Protection To Judicial Officers

S.S. Upadhyay
Former District & Sessions Judge/
Former Legal Advisor to Governor
UP, Lucknow
Mobile : 9453048988
E-mail : ssupadhyay28@gmail.com

1(A). Judicial Officers perform sovereign judicial functions of the State : A Judicial Officer is not an ordinary government servant. He exercises sovereign judicial functions and powers of the State. Judicial Officer holds office of great trust and responsibility and his conduct must be beyond suspicion. Personality of an honest Judicial Officer is ultimate guarantee to justice. A slightest dishonesty by him may have disastrous effects. See **: High Court of Judicature at Patna Vs. Shiveshwar Narayan and Another, 2011 (3) SLJ 392 (SC)=(2011) 15 SCC 317.**

1(B). Judicial Officers exercise sovereign judicial powers of the State like members of the Council of Ministers & Legislatures : The judicial service is not service in the sense of 'employment'. The judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the council of ministers and the members of the legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to e conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. However, those who exercise the State-power are the ministers, the legislators and the judges, and not the members of their staff who implement or assist in implementing their decisions. The council of ministers or the political executive is different from the secretarial staff or the administrative executive which carries out the decisions of the political executive. Similarly, the legislators are different from the legislative staff. So also the Judges from the judicial staff. The parity is between the political executive, the legislators and the judges and not between the Judges and the administrative executive. This distinction between the Judges and the members of the other services has to be constantly kept in mind for yet another important reason. Judicial independence cannot be secured by making mere solemn proclamations about it. It has to be secured both in substance and in practice. It is trite to say that those who are in want cannot be free. Self-reliance is the foundation of independence. The society has a stake in ensuring the independence of the judiciary, and no price is too heavy to secure it. To keep the judges in want of the essential accoutrement's and thus to impede them in the proper discharge of their duties is to impair and whittle away justice itself.

See : **All India Judges' Association Vs. Union of India & Others, AIR 1993 SC 2493 (Three-Judge Bench)** (Para 4).

1(C). Judicial and legal services are not like any other services : Judicial service as well as legal service are not like any other services. They are missions for serving the society. The mission is not achieved if the litigant who is waiting in the queue does not get his turn for a long time. Chief Justices and Chief Ministers have resolved that all cases must be disposed of within five years which by any standard is quite a long time for a case to be decided in the first court. Decision of cases of undertrials in custody is one of the priority areas. There are obstructions at every level in enforcement of right of speedy trial. Vested interests or unscrupulous elements try to delay the proceedings. Lack of infrastructure is another handicap. In spite of all odds, determined efforts are required at every level for success of the mission. Ways and means have to be found out by constant thinking and monitoring. Presiding Officer of a court cannot rest in the state of helplessness. See : **Hussain Vs. Union of India, AIR 2017 SC 1362 (para 26).**

2(A). Laws governing services of Judicial Officers: Various laws governing the services of Judicial Officers are as under :

(1) Articles 309, 310 & 311 of the Constitution of India
(2) The Judicial Officers' Protection Act, 1850
(3) The Judges (Protection) Act, 1985
(4) Section 52 IPC
(5) Section 77 IPC
(6) Section 228 IPC
(7) Section 197 CrPC
(8) Uttar Pradesh Judicial Service Rules, 2001
(9) Uttar Pradesh Higher Judicial Service Rules, 1975
(10) Section 19 of the Prevention of Corruption Act, 1988
(11) Sub-sections (6), (7), (12) of Section 57 of the Evidence Act, 1872
(12) Section 114(e) of the Evidence Act, 1872
(13) Contempt of Courts Act, 1971
(14) Allahabad High Court Rules, 1952
(15) UP Government Servants Conduct Rules, 1956
(16) UP Government Servant (Discipline & Appeal) Rules, 1999

(17) Public Servants (Inquiries) Act, 1850
(18) Uttar Pradesh Class II services (Imposition of Minor Punishments) Rules, 1973
(19) Principles of Natural Justice
(20) UP Government Servants Seniority Rules, 1991
(21) UP Government Servants Resignation Rules, 2000
(22) UP Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974
(23) Uttar Pradesh Government servant (Petition for Adverse ACRs and Disposal of Matters Relating Thereto) Rules, 1995
(24) UP Temporary Government Servants (Termination of Service) Rules, 1975
(25) CCA Rules i.e. Civil Services (Classification, Control & Appeal) Rules, 1930
(26) Uttar Pradesh Judicial Officers (Retirement on Superannuation) Rules, 1992,
(27) Rules in Financial Hand Books
(28) G.Os. & Government Notifications
(29) Judicial Pronouncements
(30) Scheme of Destiny and Divinity.

2(B). Conditions of service of civil servants including Judicial Officers : Generally speaking, subject to the rules governing the services of the civil servants, following are the conditions of service applicable to them:

(i) Salary or wages
(ii) Periodical increments
(iii) Seniority
(iv) Promotion
(v) Leave
(vi) Provident fund
(vii) Gratuity
(viii) Subsistence allowance during suspension
(ix) Disciplinary proceedings
(x) Tenure or termination of service
(xi) Deputation
(xii) Transfer
(xiii) Superannuation
(xiv) Pension.

2(C). Judicial Officer holds his post during the pleasure of the Governor : Article 310 of the Constitution of India provides that a civil servant holds his post during the pleasure of the President or the Governor of the State.

2(D). <u>Doctrine of pleasure & constitutional safeguards</u> : The 'doctrine of pleasure' is a constitutional necessity, for the reasons that the difficulty in dismissing those public servants whose continuance in office is detrimental to the State would, in case necessity arises to prove some offence to the satisfaction of the court, be such as to seriously impede the working of public service. Article 309 of the Constitution is subject to the provisions of the Constitution. Hence, the rules and regulations made relating to the conditions of services under Article 309 are subject to Articles 310 and 311 of the Constitution. See: **Union of India Vs. Major S.P. Sharma, (2014) 6 SCC 351(Three-Judge Bench).**

2(E). <u>Applicability of doctrine of pleasure is subject to rule of law</u>: There is distinction between the doctrine of pleasure as it existed in a feudal set up and the doctrine of pleasure in a democracy governed by rule of law. In a nineteenth century feudal set up unfettered power and discretion of the crown was not an alien concept. However, in a democracy governed by rule of law, where arbitrariness in any form is eschewed, no government or authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for the public good. See : **B.P. Singhal Vs. Union of India (2010) 6 SCC 331(Five-Judge Bench).**

2(F). <u>Doctrine of pleasure is a constitutional necessity</u> : The "pleasure doctrine" is a constitutional necessity for the reason that the difficulty in dismissing those public servants whose continuance in office is detrimental to the State, would in case necessity arises to prove some offence to the satisfaction of the court, be such as to seriously impede the working of public services**.** See : **Union of India Vs. Major S.P. Sharma, (2014) 6 SCC 351 (Three-Judge Bench).**

2(G). <u>Clauses (1) & (2) of Article 311 impose restrictions upon the President or the Governor on exercise of his power of pleasure under Article 310(1)</u> : Article 309 of the Constitution is subject to the provisions of the Constitution. Hence, the rules and regulations made relating to the conditions of service under Article 309 are subject to Articles 310 and 311 of the Constitution. It is worth mentioning that the opening words of Article 310 "Except as expressly provided by this Constitution" make it clear that a government servant holds the office during the pleasure of the President or the Governor except as expressly provided by the Constitution. From a bare perusal of the provisions contained in Article 311 of the Constitution, it is manifestly clear that clauses (1) and (2) of Article 311 impose restrictions upon the exercise of powers by the President or the Governor of the State of his pleasure under Article 310(1) of the Constitution. However, proviso to Article 311(2) makes it clear that Article 311(2) shall not apply inter alia where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold an

enquiry before termination of service. See : **Union of India Vs. Major S.P. Sharma, (2014) 6 SCC 351(Three-Judge Bench).**

2(H). Withdrawal of pleasure cannot be at the sweet will, whim & fancy of the authority: In a democracy governed by the rule of law, where arbitrariness in any form is eschewed, no government or authority has the right to do what it pleases. Where the rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority, but can only be for valid reasons. The doctrine of pleasure is not a licence to act with unfettered discretion, to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of pleasure. See : **B.P. Singhal Vs. Union of India, (2010) 6 SCC 331(Five-Judge Bench).**

3(A). The Judicial Officers' Protection Act, 1850 : The Judicial Officers' Protection Act, 1850 contains only one section and is aimed at providing protection to the judicial officers acting in **good faith** in their **judicial capacity**. Section 1 of the 1850 Act reads as under :

"**Section 1--- Non liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders**—No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction : Provided that he at the time in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

3(B). The Judges (Protection) Act, 1985 : Parliament passed The Judges (Protection) Act, 1985 to provide certain additional protections to Judges and Magistrates in addition to what was already available to them under The Judicial Officers' Protection Act, 1850. Certain important provisions contained under the Judges (Protection) Act, 1985 are as under :

"**Sec. 3--- Additional Protection to Judges---** (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-sec. (2), no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-sec. (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any

High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge."

"**Sec.4--- Saving—**The provision of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force providing for protection of Judges."

4. **The Judges (Inquiry) Act, 1968 :** The Judges (Inquiry) Act, 1968 has been enacted by the Parliament to regulate the procedure for the investigation and proof of the **misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court** and for the presentation of an address by Parliament to the President and for matters connected therewith. This Act does not cover the matter of protection to the Judicial Officers of the subordinate judiciary and exclusively deals with the matters like misbehaviour or incapacity of the Judges of the Supreme Court and High Courts.

5(A). **Protection to Judges u/s 77 IPC :** Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith, he believes to be, given to him by law.

5(B). **Acting in good faith---- when to be inferred? :** Word "good faith" has been defined in Section 52 of the IPC which reads as under—

5(C). **"Good faith" & its definition : (Section 52 IPC) :** Nothing is said to be done or believed in 'good faith' which is done or believed without **due care and attention**."

6(A-1). **Lawyers and litigants cannot be allowed to terrorize or intimidate Judges with a view to secure orders which they want :** No lawyer or litigant can be permitted to browbeat the Court or malign the Presiding Officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and Rule of Law would receive a set back. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot be allowed to terrorize or intimidate Judges with a view to secure orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it. A litigant cannot be permitted 'choice' of the 'forum' and every attempt at "forum shopping" must be crushed with a heavy hand. At the same time, it is of utmost importance to remember that Judges must act as impartial referees and decide cases objectively, uninfluenced by any personal bias or prejudice. A Judge should not allow his judicial position to be compromised at any cost. This is essential for maintaining the integrity of the institution and public confidence in it. The credibility of this institution rests on the fairness and impartiality of the Judges at all levels. It is the principle of highest importance, for the proper administration of justice, that judicial powers must be exercised impartially and within the bounds of law. It must always be remembered that justice must not only be done but it must also be seen to be done. **See : M/s. Chetak Construction Ltd** Vs. **Om Prakash & Others, AIR 1998 SC 1855 (paras 19 & 20)**.

