

Lordship's notice, the Judgment of His Lordship Justice Sri N.V. Ramana would have been otherwise.

Binding Effect on Lower Courts

The following is the position of the judgment of His Lordship Justice N.V. Ramana of A.P. High Court.

Subsequent judgment has to be relied upon by the lower Courts, (provide it is not judgment *per incuriam*). If the judgment of a particular state is judgment *Per Incuriam* that that case, even the judgment of High Courts of the same state do not bind the lower Courts. A bench can over rule the judgment passed by a Single Judge. If a bench of equal size passes another judgment subsequently, if the judgment clarifies some of the ambiguities, it becomes binding on the lower Courts in preference to the first judgment. A judgment

of a Larger Bench for example a judgment of Full Bench or Full Bench becomes binding over the judgment passed by bench of two judges.

Conclusion

In view of the judgment of the Apex Court referred to above, the judgment of His lordship Mr. Justice N.V. Ramana reported in 2006 (3) ALD 250 cannot be considered to good law and in this connection it is relevant to quote a ruling of A.P. High Court Division Bench reported in 1992 (3) ALT at Page 715 in which the Hon'ble High Court held that decision of any Court in conflict with the decision of Supreme Court is not est. and without jurisdiction.

From the above, it follows that the judgment of His Lordship Mr. Justice N.V. Ramana needs immediate review.

PRINCIPLE OF INDEPENDENCE OF JUDICIARY UNDER THE INDIAN CONSTITUTION

By

—B. RAMAIAH, B.A., LL.M.
V.V. Palem Post,
Khammam Urban District, A.P.

Introduction :

At the outset, it is to be noted that only an impartial and independent Judiciary can stand as a bulwark for the protection of the rights of the individual and mete out even-handed justice without fear or favour. By independence of the Judiciary is meant that there shall be no interference in the Judicial functions of the judges by the Government or the executives authorities under it. The Judges are free to arrive at their decision regardless of administrative policies or the political philosophies of the party in power.

An independent judiciary is an indispensable requisite of a free society under the principles of rule of law. The Judiciary is not subservient to the Government on the one hand nor to the people on the other. The judiciary stands above the popular frenzy and the Governmental might. As the legislature represent the will of the sovereign people, the Judiciary represents the conscience of the sovereign people. Independence of the Judges has now come to be accepted as an essential trait of free democratic society.

Importance of the Independence of Judiciary :

The Existence of a fearless and independent judiciary can be said to be the very basic foundations of the constitutional structure in India. The independence of Judiciary is linked with the concept of human rights and civil liberties which has been evolved through the years as an essential concomitant of civilized existence.¹

Liberty, Democracy and the Rule of Law are the most important indices of a free and civilized society which depends upon the existence of independent Courts, Independence of judiciary postulates freedom from bias and prejudice. Justice, according to this principle, should be administered by Judges who are independent and not affected in any way by the personality of the litigants or other extraneous considerations. Judicial review is one of the essential attributes of an impartial and independent judiciary.

The independence of judiciary is the most vital and indispensable condition for keeping alive and meaningful the rights enshrined in the Constitution. The judiciary interprets the Constitution and Act as its guardian by keeping all authorities – legislative, executive, administrative. Judicial and quasi-judicials within their legal bounds.²

It is indeed difficult to visible a truly democratic state which does not provide for the independence of judiciary.

Justice *B.P. Sinha* the then chief justice of India while addressing the lawyers of the Khanapur bar at ceremonial function in July 1963 stressed the importance of an independent judiciary. The learned Judge states that the democracy cannot exist with out justice, cannot exist with out an independent judiciary and there can be no independent judiciary with out a fearless lawyer. According to

Justice *B.P. Sinha* ensure the independence of judges there must also be an independent bar.

The international commission of jurist have over the years given anxious consideration to the question of rule of law and the independence of judiciary at an assembly of jurists from 48 countries Athens (Greece) in 1955 it was declared.

Independence of Judiciary under the India Constitution :

A Noble feature of the Indian Constitution is that it accords a dignified and crucial position to the judiciary India. The Supreme Court of India, the High Courts the lower Courts constitute a single unified judiciary having jurisdiction over all cases arising under any law whether enacted by the parliament or a state legislature. To enable the Supreme Court and the High Court to discharge their functions impartially with out fear or favour the constitution contains provisions to safeguard judiciary independence.

The independence of judiciary is guaranteed by the Constitutions which enacts that every judge of the Supreme Court will hold office until he attains the age of 65 years and that every judge of the High Court until the age of 62 years Articles 124 and 217 respectively. This is to be distinguished from what is called 'pleasure tenure' in the case of civil services, where a civil servant holds office during the pleasure of the President/Governor as the case may be – Art.310 the parliament is authorized to prescribe the privileges, allowance, leave and pension of the judges of the Supreme Court, subject to the safeguard that these cannot be varied during the course of tenure of the judges to their disadvantages.³

The procedure prescribed for the appointment of Judges also ensures the judicial

1. H.R. Khanna Judiciary in India and judicial process (Calcutta, SC Sarkar and Sons, Pvt. Ltd. 1985).

2. Dr. J.N. Pandey – Constitutional Law of India.

3. See, Article 125(2) and the proviso, after Constitution of India

independence under the Constitution. A Judge of the Supreme Court (other than the Chief Justice) is appointed by the President in consultation with the Chief Justice of India and such of the Judges of the Supreme Court and the High Courts as he may deem necessary⁴. The High Court Judges are appointed by the President after consulting the Chief Justice of India, the Governor of the State, and the Chief Justice of the High Court concerned⁵. Appointment of District Judges in a State is made by the Governor in consultation with the High Court⁶.

