment Act, two Division Bench judgments reported in AIR 1983 AP 234 and AIR 1983 AP 239, held that the land "Use" under Section 3 of the Act should be "Actually Used" for the purpose of levy of tax under the said Act. However the said view was overruled by the Full Bench of the Hon'ble High Court reported in 1993 (2) ALT 32. The Larger Bench of the Hon'ble High Court reported

in AIR 1997 AP 87 upheld the Full Bench judgment. But the Hon'ble Supreme Court in the judgment reported in 2000 (6) SCC 550, overruled the Larger Bench judgment and upheld the earlier Division Bench judgments of the Hon'ble High Court as cited supra.

IX. 1. While dealing with the disqualification of the President or Member of the Managing Committee of a Co-operative Society under Section 21-A under Rule 24(3) of AP Co-operative Societies Act, reported in AIR 1983 AP 83, the Division Bench held that the disqualification operates from the date of occurrence only but not from the date of order.

2. While dealing with the powers of the Government under the provisions of A.P. Co-operative Societies Act, 1964, the Full Bench of the Hon'ble High Court decided in "*M. Gidda Reddy v. Special Category Deputy Registrar, Kurnool and others*" reported in AIR 1977 AP 274, held that the Government cannot by issuing of G.O., to take away, curtail or enlarge Statutory Power of the Registrar.

X 1. While dealing with the validity of Rule 26 of AP Minor Mineral Concession Rules, 1966, in "*L. Venkateshwar Rao and others v. M/s. Singareni Collieries Company Ltd., and others*" reported in 1993 (3) ALT 199, the Full Bench upheld the said Rule. The same was confirmed by the Hon'ble Supreme Court by dismissing the S.L.Ps. at the admission stage in SLP No.17771 to 17781 of 1993 dated 15-3-1994.

2. While dealing with the powers of the Government exercised under Rule 35-A of AP Minor Mineral Concession Rules, 1966, the Division Bench of the Hon'ble High Court upheld the power of the Government in the judgment decided in "*Progressive Construction Ltd., Hyderabad v. Government of A.P.*" reported in 2003 (1) ALD 643. (SLP is pending)

3. While dealing with the Government powers for reservation of certain areas for quarrying/mining by the APMDC under Section 17-A(2) of Mines and Minerals (Development and Regulation) Act, 1957 in "*Government of A.P. and others v. Pallava Granite Industries and others*" reported in 2004 (2) ALD 684, the Division Bench held the same as valid. (SLP is pending).

4. While dealing with the powers of the Government under Rule 35-A of A.P. Minor Mineral Concession Rules, 1966 in "*C. Shashi Kumar v. Government of AP*" 2006 (1) ALD 653 (D.B) (W.A.No.2058/2005 dated 22-11-2005) when the Government once exercised the power of revision under Rule 35-A, whether the State Government can again exercised second revision under Rule 35-A in the same proceedings was held to be bad and it amounts to reviewing the earlier order passed under Rule 35-A of the said Rules and there is no such power to the Government to review its earlier order.

XI. *Interpretation of Statutes* : Article 246 of the Constitution of India : VII – Schedule, List – I, Entry – 45 and List – II, Entry – 32 :

1. While dealing with the powers of the Registrar of Co-operative Societies under Sections 61 and 71(1) of A.P. Co-operative Societies Act, 1964 decided in "*M. Babu Rao and others v. Deputy Registrar of Co-operative Societies/OSD Vasavi Co-operative Urban Bank Ltd., Malakpet, Hyderabad and others*" reported in 2005 (4) ALD 582, the Full Bench of the Hon'ble High Court held that Section 71(1) of the A.P. Co-operative Societies Act, 1964 is beyond the legislative competence of the State and declared invalid. It is further held that the provisions of Sections 61 and 71 are restrictively construed as excluding any jurisdiction, Powers or Authority in the Registrar in respect of recovery of debts or arrears due to a Co-operative Bank, its members or others which are advanced

lent or otherwise made over to such member or person, during the course of the Banking Business of such Co-operative Bank.

(The SLPs are filed by the respective Co-operative Banks and obtained *status-quo* orders and the said SLPs are pending).

MATRIMONIAL CRUELTY

By

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Cruelty to a woman is a global phenomena. It is the worst form of exploitation of womanhood, which is the reflection of growing social violence and injustice. This problem is growing day by day by acquiring new dimensions.

Since this offence is committed in the privacy of residential houses and in secrecy direct evidence is not easy to get that is why Legislature introduced Section 113-B to our Indian Evidence Act.

Section 498-A defines cruelty or torture by the Husband or relatives of husband of a woman subjecting her to cruelty. For the purpose of this section 'Cruelty' means—

- (a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) Harassment of woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

There should be a nexus between her death and the dowry related harassment.

The Essential Ingredients of Section 498-A:

- (1) The woman must be married
- (2) She must be subjected to cruelty
- (3) That cruelty must be subjected by her husband or relatives of her husband.

The precaution must prove the following Points to constitute an offence under Section 498-A :

- (1) The woman was subjected to cruelty or harassment either by her husband or by the relatives of her husband.
- (2) Such cruelty was committed with a view to driver her—
 - (i) to commit suicide or
 - (ii) to cause grave injury or danger to her life, limb or health, whether mental or physical
- (3) Such harassment was caused—
 - (i) With a view to coercing her or any person related to her to meet any unlawful demand or any property or valuable security.
 - (ii) On account of failure by such woman or any person related to her to meet such unlawful demand.