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GOWDA-AHMADI

∞ The *Midnight Meet* ?



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Dr. JANAK RAJ JAI

GOWDA-AHMADI

The Midnight Meet

?

by

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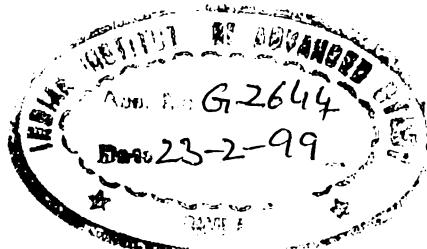
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*Dedicated
to
the media
and
the legal fraternity*

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PREFACE

The mysterious 'Midnight Meet' between the Prime Minister and the Chief Justice of India has raised many eyebrows. The delayed statement by the Prime Minister that 'it was a routine meeting wherein only administrative matters were discussed' created more suspicion in the minds of the general public.

Not only the legal fraternity, the media was equally disturbed about this unprecedeted meeting. Earlier, meetings of Lal Bahadur Shastri and P.B. Gajindragadkar during morning walk as also frequent meetings between Indira Gandhi and Justice M.H. Beg had attracted lot of criticism.

The 14th Report of the Law Commission of India, the best ever written by M.C. Setalvad quoted approvingly Winston Churchill's famous remarks on the Judiciary in the House of Commons on March 23, 1954.

"A form of life and conduct far more severe and restricted than that of ordinary people is required from Judges and though unwritten, has been most strictly observed. They are at once privileged and restricted. They have to present a continuous aspect of dignity and conduct." The report also contains admonition to Judges in the same vein.

Commenting on the most controversial midnight meeting between the Prime Minister and the Chief Justice of India, Mr. A.G. Noorani said, "For all one's respect for Justice A.M. Ahmadi and his high office one cannot help saying that he could well have spared himself the embarrassment by not meeting the P.M. in the circumstances in which he did, in the first instance. The Judge "knows the traditions and conventions of which Deve Gowda is blissfully unaware."

Quoting a distinguished Jurist, J. Jaffe, Mr. Noorani said, There is always a real danger of the diminution of public confidence in the Courts if it is believed that the Judges are in secret communication with the other branch of the Government.

David Pannick G.C., a Scholar Barrister puts it in his classic work *Judges*, that the use of Judicial experience is very sensible. "The only basis for criticizing such consultation is that it involved private rather than public expressions of Judicial views to the 'Government of the day'."

There is a strong apprehension in certain quarters that the Prime Minister's meeting with the Chief Justice was to soften him and persuade him for the supersession of two senior Judges. In one of the Caveats written by C.R. Irani, Chief Editor of *The Statesman* has categorically asked the Prime Minister to explain the purpose of his visit to the Chief Justice at a late hour and deny that he had or retains any thought of superseding Mr. Justice Verma either via persuading Chief Justice Ahmadi to take up the National Human Rights Commission or in any other manner."

One of the English Journals observed that by meeting the Chief Justice of India under such circumstances, the Prime Minister has downgraded the Judiciary. It further observed "the wily politician from Karnataka was never known for politically correct behaviour or adherence to legal proprieties. As Karnataka Chief Minister he had the audacity to call on the Chief Justice of the High Court in a vain bid to bail out a favourite official who was hauled up for contempt of the Court. He had no qualms of conscience in making use of Reliance aircraft in the company of liquor baron, Vijay Mallya, when he was the Prime Minister designate to the largest democracy in the world.

"And now Deve Gowda called on the Chief Justice after the Delhi High Court rejected the Police Commissioner's application for change in the venue of P.V. Narasimha Rao's appearance in the court in Lakhubhai Cheating case as a co-accused.

The Committee of Judicial Accountability comprising legal luminaries like Shanti Bhushan, Ram Jethmalani, V.M. Tarkunde, D.S. Tewetia, R.B. Mehrotra, Hardev Singh, Indra Jai Singh and Prashant Bhushan have in a statement described these developments as unfortunate and observed that these had adversely affected the credibility of the Supreme Court and rudely shaken the people's faith in it.

The Supreme Court Bar could not be a silent spectator to all those unprecedented events. With the help of my colleagues at the Supreme Court Bar, as many as 182 signatures were obtained for requisitioning the General Body Meeting. The General Body Meeting was then held on 10th October 1996 to discuss the propriety of the mysterious midnight meet between the Prime Minister and the Chief Justice of India.

The District Bar Association Secretary, Jatan Singh also supported this move and was solidly behind the Supreme Court lawyers who moved the resolution deplored the 'Prime Minister-Chief Justice mysterious meet' particularly when so many sensational cases involving the high functionaries in one scam or the other were pending before it.

The said General Body Meeting was badly managed and the President of the Supreme Court Bar Shri R.K. Jain, is entirely responsible for this serious lapse. Our friend Avtar Singh Sohal, a senior member of the Bar has graciously contributed an article, '*Theatre Absurd*' which gives in detail, an on the spot, account of the Supreme Court Bar Meeting held on 10th October 1996. Arvind Kumar, another senior member of the Bar has also contributed one article '*Independence of Judiciary*' which makes good reading.

Lest we forget all these events that took place after the late night meet of the Prime Minister with the Chief Justice of India on 26th September 1996. I gratefully and with a sense of responsibility reproduce all the relevant material in the shape of Articles, Editorials, Media Reports, Letters to the Editor and Supreme Court's Judgments for the people of my country who cherish democratic principles, rule of law and independence of Judiciary.

A country-wide national debate by Lawyers and Intellectuals on the propriety of the PM-CJI midnight meet' is the need of hour.

B-II/8-9, Lajpat Nagar
New Delhi
5th November, 1996

Dr. Janak Raj Jai
Advocate
Supreme Court of India

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GREAT CHALLENGE

Pliable Judges are being identified to supersede the inconvenient and upright Judges. The mid-night mysterious meet on 25-26.9.1996 between the Prime Minister, Deve Gowda and the Chief Justice of India, Justice A.M. Ahmadi, speaks volumes on the conduct of the Prime Minister and the bad designs of the Government. The sensational revelations in C.R. Irani's (Chief Editor, *Statesman*) three articles — CAVEAT, dated 5th, 6th & 8th October, 1996 have put the Prime Minister in a tight corner and has virtually made him speechless.

There is thus a great challenge before the Indian Judiciary today. The inconvenient Judges have become an eyesore for those who are neck-deep involved in scams, scandals and various other cases. Efforts are afoot to get rid of all those Judges, at all levels, by creating public opinion against them. Those who cherish the rule of law have to gird up their loins and face these forces tooth and nail.

Petitions against Deve Gowda's Appointment as Prime Minister

There are two petitions pending before the Supreme Court, challenging the appointment of the Prime Minister, H.D. Deve Gowda. The first petition was filed by S.P. Anand, and was heard by a Bench headed by the Chief Justice, Hon'ble Mr. Justice A.M. Ahmadi and judgement in that matter has since been reserved. The second Special Leave Petition (SLP No. 19606/1996) filed by Dr. Janak Raj Jai, through Mrs. Laxmi Arvind, Advocate-on-record is pending, and has yet to be put on board for hearing.

After a news item under the caption “*Aakhir Deve Gowda Raat mein Mukhya Nyayadhist se Milne Kyon Gaye*” appeared in *Rashtriya Sahara*, dated 28.9.1996 about the mysterious midnight meet between the Prime Minister and the Chief Justice of India, a letter dated 28.9.1996 was written to the Chief Justice of India to transfer both these petitions to a different and a larger Bench. No intimation has yet been received in reply to that letter. The letter is given in Appendix III of this book.

Supreme Court Bar up in Arms

Kudos to the Supreme Court Bar, which stood up in arms and strongly condemned and deplored the “PM-CJI” mid-night meet under these circumstances. At the author’s initiative, one hundred and eighty-two members requisitioned the General Body Meeting to discuss the propriety of the PM-CJI Meet. The General Body Meeting was fixed for 10th October, 1996.

The proposed resolution for the said General Body Meeting reads as under:

PROPOSED RESOLUTION FOR THE URGENT
GENERAL BODY MEETING
30.9.1996

“Resolved that judiciary and the executive are two independent organs and are expected to function without any interference from each other.

The recent meeting of the Prime Minister with Chief Justice of India at mid-night puts a question mark on the independence of judiciary.

The Supreme Court Bar Association takes a serious note of this mysterious meeting and deplores the propriety of the Prime Minister to have met the Chief Justice, particularly when sensitive matters concerning the involvement of high functionaries are pending before the apex Court.

The House is of the considered opinion that, in all fairness, the Chief Justice of India should have avoided this meeting, keeping in view the highest traditions of this august institution.”

It is unfortunate that the President of the Supreme Court Bar — Shri R.K. Jain was won over, and serious efforts were

made to disturb the said General Body Meeting. Elements from Meerut, Aligarh and neighbouring places were imported to disturb the meeting. In spite of repeated requests the President refused to hold the General Body Meeting on such a vital issue in the open and chose to hold it in the lounge which could hardly accommodate 300 members to the maximum. Curiously enough the high functionaries of the Supreme Court Registry took keen interest to fail this General Body Meeting. Soli Sorabji, U.N. Bachawat, Ashok Srivastava (Advocate-General, Sikkim), P.H. Parikh, Dr. Abhishek Singhvi, Altaf Ahmad and a few more fortune seekers were actively involved in defeating the proposed resolution.

The atmosphere was very much charged and I can say on oath that most of the members present in the meeting were itching to pass the proposed resolution with thumping majority. The mover of the proposed resolution was called upon by the President of the Bar to read the said resolution. Immediately after the resolution was read out, it was put to vote by raising hands. More than two-third of the members present raised their hands in favour of the resolution. Spontaneously the Vice President, Rajiv Dutta said — "Passed". But immediately after that Soli Sorabji, shouted — "Yeh Kya ho gya — Kuch karo (What is this — Please do something)." The members started going out of the room, and afterwards when small number of members were left in the room, what the President did — "Please read the news paper reports." There was a complete chaos and confusion, and even the mike was disconnected.

Prominent among those who voted for the resolution were S/Shri Shanti Bhushan, Indra Jai Singh, Arun Jaitly, Hardev Singh, Kapila Hingorani, Kamini Jaiswal, A.S. Sohal, K.L. Vohra, Jatan Singh, Ashok Arora, R.S. Lambat, D.P. Mukherji, K. Kumar, Dr. Choudhry, D.N. Pal, R.S. Dhull, Bhagwat Goel, Naresh Sharma, Shashi Bhushan Jain, A.L. Trehan, Arvind Kumar, Prashant Bhushan, D.K. Gupta, R.D. Upadhyay, Ujjal Singh.

It is unfortunate that the President of the Bar Association utterly failed to conduct the most important General Body Meeting in a proper manner. A large number of the members of the Supreme Court Bar, who voted in favour of the resolution are very much disturbed on the official reporting in the media. Members are collecting signatures to bring a no-confidence

motion against the President. I reproduce below a letter dated 11.10.1996 from Shri Bhagwat Goel, a member of the Supreme Court Bar addressed to S/Shri Rajeev Dutta, and Kailash Vasdev, Vice President and Secretary of the Bar, and Copies to S/Shri Soli Sorabji, Shanti Bhushan, Prashant Bhushan, U.N. Bachavat, Mrs. Kapila Hingorani and Dr. Janak Raj Jai.

LETTER OF SHRI BHAGWAT GOEL DT. OCT. 11, 1996

To

1. Shri Rajeev Dutta Vice President S.C.B.A	2. Mr. Kailash Vasdev Secty., S.C.B.A.
--	---

Gentlemen

Shameful happenings in the General Body Meeting of the Supreme Court Bar Association — today — deserve all the condemnation, particularly when sole responsibility rests with Mr. R.K. Jain, President of SCBA whose supporters/and outsiders showed worst exhibition of hooliganism not only inside meeting venue but also before cameras. There is little doubt that the whole thing was pre-planned.

Members of SCBA are intelligent enough to decide for themselves, and it did not matter as much whether the resolution is voted in or voted out. But whole manipulation — attempted — by them has lowered the dignity of the whole Bar as never before.

The resolution for NO CONFIDENCE motion against Mr. R.K. Jain moved right there should please be — urgently — taken up.

I personally, apologise for having supported the candidature of Sh. R.K. Jain for Presidentship. But then I could never imagine such a conduct.

I am sending the copy to some respected senior members of the Bar who were present there.

Bhagwat Goel Advocate
C/18, N.D.S.E II,
New Delhi 49

Copies to:

1. Sh. Soli Sorabji Fax : 4634014
2. Sh. Shanti Bhushan/ Sh. Prashant Bhushan 8525729
3. Sh. U.N. Bhachawat Fax : 6481742
4. Mrs. Kapila Hingorani Fax : 3782595
5. Dr. Janak Raj Jai

Over Awing the Judiciary

To over-awe the judiciary and to put a halt to “judicial activism” and “public interest litigation”, Seminars and Symposia are being organised on a large scale. Here is a summary report of the recent symposium organised by the Presiding Officers of the State Legislative Assemblies, as appeared in the *Times of India*, and *Statesman* dated 13-11-1996.

Bouquets, Brickbats for Judiciary

NEW DELHI: the consensus at a symposium here on Saturday of presiding officers of state legislative assemblies and councils was that judges have lately shown a “disturbing” tendency to encroach on the executive’s prerogative.

An official summary of “the broad conclusions” issued on behalf of Lok Sabha Speaker Purno Sangma, the host, says this trend, “as reflected in a series of decisions . . . in terms of identifying officials who will report to it, bringing police investigation under its own jurisdiction, thus playing the role of prosecutor as well as the judge,” should stop.

This criticism is prefaced with an acknowledgement of “the very perceptible degeneration in the general performance of the legislatures.” And that accountability, of the executive to the legislature and of the legislature to the people has got snapped all the way.”

The official note also says the judiciary “has certainly played its constitutional role very well” in the past. But its present direction is very disturbing. In addition, “while playing its rightful role,” the judiciary should “strongly discourage tendencies towards abuse of the facility of recourse to public interest litigation.”

Mr. Rajesh Pilot, ex-Union Minister and Congress Working Committee member, who spoke at the symposium but left before any resolution or official summary was discussed, felt otherwise. “We are proud of the judiciary . . . with executive and legislature both inactive, it was the judiciary’s action which saved democracy,” he said, both at the meet and to this newspaper. “With all that corruption, people were losing faith . . . in fact, the Speaker should (instead) call a special session of Parliament

to discuss the Lok Pal Bill . . . and issue a regular bulletin on the assets declared by MPs, after asking them to."

Senior representatives of the Bharatiya Janata Party and the Communist Party of India (Marxist) said that the criticism was of no use if one didn't acknowledge the executive's colossal failure in discharging its responsibility. "Yes, a few of its (judiciary's) decisions in the past two years have taken over the executive's job, which is not its function," said the BJP's Pramod Mahajan, ex-defence minister. "But one should realise why people appreciated this; the executive failed, it often relied on the judiciary to take decisions for it."

"We need discussion on this entire issue," he went on. "One-sided criticism is of no use. If the executive again starts taking its own decisions with responsibility, I don't think the judiciary will interfere . . . then, people won't like it (unlike now)."

"Yes, the Patna High Court decision was too much, this saying the CBI director was nobody and so forth" said CPI(M) Chief, Harkishan Singh Surjeet. "But the executive had completely failed . . . thousands of crores embezzled in all these scams; if the judiciary hadn't interfered, nothing would have happened."

A couple of senior figures in the ruling Janata Dal declined to comment but veteran party ideologue Surendra Mohan, who drafted their poll manifesto, vigorously defended the judiciary and, by implication, was critical of his party's tardiness in implementing the poll promise of autonomy for agencies like the CBI.

(Courtesy: The Times of India, Oct. 13, 1996)

Justice Kuldip Singh on Judicial Activism

While delivering the 12th Bir Memorial Oration on "Human Rights and Judiciary", on 13.10.1996, Justice Kuldip Singh said it was the duty of judiciary to step in whenever the Government failed to enforce basic human rights.

Mr. Justice Kuldip Singh said it was unfortunate that in some cases people were being denied basic human rights which included the right to liberty, right to life, right to equality and the right to a pollution-free environment.

He also noted that while there was no dearth of social legislation, the legislators and administrators were least worried how rights could reach the common man.

Mr. Justice Kuldip Singh said it was a misnomer to say that there was "judicial activism."

"It is in the very purview of the judiciary to see that the Government agencies were performing in the people's interest" he added.

The Supreme Court Judge noted that some of the court judgements were not being enforced.

"We have, therefore, invented methods of monitoring and reporting. We cannot wait for the Government agencies to perform."

Referring to environmental degradation, particularly in the Capital, the Supreme Court Judge called for "sustainable development."

Supersession of Judges

Long back, late Mohan Kumaramanglam, the then Union Minister raised the famous debate about 'Committed Judiciary' in the year 1973. A Junior Judge, Justice A.N. Ray, was appointed the Chief Justice of India superseding his three senior colleagues, Hon'ble Justices J.M. Shelat, K.S. Hegde and A.N. Grover, who had ultimately tendered their resignations in protest.

On May 24, 1949, Pandit Jawaharlal Nehru stated in the Constituent Assembly that "our judges should be 'first-rate men of highest integrity' who could stand up against the executive Government and whoever may come in their way." But alas! Jawaharlal's standards are no longer in vogue now. Inconvenient judges who stood up against the executive were transferred during emergency to other states for the ostensible purpose of furthering 'National Integration.' According to N.A. Palkhiwala, an eminent jurist, the policy of transfer of judges was calculated to accomplish disintegration of judicial independence rather than national integration. Dealing with the case of Justice Sankalchand Sheth (AIR 1977 S.C. 2328) who was transferred during emergency, Chandrachud J. had observed: "There are numerous other ways of achieving national integration more effectively than by transferring High Court judges from one High Court to another. Considering the great inconvenience, hardship and possibly a slur which transfer from one High Court involves, the better view would be to leave the judges

untouched and take other measures to achieve that purpose." A list of as many as 40 judges was prepared for transfer during the emergency, the notable victims of emergency were justices Rajinder Sachar, U.R. Lalit and R.N. Aggarwal. U.R. Lalit was refused extension of his term as he granted bail to some students during emergency; R.N. Aggarwal was reverted back as a Distt. Judge because he had ordered Kuldip Nayar to be released from preventive detention. Justice Sachar was transferred outside Delhi, as he was related to Kuldip Nayar. In January 1977, the supersession of Justice H.R. Khanna, and the appointment of Justice M.H. Beg as Chief Justice of India gave a setback to the independence of the Indian Judiciary. Keeping the judges on daily wages in the High Courts is unheard of. The case of Justices Wad, Vohra and Kumar are the living examples. On the last day of their tenure they were not aware whether their term would be extended or not. Justice Gupta, a former Judge of the Supreme Court rightly observed, "the Independence of the judiciary depends to great extent on the security of tenure of the Judges. If the Judge's tenure is uncertain or precarious, it would be difficult for him to perform the duties of his office without fear or favour."

Justice R. Dayal was appointed the Judge of the High Court superseding a good number of senior colleagues, simply because he set at liberty Mrs. Indira Gandhi, during Janata regime.

Justice Mahesh Chandra was appointed as Judge of the Delhi High Court, superseding his senior colleagues, simply because the said Judge sat in the glass room (bullet proof) for more than a year in Tihar Jail in the Indira Gandhi murder case. According to the information received from the horses mouth, this prize was given to His Lordship as a quid pro quo.

There seems to be a move to supersede Justices Kuldip Singh and J.S. Verma. It will be a sad day if the Government succeeds in appointing a pliable Judge, superseding the two Senior Judges of the Supreme Court.

Prominent lawyers including Shanti Bhushan, Indra Jai Singh, Har Dev Singh, V.M. Tarkunde, D.S. Tewetia, Arun Jaitly, Kamini Jaiswal in a recent statement deprecitated this move.

An appeal issued to the conscience of the Advocates, on 9.10.1996 highlighting the apprehension of the supersession of Judges by Dr. Janak Raj Jai is reproduced here:

AN APPEAL TO THE CONSCIENCE OF THE MEMBERS OF THE SUPREME COURT BAR

The General Body Meeting of the Supreme Court Bar is going to be held on 10th October, 1996. The agenda is Propriety of the Prime Minister meeting the Chief Justice of India, when so many sensitive matters, including two petitions challenging the appointment of the Prime Minister (S.P. Anand Vs. Union of India, and Dr. Janak Raj Jai Vs. H.D. Deve Gowda and others) are pending before the Supreme Court.

In the two hour meeting, the issues alleged to have been discussed are — P.V. Narasimha Rao's cases, persuading Chief Justice to resign and accept the post of Chairman, National Human Rights Commission, supersession of two Senior Judges (Justice Kuldip Singh and Justice J.S. Verma) by making a rule of two years minimum term for the Chief Justice to fit in the next incumbent — Justice M.M. Punchhi. The news certainly disturbed the lawyers community and 182 Advocates requisitioned the General Body Meeting to which the Executive Committee of the Supreme Court Bar responded favourably, and fixed the General Body Meeting on 10.10.1996. This mysterious meeting between the PM and CJI has been highlighted by many National English and Hindi Newspapers. But the facts unfolded by C.R. Irani (*Statesman*, 5th 6th and 8th October, 1996) in his CAVEAT, are most disturbing and need a thorough probe. A much delayed clarification by the Prime Minister, creates more suspicion, as he has cleverly avoided to divulge the modus operandi of his meeting with CJI.

Earlier meetings of Lal Bahadur Shastri and P.B. Gajendra Gadkar during morning walk, as also frequent meetings between Indira Gandhi and Justice M. Beg, attracted lot of criticism. And the supersession of three judges, by Justice A.N. Ray, and H.R. Khanna by M. Beg in seventies engineered a world-wide controversy.

Today when almost all the institutions have failed, judiciary is the only hope for the people of our country. It is, therefore, our bounden duty to save this institution from any outside assault whatsoever.

Morarji Desai, in his autobiography said that it would have been ideal if A.N. Ray had declined to supersede his three senior brother Judges. We, therefore, expect that Hon'ble Mr.

Justice M.M. Punchhi, would decline to supersede his senior brothers in case Govt. succeeds in its bad design in repeating 1973 or 1976.

As an humble member of the Bar, may I appeal from the depth of my heart, to all the brother lawyers attending the General Body Meeting to rise to the occasion and exhibit the unity in saving the highest judicial institution from any political interference.

Kudos to the 182 brother lawyers who set the ball rolling.

A Word of Caution

History will not pardon us if we fail to act in right direction at this critical moment.

With this background all the relevant information on PM-CJI Meet, in the shape of statements, articles, letters to the editor, editorials, etc. is given collectively in this book for all those who believe in democracy, rule of law, and the independent functioning of the Legislature, Executive and the Judiciary.

Delhi High Court Judgement on the appointment of Deve Gowda as Prime Minister, Special Leave Petition filed in the Supreme Court against the order of the High Court, letter dated 28.9.1996 addressed to the Chief Justice of India, Supreme Court Judgement on 'Propriety' the latest Judgement of the Supreme Court in shifting the venue in P.V. Narasimha Rao's case are reproduced in Appendix 1, 2, 3, 4 and 5 being pieces of historical importance.

Independence of Judiciary

On independence of Judiciary, John Rudlege Jr. while speaking on the floor of the House of Representatives in the year 1802, said,

"The Government may be administered with indiscretion and violence, offices may be bestowed exclusively upon those who have no other merit than that of carrying votes at the elections, but so long as we have independent Judiciary, the great interest of the people will be safe."

The meeting between the Prime Minister and the Chief Justice of India is still a mystery. The Prime Minister has chosen

not to divulge the whole dialogue; the Chief Justice of India may be pleased to break His Lordship's silence and make public everything that transpired between both the high profile Constitutional functionaries as the citizens of this great country are entitled to right of information. Over to the *Chief Justice of India*.

Propriety

Justice P.K. Goswami speaks on "Propriety of such meetings" in a Supreme Court Judgement (para 172) in *State of Rajasthan Vs. Union of India* (AIR 1977 S.C. 1420) which is reproduced below:

"172. I part with the records with a cold shudder. The Chief Justice was good enough to tell us that the acting President saw him during the time we were considering Judgement after having already announced the order that there was mention of this pending matter during the conversation. I have given this revelation the most anxious thought and even the strongest Judicial restraint which a Judge would prefer to exercise, leave me no option but to place this on record, hoping that the majesty of high office of the President who should be beyond the high watermark of any controversy, suffers not in future."

(Read full Judgement at Appendix IV)

— Janakraj Jai

ARTICLES

THEATRE ABSURD

An Eye Witness Account of Bar-Meeting *Avatar Singh Sohal**

One hundred and eighty two members of the Supreme Court Bar Association myself included, sought a thread bare debate on the propriety of the mysterious nocturnal tete-a-tete between two highest personages of the realm, the executive head of the country Mr. Gowda, the Prime Minister of India and the Supremo of the Indian Judiciary the learned Chief Justice of India. On learning about this unscheduled meeting, without disclosing the agenda raised many eye brows and many a tongue started wagging. Since the agenda was kept a secret and the rendezvous being the official residence of the Hon'ble Chief Justice, the signatories of the said requisition felt it their duty to initiate a debate on the controversial meeting lest there should be adverse reaction in media and the public. As expected and feared the unexpected meeting evoked a severe criticism.

2. An independent judiciary is sine-qua-non in a democratic polity and any overt or covert effort from within and without made to weaken it should be forcefully curbed. It would be calamitous if subversive elements succeed in eroding the independence of judiciary. To avert that catastrophe, a strong, upright and fearless bar is also a sine-qua-non.

3. Lawyers have a very vital role to play in maintaining the independence of the judiciary and safeguard it against any

* Advocate Supreme Court of India.

onslaught. Degenerative process has already set in and all the other democratic institutions of our polity are collapsing. We, the lawyers who are fiercely dedicated to the democratic set up of which the judiciary is a vital organ are under the grip of fear psychosis lest the last hope of people, the Indian judiciary too should be impinged upon. Even if there is hot wind blown against the judiciary we as gadflies rise like one man to zealously and resolutely shield against even the slightest onslaught on the judiciary. The raisen-de-etre for initiating the said debate on a very sensitive subject therefore was another effort to resist attack on judiciary and I would like to vouchsafe in unmistakable terms that it was not a denunciatory exercise against any individual or institution.

4. The Hon'ble Secretary of our Bar Association, Kailash Vasdev informed through a circular distributed amongst the members along with daily cause list that general body meeting of the Bar would be held on October 10, 1996 at 4.30 p.m. to discuss the said matter and the proposed resolution appended to the requisition of meeting. The Hon'ble Secretary also solicited the names of the speakers who would like to speak on the said occasion, before 9th October, 1996. Since the subject matter of the proposed debate evoked immense interest amongst the members of the Bar, unprecedently, 49 Hon'ble Members expressed their desire to speak.

5. The executive committee of the Supreme Court Bar Association should have known that this was not the first occasion that a highly controversial, volatile and sensitive issue was going to be discussed which could raise a stir commotion and uproarious scene. They ought to have selected better venue for the occasion. The lounge (library No 2) was by any reckoning inadequate to accommodate the expected large gathering. I am sorry to record here for the knowledge of our friends at Bar that an elected member of the executive committee whose name I am not disclosing goaded the movers of the resolution to collect adequate funds for shamiya and chairs if they wanted meeting to be held outside the bar lounge. The movers rightly spurned this suggestion. It was not for personal cause, the debate was for a public cause which is dear to us. Why the executive committee did not realise the sensitiveness of the issue to be debated and arrange a proper ambience to ensure healthy debate?

6. The executive committee in general and the President in particular did not cover themselves with glory by scuttling the debate. I have seen and participated in many storming meetings during the past two decades but it is very sad to say that the meeting of 10th October, 1996 did not have any semblance of a civilized meeting. They must have learnt from the history of the Bar as to how to conduct orderly meetings. My friends in Executive would remember that when the Bar Association was agitating against Justice V. Ramaswami a controversial resolution was moved to the effect that the learned Judge should not be allotted judicial work, I moved a counter resolution. The move and the counter move were very hotly debated and the executive committee sagaciously and adroitly opted for secret vote by ballot. My counter move was rejected by overwhelming votes without leaving any rancour, ill will, or bad taste. This was the ideal way of tackling ticklish and intricate issues. Alas our President could have followed the said most acceptable and hallowed democratic procedure. Adverting to the scene of the meeting on 10th October, 1996 members started occupying their seats well in advance and by 4.30 p.m. the lounge was packed cheek-by-jowl. The President arrived like a possessed and hyper-kinetic-person usurped the public address system and called the meeting to order without caring to ensure as to whether all the members assembled had signed the attendance register. Proper care ought to have been taken to exclude the presence of non-members who were present in large numbers. It was also intriguing to notice as to why the Hon' Secretary was not permitted to conduct the proceedings.

