Women on their own are climbing the ladder of progress though slowly but surely and positively and steadily. But Men also are not far behind to curb their progress whenever they are vested with discretionary power. In the designation of Senior Advocates of well-established Law Practitioners very few in some High Court and in some High Courts none of the Lady Advocates were designated as Senior Advocates. Is it not squarely a Gender Bias and Gender discrimination ?

To sum up the ornamental words used to decorate our Constitution it is time we looked into how to remove decoration of the words which are sheer ornamental and enforce Equality, Fraternity and Liberty with the accepted norms with full force by giving result oriental dressing to Equality, Fraternity and Liberty.

TOWARDS A FINAL COURT THAT IS TRULY SUPREME

By
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Sri Justice *Markandey Katju*, Judge, Supreme Court of India has recently expressed his concern at the wide range of the jurisdiction of the Supreme Court of India which is clogging its docket and also indirectly affecting the quality of the Court's output. Sri *K.K. Venugopal*, a doyen of the Bar has also expressed his grave concern and articulated the imperative need to curtail its wide jurisdiction and confine it to a set of core issues. Having been at the Bar for more than 50 years, and having been associated with the Bar Council of India for 15 long years and 4 years as its Chairman at various venues and different conferences, I have been espousing the need for having a fresh look at the extraordinary wide jurisdiction of the Supreme Court converting it into a Last Court of Appeal in a large variety of cases. I am happy that my concern expressed in various fora is being addressed by those that matter.

Before adverting to the Constitutional provisions under Chapter IV of the Constitution of India which confer perhaps the widest and largest jurisdiction to any final Court in any country; it is necessary to emphasize that the precious time of the Court should not be spent on a variety of matters under various enactments that ultimately in their sojourn from the lowest Courts of the land culminate in a final challenge in the highest Court of the land. In most of the enactments, there are appeals and revisions, inter-Court appeals and intra-Court appeals and the Suitor/ Litigant has enough opportunity to get justice instead of knocking at the door of the Supreme Court in every kind of dispute. To justify the case for revisiting the jurisdiction of the Supreme Court, one has to examine how matters of no great consequence go right upto the Supreme Court for adjudication. Several States have rent and eviction control laws and land tenancy laws. Appeals are provided from the Court of institution to the Senior Civil Judge or a District Court or a Revenue Court and from there, a revision to the High Court and from there, the matters are carried to the Supreme Court. After all, in a landlord tenant case covered by the rent control legislation, the issues involved lie within a narrow compass. Often the case is whether the tenant has committed wilful default in the payment of rent or the owner requires the premises for personal occupation and

generally procedure is not elaborate and in several matters, the tenant wants to hang on to the premises and takes it right upto the Supreme Court. The area of controversy is limited, the law is well settled and it does not require the attention of the highest Court of the land to decide such routine disputes. But nevertheless we find that appeals are filed and we notice that the Supreme Court adjudicates on the issue and law journals report these judgments of the Supreme Court where no great proposition of law requiring the attention of the Supreme Court is laid down. Another such instance is motor accident tribunal cases. On account of economic growth and the enormous increase in road traffic, there is a phenomenal increase in motor accidents and whether it is physical injury or death, the law is settled and the principles of determining the quantum of compensation are also well settled. Yet we find that such inconsequential matters go right upto the Supreme Court. Even in labour matters, and industrial disputes, where the area of controversy is extremely limited and the law is settled by a catena of decisions, still we find that such disputes gain entrance into the Supreme Court utilizing what can be called loosely "an open door jurisdiction". Another case in point is the number of land acquisition disputes where the only issue involved is the market value of the land acquired to be paid towards compensation. The Act has been on the statute book right from 1894 and the Privy Council earlier and the Supreme Court later over the last 100 years have settled the law as to how the market value of land has to be fixed and even the law relating to various amendment brought in this law have also been settled and still, we find such matters gain entry into the Supreme Court of India. One other area of concern is Arbitration which is now a growing and fertile field of litigation for lawyers. Right from 1923 when the Privy Council in *Champsey Bara and Co. v. Jiva Raj Balloo and Weaving Co. Ltd.*, AIR 1923 PC 66, laid down the law; there is no single dissenting note and that is that the Arbitrator is the Judge of the choice of the parties and good or bad, his decision is final and even though the Arbitration Act of 1940 has been exiled by the 1996 Arbitration and Conciliation Act; even 14 years thereafter, we find that each year there are not less than 100 cases of the Supreme Court of India reported in Law Journals. Adding to the burden of the Court is the issue relating to the appointment of an Arbitrator under Section 11(6) of the Act and a large number of appeals are filed in the Supreme Court. Each year since 2000, a large number of cases are reported, where no new issues of law are decided and cases galore are taken up and reported. Public Interest Litigation is a great innovation but it is not the cure for all ills and relaxation of the concept of "standing" (*locus standi*) is a bold initiative but the new frontiers opened up by a creative and proactive final Court should be judiciously used so as not to be an albatross on the Court. Sometimes, what can be loosely called the flip-flop of the Court results in confusion when the law is not made certain. For instance, the issue relating to the power of the Arbitrator to grant interest took four years to be finally settled and also dispute whether the order of appointment of an Arbitrator is an administrative order or a judicial order took 3 years to be resolved finally. This is being highlighted not because it relates to the main issue that is raised, namely, the plurality of appeals and the wide jurisdiction of the Court but the confusion that is created sometimes by inconsistent views which lead to more cases coming to the Court. In consumer disputes, no principle of great legal adjudication is required. Yet we find to such matters the hospitable doors of the Supreme Court are open. The service law under the Constitution is more or less settled and Tribunals have been constituted; yet such matters are taken up by the Supreme Court. This is not meant to be a criticism of the final Court but it will be a fair comment to say that it is a self imposed burden on

