

Provided that, if and so often as a resolution approving the continuance in force of such a proclamation is passed by both the house of Parliament, the proclamation shall unless revoked, continue in force period of twelve months from the date on with under his sub-section it would otherwise have ceased to operate, but no such proclamation shall in any case remain in force for more than three years.

(4) If the Governor by proclamation under this section, assumes to himself any power of the provincial legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the proclamation ceases to have effect, unless sooner repealed or re enacted

by the Act of appropriate Legislature, and reference to this act, provincial laws or acts or laws of a provincial legislature shall be construed as including a reference to such a law.

(5) The functions of the Governor under this section shall be exercised by him in his discretion and no proclamation shall be made by a Governor under this section with out the concurrence of the Governor general in his discretion.

The intention of the Britishers in incorporating this section was to enable the country to maintain its federation intact, not allowing any province to secede or Act against the theme of the Act (Government of India Act) 1935. This section is a incorporated the Indian Constitution as Article 356.

My Lord Justice Smt. T. Meena Kumari and My Lords the Hon'ble Judges of this Court, Former Judges, of this Court and other distinguished guests, the Chairman, Bar Council the Public Prosecutor, Additional Advocates-General, Additional Public Prosecutors, Government Pleaders, Assistant Government Pleaders Members of the Bar, Registrar General and Registrars, Hon'ble Judges from the Civil Courts, High Court Staff, Pleaders' Clerks and friends,

I feel greatly privileged to address you on the Independence Day. I do so with a sense of awe. This is a day not just of celebration but also a day when the Bench and the Bar meet as a family under the guidance of its Karta, My Lord the Chief Justice and today its My Lord Justice *Meena Kumari* and sit together for some introspection. We may be sitting n the out but for most purposes this is an in-house meeting of the Judicial family. Out sitting in the open is a message of our transparency and accountability. I would begin wishing each one of you present here and the larger fraternity a very happy Independence Day.

We have travelled a distance in the past 63 years. From Jai Hind to Jai Ho is a move we have made, some times consciously, some times with the tide, some times designed by the Will of the Unknown and some times with he benedictions of the Almighty. As a nation there can be no doubt that we have not only made major achievements but have also left an impression in the global scenario. Like it or deny it, we are a global force to reckon with and this brings with it tremendous responsibility.

One major success for India has been her commitment to Democracy and the Rule of

Law. While many nations born in the trauma of the World War have bid good bye to a Constitutional form of governance, we have demonstrated a steadfast commitment to the form. This is a day when we must re-energise the dedication to the content of that form. There can be no gain saying that we the collective are as responsible as any other branch in the governance of the country and in the execution of the Constitution.

“Judgment” is formal declaration of rights and not about *whims* and *fancies*. It is about understanding and perceiving. The training your Lordships have in understanding and perceiving human want, misery and above all needs, makes you the Honourable men you are.

You have ever so often corrected us, chided us, encouraged us and played the healthy big brother. We are glad for that. We are also aware of the challenges we collectively face in dealing with the challenge of numbers. I would recall the words of Chief Justice *Warren Burger* of the American Supreme Court who said : We all crave speedier judicial processes but when Judges are pressured as in these cases, the result is a parody of the judicial function. This has relevance to us also.

To be doubtful of ones wit and wisdom is a step not so much in humility as in understanding our limitations. An assumption of our capacity is the route, angels fear to tread. *Pandit Jawaharlal Nehru* once said : There are too many questions that fill the mind and for which there appear to be no adequate answers, or if the answers are there, somehow they cannot be implemented because of the human beings that should implement them.

This humbling expression is from a great visionary and is a reminder to many of us advocates in special, who believe we have an answer to very challenge and a challenge to every action. To understand our limitation is an extension of the concept of Due Process.

The legal fraternity, and the lawyers in particular need to understand that we have along with the world walked into the October of the first decade of a new millennium. Midnight children will soon fade and surely the new order will take their place. When we do so, we must not only do it with a sense of responsibility but also with a sense of humility. In 1947, we spoke of India being an agricultural economy. Today we talk of our Silicon Valley; we talk of our proud software engineers and world famous doctors. The time to talk of our great lawyers is also due.

While we have great respect for learning from any where, I come with the conviction that many among us are very learned and have not got the due recognition that they deserve. The system must correct itself. A system that does not place a price on talent is bound to rush towards mediocrity.

Alvin Toffler said : In a revolutionary period however, all sorts of strange flora and fauna appear – atavists, eccentrics, public hounds, saints and crooks, along with visionaries and genuine visionaries. From a understanding of his theory now established, proven and accepted, it is clear that denial of rights is a refusal of sharing power. Those who wield power have come to understand that it is safest to share power. Democracy is all about limitations in power and understanding that, in the exercise of power.

I stand as the first member of the Bar with limited understanding and tremendous responsibility. The fraternity of lawyers needs to understand that modern India and the shrinking globe, demand knowledge far beyond our limited horizons. Added to the demand for knowledge and the glamour for success, we are also going through a civilizational crises. We as responsible citizen must spare a thought to the growing violence in our midst. Urban life is becoming increasingly unsafe. We from the profession must do our best to help law agencies enforce the law.

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.

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While we lawyers get away with what we say, Judges have less 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 *amici* 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..."

D.V. Sitharam Murthy
Advocate-General

LEGAL CONSIDERATION IN APPEAL AND REVISION

By

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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 :