The meeting concluded in five minutes amidst cry of 'shame' 'shame', switching off public address system and the light. The right to express free opinion was taken away. John Stuart Mill, neatly explained the importance of free speech and expression in these words. "But the peculiar evil of silencing the expression of an opinion is, that it is robbing the humane race; posterity as well as the existing generation, those who dissent from the opinion, still most of them those who held it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth, if wrong, they lose, what is almost as a great benefit, the clearer perception and livelier impression of truth, produced by its collision with error." (1996(2) Mah.L. J. 685 at 687). Hot

words too, were exchanged between pro and anti members. The President did not condemn the bedlam created by some members instead he shouted "Resolution rejected". The members of the bar are well aware of the outcome of the meeting and the fate of the resolution therefore. I refrain from commenting upon that aspect. However, I would, with anguish, question the 'verdict' pronounced by the President. If the resolution was in fact rejected why the meeting was abruptly guillotined by switching of the public address system and light plunging the lounge into darkness? It appears that everything was preplanned otherwise, the management would not have been party to stage managing the sordid drama.

The President ought to have remembered that he was an elected representative and servant of the Association and not its master. It is not his fiefdom. It is not an association of lumpens. It is an assembly of highly cultured civilized and sophisticated people and its President ought to have risen high and provided stewardship which it deserved. "An ideal leader always submerges himself in the fountain of people." I am borrowing this saying from Lenin, for the advantage of our President, "Dissent and criticism are two indispensible antidotes against arbitrariness, despotism and delusions.

Our Association is the august body of the lawyers in the country and in the past our leaders provided role model to the young aspiring legal professionals. But the present incumbent has disdainfully and profanely chanted every right thinking person. Can our youngsters who are on the threshold of their professional career could learn any useful thing from our President?

I found certain members and non-members jubilant over the so called and stage managed "rejection" (sic). Have we considered objectively as to what is the implication of this "rejection" even if it is assumed it took place? Shall we say that by "rejection" members have approved the secret meeting between two important dignitaries? Whatever, the outcome of the debate is, the following questions remain still unanswered:

- (1) Did the Chief Justice meet the P.M. at midnight?
- (2) What was the agenda for discussion? It was not an informal dinner meting and it is not possible that there was no agenda.

Before parting, I would like to say that the confusion and mystery created, in consequence of the controversial meeting could be got cleared by the President. He ought to have met the Chief Justice and conveyed the feelings of the bar and sought appropriate reaction and conveyed it to the bar. Lack of sagacity, maturity and adroitness on the part of the President of the bar has further intensified and mystified the issue.

Independency of Judiciary

*Arvind Kumar**

It is unfortunate that there was a mysterious meeting between the Prime Minister and the Hon'ble Chief Justice of India, which came for the sharp public criticism from almost all sections of people specially intellectuals. The Bar, as usual could not remain a silent spectator and strong views were advocated from both sides. It was a general feeling amongst the members of the bar that firstly such meetings should not take place in such mysterious manner and secondly every citizen has a right to know the topic of the discussion. Rumours were scotched that the talks were centered around the appointment of the next Chief Justice of India.

As a constitutional thinker one would advance his views that such a meeting ought to have been avoided where top politicians, bureaucrats, ministers were under shadow of corruption charges. Not only this, when the office of the Prime Ministership is also under challenge before the Supreme Court. It was neither fair nor proper for the Prime Minister to involve the high Office of the Hon'ble Chief Justice of India into such controversies.

There is no gainsaying that the Occupier of the Office of the Prime Minister knows in his heart of hearts that although he might have usurped the power in a legal manner yet morally and democratically he is not entitled to retain this position. It is a mockery of the Constitution that a person who has to be responsible to the House of People (Lok Sabha) could not venture to become an elected member thereof. It is still pitiable that a person who considered himself fit for the

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coveted post of the Prime Minister continued to remain a member of Karnataka Legislative Assembly till he was sure by maneuvering that he will get elected to the Council of States (Rajya Sabha). If one looks in this sequence, such a meeting becomes a question-mark and one can only venture to say that the politicians ought not pollute the high offices of Judiciary.

Members of Supreme Court Bar Association strongly felt that such meetings are against the tenets of independence of judiciary. About 200 members of the Bar compelled the Supreme Court Bar Association to hold a General Body Meeting on this issue and accordingly a general body meeting was held on 10th October, 1996 to discuss the 'propriety' of this mysterious meet. The out-come of the meeting was again confusing. The meeting took a political colour. Unfortunately it was a completely mis-managed General Body Meeting. As a member of Supreme Court Bar Association I strongly felt that the President of the Bar should have clarified the situation after meeting the Hon'ble Chief Justice and that the voting on such issues were avoided. In the game of numbers any one side could win or lose but the issues could not be resolved. It sparks more criticism. Right to know is one of the basic fundamental rights of a Civilized Society. Before this General Body Meeting took place a clarification was unnecessarily provided by the office of the Prime Minister which created more confusion and needle of suspicion again stuck at the mysterious meeting.

In the scheme of Constitution the Hon'ble Chief Justice of India and the Prime Minister are respective heads of the judiciary and executive. There is no constitutional requirement for any consultative process between the Prime Minister and the Chief Justice of India. Although no such sensitive issues ought to be brought to such public opinion and criticism yet the requirement of the day is that such issues are diffused before they are blown out of proportions.

Importance and independence of judiciary with a limitation of self-restrained restricted judicial restraint is the basic feature of our Constitution. As Sir Winston Churchill said — "A form of life and conduct far more severe and restricted than that of ordinary people is required from judges. And

though unwritten, has been most strictly observed. They are at once privileged and restricted."

I am confident, that, had the Prime Minister ever read this observation of Winston Churchill, he would have never have thought to embarrass the high dignity, status, institution and Persona of the Hon'ble Chief Justice of India.

Gowda-Rao Launch a New Joint Venture!

C.R. Irani

There is a dark and threatening shadow across the nation's brow. For the second time in a very short while, parliamentarians of different persuasions are shouting themselves hoarse that the judiciary are encroaching on their preserves. A special debate on the subject is threatened.

What has put the wind up these politicians is the spectacle of what is happening of Narasimha Rao and Sukh Ram and the rest, or more correctly what is allowed to happen to them. When the chips are down these politicians will sink their differences and unite against what they perceive to be a common threat. The example set by some distinguished judges of the Supreme Court is proving contagious; High Courts and even magistrates are passing orders without regard to the licence of the politician to loot. Clearly from the point of view of the parasites, the crooks and the loafers, something has to be done to protect the rather splendid living they make out of politics.

Now what I am about to unfold is not being said on affidavit but it is the result of patient, careful and professional investigation. Sources cannot be named but they are reliable. With this preamble and with a full sense of responsibility, here is the game plan. Mr. Justice Ranganath Misra, former Chief Justice, completes his five-year term as Chairman of the National Human Rights Commission on October 15, 1996 and a search is on for a successor. Chief Justice Ahmadi retires on March 25, 1997. So far there is no difficulty; if Justice Ahmadi is to succeed Justice Mishra, I am sure this can be arranged without difficulty. The rub is in the selection of the next Chief Justice of India. If Justice Ahmadi resigns now to take up a five-year tenure, Mr. Justice Kuldip Singh is the next in line until he retires on January 1, 1997. What is sticking in the throat of the conspirators is the prospect of Mr. Justice J.S. Verma becoming the Chief and

continuing until January 18, 1998 when he attains the age of superannuation.

For reasons which are too obvious to need recounting, this is a contingency that does not suit many politicians in more parties than merely Narasimha Rao and Sukh Ram. Knives are being sharpened to deny the succession to that upright judge, Mr. Justice J.S. Verma. On a reasoning that is beneath contempt, it is being suggested that Chief Justices should have a minimum tenure of two years. Therefore proceed to repeat Indira Gandhi's infamous manoeuvre, supercede Judges Kuldip Singh and J.S. Verma, who have been so inconvenient and reach down to Mr. Justice Punchhi who can be Chief from October 15, 1996 to October 10, 1998, his date of retirement, a mere five days short of the newly discovered virtue of a two-year tenure. If Justice Ahmadi can be persuaded to leave in the next few days even these five days can be made up.

It is a mistake to think this cannot happen. The minds involved are steeped in vulgarity and paranoid with fear of the law. They have noticed that some judges have established their reputation ahead of others. When Indira Gandhi superseded three judges with an established reputation to pick Mr. Justice A.N. Ray the country was outraged but her friend and guide Mohan Kumaramangalam was bold enough to claim that Government had the right to choose judges who reflected their philosophy. Philosophy was too lofty an expression to describe what the then Prime Minister was looking for the rest is history.

The question is, will this country stand aside, mute and inactive and let the conspirators have their way, destroy the confidence and respect in which the judiciary is held and make sure that prosecutions are conducted in such a way as to ensure acquittal. I would dearly love to have Prime Minister, Deve Gowda dispute that this was the purpose of his late evening visit to the Chief Justice, that there is no such plan and that it is all in my imagination.

This conspiracy born of cowardice and corruption, this injustice to honest and upright judges, this outrage designed to tighten the stranglehold of the crooks and the parasites upon this ancient land must not pass. What I wonder, what indeed, will it take to move the stone of Delhi to rise and mutiny!

(Courtesy: The Statesman, Oct. 5, 1996)

The Law Minister Doth Protest Too Much !

C.R. Irani

The Law Minister, Mr. Ramakant Khalap, was neither clever nor convincing when he set out to deny the Caveat dated October 4, under the heading — Gowda-Rao launch a new joint venture! I had asserted that there was a move afoot to supersede Mr. Justice J.S. Verma. This central objective was sought to be camouflaged by, one, asking Chief Justice Ahmadi whether he would object to taking up the Chairmanship of the National Human Rights Commission this month when the position falls vacant and, two, by suddenly finding virtue in a minimum two-year term for Chief Justices.

Mr. Khalap makes two attempts at a rejoinder. He says: "We have total faith in the judiciary and we will see to it that the system is not undermined in any manner." A statement of good intentions is hardly adequate and does not carry the Minister any distance at all. Also, does the Minister suggest he is upholding the system when he calls on a suspect in a criminal matter in the company of his Prime Minister when the matter is already in court?

The other attempt is to counter with another question — why is the question being asked at all! If he had read this newspaper carefully he would have known why. Then comes the comment — "At least I am not in the reckoning." If the Minister is trying to be funny, I fail to see the humour of it. And that is all he has to say.

At the same Press conference Mr. Khalap defends his interference with the conduct of the Lakhubhai Pathak case by the Special Prosecutor, Mr. Gopal Subramaniam. There are two answers to the Minister, who is apparently a lawyer. As we said editorially, there are a string of authorities of the Supreme Court buttressing the independence of a public prosecutor. For the Minister's convenience, here are some of them:

1. "Next in importance to the independence of the tribunal is the integrity of the person in charge of the prosecution, namely the public prosecutor." — 1965, AIR 196.

2) "... the duty of a public prosecutor is to represent not the police, but the State, and his duty should be discharged by him fairly and fearlessly and with a full sense of the responsibility that attaches to his position" — (1914) 42 Cal. 422.

3) "The ideal Public Prosecutor is not concerned with securing convictions, or with satisfying departments of the State Government with which he comes in contact. He must consider himself an agent of justice." — 1970 Cr LJ 241.

4) "The public prosecutor alone should conduct his case and not the complainant or his counsel." — 1982 Cr LJ 301 (Ker).

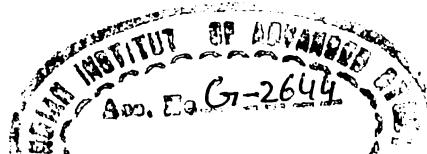
The Minister holds that the Government are the clients and can instruct the prosecutor. The Government is a creature of the State, not the State itself; the confusion in the Minister's mind is unfortunate. The Minister and the Attorney-General are thus both at fault in interfering with the conduct of the case by Special Prosecutor, Mr. Gopal Subramaniam.

More surprising, indeed outrageous is the Minister's defence of the excessive concern for Narasimha Rao's convenience. He says because a former Prime Minister is involved, the world is watching. Never mind the world, Minister! Your constituency is the country and we are all watching what a mockery you and your Prime Minister are making of the maxim of the rule of law and equality before the law. The comparison with the fake trial of Zulfikar Ali Bhutto is merely unintelligent.

To return to the charge in my last Caveat, Mr. Khalap is in no position to deny it. At most he denies according to his knowledge and the knowledge of what the Prime Minister is about is conspicuously lacking in his Ministers. Ask the Home Minister. The announcement about statehood for Uttarakhand was not processed in the Home Ministry, it was made without the Home Minister's knowledge. Mr. Indrajit Gupta confirms he did not know about the conferment of Cabinet status on Narasimha Rao or of the appointment of the Rao protege, Romesh Bhandari as Governor of U.P. Do you see the point, Minister?

The charge was laid against the soulmates, Prime Minister Gowda and Narasimha Rao. I am waiting for the Prime Minister to explain the purpose of his visit to the Chief Justice at a late hour and to deny that he had or retains any thought of superseding Mr. Justice Verma either via persuading Chief Justice Ahmadi to take up the National Human Rights Commission or in any other manner. Over to the Prime Minister.

(Courtesy: *The Statesman*, Oct. 6, 1996)



For Once Come Clean, Prime Minister!

C.R. Irani,

After worrying over it for three days and after the attempt by the Law Minister miscarried, the Prime Minister has decided to take it upon himself to explain what happened during his fateful meeting with the Chief Justice, Mr. Justice A.M. Ahmadi. I am glad he has done so — at last. The dispute over the hour of the meeting is merely a quibble, no one has sought to build anything upon it. Mr. Deve Gowda does not say what was the purpose of the meeting, he only says what the meeting was not about. It was not about “any issue which is sub-judice or is likely to arise in any court”. Apart from the unnecessary comment that the Chief Justice would not have tolerated any such talk — of course he would not, it would amount to contempt — the Prime Minister has nothing more to say.

I had made specific charges in my Caveat published on October 4. I had alleged, on good authority I might add, that 1) there was move afoot to deny the succession to Mr. Justice J.S. Verma on the retirement of Chief Justice Ahmadi; 2) a new and unstateable proposition was being canvassed to sell the idea — a minimum tenure of two years; and 3), so as not to appear to target Mr. Justice Verma, it was sought to interest the Chief Justice in the position of Chairman of the National Human Rights Commission and include Mr. Justice Kuldip Singh in the super-session as his Lordship retires on January 1, 1997. The propositions were clearly stated and the Prime Minister’s response invited.

The Prime Minister first entrust the task to the Law Minister, Mr. Ramakant Khalap, who promptly makes an exhibition of himself. He says Government have total faith in the judiciary and will see to it that the system is not undermined; he does not elaborate what system. He asks a counter question, why is the question being asked? Then he adds that he is not himself in the reckoning! very funny, Minister! It does not even amount to an attempt at denial, let alone an effective denial.

Now comes the Prime Minister teaching the sub-judice rule. I accept the lesson but it does not help him to extricate himself from the mess in which he has become entangled, with or without inspiration from Narasimha Rao. Prime Minister, have you

any plans now, or have you ever entertained them, to supersede Mr. Justice Verma? Have you asked the Chief Justice whether he would agree to initiate such a move? Did you invite his reaction to any such move, if it were made? Did you sound him out of his plans after retirement? Did you suggest to him that the National Human Rights Commission would soon need a new head? Did you canvass with him any other options you might have had up your sleeve?

The Prime Minister cannot get away with the comment that this was a "Routine" meeting and there was nothing unusual about it. Mr. Deve Gowda may have routine meetings with the President; the Prime Minister has an obligation to keep the Head of State informed, periodically. There is no routine business between Prime Minister and Chief Justice. To suggest that there is, is to mislead the nation.

What is necessary is for the Prime Minister to state unequivocally that come March 25, 1997, Mr. Justice J.S. Verma will become Chief Justice — not because the Prime Minister wills it so, his wishes are immaterial and he has no role to play — but because anything else will be a violation of the Constitutional mandate reinforced by the Judgment of the Supreme Court in the Judges transfer case.

Please Prime Minister, I beg you, for once come clean!

(Courtesy: The Statesman, Oct. 8, 1996)

By no Means that Easy
S. Sahay

The Prime Minister's clarification that when he met the Chief Justice of India one fine evening (at eight PM, not at midnight) he did not discuss any matter pending in any court or likely to come up on the judicial side is both reassuring and disturbing. It is indeed reassuring to be told that Deve Gowda knows his responsibility and would never venture to broach the CJI on any issue which is sub-judice or likely to arise in Court. Gowda did owe Chief Justice Ahmedi an apology visiting him at all and he has now made amends by regretting that his visit should have caused the CJI embarrassment.

The Prime Minister's clarification is disturbing because it is wholly silent on the allegation made by the Statesman that there

is a move afoot to make Chief Justice Ahmadi, the National Human Rights Commission Chairman when Justice Ranganath Mishra retires this month. This would only be a prelude to subsequent supersession of Justice Kuldip Singh and Justice J.S. Verma by creating a new two-year rule for the post of CJI.

Deve Gowda has been totally silent on that point and one does not know whether or not the administrative matters he discussed with the Chief Justice, included the offer of Chairmanship of the Human Rights Commission.

The newspaper had stuck to its allegation and wanted a categorical answer from the Prime Minister. There has been none.

I would refrain from commenting on the Statesman's charge, except to say that the author of the allegation does his homework pretty well, when so minded, but what I am arguing here is that even if Deve Gowda and Rao have been so naive as to have plotted the supersession of Justice Verma they had better think again.

Let me give the reasons. First, the nineties are not the seventies. When the three judges of the Supreme Court were superseded by A. N. Ray, they were in court and, as one of them said later, they waited in vain for some hours for some kind of outcry from the public. There was none. They chose to resign. Today the Government will have hell to pay if it were to adopt the same disastrous course.

Second, the Supreme Court itself has given a ruling on the subject, even though in the form of an obiter dictum.

When the Supreme Court decided to get the S.P. Gupta case reviewed by a nine-judge Bench, the questions posed before it were two: the position of the Chief Justice of India and the primacy of his opinion and the justiciability of the fixation of the strength of the judges.

Among other things the Court ruled by a majority of seven to two that the seniormost judge of the Supreme Court should be appointed as the Chief Justice, if considered fit to hold the office. On what grounds can Justice Kuldip Singh and Justice Verma be found to be unfit to be the Chief Justice? For providing Judicial Leadership and insisting on the prevalence of the Rule of Law?

The ruling is an obiter, but even an obiter is entitled to respect and the Government would find it difficult to circumvent it.

Third, in the past five years or so, the seniority principle has been strictly followed, so much so that K.N. Singh became Chief Justice for less than three weeks or so.

Fourth, even Indira Gandhi, who formulated the principle of Judicial commitment, did not cook up the two year rule. If this has to prevail then, say experts, a Constitutional amendment would be necessary. And the Government is in no position to manage one.

Let us visualize the worst possible scenario. Let us say, Deve Gowda does supersede Justice Verma. One can be sure that in the next couple of hours there would be a writ petition before the Supreme Court. And what happens if the court entertains it and grants a stay of the Government's decision? It would be a fit case in which the President would be within his right to dismiss the Government, order fresh elections and make somebody other than Deve Gowda the caretaker Prime Minister.

Following the resignation of Narasimha Rao as Congress President, Deve Gowda's 'gaddi' is already in danger and can he afford to make it doubly so?

There is another aspect to the Statesman's disclosure that worries me although it has not been said as much, the assumption appears to be that, Chief Justice Ahmadi would be a willing tool in the Government's nefarious design, is that not an unfair assumption? The most charitable construction that can be put to the Statesman's disclosure is that perhaps the Government's plot is to make the Chief Justice accept the post which would give him a few years more in active service and then suddenly supersede Justice Kuldip Singh and Justice Verma. Now that the Chief Justice has been warned, one would expect him to think thrice before falling into the Government's trap. (Is this the Statesman's purpose in making the disclosure?)

The Prime Minister's statement appears to be intended to take the wind out of the sails of the lawyers who have proposed a resolution condemning the mysterious meeting between the Prime Minister and the Chief Justice of India. The condemnation is more of the Prime Minister than of the CJI for it was the former who chose to visit the latter.

It would be interesting to see how the lawyers react now. I think they were a bit hasty in rushing with a resolution. They

could have sought a meeting with the CJI and expressed to him their misgivings. While the CJI was under no obligation to tell them what actually transpired between him and the Prime Minister, but he could have assured them (unless he had something to hide) that nothing derogatory to the independence of the Judiciary was discussed. Only if they were dissatisfied with the outcome of the meeting they could have thought out a resolution.

These are critical times. The expectations from the Judiciary are so high that people are closely watching every move by it. Some eminent lawyers have already publicly criticised the Supreme Court for deflecting justice twice. The first occasion was when the Lakhubhai Pathak case was transferred from the court of Justice Prem Kumar even though he was held to have acted fairly and P.V. Narasimha Rao had no reasons to believe that he would be denied justice. The second occasion was when the Supreme Court entertained the Police Commissioners petition about changing the venue of the former Prime Minister's trial. The argument of the lawyers is that the decision of the Delhi High Court was an administrative one and there was no room for the Supreme Court to intervene in a writ petition.

(Courtesy: The Pioneer, Oct. 8, 1996)

Public Disquiet — Ahmadi-Gowda Tryst

A.G. Noorani

"I part with the records with a cold shudder", Justice P.K. Goswami remarked at the end of his judgment in the case brought by the State of Rajasthan and others to challenge the imposition of President's rule by the Janata Party Government in 1977. The Chief Justice of India, Justice M.H. Beg, had told his brother Judges that the Acting President Mr. B.D. Jatti — who, incidentally, had stalled on signing the proclamations — "saw him during the time we were considering judgment after having already announced the order." More — "and there was mention of this pending matter during the conversation." This impelled that fine Judge, Justice Goswami, "to place this (episode) on record" in the hope that the office of the President "suffers not in future".

Candour

Neither Chief Justice A.M. Ahmadi nor Prime Minister H.D. Deve Gowda has been as candid as they ought to have been to the nation. It is preposterous for any one to suggest in 1996 A.D. that silence is the only option for a Judge. It is preferred option but should be rejected when candour is a duty. For much less, the Master of the Rolls, 'Sir John Donaldson, felt constrained to write a letter to The Times (London), on October 30, 1990, in reply to a criticism of his judgment; a precedent to be followed in the rarest of cases. But no such restraint, indeed a compelling duty to explain, exists in respect of a meeting which the Judge has with the P.M. which, he knows, has aroused grave public disquiet.

The meeting took place in the night of September 25. Disquiet was instantly and justifiably expressed in the media and by the public at large in view of the fact that a crop of cases affecting the P.M.'s ally, Mr. Narasimha Rao is in the courts. With characteristic intolerance of criticism, Mr. Deve Gowda first spoke belatedly to Press persons on October 5, and disdainfully. "I only feel sorry for those friends who raise such type of issues." After all, what does it matter? There can be nothing between a CJI and a P.M. He added for good measure; "I only request them to have some patience and look back on traditions and conventions."

Spin doctors around him, of which there is no dearth, evidently counselled him that this will not wash. Talk of "traditions and conventions" from Mr. Deve Gowda is unconvincing at the best of times. In this instance it is misinformed, to say the least. The very next day, on Sunday October 6, came a formal prepared statement.

We were told on October 5 that a P.M. meeting a CJI or vice versa "is a reciprocal practice". On April 6 its purpose was stated and a nuance added to the character of the tryst: "to discuss certain outstanding administrative matters and it was a routine meeting"; a characterization that is more accurately applied to the Gowda-Narasimha Rao meetings that have truly become a "routine". How many P.M's have felt it necessary to call on the CJI thus to discuss "outstanding administrative matters"? One suspects that the prodding came from the CJI.

For the P.M. said: "I regret that my meeting has caused embarrassment to the Chief Justice of India and hope this statement will set at rest all doubts."

For all one's respect for Justice A.M. Ahmadi and his high office, one cannot help saying that he could well have spared himself the embarrassment by not meeting the P.M. in the circumstances in which he did, in the first instance. Having seen the public disquiet, he ought himself to have issued a Press statement explaining himself. The Judge knows the traditions and conventions of which Mr. Deve Gowda is blissfully unaware.

Confidence

A distinguished American jurist, Louis J. Jaffe, wrote in 1969 that there is a real danger of "the diminution of public confidence in the courts if it is believed that the judges are in secret communication with another branch of the Government." That sums up the convention. Whoever drafted the P.M.'s statement did him disservice and is evidently no better instructed in such matters than Mr. Deve Gowda himself.

Towards the end of 1983 it became known that Sir John Donaldson, the Master of the Rolls and Head of the Chancery Division of the High Court, had been asked to advise on the court's role in industrial relations. There was a debate on the subject in the House of Lords, on December 21, 1983, and in the House of Commons on January 16, 1984. Apparently, Sir John had delivered a speech in 1975 at a meeting of the Industrial Law Society. In 1982, the Permanent Secretary, Department of Employment, Mr. Michael Quinlan, saw him to discuss his views on the subject. the report was never shown to the Minister, the Attorney-General, Sir Michael Havers, informed the Commons. Were it not for a leak by a junior civil servant, a trainee, to The Guardian on November 30, the indiscretion would not have become known.

The episode was handled with aplomb in typically British style. The Lord Chancellor, Lord Hailsham, defended Sir John; the junior civil servant was sacked; and the principle based on tradition was reaffirmed.

Convention

That remarkable barrister, David Pannick, Q.C., a scholar among lawyers and a lawyer among scholars, puts it very well in his classic work *Judges*. The use of judicial experience is very sensible. "The only basis for criticizing such consultation is that it involved private, rather than public, expressions of judicial views to the Government of the day."

And privacy in this branch of the State, the judiciary, undermines public confidence. On October 22, 1990 the Court of Appeal drew the attention of Courts in England to problems arising from visits by Counsel to a judge in his private room.

The 14th Report of the Law Commission of India, the best ever, written by Mr. M.C. Setalvad quoted approvingly Winston Churchill's famous remarks on the judiciary in the House of Commons on March 23, 1954: "A form of life and conduct far more severe and restricted than that of ordinary people is required from judges and, though unwritten, has been most strictly observed. They are at once privileged and restricted. They have to present a continuous aspect of dignity and conduct." The Report contains admonitions to Judges in the same vein.

All this is undermined by meetings between the Chief Justice of India and the Prime Minister — be the lapse a singular one or part of a distressing "routine"

(Courtesy: The Statesman, Oct. 10, 1996)

Judges should be Accountable Too

Rajiv Wagh

MUMBAI: Prime Minister Deve Gowda has come in for considerable criticism following his recent meeting with Chief Justice of India (CJI) A. M. Ahmadi. Mr. Gowda has been at pains to explain that the meeting was not meant to bail out former Prime Minister P.V. Narasimha Rao, who is facing criminal charges before different courts in the country.

While the Prime Minister has found it necessary to explain his conduct, the CJI has been characteristically reticent. It would almost appear as if the head of the country's judiciary does not feel it necessary to give the people some idea as to why he agreed to meet Mr. Gowda that night. What is equally signifi-

cant is that while the people have sought to hold the Prime Minister to account, no one has dared to question Mr. Justice Ahmadi on the propriety of such a meeting.

This is not to say that the Prime Minister and the CJI should not meet. Only, the rules of an open society dictate that the people have a right to know something about so controversial a meeting. More so, as there is speculation that the two public functionaries may have discussed a policy matter which will have the result of denying Mr. Justice J.S. Verma, the next seniormost judge of the Supreme Court, the post of Chief Justice.

"If we give the benefit of the doubt to the Prime Minister and presume that everything discussed was above board, one wonders why it cannot be openly and publicly stated," senior counsel of the Bombay High Court Jai Chinai says.

