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FROM THE DESK OF CHIEF JUSTICE OF INDIA

In a democratic setup, information is empowerment, since it promotes transparency, integrity and accountability. It is necessary to keep the people informed on vital aspects of the functioning of a public institution so as to enlighten them and enable them to form an informed opinion on its working and performance. I am happy that Supreme Court of India has taken a lead in this direction, by coming out with this quarterly Newsletter.

The information on institution, pendency and disposal of the cases and vacancy position in various Courts informs the public how, despite capacity constraints, on account of full judge strength not being available to the system, it has consistently been able to increase the disposal of cases, but, on account of a higher rate of growth in institution, the pendency levels are not coming down.

A brief gist of important judgments of public importance delivered by Supreme Court in the last quarter, will be found useful not only by lawyers and law students, but also by the common citizen. Important events and developments relating to Justice Delivery System are also a welcome feature in this Newsletter.

I am confident that this issue, like the previous ones, will prove to be highly informative and useful to the readers. Any suggestions for further improvements and making the publication more informative will be welcomed by Supreme Court Registry.

8th February, 2007


(K.G. BALAKRISHNAN)

APPOINTMENTS AND RETIREMENTS IN SUPREME COURT

APPOINTMENTS

Chief Justice of India

Name	Date of Appointment
Hon'ble Mr. Justice K.G. Balakrishnan	14-01-2007

Judges

S.No.	Name	Date of Appointment
01.	Hon'ble Mr. Justice H.S. Bedi	12-01-2007
02.	Hon'ble Mr. Justice V.S. Sirpurkar	12-01-2007
03.	Hon'ble Mr. Justice B. Sudershan Reddy	12-01-2007

RETIREMENTS

Chief Justice of India

Name	Date of Retirement
Hon'ble Mr. Justice Y.K. Sabharwal	14-01-2007

APPOINTMENTS IN HIGH COURT
(From 1st October, 2006 to 31st December, 2006)

S.No.	Name of the High Court	Name of the Hon'ble Judge	Date of Appointment
1.	Allahabad	Shiv Charan Sharma	20-11-2006
		Satendra Kumar Jain	20-11-2006
		Vijay Kumar Verma	20-11-2006
		Subhash Chandra Nigam	20-11-2006
		Ashok Kumar Roopanwal	20-11-2006
		Ajai Kumar Singh	20-11-2006
2	Delhi	Dr. Mukundakam Sharma (As Chief Justice)	04-12-2006
3.	Gauhati	Utpalendu Bikas Saha	12-10-2006
		Ketulhou Meruno	12-10-2006
		Hrishikesh Roy	12-10-2006
		Basu Deo Agarwal	12-10-2006
		Binoy Kumar Singh	12-10-2006
4.	Himachal Pradesh	Dev Darshan Sud	27-11-2006
		V.K. Ahuja	27-11-2006
		Surinder Singh Thakur	27-11-2006
5.	Patna	Shailesh Kumar Sinha	09-10-2006
		Jayanandan Singh	09-10-2006
		Sheema Ali Khan	09-10-2006
		Samarendra Pratap Singh	09-10-2006
		Dharnidhar Jha	06-11-2006
		Abhijit Sinha	06-11-2006
6	Punjab & Haryana	V.K. Jain (As Chief Justice)	28-11-2006

- Above statement is compiled on the basis of information received from the High Courts

VACANCIES IN COURTS

A) SUPREME COURT OF INDIA (As on 15th January, 2007)

Sanctioned Strength	Working Strength	Vacancies
26	24	2

B) HIGH COURTS (As on 1st January, 2007)

S.No.	Name of the High Court	Sanctioned Strength	Working Strength	Vacancies
1.	Allahabad	95	86	09
2.	Andhra Pradesh	39	34	05
3.	Bombay	64	60	04
4.	Calcutta	50	44	06
5.	Chhattisgarh	08	06	02
6.	Delhi	36	33	03
7.	Gauhati	27	22	05
8.	Gujarat	42	33	09
9.	Himachal Pradesh	09	06	03
10.	Jammu and Kashmir	14	08	06
11.	Jharkhand	12	10	02
12.	Karnataka	40	34	06
13.	Kerala	29	26	03
14.	Madhya Pradesh	42	39	03
15.	Madras	49	44	05
16.	Orissa	22	16	06
17.	Patna	43	30	13
18.	Punjab & Haryana	53	38	15
19.	Rajasthan	40	31	09
20.	Sikkim	03	02	01
21.	Uttaranchal	09	09	00
	TOTAL	726	611	115

• Above statement is compiled on the basis of figures received from the Department of Justice

C) DISTRICT & SUBORDINATE COURTS (As on 30th September, 2006)

S.No.	Name of State / Union Territory	Sanctioned Strength	Working Strength	Vacancies
1.	Uttar Pradesh	2172	1705	467
2.	Andhra Pradesh	827	720	107
3.	Bombay	1600	1326	274
4.	Calcutta	706	566	140
5.	Chhatisgarh	235	212	23
6.	Delhi	414	297	117
7.	Gujarat	940	827	113
8.a.	Assam	285	243	42
8.b.	Meghalaya ^I	10	6	4
8.c.	Tripura	83	64	19
8.d.	Nagaland ^{II}	Nil	Nil	Nil
8.e.	Mizoram ^{II}	Nil	Nil	Nil
8.f.	Arunachal Pradesh ^{II}	Nil	Nil	Nil
9.	Himachal Pradesh	118	115	3
10.	Jammu and Kashmir	191	180	11
11.	Jharkhand	503	449	54
12.	Karnataka	827	665	162
13.	Kerala	420	416	4
14.a.	Tamil Nadu	762	709	53
14.b.	Pondicherry	21	15	6
15.	Madhya Pradesh	935	778	157
16.	Orissa	477	408	69
17.	Bihar	1359	840	519
18.a.	Punjab	328	248	80
18.b.	Haryana	307	223	84
18.c.	Chandigarh	20	19	1
19.	Rajasthan	821	705	116
20.	Sikkim	15	9	6
21.	Uttaranchal	265	95	170
	Total ^{III}	14641	11840	2801

• Above statement is compiled on the basis of figures received from the High Courts.

