

P. Sayyaji Rao and *Sri Sreemannarayana* of Protocol Section, *Sri Ramakrishna*, *Sri P.S. Somayajulu*, Section Officers of J. Special Section and *Sri V.C.Kantha Reddy* and *Sri P.Vijaya Bhaskar* of J. Special Section, *Sri Sivanarayana*, Overseer and *Sri Sreeramulu*, Assistant Overseer. I am also thankful to my personal attenders deputed at my bungalow *Sri D. Santosh Kumar*, *Sri Karunakar*, *Sri Devi Ram*, *Sri Umakanth Dash* and *Smt. Krupavathi* and the attenders of my chambers *Sri B. Mallesh* and *Mr.Baig* and *Mr. Rama Rao*, I am also

thankful to *Mr.Sabeer*, former driver and *Mr. M. Nazeeruddin*, present driver who never hesitated to attend on me even at odd hours. Once again, I thank you to the Members of the Bar for their unstinted co-operation and affection showered on me as a Judge.

Thanking you,

Justice *Vaman Rao*

Date: 27-4-2001

REMINISCENCE OF A JUDICIAL OFFICER

By

—**K.M. NAGABHUSHAN RAO,**

Principal District and Sessions Judge,
Rajahmundry, East Godavari Dist.

Long long ago Greek Goddess of Justice described the Court as that incorruptible, majestic and the protector of the land. This majesty is added with the divinity as per the recent decision of our Supreme Court in “All India Judges Case” wherein it was held that the Judges are discharging divine functions.

This was the same sentiment that was expressed by *Thomus Aquinas* when he said more than 100 years ago that law is nothing but dictate of God. This postulation was then criticized as orthodoxical and fundamentalistic by liberal jurists. But the concept can be traced to the days of monarchical system when the king was considered as God — “*Na Vishnu Prithvipathi*” leading to the maxim “*Nullum Tempes Rege*” and we have the popular saying that king can do no wrong. Thus divinity not only then but also now is inbuilt in the judicial institutions.

Then came *Dr.Hens Kelsen* who propounded that law is the power of the

people and the people giving this power to be discharged by certain persons called Judges. Though he was criticised by Benthamites as radical and extreme, are we far away from him when we look into the preamble of our Constitution? It is “we the people” who gave ourselves the Constitution under which we are ruled.

When the concept of law was shuttling between the orthodox and modern interpretations *Dr. Hart* came on to the scene and postulated that law is nothing but judicious umpiring of a fair game between parties.

Yes, most of our recent decisions on fundamental rights especially Article 14, 19 and by now the omnipotent Article 21 stipulating equal and reasonable opportunities, principle of natural justice, fair play *etc.* stand testimony to the postulations of *Dr. Hart*.

In the present day democratic systems the umpiring has become more indispensable than what *Dr.Hart* would have contemplated,

as interaction between the people and the people and between the people and the Governmental agencies had become enormous and more frequent.

Golaknath is a telling tale on this umpiring. It rewrote what was the law in *Kameswari Persad* and the later case of *Kesavanand Bharathi* strictly speaking is not a negation of *Golaknath* ruling, but according to some legal pundits the Ratio of *Kesavanand Bharathi* is supplemental to or clarificatory of *Golaknath* when we consider that fundamental rights emanate from fundamental features. We must not forget that the geographical definition of the country in the first part and its citizenary in the second part are immediately followed by the fundamental rights in third part of the Constitution but not the President nor Parliamentary System in the scheme of the chapters.

The necessity of onerous responsibility of the Courts as umpires is aptly summarised by the Supreme Court in *Bihar Legal Support Society v. Chief Justice of India*, AIR 1987 SC 38 when the Constitution Bench held, (I quote) "In fact this Court always regarded the poor and the disadvantaged as entitled to preferential consideration than the rich and affluent, the businessmen and the industrialists. The reason is that the weaker sections of Indian humanity have been deprived of justice for long long years; they have had no access to justice on account of their poverty, ignorance and illiteracy. They are not aware of the rights and benefits conferred upon them by the Constitution and law; the majority of the people of our country are subjected to this denial of access to justice This Court has always, therefore regarded as its duty to the rescue of those deprived and vulnerable sections of Indian humanity in order to help them realise their economic and social entitlements and to bring to an end their oppression and exploitation — This Court has always shown the interest, concern and anxiety for the welfare of the people in the country who are

living a life of want and destitution, misery and suffering and has become a symbol of the hopes and aspirations of millions of the people in the country (unquote)."