what can be called 'India's High Temple of Justice' – the Supreme Court of India. Be that as it may, the magnificent edifice which symbolizes the scales of justice being held even requires more important matters to be weighed. Every new legislation hastily brought about without studying its impact on Court's burden opens the floodgates of litigation and becomes the gateway to the Supreme Court of India. Divorce and matrimonial disputes are also being taken to the Supreme Court and here also, there are enough statutory provisions by way of appeal *etc.*, and the legal aspects are also fairly well settled and carrying matters to Supreme Court is unnecessary and further encourages the losing party to take the matter to the Supreme Court from the High Court and the agony of the spouses is prolonged and further results in hardening the matrimonial relations. The disputes relating to the dishonour of cheques under Section 138 of Negotiable Instruments Act are a classic example of the disastrous consequences of hasty legislation and how it impacts the docket of the Courts. One can go on multiplying examples but here the issue that is being raised is to preserve the status of the highest Court of the land and how it can be a truly Constitutional Court deciding matters of great constitutional consequence and lay down law that is binding under Article 141 of the Constitution of India on all Courts. It requires serious thought where the Constitution itself should be amended or whether provisions such as Article 138(2) of the Constitution of India which speaks of conferment of further jurisdiction on the Supreme Court of India need to be amended; in addition to doing away with the power of review and curtail rights of appeal under various Articles relating to the appellate powers of the Supreme Court of India. In new legislation to be enacted, Parliament and State Legislature should also ensure that finality should be statutorily given to the judgments at a particular level instead of allowing the same to be taken to the Supreme Court. Perhaps a final Court of appeal in many of these matters can be thought of instead of taking them upto the Supreme Court, which should be the Court of last resort in matters of constitutional importance or questions of law of such importance that require the Court's time and attention. The Supreme Court also, while allowing leave to appeal in matters under Article 136 should ensure that the vast powers entrusted to it under the Constitution of India are utilized only for resolving great issues of law.

Concern has been expressed in various quarters about the quality of judgments. It is not meant to be a reflection on the Court but it is a result of the pressure of the plethora of cases that the Court is called upon to handle and the management of its time. Increase in the strength of the Court is not a solution is a predominant view of Court watchers. At the time the Constitution was enacted, the Judge strength was fixed at a maximum of seven and Article 124 of the Constitution itself prescribes that Parliament by law can prescribe a higher number of Judge strength. By Act 17 of 1960, it was enhanced to 13 and by the Supreme Court Number of Judges Amendment Act of 1977, it was increased to 17 and later to 25 by Act 22 of 1986 and today it is 31. The issue is whether the increase in strength to meet increase in the volume of work is an effective solution. The Constitution makers in their eminent wisdom by conferring such wide jurisdiction on the final Court must have contemplated the necessity and made adequate provision under Article 124 of the Constitution. But however, in the academic circles and also in legal circles, views are expressed whether such increased strength would result in the watering down of the standards. Contrast this with the history of the US Supreme Court. The Judge strength has been nine for the last two hundred years. It is *crème da la crème* – the very best. Attempt of *F.D. Roosevelt*, the President of the United States when a number of new Deal legislations