I Judiciary is not separated from the Executive in the State of Meghalaya except Shillong Municipal Area

II Judiciary is not yet separated from Executive.

III Does not include figures for Manipur in which Sanctioned Strength, Working Strength and Vacancies were 34, 28 & 6 respectively as on 30th June, 2006.

INSTITUTION, DISPOSAL AND PENDENCY OF CASES

A) SUPREME COURT OF INDIA (FROM 01-10-2006 TO 31-12-2006)

Month & year	Institution		Total	Disposal		Total	Pendency		Total
	Admission	Regular		Admission	Regular		Admission	Regular	
PENDENCY as on 30th September, 2006							21,353	16,977	38,330
OCT, 2006	3,059	338	3,397	2,872	180	3,052	21,540	17,135	38,675
NOV, 2006	6,398	738	7,136	5,521	782	6,303	22,417	17,091	39,508
DEC, 2006	4,526	771	5,297	4,582	443	5,025	22,361	17,419	39,780

B) HIGH COURTS (FROM 01-07-2006 TO 30-09-2006)

S. No.	Name of High Court	CIVIL CASES				CRIMINAL CASES				Total pendency of civil and criminal cases as on 30-09-06
		Opening balance as on 01-07-06	Institution from 01-07-06 to 30-09-06	Disposal from 01-07-06 to 30-09-06	Pendency as on 30-09-06	Opening balance as on 01-07-06	Institution from 01-07-06 to 30-09-06	Disposal from 01-07-06 to 30-09-06	Pendency as on 30-09-06	
1	Allahabad	584499	34657	27197	591959	207651	22692	18626	211717	803676
2	Andhra Pradesh	145291	13005	17628	140668	16105	2300	4381	14024	154692
3	Bombay	320977	27305	25108	323174	37581	6329	7386	36524	359698
4	Calcutta	227485	15649	15811	227323	37887	4956	4613	38230	265553
5	Chhatisgarh	52355	5711	4481	53585	24038	2270	1913	24395	77980
6	Delhi	63264	10165	8734	64695	17135	5992	6152	16975	81670
7	Gujarat	90782	10007	16975	83814	28521	5384	4448	29457	113271
8	Gauhati	52418	6789	6520	52687	6900	1807	1851	6856	59543
9	Himachal Pradesh	19034	2886	2165	19755	5993	530	377	6146	25901
10	Jammu & Kashmir	40019	4753	2939	41833	1951	427	531	1847	43680
11	Jharkhand	25665	3676	4131	25210	18710	4882	3829	19763	44973
12	Karnataka	77697	12552	12754	77495	13732	3093	2353	14472	91967
13	Kerala	101374	13683	17607	97450	24677	5278	5166	24789	122239
14	Madras	359157	68903	57468	370592	31754	19081	17130	33705	404297
15	Madhya Pradesh	131929	19228	25227	125930	57606	9972	11229	56349	182279
16	Orissa	193186	12185	7739	197632	17254	6785	6320	17719	215351
17	Patna	67724	5967	4921	68770	25106	16840	18134	23812	92582
18	Punjab & Haryana	202002	14330	16326	199847 *	41490	10817	10575	41732	241579
19	Rajasthan	161140	10307	12537	158910	50318	7908	7544	50682	209592
20	Sikkim	47	21	20	48	11	5	9	7	55
21	Uttaranchal	25152	2117	3873	23396	6922	836	879	6879	30275
	Total	2941197	293896	290161	2944773	671342	138184	133446	676080	3620853

• Above statement is compiled on the basis of figures received from the High Courts

* 159 cases (RFA) have been transferred to Distt.Courts in Punjab vide Notification dated 26-8-2006 (Ordinance No.11/2006)

C) DISTRICT AND SUBORDINATE COURTS (FROM 01-07-2006 TO 30-09-2006)

