

From the Editor's Desk



Trees are sanctuaries: *Whoever knows how to speak to them, whoever knows how to listen to them, can learn the truth. They do not preach learning and precepts, they preach, undeterred by particulars, the ancient law of life.* – Hermann Hesse

Work and Knowledge: *Birds fly with their two wings; even so both work and knowledge together lead to the supreme goal of liberation. Neither work alone, nor knowledge alone can lead to liberation; but, both together, form the means to liberation.* – Sage Agastya in Yoga Vasishta.

AN EMOTIONAL saying:- Self, almost spent my life-time on research, whether it is in my professional-way of life activities, or in my daily-life activities, when repetitive acts comes into play, which is only to better the situations. hence, I totally condemn/protest appointees, of the honorable bench of the armed forces tribunal, (who are retirees, combination of a Judge of HC's and retired Defence Flag officers, as the Administrative bench member, through political lien, and not on merits, without considering their personal veracity, in character and attitudes. which should not be, to mere favor any member they like, but for primarily to fulfill the aim and objectives of this sacred institution, in serving the ex-servicemen, discharged from defence in varying conditions and situations, hence to be in a fair and just manner, without bias, prejudice, neglect and discrimination etc. not to act to their whims and fancies, as primarily considering, "EQUALITY BEFORE THE LAW, JUSTICE TO BE GIVEN " not to cause 'sky and mud below differences, as they need to inter-act, with the like-minded officers and not to spell on their own whims and fancies, hurting the sentiments of the already aggrieved ex-serviceman, who once came forward to give their life to their nation, in protecting their mother - land with a spirit of NATIONHOOD and PATRIOTISM.

Considering the reality of cases handled by such appointees, view the harassment and humiliation to the core, meted-out to an honest ex-serviceman of integrity. (ref: OA7 and RA16 of 2013, followed by W.P.2989/2014, numbered and heard only once in Madras High Court, and further not listed, most probably because of the influence of the judicial member, Justice V. PERIYA KARUPPIAH, who a retired judge of MADRAS HC., after two and a half years, this period also considered as 'condone delay' meaninglessly AND when applied for the mandatory "leave to appeal" resting on the AFT CHENNAI, as monopolistic rights FOR JUSTICE TO BE HEARD AT HONOURABLE SUPREME COURT, not considering here again the valuable time of the litigants and the precious time of the Courts.

Investigations would reveal the deliberate delay caused, it to be numbered and appear in the cause-list, making it unnecessarily 'a case of condonement of delay'. such unwanted formalities and A F T located near the Chennai Airport, in a secluded place away from other courts functioning in this metropolitan city of Chennai. Any enlightened human-being could get emotional and outspoken, for self dragged with deliberate delay to the old age of seventy(70), with geriatric diseases, deprived of the basic claim and

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privileges of an ex-serviceman and not yielding to the linked advocate to the bench. Hence, handled differently, meting out injustices. An awakening to the higher judiciary of the States, and the Apex Court (Honourable Supreme Court) to oversee lower courts, in instilling justice to common citizens of the nation, who came forward to safeguard the nation from external threats.

Qualified lawyers and Jurists to view this Case of a citizen inducted into the Indian army, in his early age of about 15 fifteen, more particularly during National Emergency(1962-66), being the son of an ex-serviceman of World War II, recipient of Long service and Good conduct Medal. Scrutiny to all the awards made by the Armed Forces Tribunal, would reveal nothing less than a local khatta panchayat without any standard norms not following the already laid down Laws, Rules and Regulations, or without fear of almighty god or their own conscience, during this innovative age, while the retired judge companion is carried away by the pomp and show exhibited by the retired flag officers, gaining importance from Defence personnel who call into Open court of AFT, unsuitable to this judicial arena, where true justice is prime.