were struck down to pack the Court with more number of his nominees – proved abortive – and it was thwarted by the Judges themselves by what is described as 'A SWITCH IN TIME SAVES NINE' meaning that the switch of the Judges from an approach guided by strict construction of the Constitution tilted more in favour of the felt needs of the time and it averted the attempts of Court-packing. The nine Judges, though appointed by political process are the pick of judicial talent obtaining in that country and another advantage is that the Court sits "enbanc" and therefore, every decision rendered by the US Supreme Court bears the stamp of the entire Court. It could be by majority but nevertheless, it is the decision of the full Court and this leads to certainly of law. No doubt, the fact that a few matters numbering about 80 or so are taken up for review and a few are heard is a factor that enables the full Court to decide authoritatively but there again, the passage of time has resulted in some kind of representation, though not reservation in the choice of appointments to the Court. It is said that there is always a Jewish seat on the Court and after the historic judgment of the US Supreme Court in 1954 in *Brown v. School Education* where the Court held black or brown; it cannot be all while in schools because of the equal protection clause of the US Constitution, there was recognition that there should be representation for a considerable section of the American population, namely African-American and particularly, in a pluralist society like USA which is a land of immigrants; the country cannot be monochromatic. (It shall not be forgotten long before *Brown v. School Education*, Justice *Harlan* in a dissent in *Plessy v. Ferguson* in 1896 said the Constitution is colour-blind) Slowly the compulsions of the need of representative character of the Court resulted in a seat for the African-Americans and the same is continuing. As part of gender equality, a seat for a woman Judge was also found and in line with the large presence of Hispanics in USA, Justice Ms. *Sonia Sotomeyer* was appointed as a Judge of the US Supreme Court. It is in that context, whether we call it representation or reservation, the Indian Supreme Court had to provide for a minority seat, a place for Scheduled Caste and a seat for a woman Judge; but then for preventing regional imbalances, a kind of unwritten convention is in place and as far as possible, representation for various States also has become a key factor in the selection of Judges to the highest Court. Therefore, all these factors taken together and the vast multitude of cases that come to the Court made it an imperative necessity to increase the Court strength and this, in turn, does have a bearing on the quality of the judgment is an argument that cannot be easily brushed aside; more so, when extremely successful lawyers in the High Courts attracted by the unimaginable high earnings and the lure of the lucre do not opt for Judgeship of the High Court and therefore, the best of the available talent is always not found. In an analysis of the issue, particularly where the quality of judgments is discussed, the impact of the increase in strength of the highest Court has certainly to be taken into account and this is not to be construed as a reflection on the quality of the Judges manning the Court but has to be understood as a critical analysis on the quality of judgments. Time has come for all concerned, keeping in view the unique position of the Court and having regard to the awesome sweep of its jurisdiction to declare the laws of the land as laid down by the Parliament, which is the repository of the will of the people as unconstitutional given the place and position by the fundamental law, namely the Constitution; the Supreme Court's high standing is preserved and not diluted. The institution today enjoys the confidence of the nation. It is the most respected branch of the three wings and "not the least dangerous". Therefore, issues raised regarding the overburdening of the Court require serious rethinking and a need to amend the Constitution to restrict and

limit the Court's jurisdiction to great and grave constitutional issues and questions of law which require adjudication by the highest Court alone should be considered, is to be seriously thought of.

While giving the Court wide jurisdiction it cannot be said that the founding fathers wanted the Court to be an Atlas bearing the weight of ordinary litigant in their fight for justice in routine matters in spite of appeals, revisions *etc.*, upto High Court. The exalted position of the Court is something akin to Mt. Olympus a habitat of the Gods of Justice and Law. That should be the ideal status of the Summit Court as an interpreter of the Constitution and the upholder of the rule of law.

ANDHRA KESARI TANGUTURI PRAKASAM – THE LIGHTER SIDE

By
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Tanguturi Prakasam was a versatile genius who donned with unique distinction, many roles in life's drama – as actor, lawyer, jurist, journalist, writer, freedom fighter, orator, legislator, administrator, economist and statesman. Thus he touched life at many points and adorned everything that he touched. His public life was an open book but very few know that he had a keen sense of humour and was a pastmaster in the "artless art of repartee". Perhaps his dour appearance and brusque manners led to the impression that he was a cheerless curmudgeon. Here are a few anecdotes which reveal his lighter side which is indeed his brighter side and better side.

Before becoming a barrister, *Parkasam* practised for about a decade at Rajahmundry as a Second grade pleader. It was the Magistrate's Court. A case was called and the party was asked to fetch his lawyer to proceed with the case. He came back after sometime and requested for adjournment since he could not find his lawyer. Thereupon the Magistrate said "There is no dearth of lawyers in Rajahmundry. Go to the Bar Room. You can get a lawyer for a rupee or two". *Prakasam* retorted "Such lawyers have been selected as Magistrate".

Prakasam was the Revenue Minister in the first Congress Ministry headed by Rajaji in the Madras Presidency during 1937-39. Discussion was going on in the Assembly over the bill for the abolition of zamindaris. *Prakasam* who piloted the bill was criticizing the Privy Council for its improper comprehension of the language of the Regulation. Then an M.L.A. remarked "The Members of the Privy Council are Englishmen. Does the Honourable Minister mean to say that they are not proficient in English?". "Is the Honourable Member well versed in all books in Telugu"? Quipped *Prakasam*

Prakasam's arch rival Pattabhi gained the ear of Mahatma Gandhi and prejudiced him against *Prakasam*. A furious Gandhi demanded *Prakasam* to account for all the money he received from the public. *Prakasam's* famous reply was "I have no Tatas and Birlas to support me. My people