S. No.	Name of State/Union Territory	CIVIL CASES				CRIMINAL CASES				Total pendency of civil and criminal cases as on 30-09-06
		Opening balance as on 01-07-06	Institution from 01-07-06 to 30-09-06	Disposal from 01-07-06 to 30-09-06	Pendency as on 30-09-06	Opening balance as on 01-07-06	Institution from 01-07-06 to 30-09-06	Disposal from 01-07-06 to 30-09-06	Pendency as on 30-09-06	
1	Uttar Pradesh	1215017	168224	147690	1235551	3413849	591063	573796	3431116	4666667
2	Andhra Pradesh	501335	89818	98862	492291	474843	68102	73853	469092	961383
3	Maharashtra	1016562	78668	109685	985545	3161461	349057	335937	3174581	4160126
4	West Bengal	492724	39400	42491	489633	1530698	173002	141295	1562405	2052038
5	Chhatisgarh	52062	8739	9513	51288	213598	41673	37491	217780	269068
6	Delhi	137680	25243	21810	141113	488163	57269	31300	514132	655245
7	Gujarat	780831	55856	64234	772453	2698623	397184	551716	2544091	3316544
8(a)	Assam	55952	11259	8663	58548	122912	31950	34894	119968	178516
8(b)	Nagaland	1129	79	78	1130	2631	616	441	2806	3936
8(c)	Meghalaya	4244	282	362	4164	6827	522	500	6849	11013
8(d)	Tripura	6519	1239	1690	6068	26510	13002	13836	25676	31744
8(e)	Mizoram	1296	312	334	1274	3006	1390	777	3619	4893
8(f)	Arunachal Pradesh	231	226	150	307	4989	336	240	5085	5392
9	Himachal Pradesh	64252	12629	12445	64436	117142	44668	70671	91139	155575
10	Jammu & Kashmir	52787	11352	13514	50625	89902	69028	59945	98985	149610
11	Jharkhand	47066	4566	5925	45707	231032	36648	36312	231368	277075
12	Karnataka	569322	78826	93586	554562	516736	124723	129890	511569	1066131
13	Kerala	420549	60188	70022	410715	506746	163009	155913	513842	924557
14(a)	Tamil Nadu	438488	224436	224100	438824	436450	217085	243945	409590	848414
14(b)	Pondicherry	12827	5054	4563	13318	7698	3405	2734	8369	21687
15	Madhya Pradesh	196991	52265	50438	198818	758634	286200	263653	781181	979999
16	Orissa	180632	12675	15171	178136	799404	61547	52549	808402	986538
17	Bihar	236506	14059	11485	239248 *	1034878	75515	64302	1046131	1285379
18(a)	Punjab	260095	36355	34401	262049	311062	111853	123045	299870	561919
18(b)	Haryana	208365	35014	29254	214125	301570	64295	60652	305213	519338
18(c)	Chandigarh	22115	2268	2473	21910	66248	19378	14719	70907	92817
19	Rajasthan	289259	43581	45620	287220	761388	195090	186734	769744	1056964
20	Sikkim	187	63	55	195	437	489	416	510	705
21	Uttaranchal	26695	8660	8470	26885	104169	30192	33016	101345	128230
	Total #	7291718	1081336	1127084	7246138	18191606	3228291	3294572	18125365	25371503

• Above statement is compiled on the basis of figures received from the High Courts

* 168 civil cases increased on transfer and 40 criminal cases increased after split up and amalgamation

Does not include figures for Manipur in which 3234 civil cases and 6020 criminal cases were pending as on 30th June, 2006 thus amounting to a total pendency of 9254 cases on such date.

SOME RECENT SUPREME COURT JUDGMENTS OF PUBLIC IMPORTANCE

(Delivered between 1st October, 2006 to 31st December, 2006)

1. On 11th October, 2006, a two Judges Bench in *Epuru Sudhakar & Anr. vs Govt. of A.P. & Ors.* [Writ Petition (Crl.) Nos.284-285 of 2005] while examining the scope for judicial scrutiny of exercise of clemency/pardon powers by the President and the Governor delivered two separate but concurring judgments.

One of the Hon'ble Judges said that it is fairly well settled that "the exercise or non-exercise of pardon power by the President or Governor" is "not immune from judicial review" and that "limited judicial review is available in certain cases". He held that "judicial review of the order of the President or the Governor under Article 72 or Article 161 of the Constitution, as the case may be, is available and their orders can be impugned on the following grounds: (a) that the order has been passed without application of mind; (b) that the order is mala fide; (c) that the order has been passed on extraneous or wholly irrelevant considerations; (d) that relevant materials have been kept out of consideration; (e) that the order suffers from arbitrariness."

The other Hon'ble Judge while agreeing with the said conclusions further held that "exercise of Executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty." He said that this discretion "has to be exercised on public consideration alone", but cautioned that "considerations of religion, caste or political loyalty are irrelevant and fraught with discrimination" and are "prohibited grounds." The Hon'ble Judge held that "the power of executive clemency is not only for the benefit of the convict, but while exercising such a power the President or the Governor, as the case may be, has to keep in mind the effect of his decision on the family of the victims, the society as a whole and the precedent it sets for the future." He added that "a pardon obtained by fraud or granted by mistake or granted for improper reasons would invite judicial review."

2. On 11th October, 2006, a two Judges Bench in *Jasbir Singh vs State of Punjab* [Criminal Appeal No.1039 of 2006] held that the "extraordinary power under Article 227 of the Constitution can only be used by the High Courts to ensure that the subordinate Courts function within the limits of their authority" and that the "High Court cannot interfere with the judicial functions of a subordinate Judge."

"The independence of the subordinate Courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior Courts in the discharge of their judicial functions. It is the members of the subordinate judiciary who directly interact with the parties in the course of proceedings of the case and therefore, it is no less important

that their independence should be protected effectively to the satisfaction of the litigants”, the Bench said.

The Bench held that though “in the course of inspection, the High Court Judge is required to examine whether the Courts are functioning within the norms laid down by the High Court”, but “mostly the inspection is to be confined to the administrative functioning of the Courts and its officers.” It held that “under no circumstances, the Inspecting Judge, as part of his administrative duty enjoys the power to interfere with the judicial functions of the subordinate Courts in individual cases. In the course of inspection, a High Court Judge cannot pass any order on interim applications, such as bail petitions or transfer applications or applications for interim injunction, howsoever justified they may be.” “Of course, he can give administrative directions to the Presiding Officer or to any of the subordinate staff, if such directions are pertinent in the context of administration of justice”

3. On 19th October, 2006, a Constitution Bench in *M. Nagaraj & Others vs Union of India & Others* [Writ Petition (Civil) No.61 of 2002] while dealing with a bunch of writ petitions under Article 32 of the Constitution examined the validity of the Constitution (Seventy-Seventh Amendment) Act, 1995, the Constitution (Eighty-First Amendment) Act, 2000, the Constitution (Eighty-Second Amendment) Act, 2000 and the Constitution (Eighty-Fifth Amendment) Act, 2001. It was *inter alia* urged in the petitions that the impugned amendments overruled judicial pronouncements of the Supreme Court viz. the Seventy-Seventh amendment introduced Article 16(4A) providing reservation in promotion which had the effect of nullifying the decision in the case of *Indra Sawhney*; that the Eighty-First Amendment introduced Article 16(4B) which nullified the effect of the decision in *R.K. Sabharwal*, in which it was held that carry forward vacancies cannot be filled exceeding 50% of the posts; that similarly the Eighty-Second Amendment introduced proviso to Article 335 which nullified the effect of the decision in *Indra Sawhney* and a host of other cases, which emphasize the importance of maintaining efficiency in administration and that the Eighty-fifth Amendment adding the words ‘with consequential seniority’ in Article 16(4A) nullified the decision in *Ajit Singh (II)*.