The people, through the media, are virtually barred from commenting on the conduct of judges. They can criticise judgment passed by courts. But that is about all.

To comment on the conduct of a judge, however justified, can amount to contempt, entailing punishment. It must be said to the credit of our judges that they are increasingly learning to take criticism in their stride. Yet there is a danger. No one knows what may be construed as contempt. This is because our courts are judges in their own cause. The judiciary itself decides whether a person has committed contempt. There is no fool-proof way to ascertain what will be construed as bona fide criticism and what will amount to contempt. Not surprisingly, our courts rarely come in for close scrutiny from the media.

Till recently, however, there was reason for hope. Advocate of Mumbai, back in 1990, started taking up case of judicial corruption and misdemeanour. In June 1990, Justice S.K. Desai of the Bombay High Court had to resign following allegations of corruption. Subsequently, resolutions of no confidence came to be passed against Justices Sharad Manohar, V.S. Kotwal, M.P. Kenia and Guttal. They were not assigned judicial work and two of them were later transferred to other high courts.

Early last year, Justice Vijay Bahuguna of the same court surrendered his judgeship, even though he had 15 years in service. Later during the same year, Chief Justice A.M. Bhattacharjee had to resign following an admission that he accepted \$ 80,000

as royalty for the overseas publication of his book *Muslim Law in India*. Few lay persons know that lawyers in the country will no longer be able to emulate that bold steps taken by Mumbai's advocates since 1990. The Supreme Court passed a judgment last year in the Bhattacharjee case holding that lawyers did not have the right to adopt any measures to force a judge to resign. Few people will quarrel with this proposition, as lawyers have a vested interest in the legal system. It is quite possible that they will misuse the power they may have over judges.

But the alternative suggested by the Supreme Court is inadequate. It has directed that when people have grievance against a high court judge, they should submit information to the chief justice for appropriate action. Should they have objections to the conduct of a high court justice, the people should complain to the CJI.

Besides, does the chief justice of a high court or the CJI have any powers to discipline a judge? The simple answer is no. A judge can only be removed by the process of impeachment.

If the media cannot discuss the conduct of a judge, if lawyers cannot pass resolutions of no confidence and if presiding judges cannot take effective action against "errant judges", what is the way out? If the judiciary wishes to retain public confidence, it will have to devise some solution to this vexed issue.

(Courtesy: *The Times of India*, Oct. 17, 1996)

Judicial Activism is to be Welcomed, not Curbed

Nikhil Chakravarty

Recent weeks have seen the emergence of a new trend, particularly within the Congress party, which may have a pernicious effect in shape of instability on the body politic. Some Congress MPs have come out with sharp criticism of what is being called "judicial activism", and have wanted to curb it by calling for a special session of Parliament taking up the issue and passing the necessary constitutional amendment which would set limits on the courts' "judicial activism".

The calculation behind this move, with which Mr. Priyaranjan Das Munshi's name is associated is that this would put a stop to the detroning of some of the leading lights of the previous Government, including the former Prime Minister. The expecta-

tion of these Congress leaders seems to be that if the courts could somehow be made toothless and judicial activism muzzled, it would bring respite to ministers and other politicians charged with corruption. What is more, this section of Congress seems to be expecting a positive response from the main Opposition, the BJP, as well, since some of the top leaders of that party too have been facing similar accusations.

What is surprising is that the Speaker of the Lok Sabha, Mr. P.A. Sangma, has taken up the issue and through a recent symposium of presiding officers of legislatures, fired a bombshell against judicial activism, which has become the talk of the day in political circles. What has come as a surprise is that the Speaker, who has been elected with the consent of all parties and is therefore expected to take up issues of common concern to all parties in Parliament, should go in for publicising the viewpoint of only a section of the House without caring to take into account the views of other parties in Lok Sabha, who at the moment constitute the ruling establishment. It is possible that Mr. Sangma is personally disturbed by "judicial activism" as sailing politicians, but in his conduct, his peers in Parliament would expect him to behave even-handedly.

No doubt, the issue of judicial activism has been of uppermost concern for the entire political spectrum but should not the Speaker take the counsel of all parties in the Lok Sabha as to how to deal with the case? Would it not have been better for the Speaker to hold consultations with all parties before taking the initiative of firing a shot at "judicial activism", which in effect is aimed at hitting the judiciary in its relationship with not only Parliament but the executive as well?

Judicial activism owes its inception to the wholesome initiative of a number of concerned citizens, as also to the admittedly enlightened section of the judiciary which cut through the red tape and enabled, to a considerable degree, to bring to justice quite a few crooks through public interest litigations. It soon got wide currency in dealing with serious cases of executive misdeeds and also corruption in political life. It is therefore important that those who are today attacking the very idea of judicial activism are really helping to discredit an important device of cutting through the dilatoriness of our conventional judicial process. It is precisely because of this aspect of the concept of

public interest litigation that it has become a very popular weapon of the citizen's direct intervention seeking justice. Judicial activism has come largely as a response to public interest litigation.

Have a frank debate

It is necessary for the disturbed Congressmen to recall that their own party in Government was vociferously demanding judicial activism during the crisis over the Babri Masjid dispute before its demolition in December 1992, and that was precisely because their party, then in power, fought shy of building up political or executive intervention to stop that vandalism. Today the shoe is naturally pinching quite a few Congressmen, as a number of their ministers and their cohorts have been caught with their involvement in corruption to a degree never seen before in our Republic since its birth in 1950. Judicial activism on this score reflects, by and large, the feeling of indignation in the common citizens at the enormity of corruption indulged in by the elected representatives of our legislature, Parliament and assemblies.

Abuse of power on the part of those now being arraigned by the Centre itself amounts to a crime against the Constitution, and that is why the far-flung public of this democracy has welcomed judicial activism. In fact, Mr. Sangma should realise that the widespread popularity of judicial activism today is a measure of the disappointment and disillusion in the public mind about the effectiveness of Parliament in dealing with cases of corruption even when these knock at its doorstep. The fact that nobody has been punished by the executive authority for the security scam amounting to Rs. 5000 crore despite the setting up of the joint parliamentary committee, has definitely undermined the majesty of Parliament itself. If the culprits could not be branded by the JPC, it speaks volumes about the constricted manner in which the parliamentary body had to function. Was it unfair on the part of the citizens to lose faith in parliamentary practice by such devious ways of its functioning? Taking a current case, namely the charge of large-scale bribery to win over a bunch of MPs so that the Congress Government could survive a no-confidence vote in the last Lok Sabha, one can legitimately ask why this issue has not been taken up by the House under Mr. Sangma as a case of impeachment. One can

even ask: Would he, in his discretion as the Speaker, take this up once the courts have found the accused guilty?

There is no doubt there are black sheep in the judiciary. In fact, the system of judicial functioning in our country came in for sharp public criticism because of the enormous backlog in the disposal of cases before the courts. And there have been, in recent years, glaring cases of corruption on the part of the members of the bench itself. At the same time, Mr. Sangma would remember that when one shocking instance of corruption on the part of a judge came before the Lok Sabha, it was the party to which he belonged which, by calculatedly abstaining from voting on the motion of impeachment, let the culprit go scot-free.

It is clear from all this that if the members of the judiciary have occasionally been remiss in upholding probity and fair play. Parliament has hardly pulled them up. Nor has it expressed any concern at the fall in standards prevailing in the courts. It is therefore preposterous in public eye for members of Parliament to take up the issue against the judiciary for the widespread public abhorrence against politicians involved in corruption. The correct course for someone holding the august office of the Speaker of the Lok Sabha would be to find out ways and means by which there could be a free and frank exchange of view and interaction of experiences between the three pillars of our democracy — Parliament, judiciary and executive. Mr. Sangma and other honourable personages have to realise that the current ailment has afflicted all sections of the body politic, and the means to deal with it have to be found by all the wise heads coming together, not by anyone of them sniping at the other in a situation of enveloping crisis. The Speaker is an honourable personality; he has to demonstrate this in thought, word and deed.

(Courtesy: The Pioneer, Oct. 18, 1996)

EDITORIALS

The Plot Thickens

The ripples caused by the CBI Joint Director, Mr. Upen Biswas's statement disowning his own signature on the agency's Bihar fodder scam report go well beyond the confines of the Patna High Court where he made the startling disclosure. Coming as it does shortly in the wake of the CBI counsel, Mr. Gopal Subramaniam's resignation alleging Government pressure to bail out the former Prime Minister, Mr. P.V. Narasimha Rao, the revelations by Mr. Biswas have badly damaged the credibility of both, the CBI Director, Mr. Joginder Singh, and the Prime Minister, Mr. H.D. Deve Gowda. There are now successive instances of the Gowda Government manipulating CBI cases to save two top political leaders in the dock. The motives of the Government in both cases are clearly suspect. If Mr. Rao is important because of the Congress's crucial support to the UF Government, the Bihar Chief Minister, Mr. Laloo Yadav is the president of the party to which the Prime Minister belongs. Indeed, Mr. Yadav's hurried visit to the Capital just before the CBI presented its report on the fodder scam to the Patna High Court had provoked media speculation about last minute pressure tactics from Mr. Yadav to save his skin. Given the circumstances, the charge made by Mr. Biswas that his report indicting Mr. Yadav has been tampered with, appears to be most credible.

While the upright CBI official must be commended for piling the beans, his Chief Mr. Joginder Singh, has been left in an unenviable position. The two Patna High Court judges S.N. Jha and S.J. Mukhopadhyay have already declared the fraud played

by the CBI top brass on the judiciary as “unprecedented and amounting to contempt of court.” To make matters worse for Mr. Singh, the court has been presented with the original report prepared by Mr. Biswas who has also pleaded that he be given a free hand to investigate the fodder scam since he was under tremendous pressure from his seniors in the CBI to go slow against politicians. It is most unlikely that the judiciary would be forgiving in a case where the investigative agency has been exposed so thoroughly by one of its own officials. The CBI Director, who has already been castigated several times by different judges, now not only faces the risk of losing his job but also prosecution.

Yet, the Prime Minister himself cannot wholly escape some of blame being laid at the door of the CBI chief. After all, there is a clear political motive behind the CBI's game of hide-and-seek with the Patna High Court in the fodder scam case just as there was in its reluctance to oppose the bail plea of Mr. Rao in the Lakhubhai cheating case. Mr. Deve Gowda is compelled by the circumstances of his minority Government to save political leaders who could harm him. But in attempting to do so, he appears to have got into a deeper mess. It would not be surprising if the Prime Minister himself comes under the wheels of the judicial juggernaut which has so far shown scant respect for small or big politicians.

The Pioneer, dated Oct. 2, 1996

देवगौड़ा सरकार का भविष्य क्या है?

क्या सचमुच श्री देवगौड़ा की सरकार पर खतरे के बादल मंडरा रहे हैं? पिछले दो-तीन सप्ताह से जिस तरह की राजनीतिक गतिविधियां राजधानी दिल्ली में चल रही हैं, उसके महेनजर तो ऐसा लगता है कि अगर परिस्थितियां ऐसी ही चलती रहीं तो जल्दी ही केन्द्र में संयुक्त मोर्चा की सरकार पिर सकती है।

सत्तारूढ़ दल में वर्तमान राजनीतिक संकट अक्तूबर के प्रथम सप्ताह से शुरू हुआ है जबसे लखू भाई पाठक केस में केन्द्रीय जांच ब्यूरो के वरिष्ठ अधिवक्ता श्री गोपाल सुब्रह्मण्यम ने अपना त्यागपत्र दिया है। कहा जाता है कि प्रधानमंत्री श्री देवगौड़ा के निर्देश पर न केवल केन्द्रीय कानून मंत्री बल्कि ब्यूरो के निर्देशक श्री जोगिन्द्र सिंह को यह स्पष्ट शब्दों में

कहा गया था कि लखू भाई पाठक केस में पूर्व प्रधानमंत्री श्री पी.वी. नरसिंहा राव की जमानत की अर्जी का कोर्ट में विरोध न किया जाए। दूसरे उच्चतम न्यायालय द्वारा ७ अक्टूबर तक इस मामले पर विचार करने तथा श्री राव की तीस हजारी में पेशी पर सात दिन तक रोक लगाने से नए-नए विवाद पैदा हुए हैं और इस फैसले की चर्चा राजनीतिक क्षेत्रों में तेज हुई है।

इस दौरान प्रधानमंत्री श्री देवगौड़ा और उच्चतम न्यायालय के मुख्य न्यायाधीश श्री ए.एम. अहमदी की पिछले शनिवार हुई कथित गुप्त मुलाकात भी आजकल दिल्ली में चर्चा का विषय बनी हुई है। गत सप्ताह सर्वोच्च न्यायालय के १८० वकीलों ने उच्चतम न्यायालय बार संघ की आम सभा बुलाकर इस मुलाकात के औचित्य पर विचार की मांग की है। उच्चतम न्यायालय के वकीलों ने इस बात की मांग की है कि विभिन्न समाचारपत्रों में छपी खबरों के अनुसार प्रधानमंत्री ने आधी रात के समय मुख्य न्यायाधीश महोदय से दो घंटे तक भेंटवार्ता उस समय की है जबकि इतने सारे विवादास्पद मामले उच्चतम न्यायालय के समक्ष लंबित पड़े हैं। ऐसे माहौल में दोनों की मुलाकात कितनी उपयुक्त है, इस पर विचार करने के लिए सर्वोच्च न्यायालय बार संघ की आम सभा बुलाई जाए। देश के विभिन्न समाचारपत्रों में छपी खबरों के मुताबिक गत दो सप्ताह पूर्व शनिवार की रात को हुई उक्त बैठक के बारे में यह कहा गया है कि प्रधानमंत्री का काफिला चुपचाप आधी रात के समय मुख्य न्यायाधीश के आवास १२, कृष्ण मैनन मार्ग पर पहुंचा। अभी तक सरकार द्वारा न तो इस मुलाकात में हुई बातचीत का व्यौरा सार्वजनिक किया गया है और न ही इसका कोई सरकारी खंडन जारी किया गया है।

इस दौरान प्रधानमंत्री श्री देवगौड़ा और केन्द्रीय गृहमंत्री श्री इन्द्रजीत गुप्त के बीच पूर्व प्रधानमंत्री श्री नरसिंहा राव को लेकर नीतियों एंव विचारों के सन्दर्भ में शीत युद्ध शुरू हो चुका है। हालांकि श्री इन्द्रजीत गुप्त ने एक बयान में इन खबरों का खण्डन किया है लेकिन गृहमंत्री के सूत्रों का यह कहना है कि जिस ढंग से गत सप्ताह श्री राव की अदालत में पेशी को लेकर पुलिस आयुक्त का इस्तेमाल किया गया है और जिस ढंग से लखू भाई पाठक केस के मामले में श्री देवगौड़ा पूर्व प्रधानमंत्री श्री नरसिंहा राव को बचाने में लगे हैं, इस सम्बन्ध में सीढ़ी दर सीढ़ी जो क्रम बन रहे हैं उनमें केन्द्रीय जांच व्यूरो के वरिष्ठ अधिवक्ता गोपाल सुब्रह्मण्यम द्वारा लगाए गए आरोपों को बल मिल रहा है कि केन्द्र सरकार

उन पर यह दबाव डाल रही है कि लखू भाई पाठक मामले में नरसिंहा राव की जमानत की अर्जी का विरोध न किया जाए। कहा जाता है कि उपरोक्त वर्णित बातों से श्री गुप्त प्रधानमंत्री से खफा हैं। गृहमंत्री के निकटवर्ती सूत्रों का मानना है कि उन्हें सुरक्षा की दृष्टि से रथान परिवर्तन में कोई एतराज नहीं है लेकिन जहां तक श्री राव को दी जाने वाली सुविधाओं और जमानत की अर्जी का व्यूरो को विरोध न करने का निर्देश दिए जाने का प्रश्न है, इन मामलों में श्री गुप्त और श्री देवगौड़ा के बीच मतभेद हैं।

इस दौरान सेंट किट्स के मामले पर भी पिछले दिनों रोचक गतिविधियां जारी रहीं। गत सप्ताह शुक्रवार को मैट्रोपोलिटन मजिस्ट्रेट श्री प्रेम कुमार ने श्री राव के विरुद्ध गैर जमानती वारंट जारी कर दिये, लेकिन दिल्ली उच्च न्यायालय के न्यायमूर्ति श्री एस.के. महाजन ने इस गैर-जमानती वारंट के तहत गिरफ्तारी पर सोमवार तक रोक लगा दी है। इससे पहले जिस ढंग से दिल्ली उच्च न्यायालय ने जांच व्यूरो को इस मामले में ढिलाई गरतने पर डांट पिलाई है, इससे न केवल केन्द्रीय जांच व्यूरो बल्कि इसके डायरैक्टर 'टाइगर' जोगिन्द्र सिंह की छवि को भी गहरा धक्का लगा है। जिस दिन से श्री जोगिन्द्र सिंह ने केन्द्रीय जांच व्यूरो का पद सम्भाला है उसी दिन से उन पर मुसीबतों के बादल मंडराने लगे हैं। पहले पूर्व प्रधानमंत्री श्री राव और श्री चन्द्रशेखर से इनकी मुलाकातों पर विवाद उठा और अब व्यूरो के अधिवक्ता श्री सुब्रह्मण्यम द्वारा त्यागपत्र तथा दिल्ली उच्च न्यायालय की ज्ञाड़ के पश्चात तो यह बात स्पष्ट हो गई है कि श्री जोगिन्द्र सिंह स्वतंत्र और निष्पक्ष निर्णय लेने में असहाय लगते हैं।

सेंट किट्स के मामले में दिल्ली उच्च न्यायालय ने श्री राव के खिलाफ जारी गैर जमानती वारंटों के तहत सोमवार तक गिरफ्तारी पर रोक लगाई है जबकि १४ अक्टूबर को श्री राव को श्री प्रेमकुमार की अदालत में पेश होना है। उच्च एंव उच्चतम न्यायालयों का सहारा जेकर श्री राव और उनके वकील उन्हें आखिर कब तक बचाएंगे। 'बकरे की माँ आखिर कब तक खैर मनाएगी।' जिस ढंग से सेंट किट्स के मामले पर श्री राव के साथ अदालत ने कुख्यात तांत्रिक चंद्रास्वामी मामा उर्फ कैलाश नाथ अग्रवाल और पूर्व केन्द्रीय मंत्री के.के. तिवारी सहित दो अन्य व्यक्तियों को जालसाजी के केस में संज्ञान लेते हुए इनके वारंट जारी किए हैं, वर्तमान परिस्थितियों के मद्देनज़र अगर इस सप्ताह श्री राव को जेल भेज दिया जाता है तो न केवल कांग्रेस (इ) में संसदीय दल का नेता पद हथियाने के लिए जोर-

आजमाइश होगी बल्कि केन्द्र में श्री देवेगौड़ा की सरकार के गिरने की संभावनाएं पहले से ज्यादा बढ़ जाएंगी।

उधर उत्तर प्रदेश में मतदान प्रक्रिया समाप्त हाने जा रही है। जम्मू-कश्मीर में डा. फारूक के नेतृत्व में नेशनल कांफ्रैंस की सरकार स्थापित हो रही है। हालांकि डा. फारूक ने केन्द्र में संयुक्त सरकार में भागीदारी की बात कही है लेकिन आने वाले दिनों में डा. फारूक का असली रूप भी दुनिया के समक्ष आ जाएगा, जब मुख्यमंत्री की कुर्सी पर बैठने के उपरान्त उन्हें प्रदेश की उजड़ी आर्थिक, सामाजिक, धार्मिक और सुरक्षा समस्याओं से जूझना पड़ेगा। राजधानी दिल्ली में राजनीतिक सूत्रों का यह मानना है कि श्री देवेगौड़ा का बार-बार श्री राव से मिलना सरकार की कमज़ोरी का संकेत है। शायद प्रधानमंत्री एच.डी. देवगौड़ा को ऐसा लग रहा है कि उत्तर प्रदेश में संयुक्त मोर्चा की पराजय और भाजपा की जीत के उपरान्त प्रदेश और केन्द्र में राजनीतिक समीकरण बदल सकते हैं। राजधानी के राजनीतिक क्षेत्रों में इस बात की चर्चा है कि प्रधानमंत्री देवगौड़ा यह मानते हैं कि जिस दिन श्री राव को जेल भेजा गया उसी दिन उनकी सरकार धराशायी हो जाएगी। बेशक श्री राव ने इंका अध्यक्ष पद से त्यागपत्र दे दिया है और श्री सीता राम केसरी अब इंका अध्यक्ष हैं लेकिन इसके बावजूद कांग्रेस संसदीय दल के नेता तो अभी भी श्री नरसिंह राव ही हैं। इन इंका सांसदों के समर्थन से ही श्री देवेगौड़ा की सरकार टिकी हुई है। श्री राव के समर्थकों ने खासतौर पर वर्तमान पार्टी अध्यक्ष श्री सीताराम केसरी ने पिछले दिनों स्पष्ट रूप से यह बयान दिया है कि कांग्रेस जिस दिन चाहेगी उस दिन संयुक्त मोर्चा सरकार को गिरा देगी। अपने बयान में श्री केसरी ने पिछले दिनों संयुक्त मोर्चा सरकार को आगाह किया है कि वह यह न समझे कि कांग्रेस उसे हर स्थिति में समर्थन देती रहेगी। उत्तर प्रदेश में चुनाव प्रचार के दौरान श्री केसरी ने बहुजन समाज पार्टी-कांग्रेस गठबंधन के संयुक्त रैली में बोलते हुए यह कहा कि केन्द्र सरकार को कांग्रेस के समर्थन को हमारी कमज़ोरी नहीं मानना चाहिए और हम जिस दिन चाहेंगे संयुक्त मोर्चा सरकार को गिरा सकते हैं।

श्री केसरी के उक्त घोषणा के अलावा श्री नरसिंह राव ने खुद भी श्री देवेगौड़ा के साथ हुई अपनी बैठकों में इस बात के संदेश और संकेत दिए हैं कि अगर उन्हें जेल भेजा गया तो कांग्रेस पार्टी में उनके समर्थक सांसद इस बात को बर्दाश्त नहीं करेंगे, लिहाजा लोकसभा में उनके दल को मजबूरन मोर्चा सरकार से अपना समर्थन वापिस लेना पड़ेगा। अगर

ऐसा हुआ तो फिर केन्द्र में संयुक्त मोर्चा सरकार एक दिन भी टिक न सकेगी। सचमुच प्रधानमंत्री श्री देवेगौड़ा इस समय अजीब मुसिबत में फर्से पड़े हैं। जहां संयुक्त मोर्चा का एक शक्तिशाली धड़ा और खासतौर पर कम्प्युनिस्ट पार्टीयां उन पर श्री राव को जेल भेजने का दबाव डाल रही हैं, वहां सी.बी.आई. का शिकंजा विहार के मुख्यमंत्री और जनता दल अध्यक्ष श्री लालू प्रसाद यादव के गले में भी कसता चला जा रहा है। 'चारा घोटाले' में फंसे श्री लालू प्रसाद यादव की स्थिति भी लगभग श्री नरसिंहा राव जैसी बनती जा रही है। हालांकि अंदर ही अंदर श्री लालू प्रसाद को फसंता देख श्री देवेगौड़ा खुश हैं लेकिन जिस दिन श्री लालू प्रसाद पर जांच ब्यूरो ने सीधा हाथ डाला, तो श्री लालू प्रसाद भी संयुक्त मोर्चा सरकार में राजनीतिक संकट पैदा कर देंगे। कुल मिलाकर केन्द्र में स्थिति इस समय काफी विकट चल रही है। जहां एक तरफ श्री देवेगौड़ा श्री राव को जेल भेजने से बचा रहे हैं वहां दूसरी तरफ कांग्रेस पार्टी की शक्ति को कमजोर करने का कोई मौका भी हाथ से जाने नहीं देते। अगर श्री राव सेर हैं तो श्री देवेगौड़ा सवा सेर हैं। किस ढंग से श्री देवेगौड़ा कांग्रेस पार्टी को कमजोर कर रहे हैं और किस तरह संयुक्त मोर्चा के विभिन्न घटक श्री देवेगौड़ा के लिए मुसिबतें पैदा कर रहे हैं, इसका जिक्र मैं उपने कल के लेख में करूंगा।

(सौजन्यः पंजाब केसरी, अक्टूबर ७, १९६६)

Judging the Judges

In an unusual move, the Central Bureau of investigation has taken the Patna High Court to the Supreme Court. The agency is aggrieved that the High Court has restrained its director, Mr. Joginder Singh, from "meddling" in the multi-crore rupee fodder scam investigation. The order, the CBI feels, has called into question its "integrity, public image and credibility", also that it would "destroy" the chain of command so essential for its efficient functioning. In not entirely dissimilar circumstances in the Jain-hawala investigations, the Supreme Court had itself asked the CBI not to report to then Prime Minister Narasimha Rao. The issue involves complex points of law and is best left to the judgment of the highest court of the land. Yet, this is probably a good time to examine the increasing political criticism of the judiciary's so-called activist role especially in cases

involving people holding high and influential public offices. The main objection to such activism is that it borders on expansionism; that in time the judiciary will feel compelled to progress from its zealous role as watchdog to transgressing more and more on executive functions. It is being argued that an enlarged judicial canvas must necessarily blur the clearly demarcated constitutional boundaries between the judiciary, executive and the legislature. To the extent that the Constitution, as painstakingly laid down by our founding fathers, is specific on the roles of the three pillars of the state, there can be no disputing that each must stay within its boundaries.

There is merit in the argument that the judiciary should do its job well instead of taking on additional responsibilities from the executive. However, had it been a mere constitutional question, it is unlikely that the maximum noise on this front would emanate from quarters that are linked in one way or another to cases that are currently under judicial scrutiny. It raises a suspicion that the concern of our political class has less to do with constitutional niceties and more to do with saving skins. This may explain the move, now fortunately abandoned, by a section of our MPs to convene a special session of Parliament on judicial activism. We have not seen them rushing to summon special sessions to discuss such other pressing matters as, say, the growing corruption among legislators, the need for administrative transparency or even passing the backlog of important legislation. The truth is that it has been left to the third pillar to protect the state on its own; but for the vacuum created by the virtual collapse of the executive and the legislature, the judiciary would not have felt called upon to expand on its conventional duties. Besides, not much has really happened yet; neither the court's stress on speedy trials nor its insistence on transparency in CBI investigations has led to even a single conviction. The argument is still mostly over procedure. It is important to note that these are extraordinary times. It is not every day that we have a former Prime Minister and nearly his entire cabinet facing serious criminal charges. The gathering darkness calls for action from that beacon of light in these hard times, the judiciary, although it, too, should remember where the fault lines of our constitutional system lie.

(Courtesy: Times of India, dated Oct. 11, 1996)

Reassurance Needed

The announcement of the appointment of Mr. Justice M.N. Venkatachalaiah as the next Chairman of the National Human Rights Commission deserves to be warmly welcomed. How much better it would have been if the Government had not made it so obvious that this was part of the damage limitation exercise born of the Prime Minister's embarrassment over his mysterious meeting with the Chief Justice, Mr. Justice A.M. Ahmadi. The decision was taken on October 9, a day in advance of the scheduled meeting of the Supreme Court Bar Association where a resolution critical of the Chief Justice for having allowed himself to become an unwitting partner in Mr. Deve Gowda's designs was likely to be moved. The effort to take the wind out of the sail of the agitated lawyers is plain for all to see. It just might have been a coincidence; one would have to believe in coincidences with a religious faith to let that pass.

The particular excuse of the vacancy in the position of the Chairman of the NHRC thought up to pave the way for the supersession of Mr. Justice J.S. Verma is now happily removed but the Prime Minister still has to answer why he went to see the Chief Justice and whether, independently of the visit, there was a plan to supersede the courageous judge who, with the support of his brother judges on the Bench he headed, so successfully obliged the Government and agencies of the Government to do their duty. The Prime Minister's statement that he was performing a routine call on the Chief Justice is absurd; there are no routine matters for discussion between the Prime Minister and the Chief Justice. It would be reassuring to the Bench and the Bar and to the country generally, if the Chief Justice could see his way to confirming that there are no routine matters which are discussed by him with Mr. Deve Gowda. The Prime Minister has compromised the office of the Chief Justice by, to use the language of understatement, his indiscretion; the subsequent effort to pass it off as routine has only made matters worse.