6(A-2). **Only because a lawyer appears as a party in person in his own case, he does not get a license to commit contempt of Court by intimidating the Judges or scandalizing the Courts :** Does the law give a lawyer, unsatisfied with the result of a case, any licence to permit himself the liberty of scandalizing a Court by casting unwarranted imputations against the Judge in discharge of his judicial functions? Does the lawyer enjoy any special immunity under the Contempt of Courts Act, 1971 where he is found to have committed a gross contempt of Court? The answer has to be an emphatic No. In the instant case, the alleged contemnor has been making continuous attempts to subvert the course of justice in whichever Court his case was. He has been acting not only as if he is above the law but as if he is law unto himself. Notwithstanding his own assessment of his 'merit and 'competence' as stated by him in the memo of petitions, the alleged contemnor appears to be blissfully ignorant of the role of a lawyer and the law relating to drafting of pleadings which must be precise and not scandalous or abusive. By filing the applications, and the petition, as a party in person, couched in very objectionable language, he has permitted himself the liberty of indulging in an action which does little credit to the noble profession to which he belongs. An advocate has no wider protection than a layman when he commits an act which amounts to contempt of Court. It is most unbefitting for an advocate to make imputations against the Judge only because he does not get the expected result which according to him is the fair and reasonable result available to him. Judges cannot be intimidated to seek favourable orders. Only because a lawyer appears as a party in person, he does not get a license to commit contempt of the Court by intimidating the Judges or scandalizing the Courts. He cannot use language, either in the pleadings or during arguments, which is either intemperate or unparliamentary and which has the tendency to interfere in the administration of justice and undermine the dignity of the Court and the majesty of law. These safeguards are not for the protection of any Judge individually but are essential for maintaining the dignity and decorum of the Courts and for upholding the majesty of law. Judges and Courts are not unduly sensitive or touchy to fair and reasonable criticism of their judgments. Fair comments, even if, outspoken, but made without any malice and without attempting to impair the administration of justice and made in good faith in proper language do not attract any punishment for contempt of Court. However, when from the criticism, a deliberate, motivated and calculated attempt is discernible to bring down the image of judiciary in the estimation of the public or to impair the administration of justice or tend to bring the administration of justice into disrepute; the Courts must bitter themselves to uphold their dignity and the majesty of law. The alleged contemnor, has, undoubtedly committed contempt of the Court by the use of the objectionable and intemperate language. No system of justice can tolerate such unbridled licence on the part of a person, be he a lawyer, to permit himself the liberty of scandalizing the Court by casting unwarranted, uncalled for and unjustified aspersions on the integrity, ability, impartiality or fairness of a Judge in the discharge of his judicial functions, as it undoubtedly amounts to an interference with the due course of administration of justice. No litigant, even a lawyer appearing in person in his own cause, can be permitted to overstep the limits of fair, bona fide and reasonable criticism of the judgment and bring the Courts generally into disrepute or attribute motives to the Judges rendering the judgment. Perversity calculated to undermine the judicial system and the prestige of the Court cannot be permitted for otherwise the very foundation of the judicial system is bound to be undermined and weakened. Liberty of free expression is not to be confused with a licence to make unfounded, unwarranted and irresponsible aspersions against the Judges or the Courts in relation to judicial matters. In the established facts of the case, the alleged contemnor would be guilty of gross contempt of Court and liable to be convicted accordingly. The alleged contemnor sentenced to undergo simple imprisonment for

a period of four months and to pay a fine of Rs. 1,000/- (one thousand) and in default of payment of fine, to further undergo simple imprisonment for a period of 15 days. Since the contemnor has abused professional privileges while practicing as an Advocate, the Supreme Court also directed that the copy of the judgment together with the relevant record be forwarded to the Chairman, Bar Council of India, who may refer the case to the concerned committee for appropriate action as is considered fit and proper. See : **In re Ajay Kumar Pandey, Advocate, AIR 1998 SC 3299.**

6(B). A judicial officer is entitled to protection against the litigants to whom his decision might offend : A judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a Judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the Judge had come to a particular decision or conclusion. A Judge is not bound to explain later on for what reason he had come to such a conclusion. A Judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order. The application filed by the petitioner before the public authority is per se illegal and unwarranted. A judicial officer is entitled to get protection and the object of the same is not to protect malicious or corrupt Judges, but to protect the public from the dangers to which the administration of justice would be exposed if the judicial officers concerned were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. If anything is done contrary to this, it would certainly affect the independence of the judiciary. A Judge should be free to make independent decisions. See : **Khanapuram Gandaiah Vs. Administrative Officer, (2010) 2 SCC 1***(paras 11 & 13)***=AIR 2010 SCC 615.**

7. **Judicial Officers cannot have two standards of conduct whether in court or outside court :** In the case noted below, the petitioner was a member of the Uttar Pradesh State Judicial Service. He was appointed as Munsif on 27.01.1979 and posted at Aligarh. When he was working at Aligarh, he sought permission of the High Court to study LL.M. course of the Aligarh University. He appeared for 1st Semester examination in July, 1980. He was found to have used unfair means in the examination. The Registrar, Aligarh Muslim University, informed the District Judge, Aligarh that the petitioner was found copying from the manuscript lying with his answer book. The District Judge thereupon communicated all the information to the High Court. Upon receipt of the information, the High Court referred the matter to Vigilance Cell with the direction to conduct necessary inquiry into the matter. The Cell submitted its report on 18.09.1980 which was placed before the Administrative Committee. The Administrative Committee resolved that disciplinary proceedings be initiated against the petitioner and he in the meanwhile be placed under suspension. In pursuance of the said resolution, the petitioner was placed under suspension and the

Disciplinary inquiry was entrusted to one Hon'ble Judge of the High Court. A charge-sheet was supplied to him and after providing him opportunity of hearing, enquiry report was submitted against him wherein he was found guilty of the said charge. The enquiry report was placed before the Full Court of the High Court and the delinquent Munsif/petitioner was removed from service. The petitioner, in judicial side, took the plea that as his examination at the LL.M. was already cancelled by the Aligarh Muslim University, therefore, he could not have been punished twice for the same misconduct and could not have been removed from service. The Supreme Court dismissed his petition by holding that the Judicial Officers cannot have two standards, one in the Court and another outside the Court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy. A judicial officer, who has been found guilty of using unfair means in the LL.M. Examination, is undoubtedly not a fit person to be retained in judicial service. Rule of double jeopardy as envisaged in **Article 20(2)** of the Constitution of India does not apply in such matters. See **: Daya Shankar Vs. High Court of Allahabad, AIR 1987 SC 1469 (Para 11).**

8(A). <u>Protection under the Judicial Officers' Protection Act, 1850</u> <u>when Available</u> ? : Where an Executive Officer/Sub-Divisional Officer was holding two offices----one as Executive Office as a Sub-Divisional Officer and the other as Judicial Officer as Sub-Divisional Magistrate and had ordered the arrest of a person for an offence u/s 436 IPC but the proceedings were closed without any trial and thereafter the aggrieved person filed a suit for damages against the Sub-Divisional Officer, the Supreme Court, interpreting the scope of Section 1 of the Judicial Officers' Protection Act, 1850 held that **:** "In view of the admission made by the SDO that he had not taken cognizance as a Magistrate of the offence against the plaintiff before ordering his arrest, and his main defence that he had acted under the direction of his Superior Executive Officer, he must be held to have acted in his executive capacity and not in discharge of his duties as a Magistrate and hence was not entitled to protection under the 1850 Act. **The Judicial Officers Protection Act, 1850 protects a judicial officer only when he is acting in his judicial capacity and not in any other capacity**. If the act done or ordered to be done in the discharge of judicial duties is within his jurisdiction, the protection is absolute and no inquiry will be entertained whether the act done or ordered to be done was erroneous, irregular or even illegal, or was done or ordered without believing in good faith, that he had jurisdiction to do or order the act complained of. If the act done or ordered to be done is not within the limits of his jurisdiction, the Judicial Officer acting in the discharge of his judicial duties is still protected, if at the time of doing or ordering the act complained of, he in good faith believed himself to have jurisdiction to do or order the act. The expression "jurisdiction" does not mean the power to do or order the act impugned, but generally the authority of the Judicial Officer to act in the matter." See : **Anowar Hussain Vs. Ajoy Kumar Mukherjee, AIR 1965 SC 1651**

8(B). **Judicial Officer entitled to protection of the 'Judicial Officers' Protection Act, 1850' even when he had passed the order beyond his jurisdiction** : In the case noted below, an Additional Subordinate judge dismissed the suit of the plaintiff/appellant and decreed that of the then defendant. During the pendency of the decree holder's petition for execution of the decree and that of the appellant for its stay, the plaintiff/appellant issued a notice to the judge *inter alia* alleging that in his judgment he had created new facts by making third version without evidence; that he had intentionally, with bad faith and maliciously, distorted the existing oral and documentary evidence; that he had maintained different standards in the same judgment; that he had side-tracked the binding direct decisions of the High Courts and the Supreme Court; and that in the circumstances he could be said to have acted with mala fide exercise of powers without jurisdiction and, therefore, he was liable for damages for the loss incurred by the appellant and for the injury. The Supreme Court, interpreting the provisions of Section 1 of the Judicial Officers' Protection Act, 1850 held thus : "If the judicial officer is found to have been acting in the discharge of his judicial duties, then, in order to exclude him from the protection of Sec. 1 of the Judicial Officers Protection Act, 1850 the complainant has to establish that--- **(i) the judicial officer complained against was acting without any jurisdiction whatsoever**; and **(ii) he was acting without good faith in believing himself to have jurisdiction**. The expression "jurisdiction" in this section has not been used in the limited sense of the term, as connoting the 'power' to do or order to do the particular act complained of, but is used in a wide sense meaning 'generally the authority of the judicial officer to act in the matters'. Therefore, if the judicial officer had the general authority to enter upon the enquiry into the cause, action, petition or other proceedings in the course of which the impugned act was done or ordered by him in his judicial capacity, the act, even if erroneous, will still be within his 'jurisdiction', and the mere fact that it was erroneous will not put it beyond his 'jurisdiction'. Error in the exercise of jurisdiction will not put it beyond his 'jurisdiction'. Error in the exercise of jurisdiction is not to be confused with lack of jurisdiction in entertaining the cause or proceeding. Initiation of criminal contempt proceedings against the appellant was held proper by the Supreme Court. See : **Rachapudi Subba Rao Vs. Advocate General, A.P., (1981) 2 SCC 577.**