Answering the reference, the Bench held that “the impugned constitutional amendments by which Articles 16(4A) and 16(4B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. These impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling-limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBC on one hand and SCs and STs on the other hand as held in the *Indra Sawhney* case, the concept of post-based Roster with in-built concept of replacement as held in *R.K. Sabharwal*.”

Reiterating that “the ceiling-limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse”, the Bench held that “the concerned State will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation.”

The Bench added that the “impugned provision” is only “an enabling provision”, and the “State is not bound to make reservation for SC/ST in matter of promotions. However if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335.” The Bench made it clear that “even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling-limit of 50% or obliterate the creamy layer or extend the reservation indefinitely”. Subject to above, the Bench upheld the constitutional validity of the impugned Constitutional amendments.

4. On 2nd November, 2006, a two Judges Bench in *Jagmodhan Mehatabsing Gujaral & Others vs State of Maharashtra* [Criminal Appeal No.1113 of 2006] observed that “large scale theft of electricity is a very alarming problem faced by all the State Electricity Boards in our country, which is causing loss to the State revenue running in hundreds of crores every year.” Consequently it held that, “after proper adjudication of the cases of all those who are found to be guilty of the offence of committing theft of electricity, apart from the sentence of conviction, the Court should invariably impose heavy fine making theft of electricity a wholly non-profitable venture.”

“The most effective step to curb this tendency perhaps could be to discontinue supply of electricity to those consumers temporarily or permanently who have been caught abstracting electricity in a clandestine manner on more than one occasion. The legislature may consider incorporating this suggestion as a form of punishment by amending Section 39 of the Indian Electricity Act of 1910”, the Bench said.

5. On 13th November 2006, a two Judges Bench in *Minor Sunil Oraon Tr. Guardian & Ors vs C.B.S.E. & Ors.* [Civil Appeal No.4908 of 2006] while dealing with a prayer for direction to Respondent-Board to permit students of an un-affiliated school to appear at the examination conducted by the Board, observed that time and again, the Supreme Court had “deprecated the practice of educational institutions admitting the students without requisite recognition or affiliation”. Further observing that “in all such cases the usual plea is the career of innocent children who have fallen in the hands of the mischievous designated school authorities”,

the Bench held that “though the ultimate victims are innocent students that cannot be a ground for granting relief.”

Inasmuch as in the instant case, the students had suffered because of the objectionable conduct of the concerned school, which showed scant regards to the requirements for affiliation and non-challantly continued the violations even after filing undertakings, the Bench left it open to the students to seek such remedy against the school as available in law.

6. On 14th November, 2006, a two Judges Bench in *The President Board of Secondary Education, Orissa & Anr vs D. Suvankar & Anr* [Civil Appeal No. 4926 of 2006] held that the Appellant-Board had a “bounden duty to select such persons as Examiners who have the capacity, capability to make valuation and they should be really equipped for the job.” “Otherwise, the very purpose of evaluation of answer papers would be frustrated”, the Bench said.

Holding that “nothing should be left to show even an apprehension about lack of fair assessment”, the Bench further added that “care should be taken to see that the Examiners who have been appointed for a particular subject belong to the same faculty. It would be a mockery of the system of valuation if a teacher belonging to Arts stream is asked to evaluate answer papers of Science stream.”

Observing that additional steps should be taken for assessing the capacity of a teacher before he is appointed as an Examiner, the Bench held that for this purpose, “the Board may constitute a Body of Experts to interview the persons who intend to be appointed as Examiners.”

“This process is certainly time-consuming but it would further the ends for which the examinations are held”, the Bench said.

7. On 16th November, 2006, a two Judges Bench in *Indian Drugs & Pharmaceuticals Ltd. vs Workman, Indian Drugs & Pharmaceuticals Ltd.* [Civil Appeal No.4996 of 2006] held that “orders for creation of posts, appointment on these posts, regularisation, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions and it is highly improper for Judges to step into this sphere, except in a rare and exceptional case.” “The Courts must “exercise judicial restraint and not encroach into the executive or legislative domain”, the Bench said.

Alarmed that in the instant case the Labour Court and the High Court passed orders in favour of the Respondent-casual workers on the basis of emotions and sympathies, the Bench held that “cases in Court have to be decided on legal principles and not on the basis of emotions and sympathies.”

8. On 27th November, 2006, a two Judges Bench in *The Secretary, Malankara Syrian Catholic College vs T. Jose & Ors.* [Civil Appeal No.8599 of 2003] recapitulated the extent of regulation by the State, permissible in respect of employees of minority educational institutions receiving aid from the State, as clarified and crystalised in the *TMA Pai* case. “The State can prescribe: (i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments, (ii) the service conditions of employees without interfering with the overall administrative control by the Management over the staff. (iii) a mechanism for redressal of the grievances of the employees.(iv) the conditions for the proper utilisation of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions”, the Bench said.

In other words, the Bench held that “all laws made by the State to regulate the administration of educational institutions, and grant of aid, will apply to minority educational institutions also. But if any such regulations interfere with the overall administrative control by the Management over the staff, or abridges/dilutes, in any other manner, the right to establish and administer educational institutions, such regulations, to that extent, will be inapplicable to minority institutions.”

