

The Hon'ble Supreme Court in the case of *Mardia Chemicals Ltd. v. Union of India*, 2004 (17) AIC P.35 (SC), has upheld the validity of the Act and its provisions except sub-section (2) of Section 17 of the Act, which was declared as *ultra vires* of Article 14 of the Indian Constitution.

***Necessity to confer at least appellate jurisdiction on the District Courts:***

How many litigant public/aggrieved parties are in affordable position to approach the Debts Recovery Tribunals? One side the State is campaigning for the need of justice to the doors of the litigant public and on the other hand justice is like a sore grape to the needy people especially for the poor litigant people.

As per Section 17 of the Act appeal

from the measures taken by the secured creditor under Section 13(4) lies to the Debts Recovery Tribunals in all the States except the State of Jammu and Kashmir. Whereas Section 17-A of the Act confers appellate jurisdiction on the District Courts in the State of Jammu and Kashmir, from the measures taken under Section 13(4). Whatever the reason behind this *i.e.*, conferring appellate jurisdiction on District Courts in the State of Jammu and Kashmir by way of Section 17-A, the need for the same in other States is also to be considered so as to render justice to the litigant public/needy people. And it is also the voice of the people, though the Act is passed to strengthen the Indian economy, the Act suffers with lack of effective implementation, more particularly in case of wealthy people (Best example King Fisher Managing Director Mr. *Vijay Mahya*).

## INDEPENDENCE OF JUDICIARY

By

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If a citizen commits civil wrong or a crime he/she is liable for punishment according to law in our democratic country, if a Judge commits intentional violation of law or convention there is no law to decide this adjudication! Is a Judge above law, does it not lead to Constitutional turmoil?. The expression of four Senior Judges in Top Court addressing to the nation seriously; calls for a debate on this issue, it is not a lenient issue and a law is to be introduced to check errant Judges, failing which it may lead to tyranny which is not the purport of the Constitution of India.

Freedom of Speech is enshrined in Constitution of India under Article 19 of the Constitution, which runs as follows :

Protection of certain rights regarding freedom of speech etc.

- (1) All citizens have the right
  - (a) to freedom of speech and expression;
  - (b) to assemble peaceably and without arms
  - (c) to inform associations or unions;
  - (d) to move freely in any part of the territory of India;
  - (e) to reside and settle in any part of India;
  - (f) omitted
  - (g) to practice any profession, or to carry on any occupation, trade or business and so on.

No restriction is imposed to express legitimate feelings without causing contemptuous words is the true intention here. It is laid down in (2) of Article 19.

The pain in the heart of a man is to be visualised while making any comment on press conference of Judges, the dignity of human being is reflected in fundamental freedom of our Constitution, nobody is a boss and nobody is a servant is the voice of younger generation in our country. Decentralisation of powers in allotment of important works will dilute many disputes. Emergency in judiciary cannot be viewed anywhere in Constitution, but to the seldom thinking this situation is more or less indicates it, which is a dangerous desperation. Many eye brows raised surprisingly on the allegation of Top Court Judges that the CJI is allotting cases selectively to junior benches while ignoring the conventions and without any rational basis.

Independence of Judiciary is a distinguished feature of our Constitution. This biggest democratic country is being governed by three organs constitutionally since we got independence. Nobody is supreme except The Constitution of India which is a guiding factor lawfully, in resolving the disputes, if any took place among these three basic constitutional stepping stones. Law needs to be interpreted but need not be adjectively emphasized. Outdated legislations need to be repealed. The duty of parliament is to make law and the duty of judiciary is to interpret it but not to define it.

*An Act can be struck down by*

Constitutional Courts after testing it on the touch stone of Fundamental Rights and Directive principles enshrined in Constitution of India. But it should be done in rare occasions only for the welfare of citizens, since it is the basic principle of a democratic company. Law on reservations, Appointment of Judges, Law on Talaq, and Uniform Civil

Code *etc.*, are sensitive subjects to be dealt with Constitutional maturity but not with views.