9. **Pre-conditions of FIR & Arrest of Judicial Officers :** There is, however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 providing for prior sanction from the competent authority and direction that no court shall take cognizance of the offence under Section 5(1) without such prior sanction is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled

law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court, which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity, will have a far-reaching impact on the Judge and the litigant public. The need, therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless Judges are not harassed. They should be protected. See : **U.P. Judicial Officers' Association Vs Union of India, (1994) 4 SCC 687.**

10. **Judicial Officers Not to Visit Police Station :**No Judicial Officer should visit a Police Station on his own except in connection with his official and judicial duties and functions. If it is necessary for a Judicial Officer or a Subordinate Judicial Officer to visit the Police Station in connection with his official duties, he must do so with prior intimation of his visit to the District & Sessions Judge. See : **Delhi Judicial Service Association Tis Hazari Courts Delhi Vs. State of Gujarat, AIR 1991 SC 2176 (Three-Judge Bench).**

11(A). **Delhi Judicial Service Association Tis Hazari Courts Delhi Vs. State of Gujarat, (1991) 4 SCC 406 (Three-Judge Bench) :** The facts of this case are as under :

"Soon after the posting of 'P' as Chief Judicial Magistrate at Nadiad in the State of Gujarat in October 1988, he found that the local police was not co-operating with the courts in effecting service of summons, warrants and notices on accused persons as a result of which the trials of cases were delayed. He made complaint against the local police to the District Superintendent of Police and forwarded a copy of the same to the Director General of Police but nothing concrete happened. On account of these complaints, 'S', the then Police Inspector Nadiad, became annoyed with the Chief Judicial Magistrate and withdrew constables posted in the CJM's Court. When 'P' directed the police to drop the criminal cases against certain persons who had caused obstruction in judicial proceedings on their tendering unqualified apology, 'S' reacted strongly to the direction and made complaint against the CJM to the Registrar of the High Court through District Superintendent of Police. On September 25, 1989, 'S' met the CJM in his chamber to discuss a case where the police had failed to submit charge-sheet within 90 days. During discussion 'S' invited the CJM to visit the police station to see the papers and further assured that his visit would mollify the sentiments of the police officials. Accordingly, at about 8.40 p.m. 'S' sent a police jeep at the residence of 'P' and on that vehicle 'P' went to the police station. When he arrived in the chamber of 'S' in the police station, he was forced to consume liquor and on his refusal he was assaulted. He was handcuffed and tied up with a thick rope by the Police Inspector, a Sub-Inspector, a Head Constable and a Constable. This was

deliberately done in defiance of Police Regulations and Circulars issued by the Gujarat Government and the law declared by the Supreme Court in *Prem Shankar Shukla Vs. Delhi Administration, (1980) 3 SCC 526.* A panchnama showing the drunken state of 'P' was prepared on the dictation of 'S' and was signed by 'S' as well as two panchas—a Mamlatdar and a Fire Brigade Officer. Thereafter, 'P' was taken to Civil Hospital handcuffed and tied with thick rope where he was deliberately made to sit outside in the verandah on a bench for half an hour to enable the police to have a full view of the CJM in that condition. A press photographer was brought on the scene and the policemen posed with 'P' for the press photograph. The photographs so taken were published in newspapers. A belated justification for this was pleaded by the notice that 'P' desired to have himself photographed in that condition. Request made by 'P' in the casualty ward of the Civil Hospital to the doctors to contact the District Judge and inform him about the incident was not allowed by 'S' and other police officers. On examination at the hospital, the body of 'P' was found to have a number of injuries. His blood was taken and chemical examination conducted without following the procedure prescribed by the Rules and Circulars issued by the Director of Medical Services, Gujarat. The Chemical Examiner submitted the report holding that the blood sample of 'P' contained alcohol on the basis of the calculation made by him in the report, though he later clearly admitted that he had never determined the quantity of liquor by making calculation in any other case before. At the initial stage only one case was registered against 'P' by the police under the Bombay Prohibition Act, but when the lawyers met 'S' for securing release of 'P' on bail, the offence being bailable, 'S' registered another case u/s 332 and 506 IPC in order to frustrate the attempt to get 'P' released as the offence u/s 332 IPC is non-bailable. The then District Superintendent of Police did not take any immediate action in the matter; instead he created an alibi for himself alleging that he had gone elsewhere and stayed in a Government Rest House there. The register at the Rest House indicating the entry regarding his stay was found to have been manipulated subsequently by making interpolation. All these facts were found established by a then sitting Judge of the Allahabad High Court who was appointed as Commissioner by the Supreme Court to hold inquiry and submit report after the Court took cognizance of the matter and issued notices to the State of Gujarat and other police officers pursuant to the writ petitions under Article 32 filed and telegrams sent to the Court from all over the country by Bar Councils, Bar Associations and individuals for saving the dignity and honour of the Judiciary.

11(B). **Supreme Court has powers to punish contemnor for contempt of sub-ordinate courts :** Supreme Court has power under Article 129 of the Constitution to punish a contemnor having committed contempt of Sub-ordinate Courts. Contempt of Courts Act, 1971 does not impinge upon such powers of the Supreme Court. See : **Delhi**

Judicial Service Association, Tis Hazari Courts, Delhi Vs. State of Gujarat & Others, **AIR 1991 SC 2176 (Three-Judge Bench)**

11(C). **Attacking Presiding Officer inside the Court or outside Court amounts to criminal contempt of Court :** The Chief Judicial Magistrate is head of the Magistracy in the District who administers justice to ensure, protect and safeguard the rights of citizens. The subordinate Courts at the district level cater to the need of the masses in administering justice at the base level. By and large, the majority of the people get their disputes adjudicated in subordinate Courts. It is in the general interest of the community that the authority of subordinate Courts is protected. If the CJM is led into trap by unscrupulous Police Officers and if he is assaulted, handcuffed and roped, the public is bound to lose faith in Courts which would be destructive of basic structure of an ordered society. If this is permitted, rule of law shall be supplanted by Police Raj. Viewed in this perspective, the incident of arrest, assault and handcuffing of CJM by Police is not a case of physical assault on an individual judicial officer, instead it is an onslaught on the institution of the judiciary itself. The incident is a clear interference with the administration of justice, lowering its judicial authority. Its effect was not confined to one District or State, it had a tendency to affect the entire judiciary in the country. The incident highlights a dangerous trend that if the Police is annoyed with the orders of a presiding officer of a Court, he would be arrested on flimsy manufactured charges, to humiliate him publicly as has been done in the instant case. The conduct of Police Officers in assaulting and humiliating the CJM brought the authority and administration of justice into disrespect affecting the public confidence in the institution of justice. "The summary power of punishment for contempt has been conferred on the Courts to keep a blaze of glory around them, to deter people from attempting to render them contemptible in the eyes of the public. These powers are necessary to keep the course of justice free as it is of great importance to society". The power to punish contempt is vested in the Judges not for their personal protection only but for the protection of public justice whose interest requires that decency and decorum is preserved in Courts of Justice. Those who had to discharge duty in a Court of Justice are protected by the law and shielded in the discharge of their duties. Any deliberate interference with the discharge of such duties either in Court or outside the Courts by attacking the presiding officers of the Court would amount to criminal contempt and the Courts must take serious cognizance of such conduct. See : **Delhi Judicial Service Association, Tis Hazari Courts, Delhi Vs. State of Gujarat & Others**, **AIR 1991 SC 2176 (Three-Judge Bench) (para 43)**

11(D). **Police officials assaulting Judicial Officer liable to be punished both in departmental side and also for criminal contempt of court :** Police Officials

involved in assault, arrest and handcuffing of Chief Judicial Magistrate are liable both for disciplinary proceedings and also for criminal contempt of court. In the case noted below, the Supreme Court directed the State Government of Gujarat to initiate disciplinary proceedings against the police officials involved in the incident of assaulting and arresting the CJM. See : **Delhi Judicial Service Association, Tis Hazari Courts, Delhi Vs. State of Gujarat & Others**, **AIR 1991 SC 2176 (Three-Judge Bench).**

11(E). Directions of the Supreme Court regarding FIR and arrest etc. of Judicial Officers : In the case noted below, a Three-Judge Bench of the Supreme Court has issued following directions regarding registration of FIR and arrest etc. of Judicial Officers :

(A) If a Judicial Officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.

(B) If facts and circumstances necessitate the immediate arrest of a Judicial Officer of the Subordinate Judiciary, a technical or formal arrest may be affected.

(C) The fact of such arrest should be immediately communicated to the District & Sessions Judge of the concerned district and the Chief Justice of the High Court.

(D) The Judicial Officer so arrested shall not be taken to a police station without the prior order or directions of the District & Sessions Judge of the concerned district, if available.

(E) Immediate facilities shall be provided to the Judicial Officer for communication with his family members, legal advisors and Judicial Officers including the District & Sessions Judge.

(F) No statement of a Judicial Officer who is under arrest be recorded nor any panchnama be drawn up nor any medical tests be conducted except in the presence of the Legal Advisor of the Judicial Officer concerned or another Judicial Officer of equal or higher rank, if available.

(G) There should be no handcuffing of a Judicial Officer. If however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be overpowered and handcuffed. In such case, immediate report shall be made to the District & Sessions Judge concerned and also to the Chief Justice of the High Court. But the burden would be on the Police to establish the necessity for effecting physical arrest and handcuffing the Judicial Officer and if it be established that the physical arrest and handcuffing of the Judicial Officer was unjustified, the police officers causing the arrest will be responsible for such arrest and handcuffing and would be guilty of

misconduct and would also be personally liable for compensation and/or damages as may be summarily determined by the High Court.