The Bench further held that “the freedom to choose the person to be appointed as Principal has always been recognized as a vital facet of the right to administer the educational institution” and that this “has not been, in any way, diluted or altered by *TMA Pai*.”

“Having regard to the key role played by the Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid, will make no difference”, the Bench said.

The Bench held that “the right of the minority to select a Principal of its choice is with reference to the assessment of the person’s outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited, to head the institution, provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) of the Constitution to establish and administer educational institutions.”

9. On 6th December, 2006, a two Judges Bench in *Parkash Singh Badal and Anr vs State of Punjab and Ors* [Civil Appeal No.5636 of 2006] held that “the principle of immunity protects all acts which the public servant has to perform in the exercise of the functions of the Government. The purpose for which they are performed protects these acts from criminal prosecution. However, there is an exception. Where a criminal act is performed under the

colour of authority but which in reality is for the public servant's own pleasure or benefit then such acts shall not be protected under the doctrine of State immunity."

In other words, the Bench held that "where the act performed under the colour of office is for the benefit of the officer or for his own pleasure Section 19(1) of the Prevention of Corruption Act, 1988 will come in." "Section 19(1) is time and offence related", the Bench said.

The Bench further said that "each of the Sections 7, 10, 11, 13 and 15 of the Act indicate that the public servant taking gratification (S.7), obtaining valuable thing without consideration (S.11), committing acts of criminal misconduct (S.13) are acts performed under the colour of authority but which in reality are for the public servant's own pleasure or benefit. Sections 7, 10, 11, 13 and 15 apply to aforesaid acts. Therefore, if a public servant in his subsequent position is not accused of any such criminal acts then there is no question of invoking the *mischief rule*. Protection to public servants under Section 19(1)(a) has to be confined to the time related criminal acts performed under the colour or authority for public servant's own pleasure or benefit as categorized under Sections 7, 10, 11, 13 and 15. This is the principle behind the test propounded by this Court, namely, the test of abuse of office."

10. On 12th December, 2006, a two Judges Bench in *Ajay Goswami vs Union of India & Ors* [Writ Petition (Civil) No.384 of 2005] while considering the grievance of the writ petitioner that the freedom of speech and expression enjoyed by the newspaper industry is not keeping balance with the protection of children from harmful and disturbing obscene materials held that "any steps to ban publishing of certain news pieces or pictures would fetter the independence of free press which is one of the hallmarks" of the "democratic setup" in this country.

In the opinion of the Bench, "imposition of a blanket ban on the publication of certain photographs and news items etc. will lead to a situation where the newspaper will be publishing material which caters only to children and adolescents and the adults will be deprived of reading their share of their entertainment which can be permissible under the normal norms of decency in any society."

Observing that the "definition of obscenity differs from culture to culture, between communities within a single culture, and also between individuals within those communities", the Bench said that "a culture of 'responsible reading' should be inculcated among the readers of any news article" and "no news item should be viewed or read in isolation."

"It is necessary that publication must be judged as a whole and news items, advertisements or passages should not be read without the accompanying message that is purported to be conveyed to the public. Also the members of the public and readers should not look for meanings in a picture or written article, which is not conceived to be conveyed through the picture or the news item", the Bench said.

Finally observing that the “fertile imagination of anybody especially of minors should not be a matter that should be agitated in the Court of law” and that a “hypersensitive person” can subscribe to other Newspapers of his choice, which might not be against his standards of morality, the Bench dismissed the writ petition.

11. On 12th December, 2006, a two Judges Bench in *Bablu @ Mubarik Hussain vs State of Rajasthan* [Criminal Appeal No.1302 of 2006] upheld the death sentence imposed by Courts below on Appellant who had murdered his wife and four minor children. The Bench rejected the contention of the Appellant that he was in a state of drunkenness and did not know the consequences of what he was doing.

The Bench held that “the defence of drunkenness can be availed of only when intoxication produces such a condition as the accused loses the requisite intention for the offence. The onus of proof about reason of intoxication due to which the accused had become incapable of having particular knowledge in forming the particular intention is on the accused.”

In the instant case, the Bench held that the “brutal acts done by the accused-appellant” were “diabolic in conception and cruel in execution. The acts were not only brutal but also inhuman with no remorse for the same. Merely because he claims to be a drunk at the relevant point of time, that does not in any way get diluted not because of what is provided in Section 85 IPC but because one after another five lives were taken and that too of four young children.”

“This case squarely falls under the rarest of rare category to warrant death sentence”, said the Bench.

12. On 15th December, 2006, a two Judges Bench in *S.R. Batra.& Another vs Smt. Taruna Batra* [Civil Appeal No.5837 of 2006] observed that the definition of ‘shared household’ in Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 has been clumsily drafted and accordingly gave it a sensible interpretation which does not lead to chaos in society.

Rejecting the contention of Respondent that “the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship”, the Bench held that if such a contention is accepted, then “it will mean that wherever the husband and wife lived together in the past that property becomes a shared household.”

“It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband’s father, husband’s paternal grand parents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces etc. If the interpretation canvassed by the Respondent is accepted, all these houses of the husband’s relatives will be shared households and the wife can well insist in living in all these houses of her husband’s

relatives merely because she had stayed with her husband for sometime in those houses in the past. Such a view would lead to chaos and would be absurd. It is well settled that any interpretation which leads to absurdity should not be accepted”, the Bench said.

With regard to Section 17(1) of the Act, the Bench held that “the wife is only entitled to claim a right to residence in a shared household, and a ‘shared household’ would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to the husband nor was it taken on rent by him nor is it a joint family property of which the husband is a member. It is the exclusive property of Appellant No.2, mother of the husband. Hence, it cannot be called a ‘shared household’.”