To return to the NHRC, the record of Mr. Justice Mishra has been patchy; the ruling that, in effect, the armed forces are exempt from the need to respect human rights was entirely avoidable. There have been other occasions when the Commis-

sion has appeared to earn the description of a "sarkari commission"; with Justice Venkatachalaiah there ought to be no such apprehensions. Thus is good sometimes born out of evil but the need to lay the ghost of the threatened supersession remains. The only way to ensure that such things do not happen again is for the Prime Minister to confirm, not necessarily that he was on an unworthy mission but at least that come March 25, 1997, Mr. Justice J.S. Verma will adorn the office of the Chief Justice of India. Unless, of course, the dirty tricks department that the Prime Minister's Office has become, is thinking up another excuse to replace the one about the vacancy in the NHRC.

(Courtesy: The Statesman, dated October 14,)

LETTERS TO THE EDITOR

Judicious Meeting

Sahil Brelvi

Sir — The 180 members of the Supreme Court Bar Association, who have initiated a debate on the "propriety" of the Prime Minister, Mr. H.D. Deve Gowda's meeting with the Chief Justice of India, ought to be congratulated and supported in their crusade against flagrant violation of ethical norms by none else than the top functionary of the State.

The midnight hug on September 25 has sent a wrong signal to the people who are unanimous in viewing it as a quiet and shady move to save the former Prime Minister, Mr. P.V. Narasimha Rao, and his other colleagues involved in misappropriating public funds and misuse of authority for personal benefits.

One can understand Mr. Deve Gowda's concern to save the Government which is existing on the mercy of the Congress, but by meeting the Chief Justice stealthily, he has lowered his own image in the eyes of the people, for it tantamounts to betrayal of their trust. With the legislators and bureaucrats having had lost their credibility, the judiciary and the print media are the only hopes for the citizens.

(Courtesy: Pioneer, Oct. 9, 1996)

Appeasing Rao

Sir — This has reference to the article. 'Gowda puts Rao before party ire' (The Pioneer, October 2). The Prime Minister and all his men, by trying to prevent Mr. P.V. Narasimha Rao from appearing in the court, were simply trying to appease him.

This is in sharp contrast to events in 1922 when Mahatma Gandhi and Shankar Lal Ghelabai Banker, editor printer and publisher of Young India, were charged with attempting to excite disaffection toward his Majesty's Government in India. (*Selected work of Mahatma Gandhi Vol. VI* — Navjiwan Publishing House, Ahmedabad.)

Both the accused chose not to be represented. Mahatma Gandhi pleaded guilty to all the charges and prayed for maximum penalty to be awarded to him. However, he placed on record a written statement condemning the actions of His Majesty's Government in India and justifying his own actions.

(Courtesy: *Pioneer*)

Indignity of Evading Court Summons

Kapila Hingorani

Sir — It was unnecessary to make so much fuss when P.V. Narasimha Rao was summoned by a magistrate in the Lakhubhai Pathak case. Dignity lay in obeying the law and not avoiding it. Thousands of citizens are daily summoned by the courts to answer the charges against them and they obey the call.

In fact, lawyers worth their name advise clients to accept the summons and dutifully appear before the court. Rao, however, chose to appeal to the Supreme Court against the mere summons. The Supreme Court, while declaring the magistrate to be impartial and neutral, chose to transfer the case to another magistrate.

During the second round, it was improper for Prime Minister Deve Gowda to visit Rao, who is rightly or wrongly, involved in several criminal cases. It was extremely regrettable that the Prime Minister called upon the Chief Justice of India, as reported.

It was disgusting that the Government went to the extent of instructing the senior CBI counsel not to oppose the bail application of Rao. It is equally unfortunate that the Commissioner of Police, Delhi, chose to file a special leave petition in the Supreme Court on the administrative order of the Delhi High Court declining to shift the venue of the trial. Democracy is being undermined by those obliged to uphold it.

(Courtesy: *Indian Express*)

Upright Judges

Sir — The Mundhara episode tarnished the image of the Congress Government headed by Jawaharlal Nehru. But Nehru did take action by removing the then Finance Minister T.T. Krishnamachari, who was responsible for the sordid episode. Unfortunately, it was not the same under the regime of Narasimha Rao. The Prime Minister here stoutly defended his corrupt ministerial colleagues like Kalpnath Rai and Sukh Ram. What was an isolated event in Nehru's regime became a widespread phenomenon in Rao's time. There was all-round loot by all and sundry. Even the Prime Minister himself is supposedly tainted.

In this hopeless atmosphere of all-pervasive corruption, the only silver lining is the presence of an upright judiciary. In his superb Caveat — a column we have come to look upon as a heroic crusade against corruption in public life — C.R. Irani has, in his inimitable style, deftly analysed the event to show how Narasimha Rao and Deve Gowda have ganged up to let down the judiciary by contemplating the appointment of a pliable man as Chief Justice of India. It would, indeed, be an extension of Indira Gandhi's idea of a committed judiciary. — Yours, etc., Shyama Shankar Chakrabarti.

(Courtesy: The Statesman, Oct. 14, 1996)

Gowda's Gameplan

Sir — C.R. Irani's Caveat deserves the highest praise from the common man. In the wake of what has lately been happening to Sukh Ram and Narasimha Rao, politicians of their ilk are shouting themselves hoarse by saying that judicial activism is playing havoc in this country. They are planning to raise the matter in the coming session of Parliament too.

Politicians have brought the country to the brink of disaster. A few distinguished judges have taken upon themselves the uphill task of cleansing the Augean Stable that our country at the moment is. Mr. Irani has done this country a great service by exposing Mr. Deve Gowda's gameplan of clipping the wings of the judges. There is no doubt that if the conspiracy succeeds,

the country will fall into the quagmire of destruction and ruin. —
Yours, etc. Kali Charan Banerjee.

(Courtesy: *Statesman*, Oct. 7, 1996)

Hopes Belied

Sir — When Mr. H.D. Deve Gowda took charge as the Prime Minister, the people, especially the poor and the downtrodden, were happy to see a common man and the son of a simple farmer at the helm. They never expected a very high performance from him, but they believed his simplicity and his statements that he would not try to put undue influence on the judiciary or the investigating agencies such as the CBI in cases relating to corruption charges against politicians and bureaucrats. However, his activities during the last four months give a different picture. Mr. Deve Gowda has met the former PM, Mr. P.V. Narasimha Rao, 27 times in the last four months, knowing fully well about the latter's pending cases. His meeting with the Chief Justice, particularly when sensitive matters concerning the involvement of high functionaries are pending in courts, the move by the Delhi police under the PMO's instructions to seek a change in the venue for the appearance of Mr. Rao and the Law Minister's undue interference make people lose faith in the Deve Gowda Government. It is time Mr. Deve Gowda changed his ways without bothering about Cong(I) support.

(Courtesy: *The Statesman*, Oct. 14, 1996)

Dangerous Trends

Sir — When the Congress(I) as the ruling party coined the phrase "law will take its course", many had guessed correctly that it was an opportunistic move to jettison some of the unwanted elements from the party. Everything was fine with "judicial activism" as long as the party president was untouched. But, when a determined judiciary continued with the "operation clean-up", and in the process brought the focus on the Congress(I) president, the party began seeing red. The reaction to the clean-up started on oblique salvos from the party spokesmen, but has now snowballed into an open accusation that the privileges of

the elected representatives were being fouled by the judiciary. The Congress(I)'s sole objective at the moment seems to be to whip up public opinion against the judiciary taking action against public men (read ex-PM) even if the latter are, *prima facie*, criminally involved.

If this dangerous trend in the thinking of politicians about two sets of laws is not curbed in time, the people's faith in the judiciary will be eroded and, worse, corruption will become more widespread than now.

For all his protestations that he and his three pieces of personal luggage are ever ready to leave Delhi, the PM appears clearly rattled by the "Big Brother" breathing down his neck.

(Courtesy: *Hindu*, Oct. 9, 1996)

Dangerous Trends

Sir — Anatole France has said, "So long as society is founded on injustice, the function of the laws will be to defend and sustain injustice. And the more unjust they are, the more respectable they will seem." True to the above statement, the undue interest and unwarranted interference exhibited by the Deve Gowda Government in the course of justice of safeguard Mr. Narasimha Rao has made all the tall talk of law taking its own course run counter to the very principle of equality. Mr. Gowda's nocturnal visit to Mr. A.M. Ahmadi, Chief Justice, his personal meeting with Mr. Rao at the latter's residence, the Union Law Minister's instruction to the CBI counsel not to oppose the bail plea of Mr. Rao and the subsequent sudden resignation of the counsel, Mr. Gopal Subramanian — all such happenings in a series have been necessitated by the present Government's eagerness to protect Mr. Rao to the maximum possible extent for the sake of its own survival, quite unmindful of its consequences.

(Courtesy: *Hindu*, Oct. 9, 1996)

The Nation's Conscience

Sir — C.R. Irani has surpassed himself in his Caveat, "Gowda-Rao launch a new joint venture!" (October 4-5). It has thoroughly exposed the outrageous "conspiracy born of cowardice

and corruption", to quote Mr. Irani's words, to save Mr. Deve Gowda's gaddi by trying desperately to save Mr. Narasimha Rao, up to his neck in trouble, from the long arm of the law and to deprive upright judges of their due.

This superb Caveat is reminiscent of Emile Zola's ringing open letter, *J' Accuse* (*I Accuse*) about the Dreyfus case which Anatole France described as "a moment in the conscience of mankind". Mr. Irani has elevated *The Statesman* to the role of the deeper of the nation's conscience. Congratulations! — Yours, etc. Meghnad Gupta.

(Courtesy: *The Statesman*, Oct. 17, 1996)

Political Parable

M.G. Kapahy

Sir — A lot is being said about the midnight activities of the Prime Minister, Mr. H.D. Deve Gowda, and the Law Minister, Mr. Rama Kant Khalap. But the people forget that national building activities are better carried out at night.

"Those who work while others sleep/ They build the nation's pillars deep /And raise it to the sky."

(Courtesy: *The Pioneer*, Oct. 12, 1996)

MEDIA REPORTS

SC lawyers Question PM's Meeting with Chief Justice

NEW DELHI, Oct, 1: One hundred and eighty members of the Supreme Court Bar Association (SCBA) have requisitioned for a general body meeting of the association to discuss the "propriety" of the reported meeting between Prime Minister H.D. Deve Gowda and Chief Justice of India on midnight of Sept. 25.

In a letter addressed to the Secretary of the SCBA, they requested him to call a general body meeting of the bar at the earliest to discuss the "propriety of the reported meeting, particularly when so many sensational matters were pending before the apex court."

"The Supreme Court Bar Association takes a serious note of the mysterious meeting and deplores the propriety of the Prime Minister to have met the Chief Justice of India, particularly when sensitive matters concerning involvement of high functionaries are pending before the apex court," they said in a draft resolution to be discussed at the proposed general body meeting.

In the draft resolution they said: "The House is of the considered opinion that in all fairness the Chief Justice of India should have avoided this meeting, keeping in view the highest traditions of this august institution."

"The recent meeting of the Prime Minister with Chief Justice of India at midnight puts a question mark on the independence of judiciary."

They further said in the draft resolution that "Judiciary and Executive are two independent organs and are expected to function without any interference from each other."

The members said from the news reports published in three news reports published in three local dailies they have come to know that the Prime Minister, Mr. Gowda met the Chief Justice of India, Mr. Ahmadi in the midnight hours of Wednesday last.

Signatories of the letter include Dr. Janak Raj Jai, Dr. Maya Rao, Mr. D.K. Garg, Mr. R.S. Dhull, Mr. D.B. Vohra among others.

(Courtesy: *The Hindustan Times*, dated Oct. 2, 1996)

Ahmadi-Gowda Meet Raises Bar Hackles

Prime Minister H.D. Deve Gowda's meeting with Chief Justice A.M. Ahmadi on September 26 has sparked off a furore in legal circles with an emergency meeting of the Supreme Court Bar Association (SCBA) being requisitioned by its members.

A notice, signed by 182 lawyers, was submitted to the SCBA secretary to requisition an emergency meeting on Wednesday, to deplore the conduct of the Prime Minister in having the "midnight meeting," when "so many sensational matters are pending before the Supreme Court."

The signatories to the notice also felt that the Chief Justice should have avoided the meeting.

A resolution which will be moved by the signatories at the meeting reads as follows: "resolved that the judiciary and the executive are two independent organs and are expected to function without any interference from each other.

"The recent meeting of the Prime Minister with the Chief Justice of India at midnight puts a question mark on the independence of the judiciary.

"The Supreme Court Bar Association takes a serious note of this mysterious meeting and deplores the propriety of the Prime Minister to have met the Chief Justice, particularly when sensitive matters concerning the involvement of high functionaries are pending before the apex court.

"The House is of the considered opinion that in all fairness the Chief Justice of India should have avoided this meeting, keeping in view the highest traditions of this august institution."

A Bar Association member pointed out that a special leave petition against the Delhi High Court's dismissal of his petition

questioning the authority of the President S.D. Sharma appointing Mr. Deve Gowda as the Prime Minister was pending before the apex court.

Another application deplored Mr. Gowda's backdoor legitimisation" of his position (Prime Minister) by getting himself elected to the Rajya Sabha is also awaiting a hearing. SCBA secretary Kailash Vasudev said that since the requisition notice has been signed by more than 175 members, the minimum required for a demand to convene a GBM, it is now Bar's duty to take necessary steps.

Fraternalisation of Chief Justices of India with the Prime Ministers who held office at the same time have always attracted criticism.

Chief Justice P.B. Gajendragadkar's friendly advice to late Prime Minister Lal Bahadur Shastri on matters on which the latter chose to consult him during their morning walks in the mid-sixties had attracted criticism.

The family friendship between Prime Minister Indira Gandhi and Chief Justice Muzaffar Beg, which among other things led to her making his appointment in 1976 at the helm of the judiciary superseding Justice H.R. Khanna, had also created a furore.

(Courtesy: The Pioneer, dated Oct. 2, 1996)

Midnight Gowda-CJ Talks Raise Hackles

Over 200 members of the Supreme Court Bar Association have questioned the propriety of Chief Justice of India A.M. Ahmadi allegedly having a "mysterious" midnight meeting with Prime Minister H.D. Deve Gowda at a time when the apex judiciary was seized of several sensational cases involving high political functionaries.

The members, in a signed requisition letter, have demanded an immediate general body meeting of the bar association to discuss the issue.

A draft resolution circulated among the members of the apex court bar said the judiciary and executive were two independent organs and were expected to function without any interference from each other.

"The midnight meeting which was supposed to have lasted for two hours has put a question mark on the independence of the judiciary," the draft resolution said.

The resolution said the bar association takes "serious note" of the "mysterious meeting and deplores the propriety of the Prime Minister meeting the Chief Justice of India particularly when sensitive matters concerning the involvement of high functionaries were pending."

The resolution further said that "in all fairness the Chief Justice of India should have avoided the meeting keeping in view the highest tradition of the institution."

(Courtesy: The Deccan Herald, Oct. 2, 1996)

SC Advocates Irked by CJ-PM Meeting

In a significant development, 180 lawyers of the Supreme Court got together today to requisition a general body meeting of the Bar Association to express its concern about the reported meeting between Chief Justice A.M. Ahmadi and Prime Minister Deve Gowda on the eve of the hearing of the Lakhubhai Pathak cheating case.

The apex court lawyers, quoting from reports in this paper as well as other dailies, said the meeting in "the mid of night for more than two hours" has raised serious doubts as "many sensational cases involving high functionaries are pending before the Supreme Court."

A proposed resolution, which was circulated among the lawyers, said the meeting "between Gowda and the Chief Justice has put a question mark on the independence of the judiciary." The strongly-worded 'resolution' also said "the Chief Justice should have avoided the meeting keeping in view the highest traditions of this august institution."

The attack on the judiciary is significant as it was the first since it donned its activist mantle. The stand taken by the lawyers of the apex court, an important arm of the judiciary, is sure to be seen by many as a confirmation of their worst doubts that Mr. Deve Gowda was trying to bail out the accused Rao.

In a related development, the Delhi Bar Association today said that it would oppose any move by the Delhi Police, Special Protection Group (SPG) and Central government to change the trial venue of P.V. Narasimha Rao from Tis Hazari Courts to any other place in the Lakhubhai cheating case.

Taking strong exception to law minister Ramakant Khalap writing a letter to CBI director Joginder Singh to instruct CBI counsel not to oppose the bail plea of Mr. Rao in the case, Mr. Jatan Singh, secretary-general of coordination committee of all bar associations of Delhi, said that the President should dismiss Mr. Khalap from the council of ministers.

He said the coordination committee was of the opinion that the move of the government was to delay the trial and "help" Mr. Rao in the case. The bar council secretary said the association had suggested 7 am for holding the hearing in the Pathak case.

(Courtesy: The Economics Times, Oct. 2, 1996)

Gowda, Ahmadi, Khalap, Police Chief: All in the Eye of a Storm

Decision not to oppose bail for Rao was taken by Deve Gowda

New Delhi, 1 Oct. The Centre's decision to instruct the CBI counsel not to oppose the bail plea of P.V. Narasimha Rao in the Lakhubhai Pathak cheating case was taken at the highest level and cleared personally by the Prime Minister.

The controversial decision seems to be proving costly to the Front. It has given the BJP an opportunity to attack the anti-corruption plank of the Deve Gowda government and can affect the cohesion of the ruling coalition with the left making no secret of its displeasure. Both the CP(M) and CPI issued statements distancing themselves from the decision and have demanded an early meeting of the Front's steering committee to discuss the issue.

Well-placed sources in the Front disclosed that Ramakant Khalap who wrote a letter to the CBI instructing the agency to make things easier for Mr. Rao had merely carried out the instructions of his seniors within the government. In this regard, considerable significance is being attached to the meeting that Mr. Khalap had with Mr. Gowda on Sunday evening. The sources said that the law minister had been called over by Mr. Gowda. It was after returning from the meeting that Mr. Khalap was to take the controversial decision that the CBI should not play the role of prosecutor of Mr. Rao in the cheating case.

On his part, Mr. Khalap did not see anything wrong in his action. "The government is well within its legal rights to instruct its own agency to take a particular position on a case such as this. This cannot by any length be construed as discriminating for Mr. Rao and against the other accused in the case since there is no question of the former Prime Minister either jumping bail or tampering with evidence," he said. He also concurred with the stand of the Delhi Police that the threat perception to Mr. Rao from militants was also real enough for the government to take a decision to seek a change in venue of his appearance before the special judge.

The Left, however, was not impressed. Though they have been voicing disagreement with positions of the government so far, areas of differences have been confined to the economic sphere. This is the first time that they have taken umbrage at the 'attempt to politicise the judiciary', apart from voicing disapproval at CBI chief Joginder Singh's visits to Mr. Rao earlier. Left leaders in the government had also disapproved the Gowda camp's viewpoint that in the interests of stability of the government every effort should be made to protect Mr. Rao while he was still outside the court.

In view of this, Left leaders are understood to have demanded that UF convenor Chandrababu Naidu call a meeting of the steering panel immediately after the UP polls to discuss the issue on priority.

Whatever the merits of the government's case, political circles feel that its decision was influenced at least in equal measure by Mr. Gowda's political calculations. He seems to be working on the assumption that it will be better for him to deal with Mr. Rao as the Congress(I) leader. Mr. Rao with the millstone of criminal cases around his neck was unlikely to act difficult, was the assessment of the Gowda camp.

Mr. Gowda's irritation over the righteous postures struck by his communist allies made him concluded that sticking to Mr. Rao was a better option. The developments are likely to ensure a certain role reversal in the relationship between Mr. Gowda and Mr. Rao. While in the initial stages of the tie-up, Mr. Rao was a reluctant entrant into the supporting role for the Gowda government, he later flexed his muscles with constant threats of pulling out if the policies initiated by the Congress(I)

government were not toed by the UF. With the Gowda camp bailing him out of the legal mess at least for the present, however, it is perceived that the Front is likely to have the upper hand in the relationship between the two as long as Mr. Rao stays CPP chief.

Recent parley between Mr. Gowda and the other senior aspirants to the post in the Congress(I), Sharad Pawar, in fact, sparked off nervousness within the Congress(I). In addition, the fact that Mr. Gowda, was so far has not appeared to his problems meeting anyone despite his sensitive position as head of the government, including Shiv Sena Chief Bal Thackeray, Chief Justice Ahmadi of the Supreme Court and Mr. Rao himself, prior to his hearing on Monday, has nevertheless failed to meet Mr. Kesri — who is known to be close to Mr. Gowda's detractor Laloo Yadav — has also not failed to attract notice. However, how far the front can take this in other cases involving Rao, even as it faces stringent censure from its own constituents on its latest controversial move, is yet to be seen.

(Courtesy: The Economics Times, dated Oct. 2, 1996)

Frustrated Official Wants to Leave CBI

New Delhi, 1 Oct.: A.K. Sinha, CBI SP, who was a key member of the team probing the Jharkhand Mukti Morcha payoff case, is likely to seek repatriation to his parent cadre, Kerala. Mr. Sinha, an IPS official who was on deputation with the CBI, is learnt to have represented to the director of the agency to relieve him. This follows the decision to take Mr. Sinha off the probe into the politically sensitive bribery case which involves former Prime Minister P.V. Narasimha Rao and other senior Congress(I) bigwigs as accused, and send him to Silchar to probe the murder of an official.

Sources in the CBI put the sudden decision of Mr. Sinha, widely regarded for his professional competence, down to his feeling frustrated with the reluctance of the CBI to proceed against Mr. Rao. Mr. Sinha, who is credited with painstaking investigation resulting in quite a few crucial breakthroughs and was looking forward to more success during his stint with the agency, suddenly lost heart following interference from the bosses allegedly acting at the behest of the powers that be.

When contacted by The Economic Times, the CBI spokesman denied the allegation. He emphasised that Mr. Sinha has not been transferred out, but merely instructed to camp at Silchar in the light to a directive from the Guwahati bench of the High Court. He also denied that there was any pressure on Mr. Sinha not to pursue any particular lead. "They were all members of a team," he stressed.

For all this, however, there is a widely held impression within the CBI that the young Kerala cadre official was dropped from the team because he was proving to be difficult, official of the agency say that Mr. Sinha did not concur with the stand taken by the CBI before the Delhi High Court that the investigations of the agency for identifying the source of money that was paid as bribe to the JMM leaders had reached a dead-end. Mr. Sinha also felt there was a body of evidence sufficient enough to prosecute Mr. Rao who has been accused to bribing four JMM members of the last Lok Sabha in order to survive a crucial no-trust vote.

Earlier Mr. Sinha had developed strong differences with his bosses in the agency for the delay in the arrest of the four JMM leaders. Mr. Sinha had, it is learnt, argued that failure of the agency to move against those charged with taking bribes would result in the destruction of vital evidence and also, would enable the accused to organise their defence. He felt distressed when his opinion was not heeded by his bosses monitoring the investigations into the case. Mr. Sinha's step comes at a time when the CBI is already finding it difficult to dispel the impression that it has done enough to get at the bottom of the trust behind the conspiracy in the case. It was only the other day that the Delhi High Court pulled up the agency for dragging its feet and threatened to hand over the investigations to an independent agency of its choice.

The High Court also took exception to the unilateral decision of the CBI director, to change the team of which Mr. Sinha was a member, probing the pay-offs case while turning down the request of the agency that it be given two more months for unravelling the conspiracy.

(Courtesy: The Economics Times, Oct. 2, 1996)

What was Nikhil Doing at 24, Akbar Road?

New Delhi, 1 Oct.: Political circles, already thick with speculations about the Prime Minister's meeting with the Chief Justice, have been further intrigued by the presence of the Commissioner of Police, Nikhil Kumar, at the meeting of the Congress(I) office-bearers here on Sunday.

Mr. Kumar was present at the Congress(I) headquarters when the office-bearers discussed plans for expressing solidarity with P.V. Narasimha Rao when the latter would have appeared before the Special Judge in connection with the Lakhubhai Pathak cheating case.

Two of the senior Congress(I) office-bearers, speaking on the condition of anonymity, confirmed the presence of Mr. Kumar at the meeting, though they said that the Commissioner of Police had come to the party headquarters at the invitation of the party leadership and merely to request that no demonstration should be organised in support of Mr. Rao. Yet, the visit of Mr. Kumar to 24, Akbar Road, becomes important considering that it was the Commissioner of Police's request to the Supreme Court for changing the venue of Mr. Rao's appearance before the Special Judge which enabled the former Prime Minister to get a reprieve from the apex Court.

The BJP, quite expectedly, took strong exception to Mr. Kumar's conduct, with its spokesman Yashwant Sinha, describing it as yet another proof of the Deve Gowda government's clandestine actions. "Mr. Kumar must have gone there to give finishing touches to the strategy worked out by the Prime Minister in consultation with the accused," he said.

There have been reports that Mr. Kumar moved the Supreme Court at the direct instance of the Prime Minister's Office which bypassed the Union Home Ministry to get the Delhi police request for a change in venue. Given such a backdrop, political circles here are treating Mr. Kumar's surprise engagement at the headquarters of a political party as yet another proof of the anxiety of the Deve Gowda government to come to the rescue of a beleaguered Mr. Rao. Speculations are rife about Mr. Deve Gowda's meeting with the Chief Justice while it was only yesterday that the Delhi High Court came down rather heavily on the CBI for the agency's inaction in another case which features

Mr. Rao as an accused—the JMM pay—offs case. There is also a widely held opinion that it was only the sustained pressure from the Court that forced the CBI to chargesheet former Congress(I) President in the St. Kitts case.

The agenda of the Congress(I) meeting at which Mr. Kumar chose to be present and the manner in which it was all called can only give credence to the theory that the Rao loyalist within the Congress(I) and the government are moving in tandem. Party sources say convening the meeting was a unilateral decision of Janardhana Poojary, ultra-Rao loyalist who did not even seek party president Sitaram, Kesari's permission.

(Courtesy: The Economics Times, Oct. 2, 1996)

PM has Brought Disrepute to System, says BJP

New Delhi, 1 Oct.: The BJP today lashed out at the Deve Gowda government — which came to power promising non-interference in the functioning of investigating agencies — for politicising the CBI to shield its ally and accused in a cheating case, P.V. Narasimha Rao.

The BJP, which seized upon the government's direction to the CBI not to oppose the bail application of the ex-premier to emphasise its political point that the ruling Front has little respect for constitutional propriety, said: 'Barring the hated regime of emergency, at no other time has the governing system in India brought so much shame and disrepute upon itself as now."

The issue, no doubt, has given the party a talking point. The party is sure to trumpet it in the election rallies in poll-bound Uttar Pradesh.

Responding to the CBI's action in the cheating case today, party spokesman Yashwant Sinha said the United Front government would go to any length, even making a mockery of the due process of law, in order to save Mr. Rao and itself. He said the direct complicity of the Gowda government in bailing out Mr. Rao is also proved by the sudden resignation of Gopal Subramaniam as senior counsel for the CBI in the Lakhubhai Pathak Cheating case.

Mr. Sinha said Mr. Subramaniam's quitting followed a written communication from none other than CBI Director Joginder Singh

asking him not to oppose the bail plea if Mr. Rao's counsel chose to make it before the special judge Ajit Bharihoke later in the day.

The party also fears that with the CBI seeking a further extension of two months in the JMM pay-off case, it might meet the same fate as that of the urea scam case where the CBI's failure to file a chargesheet within the stipulated three month period had allowed the main accused to secure bail.

On the JMM pay-off scandal, Mr. Sinha said the CBI cannot fool anybody into believing that the delay was due to a new investigating team. "It is now an open secret that the CBI resorted to dilatory tactics in order to remove one of its own officers who had succeeded in securing a confessional statement of JMM leader, Shailendra Mahato, naming Rao as the bribe giver," Mr. Sinha said.