(H) The above guidelines are not exhaustive but these are minimum safeguards which must be observed in case of arrest of a judicial officer. These guidelines should be implemented by the State Governments as well as by the High Courts. See : **Delhi Judicial Service Association, Tis Hazari Courts, Delhi Vs. State of Gujarat, AIR 1991 SC 2176 (Three- Judge Bench)**

Note: The relevant **Circular Letters** of the Allahabad High Court and the **G.Os.** issued by Central Government for strict observance of the directions of the Apex Court in the abovenoted case are as under :

(i) C.L. No. 54/IX-f-69/Admn. 'G' dated October 22, 1992
(ii) C.L. No. 190117/4/90-Jus. Dated 26.4.1990/3.5.1990
(iii) Central Government's G.O. No. VII-11017/15/88-G.P.A. II, dated 4.10.1988
(iv) Central Government's Letter No. 19017/3/92-Jus., dated 3.4.1992/23.4.1992
(v) Central Government's Letter No. VI-25013/42/89-G.P.A. II, dt. 31.3.1992

12. **Chief Justice's prior permission mandatory for FIR :** No crime or criminal case shall be registered against a judicial officer in respect of anything allegedly done or purported to be done in discharge of his duty or in his capacity as holder of such judicial office without prior permission of Chief Justice of the High Court concerned. See : **U.P. Judicial Officers' Association versus Union of India, (1994) 4 SCC 687.**

13(A). **Superior Courts must protect the reputation of judicial officers of sub-ordinate courts against false allegations :** The facts of the case noted below were thus **:** "Shri Vishram Singh Raghuvanshi is an Advocate practicing for last 30 years in the District Court, Etawah (UP). On 25.07.1998, Shri Vishram Singh Raghuvanshi Advocate produced one Om Prakash for the purpose of surrender by impersonating him as Ram Kishan s/o of Asharfi Lal who was wanted in a criminal case in the court of IInd ACJM, Etawah. There was some controversy regarding the genuineness of the person who came to surrender and, therefore, the Presiding Officer of the court raised certain issues. So, Shri Vishram Singh Raghuvanshi Advocate misbehaved with the Presiding Officer in the court and used abusive language. The Presiding Officer of the court vide his letter dated 28.09.1998, made a complaint against Shri Vishram Singh Raghuvanshi Advocate to the UP Bar Council and vide letter dated 27.10.1998, made a reference to the Allahabad High Court for initiating contempt proceeding u/s 15 of the Contempt of Court Act, 1971. The Division Bench of the Allahabad High Court after due hearing of the matter, vide its judgment and order dated 05.05.2006 held Shri Vishram Singh Raghuvanshi Advocate guilty of committing contempt of the said court and sentenced him to undergo 03 month's simple imprisonment with a fine of Rs. 2000/-. Shri Vishram Singh Raghuvanshi Advocate then filed appeal before the

Hon'ble Supreme Court." The Hon'ble Supreme Court while dismissing the appeal ruled thus : "The contempt jurisdiction is to uphold majesty and dignity of the law Courts and the image of such majesty in the minds of the public cannot be allowed to be distorted. Any action taken on contempt or punishment enforced is aimed at protection of the freedom of individuals and orderly and equal administration of laws and not for the purpose of providing immunity from criticism to the judges. The superior Courts have a duty to protect the reputation of judicial officers of subordinate Courts, talking not of the growing tendency of maligning the reputation of judicial officers by unscrupulous practicing advocates who either fail to secure desired orders or do not succeed in browbeating for achieving ulterior purpose. Such an issue touches upon the independence of not only the judicial officers but brings the question of protecting the reputation of the institution as a whole. The dangerous trend of making false allegations against judicial officers and humiliating them requires to be curbed with heavy hands, otherwise the judicial system itself would collapse. The Bench and the Bar have to avoid unwarranted situations on trivial issues that hamper the cause of justice and are in the interest of none. Liberty of free expression is not to be confounded or confused with license to make unfounded allegations against any institution, much less the judiciary". Kindly see : **Vishram Singh Raghuvanshi Advocate Vs. State of UP, AIR 2011 SC 2275** *(paras 15 & 16)*

13(B).<u>High Court must protect honest Judicial Officers</u> : In the case noted below, a probationer lady Civil Judge (Junior Division) of Gujarat faced several difficulties from her sub-ordinate staff and wrote several letters to the District Judge by recording their objectionable conduct but there was no response to her letters and she was ultimately awarded adverse entries in her ACR by the District Judge and the same was also approved by the High Court. Her services were terminated by the High Court on the basis of the said adverse entries and also on the ground that she used to cross permitted lines of behavoiur while talking to her male colleagues. Quashing her termination order, the Hon'ble Supreme Court has held that since the probationer lady Judicial Officer was facing hostile atmosphere of staff and Bar, her complaint made to the District Judge was also not attended to rather adverse entries in her ACR were recorded and the Vigilance Judge of the High Court appear to be biased against her and had not provided her any opportunity to defend her and, therefore, her termination was bad in law. The Supreme Court further observed that when the misconduct leading to termination order is stigmatic in nature, even a probationer is entitled to enquiry as such penalty attracts Article 311 of the Constitution even to a probationer. The Supreme Court also observed that no enquiry can be held behind the back of the delinquent/Judicial Officer. The High Court must protect honest Judicial Officers.

See : **Registrar General, High Court of Gujarat Vs. Jayshree Chamanlal Buddhbhatti, 2014 (1) SLJ 130 (SC).**

13(C). <u>Protection to Judicial Officers Against Executive as Litigant</u> : There is, however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 providing for prior sanction from the competent authority and direction that no court shall take cognizance of the offence under Section 5(1) without such prior sanction is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court, which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity, will have a far-reaching impact on the Judge and the litigant public. The need, therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless Judges are not harassed. They should be protected. See : **U.P. Judicial Officers' Association Vs Union of India, (1994) 4 SCC 687.**

14. <u>Protection to Judicial Officers Against Malicious Prosecution</u> : There is, however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 of the Delhi Special Police Establishment Act, 1946 provides for prior sanction from the competent authority and direction that no court shall take cognizance of the offence under Section 5(1) without such prior sanction. It is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court, which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity, will have a far-reaching impact on the Judge and the litigant public. The need, therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless Judges are not harassed. They should be protected. See : **U.P. Judicial Officers' Association Vs Union of India, (1994) 4 SCC 687.**

15(a). <u>Application of mind by authority before according sanction for prosecution of judicial officers</u> : There is, however, apprehension that the executive being the largest

litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 providing for prior sanction from the competent authority and direction that no court shall take cognizance of the offence under Section 5(1) of the Delhi Special Police Establishment Act, 1946 without such prior sanction. It is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court, which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity, will have a far-reaching impact on the Judge and the litigant public. The need, therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless judges are not harassed. They should be protected. See : **U.P. Judicial Officers' Association Vs Union of India, (1994) 4 SCC 687.**

15(b). Duty cast on High Court to protect honest Judicial Officers : Article 235 of the Constitution confers supervisory jurisdiction on High Courts over sub-ordinate judiciary. A duty is also cast on the High Court to protect the honest Judicial Officers as that is paramount for survival of judicial system. See : **Nirmala J. Jhala Vs State of Gujarat, AIR 2013 SC 1513.**

16(A). D.O. dated 03.10.2014 of Hon'ble the CJI to the Chief Justices of all High Courts not to entertain complaints against Judicial Officers unless the same is accompanied by affidavits and verifiable material to substantiate the allegations (circulated amongst the judicial officers of the State of UP vide C.L. No. 1416/conf. dated 11.06.2015) : In pursuance of a D.O. dated 03.10.2014 written by Hon'ble the Chief Justice of India to all the Chief Justices of the High Courts not to entertain any complaint against a judicial order unless the same is accompanied by sworn affidavits and verifiable material to substantiate the allegations, a D.O. letter dated 31.12.2014 of the Department of Justice, Ministry of Law of Justice, Govt. of India issued to the Registrar Generals of all High Courts reads as under :

"F.No. L-18011/50/12-Jus
Government of India
Ministry of Law & Justice
Department of justice
******

Jaisalmer House, 26, Mansingh Road,
New Delhi-110011, dated the 31st December, 2014.

To

The Registrar General
All High Courts

Subject : **Guidelines for dealing with the complaints against the subordinate judiciary.**

Sir/Madam,

As you are aware, recently, Hon'ble the CJI, vide his D.O. No. CJI/CC/Comp/2014/1405 dt. 3.10.2014, addressed to the Chief Justice of all the High Courts, has asked the **High Court and subordinate judiciary not to entertain any complaint against a judicial officer unless it is accompanied by sworn affidavits and verifiable material to substantiate the allegation.** Expressing concern over the large number of complaints being filed against subordinate judiciary by people having vested interest and personal agenda, Hon'ble CJI has directed that authenticity of the complaints must be ascertained before any action is taken on it. In view of the provisions of the Article 235 of the Constitution, further action relating to the grievances/complaints against the judicial officers lies at the High Court level.

All the Chief Justices of the High Courts have been requested to give publicity to these guidelines laid down in the communication dated 3rd October, 2014.

This being the position, you are requested to give such wide publicity including through website of the High Courts and subordinate Courts under the control of the High Court so that litigants having any grievances/complaints relating to the judiciary are aware of the procedure required to be followed in such cases. Department of justice may be apprised of the action taken in this regard so that once publicity has been given to these guidelines, complaints/grievances received in the Department of Justice can be responded to by referring to these guidelines.

Yours faithfully,

(Y.M. Pande)
Director (Justice)
Telefax : 23072135"

16(B).Revised guidelines dated 04.04.2017 of the High Court on processing of complaints received against the Judicial Officers : Circular Letter No. 500/Conf. dated 04.04.2017 issued by the Hon'ble Allahabad High Court on the modified guidelines for dealing with the complaints against the officers of the Sub-ordinate Judiciary is reproduced below :

"In continuation of the Court's Circular Letter No. 1416/Conf. dated 11.06.2015, Allahabad, I am directed to say that the Hon'ble Court has been

pleased to issue the following modified guidelines to be followed uniformly while dealing with the complaints against the members of the Sub-ordinate Judiciary in the light of the communication made by Hon'ble the Chief Justice of India vide letter dated 16.03.2017 :

(A) The complaint making allegations against members of the Sub-ordinate Judiciary in the States should not be entertained and no action should be taken thereon, unless it is accompanied by a duly sworn affidavit and/or verifiable material to substantiate the allegation made therein.

(B) If action on such complaint meeting the above requirement is deemed necessary, authenticity of the complaint should be duly ascertained and further steps thereon should be taken only after satisfaction of the competent authority designated by the Chief Justice of the High Court.

(C) If the above requirements are not complied with, the complaint should be filed/lodged without taking any steps thereon.

I am, therefore, to request you to follow the aforesaid directions/guidelines and to give a wide publicity of the same by affixing the copy of these guidelines in a conspicuous place/Notice Board of your judgeship (including outlying courts), Collectorate, Tehsil and also upload the copy of this Circular Letter on the website of your judgeship and also circulate among the Judicial Officers under your administrative control." Yours faithfully : Dinesh Kumar Singh-I/Registrar General, High Court of Judicature at Allahabad.