MAJOR INITIATIVES

1. **E-filing:** Commencing 2nd October, 2006, Advocates-on-Record and Petitioners-in-Person have been given the facility of filing their matters in Supreme Court through internet thereby obviating need to visit the Court for Purchasing Court Fee, Filing the Case, finding out the Filing Defects, if any, and removing them. This is for the first time that E-Filing is made available by any Court in the country.

Salient features of the E-filing facility are as follows:-

- a. The prescribed court fee and the prescribed printing charges can be paid through any Visa/Master credit/debit card. No additional court fee or processing fee is required for E-Filing.
 - b. Every Advocate-on-Record is being given a password by the Registry. He can change the password by accessing the website. Petitioners-in-person, however, have to submit proof of their identity such as Ration Card/PAN Card/Identity Card/Driving Licence/Voter I.Card, by scanning the document.
 - c. The text can be typed on the computer whereas documents including affidavits and vakalatnamas can be submitted by scanning them. Counter/Rejoinder/Fresh Applications/Caveat/Additional Documents can also be filed through internet.
 - d. Every matter will be scrutinized to identify the filing defects, if any. The defects will be communicated to the Petitioner-in-Person/Advocate-on-Record, as the case may be, through E-mail, who can remove the defects by accessing his matter through internet, using the reference No. given to him by the system. The matter will have to be in conformity with the Supreme Court Rules and free from filing defects, before it can be registered by the system. Date of listing will also be communicated through the system.
 - e. The notices/communications to the parties will be sent through E-Mail wherever E-Mail I.D. is provided.
2. **Conference of the Registrar Generals of the High Courts and Law Secretaries of the States/Union Territories:** For the first time, a Joint Conference of Registrar Generals of High Courts and Law Secretaries of States was convened by the Registrar General, Supreme Court of India on 23rd December, 2006 and a number of decisions on Court management, training of staff and for improving coordination between the executive and judiciary in the States were taken.
 3. **Evening Courts:** Evening Courts were inaugurated in Gujarat by Hon'ble Shri Y.K. Saharwal, Chief Justice of India on 14th November, 2006. 30 such Courts are already functioning in Gujarat and they disposed of 16153 cases between 14th November, 2006 to 27th December, 2006.
 4. **Special Courts:** Additional Courts presided by retired Judicial Officers have been set-up in Madhya Pradesh to deal exclusively with petty offences and complaints under Section 138 of Negotiable Instruments Act.

5. ***National Plan for Mediation*** has been prepared for systemizing and institutionalizing mediation, training of mediators, preparation of training material, organizing awareness programmes and setting up Mediation Centres.
6. ***National Judicial Infrastructure Plan*** has been prepared for upgrading and augmenting judicial infrastructure such as buildings, equipment, software, knowledge resources, human resources, facilities and systems.
7. ***National Judicial Education Strategy*** has been finalised to enhance the performance of the Judges by equipping them with better knowledge, tools and techniques, including court management processes and arrears reduction methodologies.
8. ***Joint Admission Test for National Law Schools:*** A joint admission test is proposed to be introduced for all the National Law Schools, from academic year 2008.

MAJOR EVENTS

I. MAJOR ACTIVITIES IN SUPREME COURT :

The 3rd Indo-Canadian Legal Forum Meet was held on 25th November, 2006.

II. MAJOR ACTIVITIES OF NATIONAL LEGAL SERVICES AUTHORITY (NALSA)

- a) **Observation of World Mental Health Day:** The National Legal Services Authority organized National Legal Aid Week beginning from 10th October 2006 on the occasion of World Mental Health Day throughout the country. During the week, the Legal Aid Volunteers started the awareness campaign in the OPDs of different hospitals and distributed awareness material/pamphlets regarding the Legal Rights of the Mentally Challenged People across the country.
- b) **Community Support Dialogue with Fishermen Community:** The NALSA launched the Project Kanyakumari on 27th October, 2006 at Kanyakumari to provide legal literacy and legal support to women and girls victimized in and around temples and other religious places. A Community Support Dialogue with Fishermen Community was also organized. The project was inaugurated by Hon'ble Mr. Justice Arijit Pasayat, Judge, Supreme Court of India. His Lordship also inaugurated three Community Legal Aid Clinics at Aiyakuttuvilai, Muttom Post and Kanyakumari for providing free legal counselling and information regarding legal aid and legal rights to the poorest of the poor citizens.
- c) **Regional Policy Dialogue of Judges regarding the Protection of Legal and Human Rights of Beneficiary Groups:** The NALSA organized its First Regional Policy Dialogue of Judges regarding the Protection of Legal & Human Rights of Beneficiary Groups on 28th October, 2006 at Trivandrum, Kerala under the Chairmanship of Hon'ble Mr. Justice Arijit Pasayat, Judge, Supreme Court of India. It was an initiative to have an understanding of common social issues and problems for framing appropriate policies and implementation of Legal Aid Programmes in the States of Andhra Pradesh, Tamil Nadu, Kerala & Karnataka by the respective Legal Services Authorities. The Executive Chairpersons and Member Secretaries of the respective State Legal Services Authorities, Directors of Judicial Academies and District Judges participated in the interaction.
- d) **National Colloquium on Poverty Alleviation, Food Security, Right of Development and Social Justice:** The Authority organized a National Colloquium on Poverty Alleviation, Food Security, Right of Development and Social Justice on the occasion of National Legal Literacy Day on 9th November, 2006 at Main Committee Room, Parliament House Annexe, New Delhi. The Colloquium was organized to highlight solidarity and support to the cause of the underprivileged, to highlight the constitutional mandate of social justice, equality and equal opportunities for the weaker sections, to create advocacy amongst the Members of the Judiciary, students and other communities who need to participate in the implementation of the National Legal Literacy Mission. The programme was inaugurated

by Dr. Manmohan Singh, Hon'ble Prime Minister of India. Hon'ble Mr. Justice Y.K. Sabharwal, the Chief Justice of India presided over the function in the august presence of Dr .H.R. Bhardwaj, Hon'ble Union Minister for Law & Justice, Govt. of India, Hon'ble Mr. Justice K.G. Balakrishnan, Judge, Supreme Court of India (as His Lordship then was) & Executive Chairman, NALSA, Hon'ble Mr. Justice Arijit Pasayat, Judge, Supreme Court of India, Hon'ble Mr. Justice A.K. Mathur, Judge, Supreme Court of India, Hon'ble Mr. Justice R. V. Raveendran, Judge, Supreme Court of India, Hon'ble Mr. Justice Dalveer Bhandari, Judge, Supreme Court of India and other dignitaries.