This is not a ruling, this is a statement of hearsh reality. This is not a statement alone; it is a mandate which the present day Judicial Officer is bound to discharge simultaneously with the discharge of his divine duties.

There is a malady, there is a misery and there is an injury; the malady is more widespread, the misery all pervasive and the injury far deeper; the malady that comes from, the misery that arises out of and the injury that is caused due to the economic mal-adjustments between the people and the people and now the game is seriously played and the umpiring is becoming day by day tedious.

Let us go to the days when the umpiring was very limited and some times minimal. The system that was obtaining during the rule of Kalinga Kings from 460 A.D. to 1410 A.D. is akin to the present Alternative Disputes Resolution, which every one in the globalised society is looking to. The Jalumuru is a village in srikakulam District forming part of Kalinga Kingdom headquartered at Sri *Mukhalingam*, another temple village in Srikakulam District. Jalumuru Copper plate of Anantha Varma Chodaganga describe a well devolpeded system of arbitration in which both the contesting parties choose their own Arbitrators presided over by a seasoned-head of a neighbouring village whose decision is final.

The system of Judiciary in Kalinga like is any place was "Dharma". The Raj guru used to be "Dharmadhikari". "Talahari" or later popularly called "Talavari" was his subordinate and the "Kava hara Dandapasi" was the police chief and the village munsif. "Kava hara Dandapasi" means a person with

a pair of Ropes and Danda *i.e.*, a stick. The present day hand-cups and police latties are the successors of the "Pasa and Danda". You are well aware that the "Talavari" has become the present day "Talayari", the village servant in Coastal Andhra and the "Dandapasi" has become a caste called as "Dandasi" at item 18 part 1 of schedule under Presidential Order, 1950 and still existing in North Coastal Andhra Pradesh discharging the inferior duties of Dharma. If we go a little deeper into the past, the 12 years punishment of Vanavasa (transportation to forest) of Ramayana and Mahabharatha can be reflected in the present day limitation of 12 years to claim title over the immovable property or to establish title by adverse possession. The intention of Kaikeyi in Ramayana and that of *Sakuni* and *Duryothana* in Mahabharath are the same as the present day arguments on these aspects. The ancient agriculturist is not ignorant of what was held by the House of Lords in *Ashby v. White nor the maxim, "Ubi Jus ibi remedium"*.

Not only Dharma but also the nomenclatures are still continuing. For

example the Adalat is derived from the Sadar Dewani Adalats and Sadar Fouzdari Adalats which were Company Courts until 1857 in South India. In North, the criminal Courts were called as Sadar Nizamate Adalat. The infrastructure of a Court was surprisingly lavish in those days. The Civil Judicial Consultation Papers dated 4-3-1802 described the Court room at Madras as having 3 new teak benches for the Judges, mahogany desks, 1 large table covered with green cloth, 1 teak platform, 4 teak long seats, 6 mahogany chairs and 18 sisso chairs and after 200 years, the infrastructure and the facilities in the present day Courts are not a matter to be proud of.

We have come a long way in point of time. We have changed few nomenclatures, we have changed our laws including our Constitution number of times, but we have not changed the main thread of Dharma nor did we change in our attitude to the concept of Dharma. While reminiscing our past, we must understand that the people expect too much from our Judicial Institutions, where as we could give too little!

A CRITICAL VIEW OF CONSUMER PROTECTION (AMENDMENT) BILL, 2001

By

—Sri Justice P. RAMAKRISHNAM RAJU,

President, A.P. State Commission,
Hyderabad

—Sri Y. VENKATESWARA RAO,

President, District Forum-II,
Hyderabad

1. The Consumer Protection Act, 1986 is a landmark legislation enacted in Indian to further promote the interests of the consumers. With its vast potential it awakened Indian consumer and opened up new horizons of hope and relief,

revolutionising the consumer movement in the country. The experience of the past 14 years shows its tremendous success in invigorating the consumer movement and in protecting the consumers.