16(C). No Publicity of complaint against Judicial Officer : There is, however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 provides for prior sanction from the competent authority and direction that no court shall take cognizance of the offence under Section 5(1) without such prior sanction. It is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court, which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity, will have a far-reaching impact on the Judge and the litigant public. The need, therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless judges are not harassed. They should be protected. See : **U.P. Judicial Officers' Association Vs Union of India, (1994) 4 SCC 687.**

17(A). **Fearless & Honest Judges Not to Be Harassed :** There is, however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 provides for prior sanction from the competent authority and direction that no court shall take cognizance of the offence under Section 5(1) without such prior sanction. It is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court, which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity, will have a far-reaching impact on the Judge and the litigant public. The need, therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless judges are not harassed. They should be protected. See : **U.P. Judicial Officers' Association Vs Union of India, (1994) 4 SCC 687.**

17(B). **Civil Court or its Presiding Officer cannot be impleaded as party in Writ, Appeal or Revision etc.:** The civil courts, which decide matters, are courts in the strictest sense of the term. Neither the court nor the Presiding Officer defends the order before the superior court it does not contest. If the High Court, in exercise of its writ jurisdiction or revisional jurisdiction, as the case may be, calls for the records, the same can always be called for by the High Court without the court or the Presiding Officer being impleaded as a party. There are tribunals which are not at all required to defend their own order, and in that case such tribunals need not be arrayed as parties. See : **Jogendrasinhji Vijaysinghji Vs. State of Gujarat, (2015) 9 SCC 1.**

17(C). **Judicial Officers Not to be Made Party in Petitions etc. :** The practice of impleading judicial officers, who had disposed of the civil proceedings, as parties in writ petitions under Article 226 or in SLP under Article 136 of the Constitution, has been strongly deprecated by the Supreme Court. It has been further directed by the Supreme Court that such practice should be stopped as the judicial officers cannot be in any way equated with the officials of the State. See :

1. **Savitri Debi Vs. 1. District Judge, Gorakhpur & 2. IV Addl. Civil Judge (Junior Division), 1999 (2) SCC 577**
2. **Pepsi Foods Ltd. Vs. Special Judicial Magistrate, (1998) 5 SCC 749.**

18(A). **Police Protection to Judicial Officers :** For security to judicial officers at their courts and residences, following Circular Letters and G.Os. have been issued by the Allahabad High Court and the Government of U.P. :

(i). **C.L. No. 9/IVh-40/Admn. (G) dated/Alld./29th January, 1998** : ***To ensure security arrangements in district civil courts and at the residence of the Judicial***

Officers *:* "I am directed to draw your attention to the security arrangements in district civil courts and at the residence of the Judicial Officers whereupon the Government of Uttar Pradesh had issued a letter No. 344A/Chha-pu-1-94-113/93 TC/dated 10.11.94 to A.D.G.P. (Security) and all the DMs/SSPs/SPs of the State (copy enclosed). In order to review implementation of the guidelines contained in U.P. Govt.'s letter dated 10.11.94 and also tone up security arrangements, the Government of Uttar Pradesh have also issued Fax to all the District Magistrates/Senior Superintendents of Police/Superintendents of Police of State of U.P. with intimation to the court. I am, therefore, to request you kindly to apprise the Court immediately as to what action District Magistrates and Superintendents and Police have taken in the matter of security of Civil Courts and the residences of the Judicial Officers. I am, further, to request you kindly to report to the Court if the arrangements made by the District Authorities are sufficient or not."

(ii) शासनादेश संख्या–33उ/छः–30.1.94–114/93/टी.सी.

गृह (पुलिस) अनुभाग–1 लखनऊ   दिनांक : 10 नवम्बर 1994

विषयः जिला न्यायालयों के कार्यरत मुंसिफ मजिस्ट्रेटों/न्यायाधीशों की सुरक्षा व्यवस्था के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक अतिरिक्त पुलिस महानिदेशक सुरक्षा, अभिसूचना विभाग, उत्तर प्रदेश लखनऊ के अर्द्ध शा. पत्र संख्या–एच–4(क33)/93, दिनांक 20 दिसम्बर, 93 के संदर्भ में मुझे यह कहने का निदेश हुआ है कि शासन द्वारा सम्यक विचारोपरान्त यह निर्णय लिया गया है कि उत्तर प्रदेश के जिला न्यायालयों में कार्यरत मुंसिफ मजिस्ट्रेटों/न्यायाधीशों की निम्नलिखित बिन्दुओं के अनुसार सुरक्षा व्यवस्था की जाय तथा कृत कार्यवाही से शासन को यथा समय अवगत कराया जाय।

(क) न्यायालयों के परिसर में एक सशस्त्र आर्म गार्ड नियुक्त किया जाना चाहिए जिसका प्रमुख कर्तव्य न्यायालयों की सुरक्षा सुनिश्चित करना होगा।

(ख) प्रत्येक दिन न्यायालयों की कार्य अवधि के दौरान नागरिक पुलिस का एक उपनिरीक्षक तथा डेढ़ सेक्शन पी.ए.सी. नियुक्त की जानी चाहिए जो न्यायालय परिसर में बनी रहेगी।

(ग) जिला न्यायाधीश (जिला तथा सेशन न्यायाधीश) के आवास पर एक सशस्त्र आर्म्ड गार्ड की नियुक्ति की जानी चाहिए ।

(घ) जिला न्यायाधीश की अति समीप सुरक्षा (क्लोज प्राक्सीमेट) के लिए एक गनर स्टेनगन के साथ नियुक्त किया जाना चाहिए।

(ड़) यदि कई न्यायाधीश एक ही परिसर में रहते हैं तो पूरे परिवार के लिए एक ही सशस्त्र आर्म्ड गार्ड की व्यवस्था की जानी चाहिए। प्रत्येक न्यायाधीश के लिए अलग–अलग गार्ड देना सीमित संसाधनों के कारण सम्भव नहीं है।

(च) यदि किसी न्यायाधीश को विशेष जीवन भय है तो उन्हें आवेदन पत्र देना चाहिए। जीवन भय के मूल्यांकन के आधार पर उन्हें विशेष सुरक्षा व्यवस्था उपलब्ध करायी जानी चाहिए।

(iii). G.O. No.45/IVh-40 Dated 19th October, 2000

To provide sufficient security to the Judicial Officers

In Criminal Contempt Case No. 16 of 1999 and 19 of 1999, In Re- Sri Swami Nath Yadav, Advocate and 4 Others, Hon'ble Court (Hon. Sri B.K. Roy and Hon. Sri M.C. Jain, JJ.) has given directions with regard to the security of Judicial Officers. See-- **In re, Swami Nath Yadav, Adv., 2001 Cr.L.J. 639 (Allahabad)(DB)** *Known as the case of Sri S.S. Nimesh, the then I/c District Judge, Azamgarh.*

I am desired to enclose herewith copy of the judgment given by the Hon'ble Court for your information and compliance as and when situation so demands.

(iv). गृह (पुलिस) अनुभाग–2, लखनऊः दिनांक 6 फरवरी, 2001

विषयः जिला न्यायालयों में कार्यरत मुंसिफ मजिस्ट्रेटों/न्यायाधीषों की सुरक्षा के सम्बन्ध में।
महोदय,

कृपया उपर्युक्त विषयक शासनादेश सं0 7334ए/6–30–1–94–114/93 टी0सी0 दिनांक 10.11.94 का संदर्भ ग्रहण करने का कष्ट करें।

मा0 उच्च न्यायालय, इलाहाबाद द्वारा क्रिमिनल कन्टेंप्ट सं0–19/99 एस.एस. निमेश बनाम स्वामीनाथ व अन्य में अपने निर्णय दिनांक 18.9.2000 में यह आदेश पारित किये गये हैं कि–

"If any Judicial Officer of the State apprehends any type of obstruction in fearless administration of justice, he shall inform his District Judge, who in turn, will first examine the same objectively and after finding substance shall at once bring to the notice of the Senior Superintendent of Police/Superintendent of Police of his district of the same, who in turn shall be duty bound to afford sufficient police protection to that Judicial Officer and if even then the District Judge finds that no proper action has been taken in that regard by the aforesaid police authorities, in that event he will make a report to the Chief Secretary of the State through the Registrar General/Registrar of this Court and in that event the Chief Secretary shall take a serious view of the matter and apart from directing the Director General of Police of this State to take an appropriate action at once in relation to providing sufficient security to the Judicial Officer concerned shall also take further action against the erring Policing Authority concerned. The District Judges of the Judgeships shall also follow the same course if they apprehend the same by reporting to the Inspector General of police of their area thereafter the same course will be followed by all concerned."

इस संबंध में मुझे यह कहने का निदेश हुआ है कि कृपया माननीय न्यायालय के उपर्युक्त आदेशों के अनुसार आवश्यक कार्यवाही सुनिश्चित करने का कष्ट करें।

(v). **C.L. No. 4331/IV-40/Admn. (G)/Dated 7th March, 2001**

To provide sufficient security to the Judicial Officers

Kindly refer to Court's Circular Letter No. 45/IVh-40/dated 10.10.2000 wherein a copy of judgment dated 28.9.2000 passed by Hon'ble Court (Hon'ble Sri B.K. Roy and Hon'ble Sri M.C. Jain, JJ.) in Criminal Contempt Case No. 16 of 1999 and 19 of 1999 in Re-Sri Swami Nath Yadav. Advocate and 4 others was sent to you on the above subject for compliance. In this connection, I am directed to say that the Government of Uttar Pradesh vide letter No. 5319/6-pu-2-2000/dated 6.2.2001 issued directions of the Hon'ble Court passed in aforesaid contempt case to all the Senior Superintendent of Police/Superintendents of Police of Uttar Pradesh for necessary action with regard to security to Munsif Magistrates/Judges of the District Courts.

I, am, therefore, to send a copy of Government's letter dated 6.2.2001 for information.