- e) **Observation of Children's Day & Inauguration of National Child Rights Week:** The Authority, on the occasion of Children's Day, organized a Historic Dialogue and Interaction of the Hon'ble Chief Justice of India and Hon'ble Judges of Supreme Court with Child Ambassadors of National Legal Literacy Mission on 14th November, 2006 at Supreme Court, New Delhi. Students from various schools participated in the interaction.
- f) **Process Initiative for Development of a National Protection Protocol for HIV Infected and Affected Citizens :** On the occasion of World AIDS Day on 1st December, 2006, the National Legal Services Authority organized a Process Initiative of Development of National Protection Protocol for HIV infected and affected citizens. The Initiative was launched by Hon'ble Mr. Justice K.G. Balakrishnan, Executive Chairman, NALSA, Hon'ble Dr. Justice M.K. Sharma, Chief Justice of Delhi High Court, Hon'ble Mr. Justice Mukul Mudgal, Hon'ble Mr. Justice Ravinder Bhat and Hon'ble Dr. Justice S. Murlidhar, Judges of Delhi High Court. Reputed NGOs, doctors, Sex workers and affected victims of HIV participated in the initiative.
- g) **Inauguration of National Legal Aid Week for Persons with Disabilities on the occasion of International Day of Disabled Persons:** The NALSA organized the National Legal Aid Week for Persons with Disabilities from 3rd–9th December, 2006 at Army Public School, New Delhi. The programme was inaugurated by Hon'ble Mr. Justice K.G. Balakrishnan, Executive Chairman, NALSA.
- h) **West Bengal Correctional Homes as Special Legal Literacy Zones:** Shri K.Venkatapathy, Hon'ble Minister of State for Law & Justice, Government of India, during his visit to West Bengal on 12th December, 2006, announced the opening of 61 Legal Aid Clinics from 1st January, 2007 in the Social Institutions and Correctional Homes of West Bengal. The NALSA has adopted these Correctional Homes of West Bengal to establish a legal and policy framework for development of strategies for a better legal aid services for the undertrials and the convicts for facilitating their access to various social justice measures. Hon'ble Minister of Jail, West Bengal, Hon'ble Minister of Law & Justice, West Bengal, District Judges of respective Districts, District Collector, ADMs, District SSP, IG, DIG, Dy.SPs as well as Legal Aid Counsels and Public Prosecutors marked their presence during the programme. Civil Society Partners from reputed organizations were also present on the occasion.

III. MAJOR ACTIVITIES OF NATIONAL JUDICIAL ACADEMY (NJA)

1. "Refresher Course on Specialized Criminal Enactments (Atrocities, NDPS Act and PC Act)",

- 5- 9 October, 2006” (Participation: 47 District and Additional District Judges): The programme covered the SC & ST Prevention of Atrocities Act 1989, the NDPS Act and the Prevention of Corruption Act. The programme analyzed these statutes, leading cases and key legal issues in detail and the reasons for the relatively low rate of prosecution and conviction under these statutes as well as measures that may be taken to improve their implementation.
2. *“Management of Judicial Administration including Time Management, Stress Management and Inter-personal Conflict Management”*, 14-16 October, 2006 (Participation: 33 Registrars from different High Courts): The programme provided specific tools for providing judges skills for (i) effective time management; (ii) conflict management and (iii) stress reduction.
 3. *“Appreciation of Evidence in Civil and Criminal Matters, Judgment writing and Sentencing”*, 28-30 October 2006 (Participation: 49 Additional and District Judges): The programme explored substantive evidence law as well as current issues and trends. The programme also dealt in detail with “judgement writing” and “sentencing”.
 4. *“Seminar on Administrative and Constitutional Law for the Senior Members of the Subordinate Judiciary”* 9-13 November, (Participation: 34 Senior District Judges): The programme explored the most important current and emerging issues in Administrative and Constitutional Law, bearing in mind the responsibility borne by Judges to protect constitutional rights of litigants appearing before them. The program also appraised senior judges about key concepts and latest development in administrative law.
 5. *“Seminar on Intellectual Property Rights”*, 18-20 November 2006 (Participation: 28 High Court Justices): This programme explored a variety of technical, policy and legal issues and latest developments relating to IPR law. Perspectives presented included protection of IPR as well as “open source” movement as well as “protection of traditional knowledge”.
 6. *“Programme on Judicial Reform Training and Standardization of Curriculum”* 25-27, November 2006, (Participation: 17 High Court Justices and 21 Directors from State Judicial Academies): This Course was devoted to developing a *Draft National Curriculum for Judicial Education*. The three day exercise obtained inputs from all High Courts on the draft curriculum for (i) induction training of civil judge junior division and judicial magistrate; (ii) continuous education programs for civil judge senior division and chief judicial magistrates and (iii) orientation programs for district judges.
 7. *“Programme on Interpretation of Statutes”* 2-4, December 2006 (Participation: 46 District Judges): This three-day program focused on problems faced by participating judges in interpretation of statutes/bills/documents/deeds. The programme acquainted judges about tools of interpretation to advance the cause of justice and improve the quality and responsiveness of justice.
 8. *“Human Rights”* 9-11, December 2006 (Participation: 46 District Judges): The course discussed human rights of marginalized sections under the Constitution including women, children, tribals, prisoners and disabled. The discussions centered on how existing laws

and remedies could be utilized effectively by the subordinate judiciary to further Human Rights.