(Courtesy: *The Economic Times*, dated Oct. 2, 1996)

अहमदी से देवगौड़ा की भेट पर सुप्रीम कोर्ट बार एसोसिएशन ने कड़ा रुख अपनाया १८० वकीलों ने औचित्य पर विचार के लिए आम सभा की मांग की जागरण ब्यूरो

नई दिल्ली, १ अक्टूबर। प्रधानमंत्री एच.डी. देवगौड़ा व मुख्य न्यायाधीश ए.एम. अहमदी की पिछले शनिवार को हुई मुलाकात का मामला तूल पकड़ने लगा है। आज सर्वोच्च न्यायालय बार संघ से जुड़े करीब १८० वकीलों ने हस्ताक्षर कर संघ की आम सभा की बैठक बुलाकर इस मुलाकात के औचित्य पर विचार की मांग की है।

संघ के सचिव कैलाश वासदेव ने ऐसा नोटिस मिलने की बात स्वीकार की है। यह नोटिस डा. जनक राज जय की तरफ से दिया गया है। कल सर्वोच्च न्यायालय में छुट्टी है। उम्मीद है कि परसों संघ की कार्यकारिणी इस विषय पर विचार करेगी। श्री वासदेव का कहना है कि अभी इस बारे में कुछ तय नहीं किया गया है। दूसरी ओर नोटिस देने वाले डा. जय के अनुसार, कार्यकारिणी ने तय कर लिया है कि वह बृहस्पतिवार को यह निर्णय करेगी कि आम सभा की बैठक किस दिन बुलाई जाए।

नोटिस में कहा गया है कि विभिन्न अखबारों में छपी खबरों के अनुसार प्रधानमंत्री ने आधी रात के समय मुख्य न्यायाधीश से दो घंटे से ज्यादा बातचीत की। नोटिसकर्ता का कहना है कि जब इतने विवादास्पद मामले

सर्वोच्च न्यायालय के समक्ष लंबित हैं तो ऐसे माहौल में दोनों की मुलाकात कितनी उपयुक्त है, इस पर विचार करने के लिए सर्वोच्च न्यायालय बार संघ की आम सभा बुलाई जाए।

यह बैठक शनिवार की रात हुई बताई जा रही है। यह भी कहा जा रहा है कि प्रधानमंत्री का काफिला चुपचाप आधी रात के समय मुख्य न्यायाधीश के १२, कृष्ण मेनन मार्ग पर पहुंचा। अब तक सरकार की ओर से न तो बातचीत का व्योरा सार्वजनिक किया गया है, न ही इस मुलाकात का खंडन।

प्रोटोकाल की दृष्टि से भी प्रधानमंत्री मुख्य न्यायाधीश से ऊपर आते हैं। सामान्यतः प्रोटोकाल में ऊपर की श्रेणी में आने वाला पदाधिकारी औपचारिक बातचीत के लिए प्रोटोकाल में नीचे आने वाले पदाधिकारी के पास नहीं जाता।

सोमवार के दिन लखू भाई पाठक मामले में पूर्व प्रधानमंत्री नरसिंह राव को विशेष न्यायाधीश अजीत भरिहोक की अदालत के समक्ष पेश होना था। इसी दिन के लिए सर्वोच्च न्यायालय में भी दिल्ली पुलिस की एक विशेष अनुमति याचिका लंबित थी। इस याचिका में सुरक्षा की दृष्टि से नरसिंह राव पर अभियोग तीस हजारी में न चलाकर किसी और स्थान पर चलवाने की अनुमति मांगी गई थी।

इन दो बड़े मुद्दों के तय होने के ठीक पहले हुई मुलाकात ने राजनैतिक कायासों को जोर दिया। यह मानकर चला जा रहा था कि लखू भाई पाठक मामले के दो अन्य अभियुक्तों चंद्रस्वामी व कैलाश नाथ अग्रवाल के हश्र को देखते हुए इस बात की संभावना ज्यादा है कि विशेष अदालत नरसिंह राव की जमानत की अर्जी नामंजूर कर दे।

इन घटनाओं का सीढ़ी दर सीढ़ी जो क्रम बना, उसमें आरोप लगने लगे कि देवगौड़ा नरसिंह राव को बचाना चाहते हैं। इन आरोपों को कल केंद्रीय जांच व्यूरो के वरिष्ठ अधिवक्ता गोपाल सुब्रह्मण्यम द्वारा इस्तीफा दे देने से और बल मिला। अपने इस्तीफे से सुब्रह्मण्यम ने आरोप लगाया था कि केंद्र सरकार उस पर यह दबाव डाल रही है कि लखू भाई पाठक मामले में नरसिंह राव की जमानत अर्जी का विरोध न किया जाए।

इन सबसे नरसिंह राव के पक्ष में खड़ी दिख रही संयुक्त मोर्चा सरकार के प्रधानमंत्री की मुख्य न्यायाधीश से मुलाकात को भी विवाद के घेरे में ले लिया है।

(सौजन्य: दैनिक जागरण, अक्टूबर २, १९६६)

Come Clean on Meeting with CJ, BJP Tells PM

New Delhi Oct 2 — The Bharatiya Janata Party today urged Prime Minister H.D. Deve Gowda to come clean on his meeting with the Chief Justice of Supreme Court, Mr. Justice A.M. Ahmadi on September 25.

A statement issued on behalf of BJP general secretary M. Venkiah Naidu said that before this matter snowballed into a major controversy, Mr. Gowda should come clean on what transpired in the meeting.

Opposing the demand for convening a special session of Parliament for a thorough discussion on relations between the three pillars of democracy namely judiciary, executive and legislature, Mr. Naidu said the mounting frustration of the Congress against "Judicial activism" could not be allowed to lead to a confrontation between the judiciary and the legislature.

"It is ironical that the very same party which frustrated the then combined opposition's attempt to impeach a Supreme Court judge for his alleged corrupt practices a few years ago, should not now be agitated over the judiciary 'overstepping' its limits," Mr. Naidu pointed out. "It ill behoves a political party which stood by a judge accused of corruption then to now complain about judicial activism when as many as 19 ministers of Mr. P.V. Narasimha Rao's cabinet stand accused of political corruption in various courts," the general secretary said.

Confrontation with the judiciary was both unnecessary and fraught with profoundly dangerous implications for Indian democracy, Mr. Naidu stressed. The judiciary had stepped in only because of the manifest failure of the executive and even Parliament to effectively and credibly tackle the scourge of corruption at high places, he said.

The BJP believed that the need of the hour was political and judicial statesmanship. It was the responsibility of the mature political leadership and the mature judicial leadership to avoid mutual confrontation, he said.

All attempts of the United Front Government to use the CBI and influence the judiciary to prevent the long arm of law from reaching Mr. Rao had failed, Mr. Naidu said adding that this was the beginning of the end of the government of Mr. Gowda.

(Courtesy: The Tribune, Oct. 3, 1996)

देवगौड़ा पर कानूनी क्षेत्रों में हमले बढ़े

नई दिल्ली, २ अक्टूबर। कई आपराधिक मामलों में घिरे पूर्व प्रधानमंत्री श्री पी.वी. नरसिंह राव को बचाने के प्रयासों के कारण प्रधानमंत्री एच.डी. देवगौड़ा पर कानूनी हलकों में भी हमले बढ़ते जा रहे हैं।

उच्चतम न्यायालय की बार कौंसिल की आम सभा जल्दी ही बुलाई जाने वाली है, जिसमें प्रधानमंत्री श्री देवगौड़ा की उच्चतम न्यायालय के मुख्य न्यायाधीश श्री ए.एम. अहमदी से हुई 'रहस्यमय मुलाकात' पर चर्चा की जाएगी।

उच्चतम न्यायालय बार कौंसिल के सचिव श्री कैलाश वासुदेव ने आज कहा, 'इस मुद्दे पर विचार करने के लिए आमसभा की तारीख का निर्णय कार्यकारी परिषद की बैठक में लिया जाएगा, जो इस सप्ताह के भीतर होगी।'

इस सिलसिले में कल उच्चतम न्यायालय के १८० वकीलों की ओर से बार कौंसिल को दिया गया ज्ञापन कानूनी हलकों में गरम चर्चा का विषय बना हुआ है। इस ज्ञापन में बार कौंसिल के इन सदस्यों ने हाल में प्रधानमंत्री श्री देवगौड़ा की मुख्य न्यायाधीश न्यायमूर्ति श्री अहमदी से 'आधी रात' को हुई 'रहस्यमय मुलाकात' पर कौंसिल की आमसभा में चर्चा कराए जाने का अनुरोध किया है।

ज्ञापन में वकीलों ने, खासकर ऐसे समय में जब उच्चतम न्यायालय में कई सनसनीखेज मामले सुनवाई के लिए विचाराधीन हो, प्रधानमंत्री श्री देवगौड़ा द्वारा न्यायमूर्ति श्री अहमदी के घर जाकर आधी रात में की गई मुलाकात पर सवाल उठाया है।

बार कौंसिल के एक अधिकारी के अनुसार "कौंसिल की आमसभा बुलाने के लिए कम से कम १७५ सदस्यों का अनुरोध जरूरी है। इस मामले में १८० सदस्यों ने ऐसा अनुरोध किया है, इसलिए आमसभा की बैठक बुलाए जाने की बाध्यता बन गई है।"

इस मामले में वकीलों से ज्ञापन पर हस्ताक्षर कराने में पहल करने वाले वरिष्ठ वकील डा. जनक राज जय के अनुसार, "हम चाहते हैं कि बार कौंसिल की आमसभा की बैठक १० या ११ अक्टूबर तक बुलाकर चर्चा करा ली जाए, क्योंकि मुद्दा काफी महत्वपूर्ण है।"

इस बीच डा. जय ने २८ सितंबर को मुख्य न्यायाधीश न्यायमूर्ति श्री अहमदी को एक पत्र लिख कर विनम्र अनुरोध किया है कि प्रधानमंत्री श्री देवगौड़ा से संबंधित उनकी 'विशेष अनुमति याचिका' पर सुनवाई किसी अन्य अदालत के सुपुर्द कर दी जाए।

अपने पत्र मे डा. जय ने मुख्य न्यायाधीश से प्रधानमंत्री श्री देवगौडा की 'रहस्य मुलाकात' का हवाला देते हुए लिखा है कि इस रोशनी में उनकी अदालत में श्री देवगौडा की प्रधानमंत्री के रूप में नियुक्ति के बारे में जो दो याचिकाएं विचाराधीन हैं, उनको किसी बड़ी खंडपीठ के सुपुर्द कर देना न्यायोचित होगा।

इस पत्र में डा. जय ने पूर्व प्रधानमंत्री श्री राव के मामले में हाल में उच्चतम न्यायालय मे उस फैसले की भी याद दिलाई है, जिसमें देश की सर्वोच्च अदालत ने लखूभाई पाठक ठगी कांड की सुनवाई किसी अन्य अदालत मे हस्तांतरित किए जाने का निर्णय इस आधार पर दिया था कि "न्याय किया जाए, इससे अधिक जरूरी है कि न्याय किया जाता नजर आए।"

(सौजन्य: हिन्दूस्तान, अक्टूबर 3, १९९६)

Gowda's Faux Pas Anger Andhra H.C.

Hyderabad, Oct 5: Taking a cue from their counterparts in the Supreme Court, a large section of the young advocates in the High Court here have requisitioned a meeting of the Bar Association to discuss the possibility of evolving a new model of conduct for judges of the higher courts.

The requisition was signed by 285 lawyers on Friday and submitted to the Bar Association president K.G. Kannabiran.

The call for a new code of conduct, is significant in view of Prime Minister Deve Gowda's alleged midnight courtesy call on Chief Justice A.M. Ahmadi.

One of the signatories to the requisition says the idea is not to take a stand on the meeting between the Prime Minister and the Chief Justice but to develop a frame work within which the judges' conduct can be viewed.

(Courtesy: *The Indian Express*, Oct. 6, 1996)

Meeting with CJ a Routine One: Gowda

New Delhi, Oct 6: The Prime Minister, Mr. Deve Gowda, today denied in a statement that he had discussed any matter pending in courts in his meeting with the Chief Justice of India, Mr. Ahmadi, last week, nor had he in any way tried to influence Mr.

Ahmadi on politically sensitive case as alleged in some Press reports.

But he defended his meeting with the Chief Justice as being "routine" and said that "no unnecessary meaning should be read into it."

Mr. Gowda said he had met the Chief Justice at the latter's residence last week to discuss "certain outstanding administrative matters" and such meetings had taken place in the past also.

While categorically stating that during the meeting there was "absolutely no mention whatsoever" of any matter pending in any court in the country or one that was likely to come up on the judicial side, he debunked reports that said that the meeting took place at midnight.

Such reports were "false and a figment of the imagination." The meeting took place at 8 p.m., he said.

Mr. Deve Gowda stated that he knew his responsibility and was quite conscious of the propriety involved. He would never venture to broach any issue which was sub-judice or was likely to arise in court.

"I also know that the Chief Justice of India would not tolerate any such talk," he said.

He regretted that his meeting had caused embarrassment to the Chief Justice and hoped that his statement would set at rest all doubts about the matter.

(Courtesy: The Statesman, Oct. 7, 1996)

मुख्य न्यायाधीश से मेरी मुलाकात कुछ भी असामान्य नहीं: देवेगौड़ा

नई दिल्ली, ६ अक्टूबर (वार्ता): प्रधानमंत्री एच.डी. देवेगौड़ा ने इन खबरों का खंडन किया है कि उन्होंने राजनीतिक रूप से संवेदनशील मामलों में उच्चतम न्यायालय के मुख्य न्यायाधीश को प्रभावित करने की कोशिश की है।

श्री देवेगौड़ा ने आज यहां जारी एक बयान में कहा कि मुख्य न्यायाधीश से उनकी मुलाकात में कुछ भी असामान्य नहीं है और इसे गलत अर्थों में नहीं लिया जाना चाहिए।

प्रधानमंत्री ने कहा कि उन्होंने कुछ महत्वपूर्ण प्रशासनिक मामलों पर विचार-विमर्श करने के लिए गत सप्ताह मुख्य न्यायाधीश से मुलाकात की थी और ऐसी मुलाकातें पहले भी होती रही हैं।

प्रधानमंत्री ने कहा कि मुलाकात के दौरान ऐसे किसी मामले पर बातचीत नहीं की गई जो देश के किसी न्यायालय में लम्बित हो या किसी न्यायालय में आने की संभावना हो। श्री देवेगौड़ा ने कहा—“मैं स्पष्ट करना जरूरी समझता हूं कि गत सप्ताह मुख्य न्यायाधीश से आधी रात को हुई मेरी मुलाकात की खबरें झूली और मनगढ़त हैं।”

श्री देवेगौड़ा ने कहा—वह अपनी जिम्मेदारी भली भांति जानते हैं और ऐसे किसी मामले में हस्तक्षेप नहीं करेंगे जो न्यायिक हो या न्यायालय में उठाए जाने की संभावना हो। मैं यह भी जानता हूं कि मुख्य न्यायाधीश भी ऐसे किसी मुद्दे पर कोई बातचीत बर्दाश्त नहीं करेंगे।

प्रधानमंत्री ने खेद व्यक्त करते हुए कहा कि मुख्य न्यायाधीश के साथ मुलाकात को बेवजह तूल दिया जा रहा है।

No Court Matter Discussed: PM

New Delhi, 6 Oct.: The Prime Minister, Mr. H.D. Deve Gowda, sought to put a lid over the controversy related to his meeting with the Chief Justice of India, Mr. Justice A.M. Ahmadi, by issuing a statement here today saying categorically that “during the meeting there was absolutely no mention, whatsoever, about any matter pending in any court in the country or likely to come up on the judicial side.” Mr. Deve Gowda virtually offered an apology saying that “I regret that my meeting has caused embarrassment to the Chief Justice of India. I hope this statement will set at rest all doubts.”

He said the reports saying that his meeting with Chief Justice took place at the latter’s residence at midnight last week were “false and a figment of the imagination.” He said he met him at 8 p.m. last week at his residence and “no unnecessary meanings should be read into it.”

For a whole week the Opposition parties have been alleging that the Prime Minister met the Chief Justice in an effort to bail out the former Prime Minister, Mr. P.V. Narasimha Rao, from his legal entanglements. The criticism had come not only from the Bharatiya Janata Party but also from the Left parties, which are part of the United Front Government. The BJP had demanded an explanation from the Prime Minister.

The statement issued to the press from the Prime Minister today stated that “I know my responsibility and am quite con-

scious of the propriety involved and would never venture to broach any issue which is sub-judice or is likely to arise in any court. I also know that the Chief Justice of India would not tolerate any such talk."

The Prime Minister pointed out that this was not the first time that a Prime Minister and the Chief Justice had met. There was nothing unusual about the meeting. He said he had met him to discuss "certain outstanding administrative matters."

The meeting had taken place at a time when Mr. Narasimha Rao had already been issued summons in the Lakhubhai Pathak case and he was to have appeared personally at the Tis Hazari courts.

There was the apprehension that Mr. Rao would be arrested if bail was denied to him. There was also the allegation by the Opposition that the Prime Minister had 'directed' the CBI director not to oppose the bail plea by Mr. Narasimha Rao's counsels in this case.

(Courtesy: The Hindu, Oct. 7, 1996)

To Condemn PM, Ahmadi Confab

The crucial Supreme Court Bar Association's general body meeting requisitioned by 182 lawyer members for condemning a late night meeting of Prime Minister H.D. Deve Gowda and Supreme Court Chief Justice A.M. Ahmadi has been fixed for Oct. 10 at 4.40 p.m.

A notice issued by Honorary General Secretary Kailash Vasdev asks names of those who want to speak at the meeting to be held in Bar Library No. 2 latest by Oct. 9. It also makes it clear that no member would be allowed to speak for more than three minutes.

A draft resolution filed by the requisitionists on the propriety of Deve Gowda's meeting with Ahmadi is also attached with the notice. It reads:

"Resolved that judiciary and executive are the two independent organs and are expected to function without any interference from each other. The recent meeting of the Prime Minister with the Chief Justice of India at midnight puts a question mark on independence of judiciary. The Supreme Court Bar Association takes a serious note of this mysterious meeting and deplores

propriety of the Prime Minister to have met the Chief Justice, particularly when sensitive matters concerning the involvement of high functionaries are pending before the Apex Court.

“That the House is of considered opinion that in all fairness the Chief Justice of India should have avoided this meeting keeping in view the highest traditions of this august institution.”

Reacting to Deve Gowda's clarification yesterday that he had met Justice Ahmadi at 8 p.m. and not at midnight, the requisitionists say the time does not matter in the cases where a needle of suspicion is pointed towards the highest authority of the judiciary in the country.

(Courtesy: Evening News, Oct. 7, 1996)

Supersession

New Delhi, Oct. 7 — The Supreme Court Bar Association (SCBA) is scheduled to have a meeting today to discuss the alleged move to supersede Justice J.S. Verma as the next Chief Justice of India.

The strategy reportedly being adopted is to introduce a rule wherein the sitting judge of the apex court next in line to become Chief Justice must have at least two full years term. Justice Verma has less than that period of service left and is therefore likely to be bypassed.

Chief Justice A.M. Ahmadi would have to resign before October 10 in order to make way for Justice Punchhi as the next C.J. Justice Verma is currently heading the bench monitoring the Hawala petition and the public interest litigation against Chandraswami.

The consequences and repercussions of this alleged move will be discussed by the SCBA today which is expected to move a resolution in this matter.

(Courtesy: Evening News, Oct. 7, 1996)

अहमदी से मुलाकात रात आठ बजे हुई थी: देवगौड़ा

नयी दिल्ली, ६ अक्टूबर (यून्यू)। प्रधानमंत्री एच.डी. देवगौड़ा ने आज यहां कहा कि २६ सितम्बर को सर्वोच्च न्यायालय के मुख्य न्यायाधीश न्यायमूर्ति ए.एम. अहमदी से उनके निवास पर जाकर उनकी भेंट आधी रात को नहीं

बल्कि रात आठ बजे हुई थी। श्री देवगौड़ा ने आज यहां एक बयान में कहा कि आधी रात को भेंट की खबर 'मिथ्या और कोरी कल्पना' है। ज्ञात हो इस आशय का समाचार 'राष्ट्रीय सहारा' ने २८ सितम्बर को बिहार प्रदेश भाजपा महामंत्री यशोदानंदन सिंह के हवाले से प्रकाशित किया था।

प्रधानमंत्री ने इस बात का खंडन भी किया है कि देश के मुख्य न्यायाधीश के साथ गत सप्ताह मुलाकात के दौरान उन्होंने अदालत में लम्बित किसी मामले या भविष्य में न्यायालय में आने वाले किसी मुद्दे पर विचार किया था। उन्होंने कहा कि वह कुछ प्रशासकीय मामलों पर विचार के लिए न्यायमूर्ति श्री अहमदी से उनके निवास पर रात आठ बजे मिले थे। यह सामान्य बैठक थी। ऐसी बैठकें पहले भी हुई हैं।

प्रधानमंत्री ने कहा कि उन्हें इस बात का अफसोस है कि उनकी बैठक से मुख्य न्यायाधीश को शर्मिंदगी उठानी पड़ी। उन्होंने कहा मुझे उम्मीद है कि इस बयान से सारे संदेह खत्म हो जाएंगे।

उन्होंने कहा मुख्य न्यायाधीश से मेरी मुलाकात में कुछ असामान्य नहीं था और इसका कोई अनावश्यक अर्थ नहीं निकाला जाना चाहिए। उन्होंने कहा कि बैठक के दौरान देश के किसी अदालत में लम्बित मामले का अथवा न्यायालय में आ सकने वाले किसी मुद्दे का कतई जिक्र नहीं हुआ।

उन्होंने कहा कि मैं किसी मामले में जो इस समय लम्बित है या भविष्य में अदालत में आ सकता है, कभी हस्तक्षेप नहीं करूंगा। श्री देवगौड़ा ने कहा मैं अपनी जिम्मेदारी भली भांति जानता हूं साथ ही यह भी जानता हूं कि मुख्य न्यायाधीश भी ऐसे किसी मुद्दे पर कोई बातचीत बर्दाशत नहीं करेंगे।

(सौजन्य: राष्ट्रीय सहारा, अक्टूबर ७, १९६६)

मुलाकात गुपचुप ढंग से रात दो बजे हुई थी: सिंह

पटना, ६ अक्टूबर। प्रधानमंत्री एच.डी. देवगौड़ा और मुख्य न्यायाधीश ए.एम. अहमदी की पिछली भेंट का आरोप लगाने वाले बिहार प्रदेश भाजपा महासचिव यशोदानंदन सिंह अभी भी अपने इस दावे पर कायम है कि यह मुलाकात २६ सितम्बर को रात दो बजे ही हुई थी। श्री सिंह ने कहा है कि उनकी इस जानकारी का स्रोत खुद प्रधानमंत्री कार्यालय के पुख्ता सूत्र हैं।

प्रधानमंत्री द्वारा आज जारी किये गये बयान के परिप्रेक्ष्य में 'राष्ट्रीय सहारा' ने श्री सिंह से फिर सम्पर्क किया। श्री सिंह प्रधानमंत्री के स्पष्टीकरण

से पूर्णतः अप्रभावित रहे। उल्टे उन्होंने कहा कि प्रधानमंत्री अब यह तो स्वीकार कर ही चुके हैं कि वे मुख्य न्यायाधीश से उनके आवास पर जाकर मिले थे। श्री सिंह ने दोहराया कि यह भेंट रात दो बजे ही हुई थी। उन्होंने प्रतिप्रश्न किया कि अगर यह भेंट सामान्य प्रकृति की ही थी तो प्रधानमंत्री सारे नियम-कायदे तोड़कर, पूरा सुरक्षा अमला पीछे छोड़कर बिना एस्कार्ट के मुख्य न्यायाधीश के निवास पर क्यों गये।

उन्होंने कहा कि श्री देवगौड़ा द्वारा गुपचुप ढंग से ऐसे समय में न्यायमूर्ति अहमदी से भेंट करना जबकि पूर्व प्रधानमंत्री नरसिंह राव कोर्ट के दरवाजे पर बचने की गुहार कर रहे हैं तथा जनता दल अध्यक्ष व विहार के मुख्यमंत्री चारा घोटाले में बुरी तरह फंस चुके हैं, अनेकानेक संशय पैदा करता है।

यह कहने पर कि प्रधानमंत्री के मुताबिक वे कुछ प्रशासकीय मामलों पर विचार के लिए श्री अहमदी से भेंट करने गये थे, श्री सिंह ने कहा कि सामान्य तौर पर प्रधानमंत्री और सर्वोच्च न्यायालय के मुख्य न्यायाधीश के बीच ऐसे कोई प्रशासनिक मामले नहीं होते हैं जिन पर विचार करने के लिए प्रधानमंत्री को गुपचुप ढंग से उनके आवास पर जाना पड़े। उन्होंने कहा कि शंका की सारी जड़ अस्वाभाविक ढंग से असमय हुई इस भेंट को लेकर ही है। श्री सिंह ने कहा कि प्रधानमंत्री मुख्य न्यायाधीश की भेंट की खबर का स्पष्टीकरण/खंडन जारी करने के लिए प्रधानमंत्री को आठ दिन का समय दिया जाएगा?

(सौजन्य: राष्ट्रीय सहारा, ७ अक्टूबर, १९६६)

Who will succeed Mishra in NHRC?

New Delhi, Oct. 8: The nonavailability of a former Chief Justice of India to head the National Human Right Commission, after chairman Justice Ranganath Mishra retires a few weeks later, has created a difficult situation for the United Front Government.

The Gowda Government will either have to amend the Protection of Human Rights Act, 1994 or persuade Chief Justice A.M. Ahmadi to seek premature retirement and head the NHRC, in order to wriggle out of the tight corner it is in today.

The Government's problem is that the Act provides "A chairperson shall be a former CJI, who shall hold office for a

term of five years from the date on which he enters upon his office or until he attains the age of 70 years, which ever is earlier."

The maker of the Act, the Narasimha Rao Government, had not envisaged a situation in 1993 (when the NHRC was set up under pressure from Western powers) when there will be no former CJI willing to head the body.

There are not many available either who have age on their side. Sources say the Government sounded out K.H. Kania and M.N. Venkatachaliah to head the NHRC. Both declined to accept the offer for personal reasons, it is learnt. Though the names of L.M. Sharma and K.N. Singh are also being mentioned for the post, both of them are reported to be above 68 years.

According to sources close to the Prime Minister, one of the reasons for his calling on the Chief Justice on September 25 night was to urge-him to head the NHRC. The Prime Minister is reported to have also discussed the matter with Home Minister Indrajit Gupta and others.

(Courtesy: *The Indian Express*, Oct. 9, 1996)

प्रधानमंत्री को मुख्य न्यायाधीश से भेंट का ब्यौरा जाहिर करना चाहिए

नई दिल्ली, ८ अक्टूबर। आल इंडिया लायर्स एंड इंटेलेक्युअल फोरम ने कहा है कि प्रधानमंत्री एच.डी. देवगौड़ा को प्रधान न्यायाधीश न्यायमूर्ति ए.एम. अहमदी से "आधी रात" में हुई बातचीत का पूरा ब्यौरा जगजाहिर करना चाहिए।

फोरम के महासचिव व उच्चतम न्यायालय के वकील डा. जनक राज जय की ओर से आज जारी एक बयान में कहा गया कि इस मुलाकात के बारे में प्रधानमंत्री की ओर से काफी देर से जो स्पष्टीकरण दिया गया है, वह आधा अधूरा है और अविश्वसनीय है।

बयान के मुताबिक उच्चतम न्यायालय के समक्ष श्री देवगौड़ा की प्रधानमंत्री पद पर नियुक्ति को चुनौती देने वाली दो याचिकाएं विचाराधीन हैं। इन हालात में प्रधानमंत्री-प्रधान न्यायाधीश की यह मुलाकात कई सवाल उठाने वाली है।

(सौजन्य: हिन्दुस्तान, ६ अक्टूबर, १९९६)

M-P Court Dismisses PIL Against Ahmadi

Bhopal, Oct. 9 (HTC) — Madhya Pradesh High Court's Indore bench has dismissed a Public Interest Litigation filed against Supreme Court Chief Justice Ahmadi in connection with his meeting with the Prime Minister Mr. Deve Gowda last month. The petitioner had made the Chief Justice as the party.

The meeting between the two constitutional authorities kicked up a political row and an Indore resident S.P. Anand filed the petition in the High Court pleading that he had a right to know what transpired in the meeting between Mr. Gowda and Mr. Ahmadi.

The Indore bench, comprising Justice A.R. Tiwari and Justice N.K. Jain, held that the "right to know", derived from the concept of freedom of speech as envisaged by Article 19(1) (a) of the Constitution, is not absolute.