18(B). S.P., Sant Kabir Nagar, Uttar Pradesh warned by the State Government of UP for not providing police protection to CJM, Sant Kabir Nagar: See the UP Government's Order given below:

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उत्तर प्रदेश शासन
गृह (पुलिस सेवायें) अनुभाग–2
संख्या–501डीजी/छ:पु0से0–2–19–522(48)/2019
लखनऊ: दिनांक:05 जुलाई, 2019

कार्यालय–आदेश

मा0 जिला जज संतकबीर नगर द्वारा मा0 उच्च न्यायालय के समक्ष यह आख्या प्रस्तुत की गई कि मुख्य न्यायिक मजिस्ट्रेट संतकबीर नगर को प्रदत्त गनर/सुरक्षा गार्ड श्री आकाश तोमर, पुलिस अधीक्षक, संतकबीर नगर द्वारा बिना किसी कारण और पूर्व सूचना के वापस लिया गया तथा मा0 जिला जज द्वारा की गई संस्तुति के उपरान्त भी उन्हें गनर/सुरक्षा उपलब्ध नही कराये गये जो श्री स्वामी नाथ यादव व अन्य बनाम कंटीमनर्स में पारित डिवी बेंच के आदेश का उल्लंघन है। इसके अतिरिक्त मुख्य न्यायिक मजिस्ट्रेट व अन्य न्यायि अधिकारियों के आवासीय परिसर की सुरक्षा हेतु तैनात किये गये सुरक्षाकर्मियों को भी वापस कर लिया गया, जिससे न्यायिक अधिकारी और उनके परिवार असुरक्षित हो गये। यह भी संज्ञान में लाया गया कि श्री आकाश तोमर, पुलिस अधीक्षक, संतकबीर नगर द्वारा मॉनिटरिंग सेल की मीटिंग में प्रतिभाग नहीं किया जाता है तथा श्री तोमर द्वारा 09 बैठकों में केवल दो बैठक में ही प्रतिभाग किया गया है, जो पुनः शासनादेश दिनांक 28.12.93 का उल्लंघन है। इसके अतिरिक्त श्री तोमर द्वारा संयुक्त जेल निरीक्षण में भी आना–कानी की जाती रही है।

2– उक्त प्रकरण में श्री आकाश तोमर, आईपीएस को अपने मूल कर्त्तव्यों के प्रति उपेक्षात्मक कार्य का परिचय दिये जाने का दोषी पाये जाने के सम्बन्ध में शासन के पत्र संख्या–494/छ:पु0से0–2–19–522(48)/2019, दिनांक 12.06.19 द्वारा अखिल भारतीय सेवायें (अनुशासन एवं अपील) नियमावली–1969 के नियम–10 के अन्तर्गत उनका स्पष्टीकरण मांगा गया। इस सम्बन्ध में अपर पुलिस महानिदेशक, कार्मिक, उ0प्र0 के पत्र दिनांक 04.07.19 एवं श्री आकाश तोमर, आईपीएस का स्पष्टीकरण दिनांक 13.06.19 प्राप्त हुआ।

3– उक्त के सम्बन्ध में पुलिस महानिदेशक, उ0प्र0 लखनऊ द्वारा दी गई सहमति एवं श्री आकाश तोमर, आईपीएस द्वारा प्रस्तुत स्पष्टीकरण दिनांक 13.06.19 में उल्लिखित तथ्यों एवं पत्रावली में उपलब्ध अन्य संगत अभिलेखों के सम्यक विचारोपरान्त् कालान्तर में सुधार/अनुभव–संवर्धन हेतु मा0 न्यायिक अधिकारियों से उच्च स्तर का समन्वय व संवाद बनाये रखने हेतु श्री आकाश तोमर, तत्का0 पुलिस अधीक्षक, संतकबीरनगर सम्प्रति पुलिस अधीक्षक, बाराबंकी को व्यक्तिगत पत्रावली पर "चेतावनी" देते हुए भविष्य में और अधिक सतर्क रहकर अपने दायित्वों एवं कर्तव्यों के निर्वहन हेतु निर्देशित करते हुये उनके विरूद्ध निर्गत स्पष्टीकरण दिनांक 12.06.19 को तदनुसार एतद्द्वारा निर्णीत किया जाता है।

राज्यपाल महोदय की आज्ञा से,

अवनीश कुमार अवस्थी
अपर मुख्य सचिव।

संख्या–501डीजी(1)/छ:पु0से0–2–2019, तद्दिनॉक।

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषितः–

1– पुलिस महानिदेशक, उ0प्र0, लखनऊ।
2– श्री मानवेन्द्र सिंह, एच0जे0एस0, वरिष्ठ रजिस्टार मा0 उच्च न्यायालय, लखनऊ बेंच लखनऊ।
3– श्री आकाश तोमर, पुलिस अधीक्षक, बाराबंकी।
4– व्यक्तिगत पत्रावली/चरित्र पंजिका में रखने हेतु।
5– गार्ड फाइल।

आज्ञा से
(जयवीर सिंह)
अनु सचिव।

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18(C). Powers of Judicial Officers u/s 228 IPC & Sec. 345 CrPC : In case any person intentionally offers any insult or causes any interruption in the judicial functioning of the court, the presiding officer may proceed summarily against such person u/s 345 CrPC and may punish him u/s 228 of the IPC. Section 28 of the IPC reads thus : *"Intentional insult or interruption to public servant sitting in judicial proceeding : Whoever, intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."*

19(A). Use of unfair means by Judicial Officer in LL.M. Examination- Protection not available : Where a Munsif Magistrate had appeared in LL.M. examination held by the Aligarh Muslim University and was caught by the invigilator using unfair means and was first suspended and after departmental enquiry by the Allahabad High Court, was removed from service, the Supreme Court held that judicial officers cannot have two standards, one in the Court and another outside the Court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy. A judicial officer, who has been found guilty of using unfair means in the LL.M. Examination, is undoubtedly not a fit person to be retained in judicial service and as such the Supreme Court refused to extend the benefit of Sec. 1 of the Judicial Officers' Protection Act, 1850 to the delinquent Munsif Magistrate. See. **Daya Shankar Vs. High Court of Allahabad, AIR 1987 SC 1469**

19(B). Governor is bound by the recommendations of the High Court made to him under Article 235 of the Constitution : The true import of Article 235 of the Constitution is that the order of removal from service of a person holding the substantive rank of District Munsiff has to be made only by the Governor even though the Governor must act in accordance with recommendation of the High Court which is binding on the Governor. See :

(i) B.S. Yadav Vs. State of Haryana, (1981) 1 SCR 1024.
(ii) Chief Justice of AP Vs. LVA Dixitulu, (1979) 2 SCC 34.
(iii) Lakshmi Narsimhachari, Govt. of AP Vs. High Court of AP, Judgment dated 09.5.1996 by the Supreme Court in civil appeal/writ petition (c) No. 331 of 1994.

20. Magistrate issuing NBW against acquitted accused---Not entitled to protection : Where an accused was convicted by the trial court but on appeal was acquitted by the Allahabad High Court and even after the order of the High Court having been notified to the Judicial Magistrate concerned, he issued NBW against the acquitted accused and got him arrested, it was held by the Allahabad High Court that a committal Magistrate complying with an order certified u/s 425 CrPC does not act under that provision but

only performs a ministerial and not a judicial act or a protected executive function. If he negligently signs arrest warrants against acquitted persons he is not protected by **Section 1** of the Judicial Officers' Protection Act, 1850. Even if he does so out of negligence of his subordinate, he will still be liable for damages. He will not be relieved of his liability by the failure to implead that subordinate in the suit for damages, even if the latter can be considered a joint tortfeasor. See : **State of UP Vs. Tulsi Ram, AIR 1971 All 162.**

21. **Judicial Officer's Prosecution for Defamatory Comments on Transfer Application & Sec. 197 CrPC :** Where the appellant, a Munsif Magistrate, by a letter to the District Judge submitted his remarks against the allegations made by the respondent, an advocate, in a transfer petition for transfer of a suit pending in appellant's Court and while so doing, called the respondent **'rowdy'**. **"a big gambler"** and **"a mischievous element"** and on this letter being read in open court, the respondent filed criminal complaint against the appellant without the sanction contemplated u/s 197 CrPC, it was held that the act complained of had no connection with the discharge of official duty of the appellant. Hence Sec. 197 CrPC was not in any way attracted. See : **B.S. Sambhu Vs. T.S. Krishnaswamy, AIR 1983 SC 64.**

22. **No protection under the 1850 Act when not acting judicially :** Where some record sent by the court of Magistrate to a Sarpanch acting under U.P. Panchayat Raj Act, 1947 got lost and on enquiry against the Sarpanch, plea was taken by him regarding protection under the provisions of the Judicial Officers Protection Act, 1850, it was held by the Allahabad High Court that **since the Sarpanch was not acting as a court or judicial tribunal**, therefore, he was not entitled to any protection u/s. 1 of the 1850 Act. See : **Indra Pati Singh Vs. State of U.P., 1986 All LJ 1258 (All).**

23. **Family court judge not covered within the word 'judicial officer' :** Judges presiding over family courts are neither members nor integral part of judicial services. The word "judicial officer" has not been defined in the Constitution of India. A family court judge cannot be considered for elevation to High Court. See : **S.D. Joshi Vs. High Court of Judicature at Bombay, 2011(1) SCJ 169.**

24. **Refusal of transfer of Ghaziabad GPF scam case involving judicial officers to Delhi :** Turning down the transfer application of the CBI under section 406 CrPC, the supreme court has held that power of transferring case u/s 406 CRPC should be sparingly and with great circumspection exercised and merely because the accused persons in Ghaziabad PF scam are judicial officers of the state of UP, it cannot be a ground for transferring the case from Ghaziabad to Delhi where subordinate judiciary is already heavily burdened. See : **Nahar Singh Yadav Vs. union of India, 2011 CrLJ 997 (SC).**

25. **<u>Promotions not proof of competence of a Judicial Officer :</u>** Promotions are not proof of competence of a Judicial Officer. See : **High Court of Judicature at Patna Vs. Shiveshwar Narayan & Another, 2011 (3) SLJ 392 (SC)**

26. **<u>Slightest dishonesty disastrous for a Judicial Officer</u> :** A slightest dishonesty is disastrous for a Judicial Officer. See : **High Court of Judicature at Patna Vs. Shiveshwar Narayan and another, 2011 (3) SLJ 392 (SC)**

27(A). **<u>Even unproved complaints may disentitle a Judicial Officer of certain benefits</u> :** Even unproved complaints may disentitle a Judicial Officer of certain benefits. It is not 'proved dishonesty' or 'proved misconduct' that is determinative but doubtful integrity or suspicious judicial conduct may be sufficient to deny a Judicial Officer benefit of enhancement of superannuation age to 60 years. It is in totality of the circumstances available from the entire service record and all other relevant circumstances that an opinion has to be formed whether or not the Judicial Officer deserves to be given benefit of increase of superannuation age to 60 years. See : **High Court of Judicature at Patna Vs Shiveshwar Narayan & another, 2011 (3) SLJ 392 (SC).**

27(B). **<u>Pre-mature retirement of Judicial Officer on the basis of credible complaints found justified</u> :** Where a member of Higher Judicial Service of the State of J & K was prematurely retired by the Full Court of J&K High Court on the basis of credible complaints found periodically with regard to his conduct, it has been held by the Supreme Court that the order of pre-mature retirement of the Judicial Officer was justified. The fact that the Supreme Court had held the adverse ACR of the Judicial Officer recorded by the High Court in the absence of assessment of his work and conduct as non est was immaterial. See : **Shakti Kumar Gupta Vs. State of J&K, AIR 2016 SC 832.**

28. **<u>Judicial Review & Merit Review are different</u> :** Judicial Review & Merit Review are two different aspects. See : **High Court of Judicature at Patna Vs. Shiveshwar Narayan & Another, 2011 (3) SLJ 392 (SC)**