9. *“Advanced Course on Civil Justice including Commercial Disputes”* 16-20 December, 2006 (Participation: 42 District Judges): Issues considered included major categories of civil litigation including financial litigation, land acquisition, environmental law, consumer protection, alternative dispute resolution impact of globalization on civil litigation and tools and techniques for delay and arrears reduction. Simultaneous exercises for ADR through mediation were carried out. Visiting Sri Lankan judges from Sri Lankan Supreme Court and the Court of Appeal of Sri Lanka also participated in the programme.

10. *“National Meet on Best Practices in Delay and Arrears Reduction”* (25th-26th November, 2006): The National Judicial Education Strategy has set the mandate for tackling delay and arrears in the justice system within the constraints of the available framework. In this context a National Level Meet was organized to consolidate the best practices for reducing arrears and delay. Accordingly, the NJA dovetailed this National Meet with a parallel Meeting of High Court Justices in charge of training and Directors of State Judicial Academies between 25th and 27th December to achieve these goals. This Meet addressed by Hon’ble Justice S.B. Sinha, Judge, Supreme Court of India was attended by nearly 80 Judicial Officers including High Court Justices, best performers from the States, Directors of State Judicial Academies as well as other experts from different disciplines. Hon’ble Justice K.G. Balakrishnan, Judge Supreme Court of India (as His Lordship then was) interacted with the gathering through videoconferencing.

IMPORTANT VISITS AND CONFERENCES

1. Hon'ble Shri Y.K. Sabharwal, Chief Justice of India visited Washington and San Francisco, USA as Head of the Indian delegation to participate in the Fifth Indo-US Legal Forum Meet from 1st to 6th October, 2006. Hon'ble Mr. Justice K.G. Balakrishnan (as His Lordship then was), Hon'ble Mr. Justice B.N. Agrawal, Hon'ble Mr. Justice Ashok Bhan and Hon'ble Mr. Justice Arijit Pasayat were the other Members of the Delegation. The topics of discussion of the said Meet were:(a) The work of the Supreme Court;(b) Comparative Constitutional issues; Constitutional Protections relating to Affirmative Action or Positive Discrimination and (c) References to, or use of, the work of Foreign Constitutional Courts.

Hon'ble Shri Y.K. Sabharwal, Chief Justice of India inaugurated the National Level Seminar on "Erosion of Values in Judicial System and Its Refurbishment" organised under the joint auspices of Bar Council of India and Bihar State Bar Council on 9th December, 2006 at Patna, Bihar.

2. Hon'ble Mr. Justice S.B. Sinha addressed the participants of a course on "Appreciation of Evidence in Civil and Criminal Matters, Judgement Writing and Sentencing" organised by the National Judicial Academy, Bhopal on 29th October, 2006. His Lordship inaugurated a) the 19th Counselling Course conducted by Legal Aid Services - West Bengal at Kolkata on 4th November, 2006 and b) National Workshop on "Labour Jurisprudence - Emerging Scenario" held at IICM, Ranchi on 2nd December, 2006. He also participated in the programme "Interaction with Sri Lankan Justices on current Legal Developments in India and Sri Lanka" organised by National Judicial Academy from 18th to 20th December, 2006.
3. Hon'ble Dr. Justice AR. Lakshmanan presided over the 7th International Conference of Chief Justices of the World at the World Unity Convention Centre, CMS Kanpur Road, Lucknow on 9th December, 2006.
4. A five-member Canadian delegation headed by Hon'ble Mrs. Beverley McLachin, Chief Justice of Canada accompanied by His Excellency Mr. David M. Malone, High Commissioner for Canada in India visited Supreme Court of India on 24th November, 2006 and had a meeting with Hon'ble the Chief Justice of India/Hon'ble Judges. The delegation also participated in the Third Indo-Canadian Legal Forum Meet held on 25th November, 2006 in the Supreme Court premises.
5. A three-member Pakistani delegation headed by Mr. Iftikhar Muhammad Chaudhary, Chief Justice of Pakistan accompanied by Mr. Tanweer Afzal, First Secretary in High Commission of Pakistan in India visited Supreme Court of India on 27th November, 2006 and had a meeting with Hon'ble the Chief Justice of India/Hon'ble Judges.
6. An eight-member Czech delegation headed by Mr. Petr Polednik, Vice President of the Czech Bar Association accompanied by three office bearers of the Advocates-on-Record Association visited Supreme Court of India on 29th November, 2006 and had a meeting

with Hon'ble the Chief Justice of India and Mr. Justice K.G. Balakrishnan (as His Lordship then was).

7. A three-member Indonesian delegation headed by H.E. Dr. Parman Soeparman, Deputy Chief Justice of Indonesia accompanied by Mr. Amar Makruf, First Secretary in High Commission of Indonesia visited Supreme Court of India on 12th December, 2006 and had a meeting with Hon'ble the Chief Justice of India and Hon'ble Mr. Justice K.G. Balakrishnan (as His Lordship then was).
8. A six member Indonesian delegation headed by HC.J. Hatta Ali, Director General Court, Supreme Court of Indonesia accompanied by Mr. Amar Makruf, First Secretary in High Commission of Indonesia visited Supreme Court of India on 19th December, 2006 and had a meeting with Shri V.K. Jain, the Registrar General and other senior officers of the Registry and National Informatics Centre.