The concept separation of powers theory is imbibed basing on the theory of Montesque, a great Greek Philosopher and social scientist. They are 1. Legislature, 2. Executive, 3. Judiciary. This is propounded by Montesque to avoid supremacy of any one of the institutions for decentralization of power. It is well known fact that Top Court Judges are appointed by the executive in New Zealand, Australia, Britain and in USA. But in our country Top Court Judges are appointed by the President of India, earlier until .....years. But this was changed after the judgment of S.C. of India in All Indian Judges Association's case.

Controversy trigged there on and since then Parliament is trying to change the system by making preparation to get the importance of the Executive in selection of Constitutional Judges. Around 1997 a bill was prepared to make clarification on Article 124 of the Constitution of India, to give clarity on the meaning of in consultation with the Chief Justice of India means not with the consent of the CJI, due to uproar and hue and cry it was not moved for discussion and the dispute is temporarily resolved, what constitutional experts opined. This is the origin of this stalemate of tussle between Parliament and Judiciary claiming supremacy on each other which creates constitutional jeopardy.

Prior to that in *Supreme Court Advocates on record v. Union of India* case reported in All India Reporter of India, 1994 SC 268, it was held by The Supreme Court of India that the meaning of in consultation means to get the consent of Chief Justice of India. His Lordships Justice *Ratnavel Pandian* compared the power of CJI with that of POPE enjoying accelesiastical and temporal importance. It is a holy duty since it is for the welfare of Nation, serious commitment is articulated in this judgment. So many

constitutional rifts took place since then. What is needed is self introspectionism of both Parliament and Supreme Court of India to mitigate this misunderstanding. Accountability of a Judge and Parliamentarian is also essential in view of changing Socio, Economic and Religious conditions.

Time changes many things suiting the present prevalent socio, economic and religious condition of this country and it is time to introspect and implement the judgment in true letter and spirit of Law by Judges while selecting Judges to Constitutional Court since there is no accountability to Judges in our Constitution. What will be the advantage to the Nation if the appointment of Judges power is taken by the Executive or the Parliament is to be discussed now. Transparency in appointment of Judges is also necessary.

Whether the procedure for elections to the Houses, appointment of Executive and appointment of Cabinet Ministers and P.M. or C.M. in States has changed to suit the present trend and problems. It appears a close study of the Political News that there is no drastic or normal change in these procedures! Then what is the reason for curiosity in respect of diluting the power of Chief Justice of India in respect of

appointment of Judges is to be studied meticulously by our Law Makers, who don't have basic knowledge on the Constitution of India.

Involvement of prominent politicians in huge scams and economic offences has increased alarmingly in our country, what we need is to increase the number of Judges without delay for timely disposal of cases. This will help to maintain law and order properly. The ratio of Judges in India is very lesser than other countries. How backward we are; in providing speedy justice enshrined in the Constitution to citizens. Similarly the Top Court has to self introspect itself in discharging its Constitutional duties for transparency and to clarify the doubt in the mind of parliament *i.e.*, some thing is going contrary to the Constitution of India.

Here I would like to assert that nothing is wrong in Constitution of India; except drastic deterioration and changing the thoughts of individuals holding the charge powers in all the institutions. The colonial impact on our country is to be discarded and some changes are required to be done, it is advisable to form a team from parliament, judiciary and Executive for having a open discussion on these constitutional remedies to indicate about the integrity of the Nation.

## LOK ADALAT AND PERMANENT LOK ADALAT – DISTINCTION

*By*

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The object of the Legal Services Authorities Act, 1987 is to provide free and competent legal services to the weaker sections of the society apart from promoting legal awareness among the public by organising legal awareness camps and to

settle the disputes in respect of cases pending before Courts and also pre-litigative matters, in the sense that disputes which are not brought before any Court, by way of conciliation or compromise or settlement. Under the above Central enactment, National