29(A). **<u>ACR recording of Judicial Officers needs urgent reforms</u>** : The process of evaluation of a Judicial Officer is intended to contain a balanced information about his performance during the entire evaluation period. Experience however shows that it is deficient in several ways, being not comprehensive enough to truly reflect the level of work, conduct and performance of each individual on one hand and unable to check subjectivity on the other. Undoubtedly, ACRs play a vital and significant role on the assessment, evaluation and formulation of opinion on the profile of a judicial officer, particularly, in matters relating to disciplinary action against a Judicial Officer. The ACRs of such Officer hold supreme importance in ascertaining his conduct, and

therefore, the same have to be reported carefully with due diligence and caution. There is an urgent need for reforms on this subject, not only to bring about uniformity but also to infuse objectivity and standardization. See : **Registrar General, Patna High Court Vs. Pandey Gajendra Prasad & Others, AIR 2012 SC 2319.**

29(B). <u>How to record ACR of Judicial Officers</u> ? : The process of evaluation of a Judicial Officer is intended to contain a balanced information about his performance during the entire evaluation period. Experience however shows that it is deficient in several ways, being not comprehensive enough to truly reflect the level of work, conduct and performance of each individual on one hand and unable to check subjectivity on the other. Undoubtedly, ACRs play a vital and significant role on the assessment, evaluation and formulation of opinion on the profile of a judicial officer, particularly, in matters relating to disciplinary action against a Judicial Officer. The ACRs of such Officer hold supreme importance in ascertaining his conduct, and therefore, the same have to be reported carefully with due diligence and caution. There is an urgent need for reforms on this subject, not only to bring about uniformity but also to infuse objectivity and standardization. See : **Registrar General, Patna High Court Vs. Pandey Gajendra Prasad & Others, AIR 2012 SC 2319.**

29(C).<u>Entries in ACR of a pubic servant must be communicated to him whether poor, fair, average, good or very good etc.</u> : Overruling its two earlier Division Bench rulings reported in the cases of (i) Satya Narain Shukla Vs. Union of India, (2006) 9 SCC 69 and (ii) K.M. Mishra Vs. Central Bank of India, (2008) 9 SCC 120 and giving approval to its earlier Division Bench ruling reported in the case of Dev Dutt Vs. Union of India, (2008) 8 SCC 725, a **Three-Judge Bench** of the Hon'ble Supreme Court, in the case noted below has ruled thus : *"In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving three-fold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR - Poor, fair, average, good or very good - must be communicated to him/her within a reasonable period."* See : **Sukhdev Singh Vs Union of India & Others, (2013) 9 SCC 566 (Three-Judge Bench)** *(para 8)*.

29(D). **<u>ACR of a judicial officer recorded by High Court without assessment of his work and conduct liable to be treated as non est for all intents and purposes</u> :** Where a member of Higher Judicial Service of the State of J&K was prematurely retired by the Full Court of J&K High Court on the basis of his annual confidential report by saying that he had not submitted his Self Assessment Report, the Supreme Court disapproved recording of the adverse ACR of the Judicial Officer by observing that merely because the Judicial Officer had not submitted his Self Assessment Report, the same cannot be a ground to record his ACR as "Average". Such recording of ACR cannot be taken as truthful Assessment of various constituents of the Judicial Officer's work and conduct. Evaluation of an Officer can be done on the basis of record accessible and available to the High Court. ACR bereft of any assessment of work and conduct of the Judicial Officer is liable to be treated as non est for all intents and purposes. See **: Shakti Kumar Gupta Vs. State of J&K, AIR 2016 SC 832.**

30(A). **<u>Calling for report from the Sub-ordinate Judges on the judicial orders passed disapproved by the Supreme Court</u>** : It has been ruled by the Supreme Court that the High Courts should not ask the subordinate Judicial Officers to send up report in defence of their judicial orders as reasons in support of a judicial order can appear only in the order itself and it is an unwholesome practice to compel a Judicial Officer to write a report subsequently in defence of his conclusions. See : **Braj Kishore Thakur Vs. Union of India and others, AIR 1997 SC 1157.**

30(B). **<u>High Court should be extremely careful in summoning the Judicial Officers</u>** : High Court has discretion to summon a person whose attendance is necessary in the Court for deciding the case. When the summoning of a serving Judicial Officer is concerned, the Court must record sufficient reasons for summoning him or her and give sufficient indication for the purpose for which he or she is summoned to the High Court. The judicial officers discharge important judicial functions under the supervision of the court. The High Court is required to be extremely careful when summons are issued to the judicial officers to appear in the Court. It is only when the allegations are substantiated that the Court may, if it is necessary to decide any case and if it is absolutely necessary in a rarest of rare case to summon the judicial officer after recording reasons on record, and if such necessity arises the proceeding should be held in camera, so that the judicial officer is not put to embarrassment and is not required to face the same litigants, who are appearing or have appeared in Court. So far as possible the proceedings should be concluded on affidavits filed by the judicial officer concerned. ***See :***

Judgment dated 10.04.2014 passed by the Division Bench of the Hon'ble Allahabad High Court comprising Hon'ble Sunil Ambwani & Hon'ble Devendra Kumar Upadhyaya, JJ. in Writ Petition (M/B) No. 9736/2013, Rajendra Prasad Vs. State of UP.

30(C). On summoning of a Judicial Officer, proceedings should be held in camera : On summoning of a Judicial Officer, proceedings should be held in camera. **See :** *Judgment dated 10.04.2014 passed by the Division Bench of the Hon'ble Allahabad High Court comprising Hon'ble Sunil Ambwani & Hon'ble Devendra Kumar Upadhyaya, JJ. in Writ Petition (M/B) No. 9736/2013, Rajendra Prasad Vs. State of UP.*

30(D).**Direction of High Court to ASJ to appear in chamber and explain as to how a judgment of conviction was passed by him despite his findings that the prosecution had failed to prove its case beyond all reasonable doubts** : In the Criminal Appeal noted below, the observations of a Division Bench of the Lucknow Bench of the Allahabad High Court are reproduced here thus : "This appeal has been filed challenging the order dated 17.04.2017 passed by Additional Sessions Judge/Special Judge Gangster Act, Court No. 4, Sultanpur in Gangster Case No. 448/2012 arising out of Case Crime No. 717/2003, Police Station-Gosaiganj, District-Sultanpur whereby the appellant has been convicted under Section 147 IPC and sentenced to under go the rigorous imprisonment for one year and under Section 148 IPC rigorous imprisonment for two years, under Section 302 read with 149 IPC rigorous life imprisonment and Rs. 20,000/- fine and further convicted him under Section 307 read with 149 IPC sentencing the appellant to undergo rigorous imprisonment for ten years with fine of Rs. 10,000/- under Section 504 IPC rigorous imprisonment for one year and further convicted under Section 506(2) IPC and sentenced to undergo the rigorous imprisonment for two years with default stipulation. Petitioner is also challenging the order dated 17.04.2017 passed by Additional Sessions Judge/Special Judge in Gangster Case No. 450/2012 arising out of Case Crime No. 718/2003 relating to Police Station - Gosaiganj, District - Sultanpur convicting the appellant under Section 25 Arms Act and sentencing him to undergo rigorous imprisonment for three years and a fine of Rs. 3000/- with default stipulation. While arguing the appeal for admission learned counsel for the appellant has been able to show that there are several infirmities in the order of the trial court. He has referred to a number of findings which are spread on pages 24, 25, 27, 29, 30, 34, 39, 43 and finally 55. Learned counsel for the appellant has been able to demonstrate that learned Judge of the trial court has also observed that the prosecution has not been able to prove its case beyond

reasonable doubt, yet conviction has been awarded. He has been able to make out an arguable case. It is a fit case for admission. Admit. Summon the lower court record. Learned A.G.A. shall file objection on the bail application by the next date of listing. Sri Vinay Kumar Singh, Additional District Judge, Sultanpur shall also appear before this Court on 18.05.2017 personally. Appearance will be taken in Chambers." See : Order dated 03.05.2017 of Division Bench of the Lucknow Bench passed in Criminal Appeal No. 704/2017, Pradeep Singh Vs. State of UP.

30(D). <u>Affidavit of Judicial Officer concerned may be required by the Court</u> : Affidavit of Judicial Officer concerned may be required by the Court. See : *Judgment dated 10.04.2014 passed by the Division Bench of the Hon'ble Allahabad High Court comprising Hon'ble Sunil Ambwani & Hon'ble Devendra Kumar Upadhyaya, JJ. in Writ Petition (M/B) No. 9736/2013, Rajendra Prasad Vs. State of UP.*

30(E). <u>Magistrate recording statements of a witness or confessional statement of an accused cannot be summoned as witness to give oral evidence</u> : Section 164 CrPC by conferring on Magistrate the power to record statements of a witness or confessional statements of an accused, by necessary implication, prohibits the Magistrate from giving oral evidence of the statements or confessions made to him. See :

(i) **Dhananjayaya Reddy Vs. State of Karnataka, AIR 2001 SC 1512**
(ii) **State of UP Vs. Singhara Singh, AIR 1964 SC 358 (Three-Judge Bench)***(para 8)*
(iii) **Saleem Vs. State of UP, 2011 (74) ACC 744 (All)**
(iv) **Judgment dated 05.02.2014 of the Lucknow Bench of the Hon'ble Allahabad High Court passed in Criminal Revision No. 32/2014, Manoj Kumar Singh Vs. State of UP.**

30(F). <u>Non compliance of judicial orders when to be taken cognizance of</u> : In contempt proceedings, the Court is supposed to adopt cautionary approach which would mean that if there is a substantial compliance with the directions given in the judgment, the Supreme Court is not supposed to go into the nittygritty of the various measures taken by the respondents. It is also correct that only if there is willful and contumacious disobedience of the orders, that the court would take cognizance. Even when there are two equally consistent possibilities open to the court, case of contempt is not made out. At the same time, it is permissible for the court to examine as to whether the steps taken to purportedly comply with the directions of the judgment are in furtherance of its compliance or they tend to defeat the very purpose for which the directions were issued. See : **Bihar State Govt. Secondary School Teachers Association Vs. Ashok Kumar Sinha, (2014) 7 SCC 416.** *(para 24)*

31. <u>Suspension of clerk by Officiating District Judge held proper</u> : Where a clerk was suspended by the Officiating District Judge, Fatehpur for the allegations that the clerk had used unparliamentary language against the In-charge District Judge on 01.01.2016 and had misbehaved with him and appeared to be in a state of intoxication, the suspension order passed by the In-charge District Judge was held proper by the Allahabad High Court. Interpreting the provisions of Article 309 of the Constitution

of India, Rule 23(2) of the Uttar Pradesh State District Court Service Rules, 2013 and Section 10 of the Bengal, Agra & Assam Civil Courts Act, 1887, it has further been observed that the Additional District Judge in the absence of the District Judge was statutory delegatee as there was no delegation of power by the District Judge and being a statutory delegateee, the In-charge District Judge could not have further delegated his powers. But the suspension of the clerk by the In-charge District Judge pending enquiry was not penal in nature and the suspension order passed by him was proper. **See : Siddharth Pandey Vs. State of UP, 2016 (3) ALJ 316 (All)**

32(A). Probation of Civil Judges (Junior Division) : Rule 24 of the 'Uttar Pradesh Judicial Service Rules, 2001' provides for probation period of the Civil Judges (Junior Division). Rule 24 is reproduced below :

(1) All persons shall, on appointment to the serving in the substantive vacancies, be placed on probation. The period of probation shall, in each case, be two years.