Each institution requiring specialization, must be allowed to concentrate on to their own work. What was earlier thought to be a seasonal affliction, worrying but not a cause for either alarm or panic, seems to have turned into an epidemic. For the past few months, India seems to have declared both the legislatures and the executive redundant. Instead judge-made laws have replaced the old custom-decreed, I daresay, by the Constitution of the country, not to mention the conventions of democracy that laws should be made by duly-elected legislators. The judges, apart from their bread and butter role of playing the honest umpire in the event of complex disputes and doling out justice, were entrusted with the onerous task of ensuring that laws made by Parliament and the State Assemblies were in accordance with the Constitution of the day. That the judges had the power to overrule the wishes of those duly-elected by the people, either directly or indirectly, was itself a judicial invention. In the Westminster model, only Parliament has the right to make laws. The judges could not override the wishes of Parliament. In theory, therefore, as I recall the late Mohan Kumaramangalam arguing during the high noon of Indira Gandhi's socialism, Parliament has the right to decree that all blue-eyed babies born to Indians should be, say, deemed stateless. It would be a preposterous piece of legislation but the right of Parliament to pass tendentious laws was deemed to be undeniable. Kumaramangalam's associated argument that Parliament had the right but would never exercise that right is neither here nor there. The point is that since the inception of the Republic (not to be confused with the new TV channel) the absolute right of Parliament to frame laws has always been questioned. The courts have struck down innumerable pieces of legislation, including the abolition of zamindari, the abolition of privy purses, the right of habeas corpus, a law to streamline judicial appointments and the right of triple talaq. Second guessing the courts has to be one of the compelling imperatives of lawmakers. Those entrusted with the task of making laws spend as much time determining what is necessary as with what will pass judicial scrutiny. It is not even the "basic

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structure" of the Constitution that must be adhered to. What is equally relevant is how that loose principle will adhere to the subjective predilections of the judges. This is because legality is not a scientific test that should lead to a fixed conclusion but a test of how a certain body of people will view the issue. And that too is so dependant on the prevailing climate of opinion, conventional wisdom and even fashion. Judgments vary depending on which judge is hearing the case.

Finally, there is the tricky question of jurisdiction. In recent years, the question of what comes under the purview of judicial review and what should be the prerogative of the executive has troubled the country. Increasingly, in what is being called judicial activism, the courts appear to be more than willing to pass orders on matters that should, ideally, concern the executive. Last week, to take a random example, the courts banned the sale of fire-crackers during Diwali in Delhi, leading to the criticism that the courts are more than willing to impose restrictions on Hindu customs. The criticism is unfair since the question of animal cruelty involved in Jallikattu apart, the courts have also ruled on triple-talaq on the grounds of gender justice. However, the larger question as to whether the sale or ban on fireworks is an executive decision and whether protests in Jantar-Mantar can be regulated by the courts, does not appear to have been addressed. All parties to the dispute seem to be open to the idea of the courts passing orders on purely administrative matters. While the respect for the judiciary is admirable, it is worth considering whether or the courts should get into the business of running the country and more particularly, Delhi. This in turn has prompted questions over the relationship of the judiciary with democracy. In recent years, India has witnessed the growth of a small but influential community of activists that are determined to bypass the pace of change and grievance redressal through judicial activism. Inspired by European notions of "constitutional universalism", they have sought to impose global norms on a society that is unevenly prepared to abandon local and national concerns. The recent attempt to force the Government to accept an influx of Rohingya refugees from Myanmar is a classic attempt to bypass the political process and concerns over national security and sentiments in the North-East regions of India. In this case, an absolute commitment to humanitarian ideals has confronted democratic norms. It has also brought to the fore, the vexed question of whether a small group of the so-called 'enlightened ' have a right to impose their value systems on a larger majority. There is a larger battle being fought between those who believe that the main task of the judiciary is to safeguard laws made by the elected representatives of the people and those who feel that judges must also set the direction of politics. It is not a new battle and centers on different philosophies of public conduct. But it is also a battle that is likely to intensify. The controversy needs careful deliberation.

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