The Continuity of tenure of the Judges of the Supreme Court and the High Court upto the prescribed age is protected by the Constitutional provisions that no such judge shall be removed from his office by the President except upon the presentation to him of an address by each House of Parliament for such removal on the ground of proved misbehavior or incapacity⁷.

The Constitution insulates the Supreme Court and the High Courts from political criticism, and thus ensures their independence from political pressures and influence, by laying down that neither in Parliament nor in a State Legislature the conduct of a Supreme Court/High Court Judge, in the discharge of his duties, can be discussed⁸. The Supreme Court's expenses are charged upon the consolidated fund of India, which means that this item is non-votable in the Parliament although a discussion on it is not ruled out⁹. Making supply of money to the Supreme Court independent of Parliamentary vote is a great step in ensuring the Supreme Court's independence from political pressures.

The independence of judiciary is vouchsafed also by the contempt of Court. Thus the Supreme Court is a Court of record and has all the powers of such a Court including the power to punish for its contempt¹⁰. A "Court of record" is a Court the records of which are admitted to be of evidentiary value and are not to be questioned when produced before any Court. Similar powers were conferred on the High Courts under Art. 215 of the Constitution. In addition to this, the Contempt of Courts Act, 1971, also contains provisions dealing with the powers of Courts to punish for contempt of Courts.

Conclusion :

The significance of the freedom of the judiciary from the executive control was fully appreciated by the framers of the Constitution and consequently, a constitutional directive was provided in Art. 50 to effect separation of the Judiciary from the Executive. A reasonable security of tenure has been provided to the Judges of the Supreme Court and the High Courts which is an important condition to enable them to act in an atmosphere of independence. The Courts have been reasonably immunized from the stresses and strains of contemporary politics in the Court.

Dr. B.B. Ambedkar was perhaps the greatest apostle in the Assembly of what he described as 'one single integrated judiciary having jurisdiction and providing remedies in all cases arising under the constitutional law, the civil law or the criminal law. For Dr. B.R. Ambedkar, such a judicial system, and uniformity of law were 'essential to maintain the uniformity of the Country'.

The principle of judicial independence does not mean that independence should be absolute entitling a judge to act in an entirely arbitrary

4. Article 124(2)

5. Article 217(1)

6. See Article 233

7. See for details of procedure, Article 124(g) Article 217(1)(b)

8. See, Articles 121 and 211.

9. See, Article 112(3)(d) and 146(3)

10. See Art. 129 and 142(2) "A Court of record" is a Court the records of which are admitted to be of evidentiary value and are not to be questioned when produced before any Court.

manner. The primary duty of the judges is to uphold the constitution and the laws without fear or favours and in doing so they cannot allow political ideology or economic theory which may have caught their fancy to colour

the decision. The main emphasis is that the principle of judicial independence is not to be raised to the level of a dogma so as to enable the judiciary to function as a kind of super – Legislature or Super – Executive.

DIMENSIONS IN RIGHT TO PRIVACY

By

—N. SUDARSHAN, M.Sc., L.L.M. (Ph.D)

Assistant Professor in Law,
Pendekanti Law College,
Hyderabad, A.P.

Privacy has been an integral and an alienable part of human beings since long. Privacy is intricately connected with a man's dignity and liberty. Right to Privacy assumed much significance today with the advent of internet, gene banks, Business process outsourcing *etc.* The concern for the right to privacy is also felt these days in the context of large-scale anti-terrorist enactments that are allegedly infringing the privacy interests of the innocent individuals. Though, it is a legally protected human right, very often, this is violated very casually, often without the knowledge and consent of the victim. Many of the modern man's activities are intensively associated with internet in the present day global village. Now our personal information is not just confined to traditional desks but is connected to internet system largely spread throughout the world on account of its vast network, thus exposing the private life to the public domain.

The basic philosophy of the right to privacy enunciates that every person has right to enjoy privacy pertaining to one's person, property, place, information *etc.* its infringement by anybody is not justifiable, unless warranted by law and is inevitable in the larger interests of the society. Any disturbance to this privacy by anybody including the Government, without any valid justification strictly is

prohibited unless warranted by law. If interference is inevitable, due observance of certain norms and proper care is a must while doing so. In other words, a harmonious balance has to be maintained between the right to privacy of an individual and larger interests of the society, minimizing the friction to the possible extent between these two conflicting interests.

Origin and evolution of Right to Privacy

The United States of America is considered to be the motherland of right to privacy. The concept of privacy was discussed for the first time by *Warren* and *Brandy* in his article published in famous *Harvard Law Review* in the year 1890. "*Plessy versus Fergusson* (1896)" and "*Paolo Pavesich versus New England Mutual Life Insurance Company* (1905)" were the popular and pioneering cases in the USA representing the nascent stage of right to privacy.

In earlier days, the right to privacy was perceived in a very narrower sense and was thought to have included the 'right to be left alone'. Now with the increased awareness levels of the people living in the contemporary matured democratic systems and experience with the unprecedented scientific advancements of science and technology has further widened its scope to a great extent. As such, now the