The order, delivered on Oct. 7, said: "In our view this provision does not seem to confer on the petitioner in a matter like this without context, in assumed public interest, the "right to know" the purpose of particulars of alleged meeting between the two constitutional functionaries on Sept. 25."

The brief order further says that there is no case or cause for writ on this subject. "We find it fit to add that judges perform true to their conscience, ever mindful of the oath of their office. The executive functionary or any one else for that matter has no scope to interfere with the work of a judge."

The courts ensure that their discretions or adjudications are untrammelled by external pressures or controls.

The State High Court, referring to the meeting on Sept. 26, observed that there is no scope for doubts at all in this matter.

(Courtesy: The Hindustan Times, Oct. 10, 1996)

Gowda-Ahmadi Meeting Controversy — NHRC chief a strategic choice

Bangalore, Oct. 10. The decision to appoint the former Supreme Court Chief Justice, Mr. M.N. Venkatachaliah, as the next Chairman of the National Human Rights Commission seems to be a last-minute move.

With Mr. Venkatachaliah yet to receive any official intimation regarding his selection to succeed Mr. Justice Rangnath Mishra, sources close to him told *The Statesman* here today that he was merely sounded off about the likelihood of the new assignment, but was never consulted before or after the selection.

The last-minute decision assumes significance in the light of the controversy regarding the Prime Minister, Mr. H.D. Deve Gowda's reported intention to appoint the apex court Chief Justice. Mr. A.M. Ahmadi, as the NHRC chief. Besides avoiding yet another controversy by appointing Mr. Ahmadi, the Prime Minister is said to have zeroed in on Mr. Venkatachaliah since the latter belongs to Karnataka.

However, Mr. Venkatachaliah told *The Statesman* that his word of acceptance of the new assignment would have to wait till he was officially informed.

(Courtesy: The Statesman, Oct. 10, 1996)

Gowda-Ahmadi Meeting Controversy — Bedlam at SC Bar meet

New Delhi, Oct. 10. — Chaos and commotion marked the requisitioned meeting of the Supreme Court Bar Association held here today.

The meeting, marked by continuous uproar, hoarse shouts and frequent interruption, ended amidst confusion with the president of SCBA, Mr. R.K. Jain, laying down that the resolution condemning the "midnight" meeting of the Chief Justice with the Prime Minister, was rejected.

Disorder reigned as a majority of members vociferously maintained that the resolution "in effect" had been accepted. They passed a no-confidence motion against the president, who, they said, was "hand-in-glove" with the Chief Justice.

The members of the SCBA had decided to meet today to discuss the propriety of the Chief Justice of India, Mr. Justice A.M. Ahmadi, in meeting with the Prime Minister, Mr. H.D. Deve Gowda. The meeting was also to take up the issue of Supersession of senior judges in important appointments, but the resultant uproar did not allow for the discussion.

The meeting, which started at 4.35 p.m. was over in 20 minutes. It remained inconclusive as its aftermath saw members jumping onto their seats in an effort to make themselves heard above the din.

Mr. Jain started the meeting with the announcement that 48 members had expressed the wish to speak and they would be allowed three minutes to make their views known. This was met with vociferous disapproval. He then asked the members to raise their hands in support of a discussion. The result was inconclusive, so he went on to ask Mr. Janak Raj Jai to read out the resolution so that a subsequent voice vote could take place.

Mr. Jai read out the resolution: "The SCBA takes serious note of this mysterious meeting and deplores the propriety of the Prime Minister to have met the Chief Justice, particularly when sensitive matters concerning the involvement of high functionaries are pending before the apex court."

The room erupted into long shouts following which Mr. Jain asked members to raise their hands to make their views known. Amidst raised hands, shouts and queries he counted and said the resolution had been rejected by a majority.

Following this, the whole room exploded into cries of "shame" even as the president left. As the commotion continued, several members could be heard asking what the outcome of the meeting was. A few climbed onto the desk and announced the initiation of a no-confidence motion against the president.

Calling the whole meeting a "farce" they alleged that Mr. Jain had no right to take this decision, thereby "toeing the line" of the Chief Justice. Others said as things stood, the resolution was neither passed nor rejected. However, opinions continued to differ.

"The president just rejected the resolution by a voice vote and did not conduct the meeting which was his duty," said one member. "There should have been the provision for a secret ballot," he added, saying that the result was "deliberate" and "intentional".

Two groups emerged and their differences brought them to blows — those who said that the president had no choice but to take a quick decision and others who said that he should have waited for the gathering to calm down and taken cognizance of the opinion of all, before taking the decision by a hurried count.

Ms. Kapila Hingorani, a senior Supreme Court advocate, who had expressed the desire to second the resolution at the meeting before things went out of hand immediately drafted a statement which laid down: "The resolution in effect was accepted, but the president wrongly, without counting the show of hands, made out that the resolution was rejected and closed the meeting." Several lawyers were in the process of signing it.

When asked, Mr. Jain defended his decision by saying that he had no hand in the decision since his duty was only to preside over the meeting. "I, as president, cannot take part," he pointed out, adding that the confusion was compounded as 12 persons wanted a discussion and 49 wanted to speak.

He however said: "The Indian people have great faith in the judiciary and the Bar does not want to shake that faith."

(Courtesy: *The Statesman*, Oct. 11, 1996)

PM-Ahmadi meeting — SC lawyers come to blows

New Delhi, Oct 10: Pandemonium broke loose this after noon during the much hyped general body meeting organised by the Supreme Court Bar Association (SCBA) to decide the fate of the resolution condemning the alleged midnight rendezvous of Prime Minister H.D. Deve Gowda with Chief Justice A.M. Ahmadi.

SCBA president R.K. Jain's abrupt announcement, calling the resolution as dismissed, even before the votes on each side could be counted, triggered a wave of anger among a large section of lawyers.

So much so that two groups of lawyers came to blows on the Supreme Court premises minutes after Jain's verdict.

Jain later said that he was merely acting as a presiding officer in the meeting and did not take sides. But he added that the people reposed great faith in the judiciary and the Bar did not want this faith to be shaken.

A number of agitated lawyers, however, differed not only with Jain's verdict and views but also with the way he had handled the show. Many declared his verdict to be as controversial as the Gowda-Ahmadi encounter.

Fumed Prashant Bhushan: "The SCBA president's behaviour has been blatantly dishonest. In my opinion, the majority of Bar

members wanted the resolution to be passed; but Jain acted hastily in coming to the opposite conclusion."

The meeting itself resembled a three-ring circus, a far cry from what one expected from officers of the highest court of the land. Shouting, both in favour of and against the resolution, over 300 lawyers had crammed themselves into the court library, the venue of the meeting. As if the incessant slogans were not enough to mar the proceedings, the mike went off the moment Jain gave signal for voice-voting, further adding to the chaos.

The resolution, moved by senior counsel Dr. Janak Raj Jain, was supported by 182 members. However, neither the advocates who had been earlier selected by the SCBA to speak on the issue nor Jain's colleague, Kapila Hingorani, who was to second the resolution were allowed to have their say. This was because Jain ruled that voting on the resolution would precede over any discussion on it.

All those in favour of resolution were asked to raise their hands. Several hands went up, but it took Jain less than 10 seconds to count them all and conclude that the number was insufficient for passing the resolution.

Not that everyone was critical of Jain's verdict. Anis Suhawardhy, one such lawyers held that the resolution had been dismissed by a decisive majority. He also alleged that a number of "outsiders", who had no business to be in the meeting, had disturbed the proceedings.

Krishnamani, a senior counsel, saw nothing wrong in Ahmadi meeting the PM. Kapila Hingorani, however, insisted that the resolution had been upheld by an overwhelming majority, but the SCBA president look the other way.

(Courtesy: The Indian Express, Oct. 11, 1996)

Imagined Offences, and a Hoax Video *Soli J. Sorabji*

The needless controversy about the Prime Minister's recent meeting with the present Chief Justice of India (CJI) is a veritable storm in a tea cup. In the past there have been meetings between different Prime Ministers and the Chief Justices where matters of common concern have been discussed between the two constitutional functionaries. Then why the fuss? Because

the meeting which took place at 8 in the evening — a verifiable fact — was misreported to have occurred at the dark hour of midnight and terminated at 2 am, and an air of mystery was injected into the “tryst”. Worse, there was the dogmatic assumption, without the lightest attempt at ascertaining the facts, that the Prime Minister must have discussed the cases in which Narasimha Rao is involved, an unthinkable event knowing the present CJI’s strict sense of propriety.

Thereafter imagination reigned supreme. A diabolical plot was smelt whereby the CJI would prematurely retire, promptly accept the chairmanship of the National Human Rights Commission (NHRC), a rule would be evolved that no Supreme Court judge can become the Chief Justice unless he has a minimum period of two years on the bench and thus the fiercely independent Justice Verma would be superseded. These fantasisers were obviously ignorant that the appointment of the chairman of the NHRC requires consultation with six functionaries, including the leader of the Opposition in the Lok Sabha, Mr. Vajpayee, an unlikely participant in the imaginary plot.

One is accustomed to such outpourings from disgruntled litigants and suspicious minds who compulsively perceive dangerous hairpin when all that lies ahead is a straight road. But when such gibberish is circulated by media persons with an air of solemn conviction on the basis of “reliable” sources it is truly depressing because incalculable damage can be inadvertently inflicted upon the apex judiciary. The infamous supersession in April 1973 of three seniormost judges of the Supreme Court by Mrs. Gandhi was condemned generally by the Bar. Today any suicidal attempt at supersession will be opposed not only by lawyers but the people throughout the country who rightly regard the present judiciary as their ultimate hope and defender. The most refreshing news in the dismal scenario is the proposed appointment of former Chief Justice M.N. Venkatachaliah as chairman of the NHRC.

(Courtesy: *The Times of India*, Oct. 11, 1996)

SCBA Rejects Move Against PM-CJ Meet

New Delhi, Oct. 10: General Body Meeting of the Supreme Court Bar Association (SCBA) today by “overwhelming majority” re-

jected a resolution questioning the “propriety” of the meeting between Prime Minister H.D. Deve Gowda and Chief Justice of India held on Sept. 25, SCBA president R.K. Jain said here today.

Talking Press after the meeting, Mr. Jain said: “the bar has full faith in the Chief Justice of India and the members of the bar by an overwhelming majority have rejected the resolution moved by its 182 members.”

Mr. Jain said that there were some people in the country who wanted to malign the institution of judiciary and they would not be allowed to take law into their hands.

However, Dr. Janak Raj Jai who moved the resolution claimed that two third members of the bar, who were present on the occasion, supported the resolution.

When the meeting started, the president of the association told the members that there were about 49 members who wanted to speak on the resolution. But later it was decided by the members not to allow any discussion on the resolution, Mr. Jain said.

There were only 40 members who voted in favour of the resolution by raising their hands but majority members of the bar by voice vote rejected the resolution, he said.

The president of the All India Tax Advocates Forum, Mr. M.K. Gandhi and president A.M.U. Forum, Delhi, Mr. Shailender Yadav in a statement said that the resolution was rejected by over-whelming majority of the Bar.

However, some members of the bar including Ms. Kamini Jaiswal and others questioned the manner in which the meeting was conducted and said that they would like to bring a no-confidence motion against the president of the Bar.

(Courtesy: *The Pioneer*, Oct. 11, 1996)

PM-CJ Meet Rocks Bar Meet

Unruly Scenes marked the Supreme Court Bar Association (SCBA) general body meeting on Thursday which was convened to discuss a resolution stating that Chief Justice of India A.M. Ahmadi should have avoided meeting Prime Minister H.D. Deve Gowda last week.

While at the end of the meeting, SCBA president R.K. Jain announced that it had been defeated overwhelmingly, the reso-

lution sponsors, who had requisitioned the meeting, claimed that it was passed.

The resolution moved by Dr. Janak Raj Jai and seconded by Mr. Shashi Bhushan Jain and Mrs. Kapila Hingorani said the judiciary and the executive were two independent organs and were expected to function without interference from each other. It added that the recent meeting between the Prime Minister and the Chief Justice of India had put a question mark on the independence of the judiciary.

The resolution said the SCBA took a serious note of this mysterious meting which was particularly condemnable as sensitive matters concerning the involvement of high functionaries were pending before the apex court.

It added that the SCBA was of the considered opinion that in all fairness the Chief Justice should have avoided meeting the Prime Minister keeping in view the highest traditions of the Supreme Court.

Addressing newspersons after the meeting, Mr. Jain said at the outset he had mentioned to SCBA members that 49 speakers were scheduled to speak and that they could be allotted three minutes each. But it was first left to be decided whether a discussion like this could take place or the resolution proposed by Dr. Jai be put to vote straight away. The SCBA members preferred the latter alternative, he added.

Mr. Jain said that a voice vote was taken and the resolution was decisively defeated. Only a handful of members were in favour of the resolution being passed, he said.

Mr. Jain concluded by saying that he had full faith in the Chief Justice of India.

He said he was against any supersession of judges when the appointment of a new Chief Justice was made.

However, Dr. Jai said that about two-thirds of the 300 members present had voted for the resolution. He also expressed his dismay that despite this it had been announced that the resolution had been rejected. Intellectuals should not behave like this, he added.

(Courtesy: *The Pioneer*, Oct. 11, 1996)

Pandemonium at SC Bar Meeting

New Delhi: The Supreme Court Bar Association on Thursday warned the United Front government against superseding any judge but at its overdue general body conclave pandemonium prevailed when a resolution deplored Prime Minister H.D. Deve Gowda for meeting Chief Justice of India A.M. Ahmadi was put to vote.

SCBA president R.K. Jain however claimed that the requisition signed by 182 members was "defeated by an overwhelming majority." Lawyer Janak Raj Jai who piloted the resolution also maintained that it was passed by a "overwhelming majority." The House had rejected the proposal allowing each of the 49 members wanting to speak for three minutes each on the resolution.

After the general body meeting, SCBA's executive committee members were closetted for half an hour "to discuss some internal matters." Later, Mr. Jain told newsmen that "30 or 40" members voted in favour of the resolution. But Janak Raj Jai claimed that "about 200 of the 300 members present" condemned the PM-CJI meeting.

To a question, the SCBA chief said the entire bar would fight against the government's move to supersede any judge. "We'll fight it tooth and nail," he said as another lawyer Ms. Kamini Jaiswal intervened: "Fight! when supersession is done."

The controversial resolution was: "... The recent meeting of the Prime Minister with the Chief Justice of India at midnight put a question mark on the independence of judiciary."

"The SCBA takes a serious note of this mysterious meeting and deplores the propriety of the Prime Minister to have met the CJI, particularly when sensitive matters concerning the involvement of high functionaries are pending before the apex court."

It also said: "the House is of the cosidered opinion that in all fairness the CJI should have avoided this meeting keeping in view the highest traditions of this august institution."

Former attorney general Soli J. Sorabjee and additional solicitor general Altaf Ahmad were among those who raised their hand against the resolution but former Union law minister Shanti Bhushan, former additional solicitor general Arun Jaitley, and

Ms. Indira Jaising were among those who were up in arms to condemn the PM-CJI "mysterious" mid-night meeting.

Incontroverted newspaper reports suggest that Mr. Gowda had met Justice Ahmadi to discuss supersession of seniormost judge — Justice J.S. Verma — through a policy decision that the chief justice's term should be of at least two years. Justice Verma who is heading the two benches dealing with sensitive cases involving powerful politicians, bureaucrats and businessmen would not have two years when he takes over from Justice Ahmadi in March.

During briefest ever six minutes crucial meeting, confusion prevailed with rival faction shouting down each other and making counter claims on the fate of the resolution.

In fax message, while an SCBA member Bhagwat Goel said the "whole drama in the SCBA was pre-planned," Aligarh Muslim University Lawyers Forum president Shailender Yadav supported "rejection" of the resolution.

(Courtesy: The Indian Express, Oct. 11, 1996)

देवेगौड़ा—अहमदी भेट के 'औचित्य' पर बार कौसिल मे मतभेद

नई दिल्ली, १० अक्टूबर। उच्चतम न्यायालय बार कौसिल की आम सभा की आज शाम हुई हंगामी बैठक में प्रधानमंत्री एच.डी. देवेगौड़ा और न्यायाधीश ए.एम. अहमदी की 'आधी रात' से हुई 'रहस्यमय मुलाकात' के 'औचित्य' को ले कर सवाल उठाने वाले प्रस्ताव के बहुमत से 'पारित' और 'नामजूर' होने के बारे में परस्पर विरोध दावे सामने आए हैं।

इस मसले पर विचार करने के लिए बार कौसिल की आमसभा की बैठक बुलाए जाने का औपचारिक निवेदन १८२ वकीलों की ओर से पिछले सप्ताह किया गया था। इस निवेदन के मुताबिक यह बैठक आज शाम लगभग साढ़े चार बजे उच्चतम न्यायालय के द्वितीय पुस्तकालय में शुरू हुई।

बैठक समाप्त होने पर बार कौसिल के अध्यक्ष श्री आर. के. जैन ने बाहर मौजूद पत्रकारों को बताया कि प्रधानमंत्री की प्रधान न्यायाधीश से हुई मुलाकात को ले कर 'औचित्य' उठाने वाला प्रस्ताव 'बहुमत से नामजूर' हो गया।

श्री जैन ने यह आरोप भी लगाया कि 'देश में कुछ ताकतें न्यायपालिका की साथ बिगाड़ने के लिए काम कर रही हैं, जिसमें पूरे देश की जनता का विश्वास है।

दूसरी ओर बैठक में 'औचित्य' सम्बन्धी प्रस्ताव रखने वाले डा. जनक राज जय ने दावा किया कि प्रस्ताव 'बहुमत से परित' हो गया है। एक अन्य वरिष्ठ वकील श्री हरदेव सिंह ने भी कहा, 'हमारे लिए तो यह प्रस्ताव बहुमत से पारित है। भले ही कौसिल के पदाधिकारी कुछ कहें।'

मिले व्यौरे के अनुसार साढ़े चार बजे बैठक शुरू हाते ही बार कौसिल के अध्यक्ष श्री जैन ने कहा कि प्रस्ताव पर ४१ लोग बोलने के इच्छुक हैं। क्या किया जाए? इस पर ज्यादातर ने कहा कि बिंना बहस के प्रस्ताव का पाठ करने के बाद उस पर मतदान करा लिया जाए।

डा. जय के अनुसार इसके बाद उन्होंने प्रस्ताव का पाठ किया। इसका तत्काल ही वरिष्ठ वकील श्री शशि भूषण जैन और सुश्री कपिला हिंगोरानी ने समर्थन कर दिया। इसेक बाद उपस्थित लगभग तीन सौ सदस्यों में से दो सौ लोगों ने प्रस्ताव के समर्थन में अपने हाथ खड़े कर दिए। प्रस्ताव 'पास-पास' के शोर के साथ बड़ी संख्या में सदस्य बैठक कक्ष से बाहर निकल आए। बाद में भीतर बचे लगभग ४०-६० सदस्यों ने क्या किया, इसकी कोई जानकारी नहीं।

दूसरी ओर बार कौसिल के एक पदाधिकारी ने इस कथन को असत्य ठहराते हुए अध्यक्ष श्री जैन के इस दावे को दोहराया कि प्रस्ताव सदस्यों ने बहुमत से नामजूर कर दिया।

(सौजन्य: हिन्दुस्तान, ११ अक्टूबर, १९६६)

Venkatachalaiah's Denial Creates Controversy Over New NHRC Chief

New Delhi, Oct 10: Former Chief Justice of the Supreme Court M.N. Venkatachalaiah said in Bangalore today that he had not received any official communication on the reported decision to appoint him as chairman of the National Human Rights Commission (NHRC).

Venkatachalaiah's clarification has given an added twist to the controversy given rise to by the hurried manner in which the Deve Gowda Government announced his appointment. The Government did not even wait for President S.D. Sharma to return from his foreign tour and approve the appointment.

Venkateshalaiah had told Prime Minister Deve Gowda during the latter's recent visit to Karnataka that he needed time to consider the offer.

Venkateshalaiah had also said that when he demitted the office of the Chief Justice in 1994, he had expressed the view that retired chief justices should not accept any office.

When asked if he would accept the NHRC chairmanship if the offer was made to him, he replied, "Till the official communication comes, I will not be able to say anything."

(Courtesy: *The Indian Express*, Oct. 11, 1996)

SC Bar Body Chief Flayed

New Delhi, Oct 11: Twentysix members of the Supreme Court Bar Association (SCBA) today assailed association president R.K. Jain for allegedly mishandling yesterday's general body meeting.

The entire affair, it is alleged, turned into a farce as no one knew whether the resolution condemning the Prime Minister's meeting with the Chief Justice was actually opposed by the majority during the voice vote.

Held the 26 members in a signed statement: "We, the members of the SCBA strongly condemn the methods in which the GBM was conducted by R.K. Jain. We, therefore, express no confidence in R.K. Jain as SCBA president."

(Courtesy: *The Indian Express*, Oct. 12, 1996)

Bar Council Condemns President's Action

New Delhi, Oct. 11. The Supreme Court Bar Association members in a statement have strongly condemned" the method in which the general body meeting of the association conducted by its president was held yesterday.

In a resolution passed today the members have expressed "no confidence" in the president, Mr. R.K. Jain.

In the statement The secretary of the SCBA, Mr. Janak Raj Jai stated "the sanctity and dignity of the Institution and the Bar has been eroded in the eyes of the public by the president by his uncivilized behaviour."

He said "It has become necessary to state the correct facts, being witness to the occurrence, to set the record straight and to contradict what had been said."

(Courtesy: *The Indian Express*, Oct. 12, 1996)

Judiciary's Role Questioned

New Delhi, Oct. 12 — Presiding Officers of legislative bodies were wary of the role being played by the judiciary in taking over the function of the Executive. The court orders to the CBI seem to have an impact on them and they were critical of judges.

There was a sense of warning in this and a broad consensus on these counts were arrived at the symposium of Speakers and others chairing different legislative bodies today. The subject of symposium was the relationship between the Executive, Legislature and the Judiciary.

Speakers at the symposium felt that the law concerning the Lok Pal should be enacted soon and if possible at a special session of Parliament. They wanted that the Act should cover authorities in high places right from the Prime Minister to judges.

That Presiding Officers were critical of the role of the judiciary had a topical ring about it because of the recent rulings of courts, giving special directions to the CBI which was investigating financial irregularities involving public figures, especially the politicians.

The Speakers obviously had this week's order to the Patna High Court (in connexion with the fodder scam) in mind when they arrived at the conclusion about the functions of the Judiciary, which had "tended strongly to take over the Executive functions as reflected in the decision."

On Judiciary's orders in some of these cases, the Speakers found it, "disturbing" that courts were even "identifying the investigating official who will report to it (court)." Bringing police investigations itself under its own jurisdiction the courts were thus playing the role of prosecutor as well as judge," the speakers concluded and wanted this trend to stop.

The Speakers depreciated the tendency of the easy acceptance of public interest petitions. They wanted that courts should discourage tendencies of "abusing the facility" of PILs. In this connexion, the Lok Sabha Speaker, Mr. P.A. Sangma said: "Courts

of last resort should not end up becoming courts of the first resort." There was a trend which smacks of judicial populism, Mr. Sangma said.

The symposium concluded that there was perceptible "de-generation" in the general performance of Legislatures and that it should be halted. "The Legislature should restore its own dignity and prestige," it was said.

The Legislature had failed to perform the role envisaged in the Constitution, and "it has not been assertive in its own areas of competence like in the case of protecting the rights of the Manipur Assembly Speaker as also in the case of failing to take to task an errant judge, held to be as such by the Judiciary itself."

(Courtesy: *The Statesman*, Oct. 13, 1996)

V.P. Criticizes Venue Change in Rao's Trial

New Delhi, Oct. 12.— The former Prime Minister, Mr. V.P. Singh, today made certain sarcastic remarks apparently on the efforts to change the trial venue of Mr. P.V. Narasimha Rao on grounds relating to SPG protection, report PTI.

"All these considerations (security and possible lack of SPG cover in custody) which are being shown now were not there then (when he was arrested in 1992 while still enjoying SPG protection)," he said, deposing before the Jain Commission of inquiry.

Mr. Singh said that he was detained for one full day in police station and taken to Fatehgarh Jail. The SPG was there with him fully on the way, but bade him goodbye as soon as he was taken into the jail.

He made an apparent dig at Mr. Rao when he said that he was arrested in Deoria "not for any forgery or cheating or bribery" but for trying to address a farmers' rally in which four farmers had died in police firing.

(Courtesy: *The Statesman*, Oct. 13, 1996)

Deve Gowda Downgrades the Judiciary

Our "humble farmer" turned Prime Minister has no use for political and legal niceties. As a practical man who has risen

from the ranks, he uses the levers of power to get things done for his fragile coalition and for the Congress party on whose outside support the United Front Government's survival depends. If in the process, the hard earned credibility of the judiciary and always-in-doubt neutrality of the CBI get eroded, H.D. Deve Gowda could not care less.

The wily politician from Karnataka was never known for politically correct behaviour or adherence to legal proprieties. As Karnataka Chief Minister, he had the audacity to call on the Chief Justice of the High Court in a vain bid to bail out a favourite official who was hauled up for contempt of the court. He had no qualms of conscience in making use of Reliance aircraft in the company of liquor baron, Vijay Mallya, when he was the Prime Minister-designate of the largest democracy in the world.

Deve Gowda did not care to think twice before indulging in gross violation of the Election Commission's model code of conduct by carrying unauthorised persons in the Air Force planes during his campaign in UP elections and announcing sanction of 25 sugar mills for the State. The gross abuse of Doordarshan was there for anyone to see. The Imam of Delhi's Fatehpuri mosque was shown on the DD making communal appeals to the voters in UP by a Government which grabbed power with the slogan of saving secularism. Did he violate the code in the firm belief that the Election Commission was in no position to take any stringent action in the matter as T.N. Seshan, who did so much to cleanse the electoral system, is on the verge of retirement, and has become almost non-functional, and the two Election Commissioners are in the race to capture the top post in the Commission with the help of the Prime Minister?

The latest in the series of improprieties committed by the Prime Minister is his midnight call on the Chief Justice of India, Justice A.M. Ahmadi, last week. A meeting between the two dignitaries during office hours under normal circumstances might not have attracted adverse comment. But the circumstances preceding and the developments following the meeting have caused considerable disquiet in legal circles.

Deve Gowda called on the Chief Justice after the Delhi High Court rejected the Police Commissioner's application for change in the venue of P.V. Narasimha Rao's appearance in the court

in the Lakhubhai cheating case as a co-accused. The court saw through the sordid game being played under the garb of security and observed: "A police force which cannot provide security to one person in a court room cannot qualify as a police force . . ." The police petitioned the Supreme Court against the High Court's order bypassing the usual procedure. Although filed on a Friday afternoon, the case was listed as the first item on the following Monday and a bench headed by Justice M.M. Punchhi granted Rao exemption from appearing before the trial court till further orders as it fixed October 7 for hearing of the appeal.

These developments have agitated the bar. Tis Hazari lawyers have threatened to go on strike if the venue is shifted. Rao, it is pertinent to recall, had earlier appeared in Delhi courts to file his nominations. If there was no threat to his security as Prime Minister, how come he was now more vulnerable and the police was in no position to ensure fool-proof security for him in court?

The Committee for Judicial Accountability comprising legal lumanaries like Shanti Bhushan, Ram Jethmalani, V.M. Tarkunde, D.S. Tewatia, R.B. Mehrotra, Hardev Singh, Indira Jaisingh and Prashant Bhushan have in a statement described these developments as unfortunate and observed that these had adversely affected the credibility of the Supreme Court and rudely shaken the people's faith in it.

The Committee also took strong exception to the transfer of Rao's case from Prem Kumar's court to another court and said it was unfortunate that when an honest judicial officer decided to proceed against Rao, the Supreme Court had to intervene and adopt an "unusual and novel" procedure of transferring the case without any ostensible reason and in violation of every "principle of law and procedure". Harsh words these about the apex court. But the legal lumanaries, who include two former chief justices, must know what they are talking about.