(2) The Court may, in special cases, extend the period of probation upto a specified date.

(3) An order extending period of probation shall specify whether or not such extension shall count for increment in the time-scale.

(4) If, it appears, to the Court at any time during or at the end of period of probation or extended period of probation, as the case may be, that a probationer has not made sufficient use of his opportunities or has otherwise failed to give satisfaction, it may make recommendation to the appointing authority whereupon the probationers shall be discharged from the service by the appointing authority.

(5) A person, whose services are dispensed with under sub-rule (4) shall not be entitled to compensation and shall also not be eligible for reappointment to the service.

32(B). Probationer not to be dismissed or terminated on stigmatic grounds without enquiry: Where the services of Probationary Officers were terminated on the ground of using unfair means in test/examination, it has been held by the Supreme Court that since their services were terminated not on account of any deficiency in their performance during probation period or failure to secure qualifying marks in confirmation test but on the ground of their misconduct as to use of unfair means in the test and no enquiry was conducted and no opportunity of hearing was granted to them and they were condemned unheard despite stigmatic allegations as above, therefore, termination of their services was declared unsustainable. See: **State Bank of India Vs. Palak Modi, (2013) 3 SCC 607.**

32(C).**<u>Ad hoc or temporary employee's services can be terminated outright if the termination is made not for any misconduct but for unsatisfactory performance etc</u>**: In the case noted below, the services of a temporary Assistant Project Officer appointed under the National Adult Education Scheme in UP were terminated by the competent authority on the ground of her irregular presence on duty by giving one month's pay to her without conducting an enquiry into the alleged misconduct. Interpreting the provisions of the 'Uttar Pradesh Temporary Government Servant's (Termination of Service) Rules, 1975', it has been ruled by the Supreme Court that: "if misconduct is the foundation to pass the order then an enquiry into misconduct should be conducted and an action according to law should follow. But if it is not the motive, it is not incumbent upon the competent officer to have the enquiry conducted and the service of a temporary employee could be terminated in terms of the order of appointment or rules giving one month's notice or pay salary in lieu thereof. Even if an enquiry was initiated, it could be dropped midway and action could be taken in terms of the rules or order of appointment." **See: State of UP & Another Vs. Km. Premlata Mishra & Others, AIR 1994 SC 2411.**

32(D). **<u>Dismissal of probationer for misconduct without enquiry held improper:</u>** In the case noted below, a lady constable was temporarily appointed and during probation period, she committed misconduct by staying in nights with a male constable and on her aforesaid misconduct, she was dismissed from service by the competent authority without a proper enquiry. It has been held by the Supreme Court that "the order of dismissal from service was bad in law in as much as no charge-sheet was supplied to her, no explanation was called from her, no opportunity to cross examine the witnesses examined was given to her, no opportunity to show cause against the proposed dismissal from service was given to her and all that was made in total contravention of the provisions of Article 311(2) of the Constitution and her dismissal order was set aside." **See: Smt. Rajinder Kaur Vs. Punjab State & Another, AIR 1986 SC 1790.**

32(E). **<u>Even a casual labour cannot be dismissed or removed from service without regular enquiry if his removal etc. is made for any misconduct:</u>** In the case noted below, a casual labour of the Telecom Department had acquired the status of a temporary employee and his services were terminated for certain misconduct like assaulting and threatening the gateman without conducting a regular departmental enquiry as per law. Setting aside the termination order, the Supreme Court held that: "Once an employee attains the temporary status, he becomes entitled to certain benefits, one of which is that he becomes entitled to the constitutional protection envisaged by Article 311 of the Constitution and other Articles dealing with services under the Union of India. The services were terminated on account of the allegation of assault by the delinquent employee. The order of termination cannot be treated to

be a simple order of retrenchment. It was an order passed by way of punishment and, therefore, was an order of dismissal which, having been passed on the basis of preliminary enquiry and without holding a regular departmental enquiry, cannot be sustained." **See: Nar Singh Pal Vs. Union of India & Others, (2000) 3 SCC 588.**

32(F).Termination etc. of service of an officiating, temporary or probationer government servant when to amount to punishment ?: The principle as that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto. But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary, either on probation or on an officiating basis, and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself, be a punishment. One test for determining whether the termination of the service of a Government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post, the termination of his service will by itself be a punishment and he will be entitled to the protection of Article 311 of the Constitution. In other words and broadly speaking, Article 311(2), will apply to those cases where the Government servant, had he been employed by a private employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank. To put it in another way, if the Government has, by contract, express or implied, or under the rules, the right to terminate the employment at any time, then such termination, in the manner provided by the contract or the rules, is prima facie and per se not a punishment and does not attract the provisions of Article 311. Where, however, the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with. A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank, then the very

reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servants with any penal consequences. The use of the expression "terminate" or "discharge" is not conclusive. Thus in each case, the court has to apply the two tests namely, (1) whether the servant had a right to the post or the rank or (2), whether he has been visited with evil consequences of the kind herein-before referred to? If the case satisfies either of the two tests, then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311 which give protection to the Government servant have not been complied with, the termination of service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant. The enquiry against the probationer can be conducted to ascertain whether he is fit to be confirmed in service. An order discharging a public servant, even if a probationer, in an enquiry on charges of misconduct, negligence, inefficiency or other disqualification, may appropriately be regarded as one by way of punishment but an order discharging a probationer following upon an enquiry to ascertain whether he should be confirmed in service is not of that nature and clearly amounts to punishment. See : **(i) State of Orissa Vs. Ram Narayan Das, AIR 1961 SC 177 (Five-Judge Bench) (Paras 12), (ii) Purshotam Lal Dhingra Vs. Union of India, AIR 1958 SC 36 (Five-Judge Bench) and (iii) State of Bihar Vs. Gopi Kishore Prasad, AIR 1960 SC 689.**

32(G). **Probationer can be discharged in the manner provided by Rule 55-B of the CSR:** A Probationer has no right to the post held by him. Under the terms of his employment, the probationer could be discharged in the manner provided by Rule 55-B of the Civil Services (Classification, Control and Appeal) Rules. Again, mere termination of employment does not carry with it "any evil consequences" such as forfeiture of his pay or allowances, loss of his seniority, stoppage or postponement of his future chances of promotion, etc. It is then difficult to appreciate what indelible stigma affecting the "future career" of the probationer was cast on him by the order discharging him from employment for unsatisfactory work and conduct. The use of the expression "discharge" in the order terminating employment of public servant is not decisive. It may, in certain cases, amount to dismissal. If a confirmed public servant holding a substantive post is discharged, the order would amount to dismissal or removal from service but an order discharging a temporary public servant may or

may not amount to dismissal. Whether it amounts to an order of dismissal depends upon the nature of the enquiry, if any, the proceedings taken therein and the substance of the final order passed on such enquiry. Where under the rules governing a public servant holding a post on probation, an order terminating the probation is to be preceded by a notice to show cause why his service should not be terminated and a notice is issued asking the public servant to show cause whether probation should be continued or the officer should be discharged from service, the order discharging him cannot be said to amount to dismissal involving punishment. Undoubtedly, the Government may hold a formal enquiry against a probationer on charges of misconduct with a view to dismiss him from service and if an order terminating his employment is made in such an enquiry without giving him reasonable opportunity to show cause against the action proposed to be taken against him within the meaning of Article 311(2) of the Constitution, the order would undoubtedly be invalid. **See : State of Orissa Vs. Ram Narayan Das, AIR 1961 SC 177 (Five-Judge Bench) (Paras 12 and 13).**

32(H). Termination does not deprive government servant of his pay or allowances, seniority and his future chances of promotion etc.: Mere termination of services of a government servant does not carry with it "any evil consequences" such as forfeiture of his pay or allowances, loss of his seniority, stoppage or postponement of his future chances of promotion, etc. See : **(i) State of Orissa Vs. Ram Narayan Das, AIR 1961 SC 177 (Five-Judge Bench) (Paras 12), (ii) Purshotam Lal Dhingra Vs. Union of India, AIR 1958 SC 36 (Five-Judge Bench) and (iii) State of Bihar Vs. Gopi Kishore Prasad, AIR 1960 SC 689.**

33. Information as to 'why' and for what 'reasons' judge had come to a particular decision or conclusion cannot be sought under the RTI Act, 2005 : Information as to 'why' and for what 'reasons' judge had come to a particular decision or conclusion cannot be sought under the RTI Act, 2005. A Judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion. A judge is not bound to explain later on for what reasons he had come to such a conclusion. A Judicial Officer is entitled to protection under the provisions of the **Judicial Officers' Protection Act, 1850** and the object of the same is not to protect malicious or corrupt judges but to protect the public from the dangers to which the administration of justice would be exposed if the concerned judicial officers were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. If anything is done contrary to this, it would certainly

affect the independence of the judiciary. A judge should be free to make independent decisions. See : **Khanapuram Gandaiah Vs. Administrative Officer, AIR 2010 SCC 615.**

34. Important reported cases where dismissed/terminated/compulsorily retired Judicial Officers got relief from Courts in judicial side :

(i) Naresh Singh Vs. State of U.P. & Others, 2013 (1) ESC 429 (Allahabad)(LB)(DB)
(ii) Ramesh Chandra Singh Vs. High Court of Allahabad, (2007) 4 SCC 247
(iii) P.C. Joshi Vs. State of U.P., (2001) 6 SCC 491
(iv) Vijendra Pal Singh, Vs. State of U.P., (2001) 3 UPLBEC 2659
(v) Yoginath D. Badge Vs. State of Maharashtra, (1999) 7 SCC 739
(vi) Union of India & Others Vs. A.N. Saxena, AIR 1992 SC 1233
(vii) Zunjarrao Bhikaji Nagarkar Vs. Union of India & Others, AIR 1999 SC 2881
(viii) Iswar Chandra Jain Vs. High Court of Punjab & Haryana, AIR 1988 SC 1395
(ix) K.P. Tiwari Vs. State of M.P., AIR 1994 SC 1031
(x) Kashi Nath Roy Vs. State of Bihar, AIR 1996 SC 3240.

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