The Gowda Government must take part of the blame for putting judicial credibility under a strain. The judiciary has done a lot in recent years to cleanse public life of corruption and to bring the mighty to book. It has won appreciation even outside the country. Lord Woolfe, Master of the Rolls in the UK, recently observed that the British judiciary was "gasping with

administration" at the pioneering work done by Indian courts and the attempts by the British judiciary to prevail over the Government were nothing compared to the kind of work courts in India had done.

Successive Governments have used CBI for their partisan ends. But the agency had a certain amount of credibility in the public eye. CBI, however, seems to have reached its nadir under Joginder Singh who was pick-forked by Deve Gowda. The Director was pulled up by the apex court first for rushing to Rao's residence whose name figures in several cases under investigation by CBI and later for his other acts of omission and commission.

Minister of State for Law, Ramakant Khalap's defence of his instructions to the CBI not to oppose bail for Rao is untenable. The Government has no business to intervene on behalf of an accused. It is, therefore, not surprising that the Bharatiya Adhivakta Manch (Indian Lawyers' Forum) has demanded immediate sack of the minister. The bar too reacted sharply and the CBI's lawyer returned the file to the agency protesting against interference in his work by Joginder Singh.

CBI covered itself with mud and ill-fame by presenting in the Patna High Court's a "doctored" report on the fodder scandal in which Bihar Chief Minister, Laloo Prasad Yadav, is also said to be involved.

It is common knowledge that the Bihar Chief Minister rushed to Delhi after learning about the report prepared by the Joint Director of CBI, U.N. Biswas. He called on the Prime Minister who in turn conferred with the CBI Director. Consequently, Biswas was ordered not to submit his report to the court and instead present a report prepared by DIG Ranjit Sinha, who is himself under cloud. Biswas had the courage of his conviction to apprise the court of the murky behind-the-scene happenings and, on the orders of the court, also presented a report prepared by him after investigating the multi-million fodder scandal.

The high drama in Patna High Court is a big setback for the Central and Bihar Governments. Biswas's disclosures have exposed both Deve Gowda and Laloo Yadav. These are the very people who have been talking about the law taking its own course.

Deve Gowda is behaving like a village headman. His vitriolic attacks on the press show that he has no respect for the freedom of the press. He is cast in the mould of petty autocrat.

What does all this add up to? Deve Gowda appears to be for a committed judiciary-and media-committed not to the Constitution and the people but to the hydra-headed coalition called United Front. This reminds one of the dark days of the run-up to the hated Emergency!

(Courtesy: Organiser, Oct. 13, 1996)

APPENDIX I

63(1996) DELHI LAW TIMES 271(DB)
DELHI HIGH COURT
Present: *Jaspal Singh & J.K. Mehra, JJ.*

Dr. Janak Raj Jai — Petitioner
versus
H.D. Deve Gowda & Ors. — Respondents

Civil Writ Petition No. 2408 of 1996 - Decided on 5.7.1996

Constitution of India, 1950 — Art. 75 — Words “Other Ministers” — Go to show Prime Minister too is a Minister — Constitution makes no distinction.

Held: The words “and the other Ministers” in Article 75(1) are not without significance and clearly go to show that the Prime Minister too is a Minister though with the title of the Prime Minister. He takes the same oath as the other Ministers are required to take. He is also a member of the Council of Ministers though he describes himself as the Prime Minister on account of the fact that the Constitution describes him as the Prime Minister (K.M. Sharma v. Shri Devi Lal & Ors., AIR 1990 SC 528). It is for this reason that we feel that when Article 75(5) speaks of a “Minister” it takes within its embrace that Minister also who is described in the Constitution as Prime Minister. In short, thus, the Constitution of India makes no distinction between the Prime Minister and other Ministers on this point.

Result: Petition dismissed.

(Para 5)

Cases referred:

1. AIR 1971 SC 1331.	2. AIR 1990 SC 528.
3. AIR 1974 SC 2192.	4. (1995) 2 SCR 225.

Counsel for the Parties:

For the Petitioner: *In person.*

For the Respondents: *Mr. M. Chandrashekharan, Advocate.*

JUDGEMENT

Jaspal Singh, J. — Rule D.B.

Although Melbourne debunked the office of Prime Minister as "a damned bore," his own Secretary Robert Blake, "Introduction — The Prime Minister, 1839-1974" in the Prime Ministers, Vol. II 13 (Ed. Herbert Van Thal, Allen and Unwin, 1975), was of the opinion that "such a position was never occupied by any Greek or Roman and if it lasts only two months, it is well worth to have been Prime Minister". Surely, in fact, it remains *Primus inter pares, Inter stellas luna minores*; foreman of Jury, key-stone of the Constitution. It is this office of the Prime Minister which is at the centre-stage of this writ petition filed by Dr. Janak Raj Jai, a practising Advocate of Delhi.

2. Dr. Jai is not happy with the appointment of Shri H.D. Deve Gowda as the Prime Minister of India. He feels that as Shri Gowda is not a member of either House of Parliament, the President could not have made the said appointment. The petitioner does concede that under Clause(5) of Article 75 of the Constitution of India, a person who is not a member of either House of Parliament can be appointed by the President as a Minister on the advice of the Prime Minister. However, as per him "Prime Minister" and "Minister" are separate entities and as such the said provision extends no protection to Shri Deve Gowda. He thus wants us to declare his appointment as violative of the Constitution.

3. Before we proceed to examine the edifice raised by the petitioner on the foundation of Articles 74 and 75 of the Constitution, it may be mentioned that during arguments, Dr. Jai had given up respondents 4 to 9 and had not pressed for any relief other than the declaration referred to above. It may also be noticed that Shri M. Chandrasekharan, the learned Additional Solicitor General appearing for the remaining respondents did not prefer to file any counter.

4. As the entire case set up by the petitioner revolves around Articles 74 and 75(5) of the Constitution, let us first have a look at those provisions. Article 74 reads as under:

74. *Council of Ministers to aid and advise President.* — [(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.]

[Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.]

(2) The question whether any, and if so what advice was tendered by Ministers to the President shall not be inquired into in any Court.

[a] Substituted for original Clause (1) by Constitution (Forty-second Amendment) Act, 1976, Sec. 13(3-1-77).

[b] Inserted by Constitution (Forty-fourth Amendment) Act, 1978, S.11(20-6-79)

This is what is provided in Article 75(5):

75. *Other provisions as to Ministers* — (1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(2)

(3)

(4)

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6)

5. Article 74 bears testimony to the fact that the Cabinet system of Government has been introduced into the Indian Constitution from the British Model (*Ram Jamaya v. State of Punjab*, (1995) 2 SCR 225, *Shamsher Singh v. State of Punjab*, AIR 1974 SC 2192 (para 27) which reduces the President to a formal constitutional head of the executive, the real power being exercised by the Council of Ministers, (*ibid.*) with the Prime Minister at the head. Significantly, whereas the Prime Minister is appointed by the President "the other Ministers" are appointed by him only "on the advice of the Prime Minister". [Article 75(1)]. The words and the other Ministers" in Article 75(1) are not without significance and clearly go to show that the Prime Minister too is a Minister though with the title of the Prime Minister. He takes the same oath as the other Ministers are required to take. He is also a member of the Council of Ministers though he describes himself as the Prime Minister on account of the fact that the Constitution describes him as the Prime minister (*K.M. Sharma v. Shri Devi Lal & Ors.*, AIR 1990 SC 528). It is for this reason that we feel that when Article 75(5) speaks of a "Minister" it takes within its embrace that Minister also who is described in the Constitution as Prime Minister. In short, thus, the Constitution of India makes no distinction between the Prime Minister and other Ministers, on this point. Reference in this connection may be made to the judgment of the Supreme Court in *H.S. Verma v. T.N. Singh*, AIR 1971 SC 1331, which, we feel, clinches the issue. It revolves around Article 164 of the Constitution which differs from Article 75 only to the extent that whereas Article 75 relates to the appointment of the Prime Minister and other Ministers at the Centre by the President, Article 164 deals with the appointment of the Chief Minister of a State and other Ministers by the concerned Governor. The case related to the validity of the appointment of Shri T.N. Singh as Chief Minister of Uttar Pradesh at a time when he was not a member of either House of Legislature of the State of Uttar Pradesh. The appointment was held to be not illegal. The edifice so assiduously raised by the petitioner thus crumbles to the ground.

6. Dr. Janak Raj Jai feels that if the interpretation adopted by us is accepted, it will provide unrestricted and unfettered power to the President to appoint any one. We tend to disagree. The President has to choose one for appointment who has the support of the party and the majority in the House. In *Shamsher Singh v. State of Punjab*, AIR 1974 SC 2192, Krishna Iyer, J. said that the choice of Prime Minister by the President is restricted "by the paramount consideration that he should command a majority in the House...". We need say no more.

7. For the reasons recorded above, we hold that the appointment of Shri H.D. Deve Gowda does not militate against the Constitutional mechanism or against the democratic principle embodied in the Constitution.

The writ petition is dismissed with no order as to costs.

Petition dismissed

APPENDIX II

**IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)
SPECIAL LEAVE PETITION (CIVIL) NO. 19606, 1996**

In the Matter of:

Dr. Janak Raj Jai
Advocate, Supreme Court
Chairman, People's Council
B-24/2D/DIZ/SII, Gole Market
New Delhi 110 001 Petitioner.

versus

1. Shri H.D. Deve Gowda
Prime Minister of India
7, Race Course Road
New Delhi 110 001.
2. President of India
Through Secretary to the President,
Rashtrapati Bhavan
New Delhi (deleted).
3. Union of India
Through Secretary
Ministry of Home Affairs
Govt. of India
New Delhi
4. Shri P.V. Narasimha Rao
former Prime Minister of India
President, Indian National Congress
9, Moti Lal Nehru Marg
New Delhi
5. Shri Atal Behari Vajpayee
former Prime Minister of India
11, Ashoka Road
New Delhi

6. Shri Ramkrishna Hagde
formerly Janta Dal Leader
Member of Parliament (Rajya Sabha)
7, Feroze Shah Road
New Delhi
7. Shri Ram Jethmalani
former Minister for Law
Justice and Company Affairs
Govt. of India
New Delhi
9, Harish Chander Mathur Road
New Delhi
8. Shri Laloo Prasad Yadav
President, Janata Dal,
Chief Minister of Bihar
Patna, Bihar
9. High Court of Delhi
through Registrar
High Court of Delhi
New Delhi Contesting Respondents

**SPECIAL LEAVE PETITION UNDER ARTICLE-136 OF THE CONSTITUTION
OF INDIA**

To,

The Hon'ble Chief Justice of India
and His Companion Justices of
The Supreme Court of India.

The abovenamed Petitioner most respectfully begs to submit as under:

1. That the petitioner is desirous of obtaining special leave to appeal against the Judgement and Order dated 5th July, 1996, passed by a Division Bench consisting of Hon'ble Mr. Justice Jaspal Singh and Hon'ble Mr. Justice J.K. Mehra of the High Court of Delhi at New Delhi in C.W.P. No. 2408/96 whereby their Lordships have dismissed the writ petition.
2. That the petitioner, an Advocate of this Hon'ble Court filed writ petition challenging the appointment of Shri H.D. Deve Gowda, Prime Minister of India on the ground that the President of India was not legally, morally and judicially entitled to appoint him as a Prime Minister of India.
3. That the Judgement of the Delhi High Court whereby the High Court has allowed Shri Deve Gowda to act as a Prime Minister of India is challenged as the High Court has not taken into consideration various vital facts. It may further be submitted that after the dismissal of the writ, as per advice available to the petitioner, petitioner filed application for review being Review Petition No. 5068/96 and that the said review petition is listed for hearing and arguments on 19th November, 1996. However, the petitioner is filing this special leave petition against the Judgement and Order dated 5.7.96 as it has appeared in the press that this Hon'ble Court vide Order dated 30th July, 1996 have categorically stated that this

question whether the appointment of Shri Deve Gowda is legal or proper or not shall not be debated in any other High Court pending disposal of Orders from this Hon'ble Court.

4. That the petitioner has accordingly been left with no other remedy except to file this special leave petition in this Hon'ble Court.

5. That without prejudice to the rights of the petitioner as available to him under law for the review which is pending before the Delhi High Court, the petitioner is filing special leave petition in this Court.

6. That this petition raises important questions of law of general public importance and few of them are enumerated hereunder:

- (a) Whether a Member of Legislative Assembly is entitled to be appointed Prime Minister of India without being the member of either the houses of the Parliament and enjoying the benefit of being M.L.A. of a particular Legislative Assembly and in the present case it is stated that Shri H.D. Deve Gowda besides being the Chief Minister of Karnataka Assembly was also a member of Karnataka Legislative Assembly. On being considered for appointment as Prime Minister, he resigned only from the post of the Chief Minister but continued enjoying the membership of Karnataka Legislative Assembly. It is apparent that even though he being the Prime Minister of India, entitled to participate in debates in Parliament, has a further right to sit in the Assembly of the Karnataka State and to participate in the debates and act with all rights as available to him being M.L.A. of the said State. This itself is a fraud on Constitution. Needless to mention that he continued enjoying privileges of being a Prime Minister and M.L.A. for a sufficient long time.
- (b) Whether it is open to the President of India to appoint a person of his own choice from the street who does not enjoy the status of membership of either of the Houses of the Parliament and supposed for the said person after becoming the Prime Minister, appoints his Cabinet Ministers again from the street. On the exemption and presumption that all of them get elected within a period of six months and for the said period of six months the Parliament and treasury of the nation can be brought to ransom status of the Constitution. Even in the present case one of his Cabinet Colleagues is again an outsider.
- (c) Whether in such situation President is not bound to act on the advice of the Prime Minister who has his Cabinet from general strata of individuals being common man and whether in those circumstances President of India shall not be bound to act on the advice of the Cabinet headed by the Prime Minister.
- (d) Whether the Constitution does not permit the appointment of a Cabinet Minister by the Prime Minister and therefore, Article-74 and 75 have to be read in a harmonious manner to the extent that if the Prime Minister is also non-member of the Parliament on his losing election, the total cabinet stands resigned in other words the Government falls. However, if a cabinet member of the Parliament does not get re-elected neither the Cabinet loses his responsibilities nor the Government falls.
- (e) Whether a person who cannot be commanded by the rules, regulations and veto of the Speaker and its powers has a right to govern the nation. Needless to submit that although being a Prime Minister, the respondent no. 1 has a right to present his views in the Parliament and to initiate debate thereon, yet he has no responsibility towards the House of the Parliament.

(f) Whether it is legal within the provisions of Article-74 and 75 to assume that the Prime Minister is included in the word Minister and specifically when there are two different appointment authorities and two different connotations appear from the text and body of the said provisions.

7. That the writ petition was filed in the Delhi High Court on the facts that the elections to the 11th Lok Sabha were held in the country on 27th April, 1996. In few States, the elections were held on two days or different dates. Counting of votes started on 8th May, 1996 and most of the results were announced on 9th May, 1996. After the results were announced it became very clear that there was no single party having majority in the House. Bhartiya Janata Party with its allies commanded 190 seats in the Parliament and the Congress Party was second largest with 160 odd members. Rest of the seats were held by various Regional Parties, independents besides CPM, CPI, DMK, TMC, TDP, JD, AGP, Samajwadi Party and BSP Party.

8. That on 11th May, 1996, the President of India called respondent no. 5 Leader of the largest Single Party, Shri Atal Behari Vajpayee to form the Government. The said Government was asked to prove its majority on the floor of the House till 31st May, 1996.

9. That Shri Atal Behari Vajpayee, the then Prime Minister finding that he shall not be able to muster the confidence of majority members of the Lok Sabha tendered the resignation of his Government.

10. That thereafter the President of India appointed respondent no. 1 as the Prime Minister of India and administered to him an Oath of Office in the evening of 1st June, 1996.

11. That the respondent no. 1 was an M.L.A. in Karnataka Assembly at the time he was sworn the Oath of Office of the President of India. As luck would have it the respondent no. 1 secured vote of confidence in the Lok Sabha on the strength of the Congress which backed the respondent no. 1. This was political fraud on the people of this Country.

12. That in the circumstances a writ petition was filed before the High Court of Delhi at New Delhi being writ Petition No. 2408/1996. A true copy of the said writ petition is filed herewith as Annexure-A with this Petition.

13. That the aforesaid writ petition has been dismissed by the Delhi High Court on 5th July, 1996 by Hon'ble Mr. Justice Jaspal Singh and Hon'ble Mr. Justice J.K. Mehra. After the petition was dismissed a Review Petition was filed by the petitioner on or about 22nd July, 1996 and the true copy of the said petition is also filed herewith as Annexure-B with this Petition.

14. That the High Court of Delhi did not consider various facts and circumstances including that the constitutionality of the Provisions were under challenge. With great respect it is submitted that Article 74 of the Constitution of India has to be read in the manner of harmonizing the Constitution.

15. That the founding fathers of the Constitution proceeded on the assumption that the President shall appoint Leader of a Party in House to be a Prime Minister. It is clear from the statement of Dr. Ambedkar on 30.12.1948 that the only way for the appointment of the Prime Minister is to be required that the House which shall chose its Leader and after the choice being made, the President may proceed to appoint the Prime Minister of India.

16. That the Prime Minister is distinct and separate from the other Ministers. Normally Leader of the treasury bench is the Prime Minister. It is submitted that Article-75(5) does not include Prime Minister.

17. That the petitioner has been left with no other remedy except to invoke the Jurisdiction of this Hon'ble Court under Article 136 of the Constitution of India.

18. That the petitioner has not filed any other or similar petition either in this Hon'ble Court or in any other High Court and this is the only Petition in this regard.

19. That the Petitioner, therefore challenges the Judgement and Order dated 5th July, 1996, passed by Hon'ble Mr. Justice Jaspal Singh and Hon'ble Mr. Justice J.K. Mehra of the Delhi High Court at New Delhi in C.W.P. No. 2408/1996 on the following amongst other Grounds:

- (i) Because the Constitution does not give unfettered discretion to the President of India for the appointment of the Prime Minister and his discretion cannot be exercised in the manner he has done so.
- (ii) Because the discretion of the President of India in appointing the Prime Minister of India is regulated and guided by the political and legal convention in as much as President has no powers to appoint any person as a Prime Minister of India except that the incumbent is a member and a leader of the House.
- (iii) Because Article 75(5) does not include appointment of the Prime Minister of India.
- (iv) Because no person is entitled to be appointed as a Prime Minister of India who is continuing as a member of any other legislature in India. It is a fraud on the Constitution if the Prime Minister is also a member of any State legislative Assembly. It is mockery of Constitution and law.
- (v) Because the High Court has committed grave error of law while comparing the position of the Prime Minister vis-a-vis the Chief Minister of State. There is no comparison between these two positions of the Constitution. Similarly position of the Governor cannot be equated with the President of India. There is no corresponding Article to the Article-356 whereby the Governor is obliged to send his report to the President of India.
- (vi) Because the High Court has further failed to appreciate that there is a marked difference between the Minister and Prime Minister of India. While Prime Minister is appointed by the President of India, but the Ministers are appointed on the aid and advice of the Prime Minister. Even otherwise if a Minister loses in an election and he ceases to be the Minister, the Government does not fall but if we import the concession of Article 75(5) in the matter of the Prime Minister then on the expiry of six months or in the event of his losing elections, the whole Cabinet of the Ministers fall and in other words the Government falls. Certainly this was not the intention of the framers of the Constitution nor should we read Article 75(5) in this way.
- (vii) Because the High Court has further failed to appreciate that there shall be no Council of Ministers without the Prime Minister, but there can be a Council of Minister without a particular Minister or even Deputy Prime Minister. It is, therefore, necessary that Article 75(5) of the Constitution be read only as Minister excluding the Prime Minister.
- (viii) Because the High Court has further failed to appreciate that although the alleged Prime Minister (non-member) has a right to participate in debates and also to enjoy certain special status as per rules of the House but he

cannot participate either in the voting or in the matters of caution and the discipline which is maintained by the Speaker in the House. It is a fraud on the Constitution if such a Prime Minister has a right to issue a whip on any issue being the Leader of the House or through any other nominated leader but he himself shall be a free bird.

- (ix) Because the High Court has further failed to appreciate that the Judgement of this Hon'ble Court in the matter of K.M. Sharma vs. Devi Lal reported in AIR 1990 SC PAGE 528 clearly defines that the Prime Minister is not included within the ambit of Minister. A right to vote is distinct and can only be enjoyed by a member in his specific House. Article-88 specifically lays down that by virtue of being Minister there is no right to vote.
- (x) Because the High Court has further failed to appreciate that the President is not entitled to act except on the aid and advice of the Prime Minister and in any view of the matter Prime Minister cannot be equated with any other Minister which are referred in Article 75 and 88.
- (xi) Because the High Court has further failed to appreciate that the 39th amendment of the Constitution specifically lays down that there is a marked difference between a Minister and Prime Minister.
- (xii) Because in any view of the matter appointment of a non-member of the House as a Prime Minister is a fraud on a Constitution of India.
- (xiii) Because the High Court has further failed to appreciate that Article 78 of the Constitution of India itself makes out a distinction between the Prime Minister and the Minister.
- (xiv) Because the High Court has further failed to notice that it will lead to absurdity if the Prime Minister is included in the ambit of a Minister as used in Article 75(5) of the Constitution of India.
- (xv) Because Article 74 of the Constitution of India is its heart and in assuming a Prime Minister on the unfettered discretion of the President, the total Constitutional machinery shall collapse and Constitution shall be reduced into a waste paper in as much as if the appointment of person as the Prime Minister, the President will have to act on his aid and advice because the word "shall" as used in this Article shall be of very serious import and consequence. Assuming without admitting that the President has to act only on the aid and advice of the Council of the Ministers headed by the Prime Minister, it becomes a prerogative of the Prime Minister to advise even for scrapping it.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be graciously pleased; to grant special leave to appeal against the Judgement and Order dated 5th July, 1996, passed by a Division Bench consisting of Hon'ble Mr. Justice Jaspal Singh and Hon'ble Mr. Justice J.K. Mehra of the High Court of Delhi at New Delhi in C.W.P. No. 2408/96, so that the ends of justice may meet.

September 13, 1996.

(Mrs. Laxmi Arvind)
Advocate for the Petitioner.

APPENDIX III

LETTER DATED 28.9.1996 ADDRESSED TO THE CHIEF JUSTICE
OF INDIA

Dr. Janak Raj Jai
M.A., LL.M., J.D., Ph.D. (Law)
Advocate, Supreme Court of India.
Chairman, People's Council
New Delhi.

To

Hon'ble Mr. Justice A.M. Ahmadi
Chief Justice
Supreme Court of India
Bhagwandas Road
New Delhi 110001

Ref: S.L.P. (Civil) No. 19606/1996

Dr. Janak Raj Jai
vs.
Shri H.D. Deve Gowda & Ors.

MAY IT PLEASE YOUR LORDSHIPS

I as a senior citizen, an humble social activist, and a member of the Bar, has been disturbed by reading a news in the National Hindi Paper — Rashtriya Sahara of 28th September, 1996, under the caption "Aakhir Deve Gowda Raat Mein Mukhya Nyaadhis se Milne Kyon Gaye"? (Why Deve Gowda went to see the Chief Justice of India at the mid of the night?).

According to news, the Prime Minister, Shri H.D. Deve Gowda was with the Chief Justice of India for three hours, from 2.00 A.M. to 5 A.M., on the morning of 26.9.1996. A photocopy of the said news is enclosed for ready reference.

Your Lordships is seized of the matter in which, one petitioner Shri S.P. Anand — has challenged the appointment of the Prime Minister. Arguments in this case have since been heard, and the judgement has been reserved.

I had also filed a similar writ petition challenging the appointment of the Prime Minister in the High Court of Delhi. The same was heard by Hon'ble Mr. Justice Jaspal Singh and Mr. Justice J.K. Mehra. After hearing the arguments of the Additional Solicitor General of India (Shri Chandra Shekhran) and myself, the Court upheld the appointment of the Prime Minister vide its four page Order (in writ petition No. 2408/1996) dated 5th July, 1996. That a review petition was also filed in the same Court, which is adjourned to 19.11.1996. The Supreme Court has stayed hearing of any petition in any High Court pending disposal of the writ petition filed by Shri S.P. Anand.

On 13.9.1996 I filed a special leave petition by way of public interest litigation in this Hon'ble Court through Advocate-on-Record, Mrs. Laxmi Arvind, 86, Supreme Court Lawyers Chamber, New Delhi 110001. The same has been numbered as 19606 of 1996. Initially it was told that it might come on board on 7th October, 1996 but now it is learnt that it may not come on that date, and the next date is not known. That the petition filed by me also raises different pleas than the pleas raised by Shri S.P. Anand. In fact both these petitions are against the appointment of the Prime Minister and are pending before the Supreme Court of India.

Since Shri H.D. Deve Gowda (against whom two petitions are pending before the Supreme Court) has mysteriously met Your Lordships, at the residence, it will not be in fitness of things that Your Lordships may pronounce the Judgement in Shri S.P. Anand's case as also hear the petition filed by me against the appointment of the Prime Minister.

Your Lordships may be pleased to refer both the petitions to a larger bench, so that issues raised in these petitions may be finally decided by the highest court of land.

In a recent case of the former Prime Minister, this Hon'ble Court has held that the justice is not only to be done, it must be seen to have been done. This principle very much applies in both these petitions.

September 28, 1996

*(Dr. Janak Raj Jai)
Petitioner/Applicant*

Encl.: Photocopy of News cuttings.

Gowda meets Ahmadi

Mystery shrouds the late-night visit of Prime Minister Deve Gowda to the house of Justice A.M. Ahmadi, Chief Justice of India, on the night of September 25. The Prime Minister's cavalcade was seen whizzing silently through to the Chief Justice's 12 Krishna Menon Marg residence, reports ENS.

According to highly-placed sources, Gowda was closeted with the Chief Justice for nearly two hours, giving rise to a great deal of speculation.

It is believed, the Prime Minister visited the Chief Justice to discuss Narasimha Rao's personal appearance in court on Monday and perhaps the Government's request to shift the venue to the Pragati Maidan.

What transpired in the meeting is not known but according to sources, the Prime Minister looked "worked up" when he returned.

(Courtesy: Indian Express, Sept. 29, 1996)

आखिर देवगौड़ा रात मे मुख्य न्यायाधीश से मिलने क्यों गये?

नयी दिल्ली २७ सितम्बर। गुरुवार २६ सितम्बर को रात दो बजे प्रधानमंत्री एच.डी. देवगौड़ा राजधानी मे उच्चतम न्यायालय के मुख्य न्यायाधीश न्यायामूर्ति ए.एम. अहमदी के आवास पर क्यों गये थे? आज राजधानी के राजनीतिक गलियारों में देवगौड़ा-अहमदी भेंट चर्चा का विषय रही तथा तरह तरह के क्यास लगाये जाते रहे। इधर क्यास ही लगाये जा रहे थे उधार पटना में बिहार प्रदेश भाजपा के महामंत्री यशोदानन्दन सिंह ने पूछ ही लिया कि २६ सितम्बर को रात दो बजे प्रधानमंत्री देवगौड़ा सर्वोच्च न्यायालय के मुख्य न्यायाधीश से मिलने प्रोटोकाल तोड़कर उनके आवास पर क्यों गये थे।

श्री सिंह के मुताबिक यह गुप्त भेंट सारे नियम कायदे को तोड़कर हुई। प्रोटोकाल को ठेंगा दिखाया गया, सिक्यूरिटी को स्टांप किया गया सायरन गुम था। श्री सिंह ने कहा कि यह मुलाकात तीन घंटे तक चली। उन्होंने इस गोपनीय मुलाकात पर पार्टी की ओर से कड़ी आपत्ति दर्ज करायी है।

श्री सिंह ने कहा है कि प्रधानमंत्री और सर्वोच्च न्यायालय के मुख्य न्यायाधीश का मिलन जिस तरीके से असमय हुआ है, उससे अनेकानेक संशय पैदा हो रहे हैं। आज पूर्व प्रधानमंत्री नरसिंह राव कोर्ट के दरवाजे पर बचने की गुहार लगा रहे हैं। दूसरी ओर बिहार के मुख्यमंत्री भी पश्चात्याकाल में बुरी तरह फंसे हैं और प्रधानमंत्री मुख्यमंत्री के दल के हैं। बिहार के मुख्यमंत्री को किंग मेकर की संज्ञा भी दी गयी है। श्री सिंह ने कहा है कि ऐसी अवस्था में अपनी बैशाखी कांग्रेस और किंग मेकर

बिहार के मुख्यमंत्री को उस मिलन से जोड़कर देखना स्वाभाविक ही है। इसलिये प्रधानमंत्री पूरे देश को इस मिलन के बारे में अपनी स्थिति से अवगत कराएं।

(राष्ट्रीय सहारा, सितम्बर २७, १९९६)

First ex-PM to Face Court in a Criminal Case

Sabina Sehgal Saikia and Sanjay Kaw

“NEW DELHI: Special Judge Ajit Bharihoke is all set to add a new chapter to India's history by being the first judicial officer to have in his witness box a former Prime Minister as an accused in a criminal case.

The last time a former Prime Minister stepped into the portals of a courtroom was a post-emergency Indira Gandhi who was sentenced for contempt of Parliament in 1978.

Unprecedented security arrangements have been made for P.V. Narasimha Rao as he prepares to appear before the court on Monday. His fate now lies in the hands of Judge Bharihoke.

Despite the parallels offered between Indira Gandhi and Narasimha Rao, comparisons may not hold in the context of the case which is to be decided by Mr. Bharihoke.

For instance, the then metropolitan magistrate R. Dayal, who held court in what is today the Registrar Cooperative Society office in Parliament Street, had granted bail to Indira Gandhi since the Central Bureau of Investigation (CBI) had not pressed for a remand.

On Monday, the same investigating agency will not have the prerogative to exercise an opinion on the remand of Narasimha Rao as the court alone can either send him to jail or grant him freedom since it was the court, and not the CBI, which had named him as an accused during trial.

If sent to Asia's largest prison, the Tihar Jail, Narasimha Rao, by virtue of being a graduate and an income tax payee, can avail himself of a 'B' class facility which entitles an inmate to a cot and a degree of privacy. On the other hand, should he be remanded to house arrest, the Jail Manual and the Prisons Act would be enforced on 9, Motilal Nehru Marg as well.

But, even if he should receive a temporary reprieve, Narasimha Rao, in an ironical twist of fate, will have to face the directions of chief metropolitan magistrate Prem Kumar in the St. Kitts forgery case on Tuesday.

It was not too long ago when Mr. Prem Kumar had created history by adding Narasimha Rao's name as an accused and summoning him in the \$ 100,000 Lakshubhai Pathak cheating case.

Though the Delhi High Court had upheld Mr. Prem Kumar's order and the Supreme Court had described it as 'fair and impartial,' the case was transferred to the court of Mr. Ajit Bharihoke.

On Tuesday, Mr. Prem Kumar will once again decide the fate of Narasimha Rao as he could direct "action" against him while taking cognisance of the St. Kitts chargesheet.

(Courtesy: *The Times of India*, Sept. 30, 1996)

APPENDIX IV

PROPRIETY

Judgement delivered by Justice P.K. Goswamy on Propriety of High Constitutional Functionaries
State of Rajasthan vs. Union of India 1977 S.C. 1417

GOSWAMI, J.: — 149. We already dismissed the suits and the writ petitions on April 29, 1977, and accordingly rejected the prayers for interim injunctions. We promised to give our reasons later and the same may not be stated.

150. The facts of all these matters appear in the judgment of the learned Chief Justice and need not be repeated.

151. The fundamental questions involved in these suits are these:

- (1) Do the suits lie under Art. 131 of the Constitution of India?
- (2) What is the scope of Art. 356 vis-a-vis the Court's jurisdiction?

(3) If the suits lie, is there a case for permanent injunction and, as an intermediate step, for an interim temporary injunction?

(4) Have the writ petitioners any fundamental rights to maintain their applications under Art. 32 of the Constitution?

152. In these suits as well as in the Writ Petitions the central issue that is involved is the constitutional right of a Council of Ministers to function as the Government of a State and a Legislative Assembly to continue until expiry of its term provided for in the Constitution.

153. The suits are filed under Art. 131 of the Constitution. Article 131 gives this Court exclusive original jurisdiction in any dispute—

- (a) between the Government of India and one or more States: or
- (b) between the Government of India and any State or States on one side and one or more other States on the other: or
- (c) between two or more States.

Although the expression used in Art. 131 is any dispute, the width of the expression is limited by the words that follow in respect of the nature of dispute that can be entertained by this Court in its original jurisdiction. It is only a dispute which involves any question of law or fact on which the existence or extent of a legal right of the contending party depends that can be the subject-matter of a suit under Art. 131. The dispute should be in respect of legal rights and not disputes of political character. The Article, thus, refers to the parties that may be arrayed

in the litigation as well as to the subject-matter of the dispute. (See *State of Bihar v. Union of India* (1970) 2 SCR 522: (AIR 1970 SC 1446).)

154. The suits are, in form being filed by the States of Rajasthan, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh and Orissa. But is the dispute sought for adjudication within the scope or ambit of Art. 131? That is the first question.

155. In a parliamentary form of Government when one Government is replaced by another, the State's continuity is not snapped. There may come a moment in the life of a Government when it may cease to be truly representative of the people and, therefore, the interest of the State as a polity or legal entity and that of the Government established on party system may cease to be identical. In such a situation, factual or imminent, a suit by a State Government in the name of the State against the Union Government's action in defence of the former's legitimate existence and right of continuance will not relate to the legal right of the State. The judgment, whether in truth and reality a particular situation exists or is portentously imminent, may be correct or incorrect, but it is a political issue. The Court's jurisdiction is not political but entirely judicial.

156. The right of a particular State to sue is not always equivalent to the right of the Council of Ministers in all matters. Even if a Government goes the State lives. Whether a particular Council of Ministers can survive threats to their existence depends no doubt immediately on its ability to enjoy the confidence of the majority in the Legislature but also, in the last resort, in its ability to enjoy the confidence of the political sovereign, the electorate. The questions affecting the latter domain are of highly political complexion and appertain to political rights of the Government and not to legal rights of the Government and not to legal rights of the State. The rights agitated by the plaintiffs are principally of the Governments concerned who are interested in continuing the legislatures whose confidence they enjoy. On the other hand, it is claimed by the Home Minister in his letter that these Legislatures have lost the mandate of the people and that there is clear evidence of their having lost the confidence of the people as a result of the verdict in the recent general election to the Parliament. The Court is not concerned whether this is a correct assessment or not. The Union Government is entitled to take political decisions. However, even if a political decision of the Government of India affects legal rights of the State as a legal entity, the existence and extent of that right will be triable under Art. 131. The question is, are legal rights of the State involved in the dispute?

157. Article 131 speaks of a legal right. That legal right must be that of the State. The dispute about a legal right, its existence or extent, must be capable of agitation between the Government of India and the States. The character of the dispute within the scope of Art. 131 that emerges is with regard to a legal right which the States may be able to claim against the Government. For example, the State as a party must affirm a legal right of its own which the Government of India has denied or is interested in denying giving rise to a cause of action. For the purpose of deciding whether Article 131 is attracted the subject-matter of the dispute, therefore assumes great importance.

158. Part VI deals with the States. The word "State" is not defined for the purpose of Article 131 in Part V. The "State" is, however, defined under Art. 12 for the purpose of Part III (Fundamental Rights). This is the definition also for Part IV (Directive Principles of State Policy). Under Article 367 (1), the provisions of the General Clauses Act, 1897, are applicable for interpretation of the Constitution. S.3 (58) of the General Clauses Act defines State, after the commencement

of the Constitution (Seventh Amendment), Act, 1956, to mean a State specified in the first Schedule to the Constitution and shall include a Union Territory. The First Schedule to the Constitution describes 22 States and 9 Union Territories. The State Government is separately defined under S. 3 (60) of the General Clauses Act thus keeping the distinction. Article 131 of the Constitution related to legal rights of the State or of the Government of India. Any violation of the provisions of the Constitution impinging on the rights of the States or of the Government of India will be justiciable under Art. 131. Similarly, boundary disputes or disputes relating to rival claims to receipts from taxes and other duties between two states are cognizable by this Court, to refer only to a few instances. Now in these above mentioned cases the rights of the State as a legal entity distinguished from the Government, being the executive agent, will be involved. Even if one Government is replaced by another Government, such a dispute will not abate or disappear since the State endures and the cause of action survives.

159. Keeping in view the above concept, we will undertake to examine the nature of the dispute which is involved in these suits. Shortly stated the States apprehend a grave threat to the assumption of the executive functions of the State by the President on non-compliance with the advice or direction contained in the letter of the Home Minister. It is true that the threat to an illegal action also furnishes a cause of action for a suit or proceeding.

160. Under Art. 172 (1) all the State Assemblies, except Orissa, will continue, if not dissolved earlier, for a period of six years from the date appointed for its first meeting and in that view in the normal course will continue for some more months. The Legislative Assembly of the State of Orissa, on the other hand, having held its election in 1974, will in the normal course continue till 1980 unless earlier dissolved. The States apprehend that this normal life of the Legislatures is going to be snuffed resulting in the annihilation of their legal and constitutional rights under Article 172 (1). That furnishes a cause of action for the suits for permanent injunction, according to the plaintiffs.

161. The dispute is this. The Home Minister, Government of India, is asking the Chief Ministers of the Governments of the States to advise the Governors to dissolve the Legislative Assemblies. The Chief Ministers declined to accept the advice and filed the suits. What is the nature of this dispute? On the one hand there is the claim of a right to continue the present Government of the State and necessarily to continue the Legislative Assembly and on the other hand the right to take action under Article 356 by the President to assume functions of the State Government. This dispute involves a major issue of great constitutional importance and the aggrieved party may have other appropriate forum to complain against any substantial injury. Even so, it is not a dispute between the State on the one hand and the Government of India on the other. It is a real dispute between the Government of the State and the Government of India. It is no doubt a question of life and death for the State Government but not so for the State as a legal entity. Even after the dissolution of the Assembly the State will continue to have a Government for the time being as provided for in the Constitution in such a contingency.

162. A Legislature of the State under Art. 168 consists of the Governor and the Legislative Assembly or where there is a Legislative Council both the Houses. This also has its significance in comprehending the nature of the dispute. The members constituting the State Legislature of which the Council of the Ministers is the executive body, alone, do not even constitute the State Legislature. The

Governor is an integral part of the State Legislature under the Constitution. The rights of the Council of Ministers or of the members of the State Legislature cannot, therefore, be equated with the rights of the State even though those rights may be those of the State Government, *pro tempore*.

163. The distinction between the State and the Government is brought out with conspicuous clarity in the following passages:

"The distinction between the State and its Government is analogous to that between a given human individual, as a moral and intellectual person, and his material physical body. By the term 'State' is understood the political person or entity which possesses the law making right. By the term Government is understood the agency through which the will of the State is formulated, expressed and executed. The Government thus acts as the machinery of the State, and those who operate this machinery . . . act as the agents of the State." The Fundamental Concept of Public Law by Westel W. Willoughby, page 49.

"In all constitutionally organised States the State is permitted to sue in the courts not only with reference to its own proprietary or contractual interests, but also on behalf of the general interests of its citizen body. When appearing as plaintiff in the latter capacity it is known as *Parens Patriae*. This jurisprudential doctrine is stated in the *Cyclopedia of Law and Procedure* as follow:

'A State, like any other party, cannot maintain a suit unless it appears that it has such an interest in the subject-matter thereof as to authorise the bringing of the suit by it. In this connection, however, a distinction, should be noted between actions by the people or by the State in a sovereign capacity, and suits founded on some pecuniary interests or proprietary right'. The fundamental Concepts of Public Law by Westel W. Willoughby, page 49.

"The value of the distinction between State and government is the possibility it offers of creating institutional mechanisms for changing the agents of the State, that it, the government, when the latter shows itself inadequate to its responsibilities." The State in Theory and Practice by Harold J. Laski, page 25.

164. I am clearly of opinion that the subject-matter of the dispute in these suits does not appertain to legal rights of the States concerned to satisfy the requirement of Article 131 of the Constitution. These suits are, therefore, not maintainable in law and on this ground they are liable to be dismissed.

165. With regard to the Writ Petitions I had the opportunity to go through the judgments of my brothers Bhagwati and Gupta and I entirely agree with their reasoning and conclusion. I am clearly of opinion that there is no violation of the fundamental rights guaranteed to the petitioners under Arts. 19 (1) (f) and 31 of the Constitution as a consequence of the threatened dissolution of the Legislative Assembly. The Writ Petitions are, therefore, not maintainable and are liable for rejection.

166. Since, however, the question of *mala fides* of the proposed action of the Home Minister was argued at length with a pointed focus on the ensuing Presidential election, I should touch on the point.

167. It is submitted that these grounds, *ex facie*, are completely irrelevant and extraneous and even *mala fide*. Mr. Niren De referred to the decision of the Privy Council in *King-emperor v. Benoari Lal Sharma*, 72 Ind APP 57 at p. 64: (AIR 1945 PC 48 at P. 50) and read to us the following passage:

"It is to be observed that the Section (72 of Government of India Act, 1935) does not require the Governor-General to state that there is an emergency, or what the emergency is, either in the text of the ordinance or at all, and assuming

that he acts bona fide and in accordance with his statutory powers, it cannot rest with the courts to challenge his review that the emergency exists."

Relying on the above passage Mr. De submits that this Court is entitled to examine whether the direction is mala fide or not.

168. The Additional Solicitor General has drawn our attention to *Bhagat Singh v. The King-Emperor*, 58 Ind App 169 at p. 172: (AIR 1931 PC 111 at pp. 111, 112) which is a decision of the Privy Council followed in *Benoari Lal Sarma's case* (supra). He read to use the following passage:

"A state of emergency is something that does not permit of any exact definition. It connotes a state of matters calling for drastic action, which is to be judged as such by some one. It is more than obvious that some one must be the Governor-General, and he alone. Any other view would render utterly inept the whole provision. Emergency demands immediate action, and that action is to be taken by the Governor-General. It is he alone who can promulgate the Ordinance."

169. The President in our Constitution is a constitutional head and is bound to act on the aid and advice of the Council of Ministers (Article 74). This was the position even before the amendment of Article 74(1) of the Constitution by the 42nd Amendment (See *Shamsher Singh v. State of Punjab* (1975) 1 SCR 814 : (AIR 1974 SC 2192). The position has been made absolutely explicit by the amendment of Article 74 (1) by the Constitution 42nd Amendment which says

"there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of this functions, act in accordance with such advice."

What was judicially interpreted even under the unamended Art. 74 (1) has now been given Parliamentary recognition by the Constitution amendment. There can, therefore, be no doubt that the decision under Art. 356 of the Constitution which is made by the President is a decision of the Council of Ministers. Because certain reasons are given in the letter of the Home Minister, it cannot be said that those will be the only grounds which will weigh with the Council of Ministers when they finally take a decision when the advice has been rejected by the Chief Ministers. There are so many imponderables that may intervene between the time of the letter and the actual advice of the Council of Ministers to the President. There may be further developments or apprehension of developments which the Government may have to take note of; and finally when the Council of Ministers decides and advises the President to issue a proclamation under Article 358, the court will be barred from enquiring into the advice that was tendered by the Cabinet to the President (Art. 74 (2)). Then again under Art. 356 (5), the satisfaction of the President in issuing the proclamation under Article 356 (1) shall be final and conclusive and shall not be questioned in any Court on any ground. In the view I have taken, I am not required to consider in the matters before us whether Art. 356 (5) of the Constitution is ultra vires the Constitution or not. Even the Additional Solicitor based his arguments on the very terms of Article 356 (1) de hors Art. 356 (5), relying upon *Bhagat Singh's case* (supra) (AIR 1931 PC 111) that the subjective satisfaction of the President is not justiciable. It is in view of this stand of the Union that Mr. De drew our attention to *Benoari Lal Sharma's case* (supra) (AIR 1945 PC 48) where the Privy Council seems to have indicated that the question of mala fides could be gone into by the court. Mr. De submits that a mala fide order under Art. 356 will be no order in the eye of law.

170. I am not prepared to say that this Court, which is the last recourse for the oppressed and the bewildered, will, for good, refuse to consider when there may be sufficient materials to establish that a proclamation under Art. 356 (1) is tainted with mala fides. I would, however, hasten to add that the grounds given in the Home Minister's letter cannot by any stretch of imagination be held to be mala fide or extraneous or irrelevant. These grounds will have reasonable nexus with the subject of a proclamation under Art. 356 (1) of the Constitution. The matter would have been entirely different if there were no proposal, *pari passu*, for an appeal to the electorate by holding elections to these assemblies.

171. In view of my conclusion that the suits and Writ Petitions are not maintainable I do not feel called upon to deal with the question whether there is a case for permanent injunction or other appropriate writ in those matters. The suits and the Writ Petitions were, therefore, already dismissed.

172. I part with the records with a cold shudder. The Chief Justice was good enough to tell us that the acting President saw him during the time we were considering judgment after having already announced the order that there was mention of the pending matter during the conversation. I have given this relation the most anxious thought and even the strongest judicial restraint which a Judge would prefer to exercise, leaves me no option but to place this on record hoping that the majesty of the High Office of the President, who should be beyond the high watermark of any controversy, suffers not in future.

APPENDIX V

1996(7) Supreme 348
SUPREME COURT OF INDIA
M.M. Punchhi and K.T. Thomas, JJ.
Commissioner of Police, Delhi & Anr.

—Appellants

versus

Registrar, Delhi High Court

—Respondent

Civil Appeal No. 12991 of 1996
(Arising out of SLP (C) No. 19983 of 1996)

with

I.A. No. 3 of 1996

(In SLP (C) No. 19983 of 1996)

Decided on 11.10.1996

(i) *Constitution of India - Article 136 r/w 142 - Special Protection Group Act, 1988 as amended w.e.f. 16.11.1994 - Sections 2(a), 4 & 7 & 14 — Petition seeking relief of change of venue of trial from Tis Hazari Court, Delhi to either of venues suggested in petition — Shri P.V. Narasimha Rao, former Prime Minister of India stood summoned before Chief Metropolitan Magistrate, Tis Hazari Courts — Shri Rao had to be taken before Criminal Court as a Protectee of Special Protection Group — Threat perception — Fears expressed by appellants that it was almost impossible for them to provide proximate security satisfactorily to Shri Rao when required to be taken to Tis Hazari Courts on date fixed — Held, venue of trial/trials involving Shri Rao may be shifted from Tis Hazari Court complex to another venue — Appellants directed to submit to High Court a list of places in New Delhi area suitable for converting into a court — High Court to select the new venue — Exemption from personal appearance of Shri Rao may continue until his presence required in newly venued Court.*

(ii) *Special Protection Group Act, 1988 as amended w.e.f. 16. 11.1994 — Sections 2(a), 14 and 7 — Expression "proximate security" — To be given a purposive meaning — visits of a protectee to courts, compulsory or voluntary — SPG cannot be absolved from its statutory responsibility — Even in court custody or other custody as ordered by*

Court, SPG protective cover cannot be lifted from the protectee. (Constitution of India — Art. 21).

Held that the will of the Parliament reflected in the Act is bold, unequivocal, comprehensive and wide in nature, nowhere permitting withdrawal, limiting or prescribing of the proximate security statutorily conferred on the protectee. The mere fact that the protectee has to go to court as an undertrial, does not disentitle him to the proximate security. His being in transit or getting within the precincts of the court does not absolve the Group from extending to him the proximate security as threat perception to him is in no way diminished. The expression "proximate security" has to be given a purposive meaning, for, it could never have been intended by the Parliament that security would be restricted to places of functions, engagements, residence or halt on resorting to a literal meaning. The purposive approach would warrant these places to be wide enough to include visits of a protectee to courts, compulsive or voluntary and in no way can the Group be absolved from its statutory responsibility on the specious plea that having brought the protectee to the court precincts, the obligation to protect him would then shift to the court, who may either, under orders, place the protectee back to the Group, or send him into Police or Judicial Custody, shifting the obligation of his protection to others. A contrary view expressed on these lines by Shri Bhatt deserves outright rejection. It has to be borne in mind that the protectee is a protectee all the time, as long as he keeps breathing for the period of ten years, from the date he demits office of the Prime Minister. We shall not be taken to have even remotely suggested or tried to impinge on the power of the Court to deal with the person summoned in accordance with law we wish to lay emphasis that even in court custody or other custody as ordered by the court, the SPG protective cover cannot be lifted from the protectee. It goes with the person of the protectee as the shadow would a man. It is for the SPG to devise how to render meaningful protection to the protectee wherever he is even when he is under court orders, vide Section 2(a).

(Para 14)

Further held: Emphasis need be laid on Article 21 of the Constitution which enshrines and guarantees and precious right of life and liberty to a person, deprivable only on following the procedure established by law in a fair trial, assured of the safety of the accused. Assurance of a fair trial is the first imperative of the dispensation of justice.

(Para 15)

It is also not disputed that the protectee would have to visit the courts a number of times not only in this case but in other cases too. We are equally conscious that his appearance time and again, would put a lot many people to inconvenience, if it is insisted upon that like any other criminal, he too should appear in court in such conditions. In these circumstances the assessment of the situation made by the appellants would normally require no contradiction particularly when there is no malafide exercise of power. Should the worst happen, the protectee alone may not depart from the world, as others too might go with him. Instinct of self preservation is the foremost to be favourably responded. The concern of the appellants is therefore justified.

(Para 16)

(iii) *Constitution of India — Articles 136 and 142 — Scope — Appellate jurisdiction under Article 136 is plenary in nature — This Court can determine its own jurisdiction*

tion — Court has special residuary power to entertain appeal against any order of any Court in the country — 1991(4) SCC 406; 1991(4) SCC 584: Relied on.

(Para 18)

Result: Ordered accordingly.

Cases referred:

1. *Maneka Sanjay Gandhi v. Rani Jethmalani*, AIR 1979 SC 469.
2. *Dev Singh & Ors. v. Registrar, Punjab & Haryana High Court and Ors.*, 1987(2) SCR 1005.
3. *Delhi Judicial Service Association v. State of Gujarat*, 1991(4) SCC 406: Relied on.
4. *Union Carbide Corporation v. Union of India*, 1994(4) SCC 584: Relied on.

Counsel for the Parties:

For the Appearing Parties: K.N. Bhatt, Additional Solicitor General, O.P. Sharma, Arun Jaitley, Sr. Advocates, P. Parmeshwaran, R.C. Gubrella, Vivek Sharma, Ashok Sudan, K.R. Gupta, Ms. Nanita, Rajiv Dutta, C.P. Saxena, Ravendra Aggarwal, M.A. Chinnaswamy, Ms. A. Subhashini and A. Ramchanda, Advocates.

Very Important Points

1. On account of the threat perception to Shri P.V. Narasimha Rao, former Prime Minister of India, and the fears expressed by the Commissioner of Police, Delhi, the venue of trial/trials involving Shri Rao may be shifted from Tis Hazari Court complex to another venue.

2. The exemption from personal appearance of Shri Rao, granted by the Supreme Court vide interim orders of 30.9.1996, may continue until the Court concerned requires his presence in the newly venued Court.

3. Even in Court custody or other custody as ordered by the Court, the SPG protective cover cannot be lifted from the protectee as it goes with the person of the protectee as the shadow would a man.

4. The mere fact that the protectee has to go to court as an undertrial, does not disentitle him to the proximate security granted under the Special Protection Group Act.

JUDGEMENT

Punchhi, J. — The People of India, that is Bharat, gave to themselves a written Constitution effective from 26th January, 1950, ordaining in Article 74 that there shall be a council of ministers with the Prime Minister as the Head, to aid and advise the President. The importance of the office of the Prime Minister in a parliamentary democracy is well understood and needs no elaboration. In the course of time, on October 31, 1984, the People of India suffered assassination of their Prime Minister, Shrimati Indira Gandhi, during a period of great turmoil and tumult. Her son, Shri Rajiv Gandhi then stepped forward to serve the country as Prime Minister, when the cult of violence had begun and was expected to gain ground. During his tenure, need was felt to provide high security to the Prime Minister of India and the members of his immediate family, since there had been several threats to his life. A Bill which led to the passing of the Special Protection

Group Act, 1988 (for short the 'Act') was introduced in the Parliament by giving out the following:

"Statement of Objects and Reasons

During the last few years, terrorism has been steadily assuming menacing proportions in various parts of the country and abroad. In addition to indulging in wanton killings, arson, looting and other heinous crimes with the object to overawing the Government, terrorists aim to destabilise the democratically elected Government by resorting to selective killing of prominent members of the public including those who are in the Government. During the last three years, the present Prime Minister has been under several threats to his life.

2. With a view to providing the proximate security to the Prime Minister and the members of his immediate family, both in India as well as abroad, it has been decided to raise a special force. Accordingly, the Special Protection Group was set up in April 1985 under the Cabinet Secretariat.

3. The Special Protection Group is intended to serve as a single specialised agency consisting of highly motivated professionals charged with the responsibility of ensuring the proximate security of the Prime Minister and the members of his family.

4. It is essential that matters concerning the force should be regulated by a self-contained statute which will also provide the essential legal status to its functioning.

5. The proposed legislation will constitute the force as an armed force of the Union. It will lay down the terms and conditions of service of the members of the force and provide for its control and direction. It has provisions restricting the application of some of the Fundamental Rights to the members of the force in so far this is necessary for the maintenance of discipline. Keeping in view, the exclusive task entrusted to the force, it is proposed to make it obligatory on the part of Ministries and Departments of the Central and State Governments and the Union Territories, Indian Missions abroad and local or other authorities, civil or military, to act in aid of the Group."

The Act came into force on June 2, 1988.

2. On December, 2, 1989, Shri Rajiv Gandhi demitted the office of Prime Minister. On May 21, 1991, he was assassinated, whereafter need was felt to bring the former Prime Ministers of India and the immediate members of their families under the umbrella of the Act. Therefore a Bill passed by the Parliament brought forth the necessary amendment with effect from 25.9.1991, whereunder every former Prime Minister of India was brought at par with the existing Prime Minister of India for being extended high security. The following was the statement of objects and reasons made in the Parliament when introducing the amendment:

"Statement of Objects and Reasons

Following the tragic assassination of Shri Rajiv Gandhi, Government have received reports that indicate that several extremist organisations, inside and outside India, are conspiring to cause harm to the members of his immediate family. The threat perception emerging from these reports confirms that the danger to the members of the immediate family of the assassinated ex-Prime Minister is grave and serious.

2. The Central Government have been considering ways and means for providing adequate arrangements for the security of the members of the

immediate family of the assassinated ex-Prime Minister consistent with the high level of threat.

3. With a view to ensuring proximate security for the members of the immediate family of such assassinated Prime Minister and assassinated ex-Prime Minister who continue to be under serious threat, it is considered necessary that such security of the said members of immediate family should be brought within the purview of the Special Protection Group. Since the role of the Special Protection Group as at present provided by law is to provide proximate security only to the Prime Minister and members of his immediate family, an amendment of the Special Protection Group Act, 1988 is necessary to enable the Special Protection Group to take up the task of providing proximate security to the said members of the immediate family."

The Act was further amended w.e.f. November 16, 1994 to extend the period of security from a period of five years to ten years from the date of the Prime Minister demitting office.

3. The Act is thus very special in nature, in as the Prime Minister of India and the members of his immediate family as well as former Prime Ministers of India and the members of their immediate families form a distinct group which are under the protective cover of the Act; the only distinction being that the Prime Minister cannot shake off the protective cover but any member of his immediate family, a former Prime Minister or any member of his immediate family, can and may decline such protective cover, and in that case the obligation to provide security gets lifted.

4. We have on the spread of life five important persons whose security is covered under the Act. They are:

- (1) Shri H.D. Deve Gowda, existing Prime Minister;
- (2) Shri V.P. Singh, former Prime Minister;
- (3) Shri Chander Shekhar, former Prime Minister;
- (4) Shri P.V. Narasimha Rao, former Prime Minister; and
- (5) Shri Atal Behari Vajpayee, former Prime Minister.

5. The Act, as its preamble suggests, is a measure to provide for the constitution and regulation of an armed force of the Union for providing proximate security to the aforementioned category of persons and members of their immediate families, and for matters connected therewith. Unless the context otherwise requires, Section 2(a) defines "active duty" in relation to a member of the Group to mean any duty as such member during the period when he is posted to physically protect the Prime Minister of India and the members of his immediate family, or a former Prime Minister and the members of his immediate family, wherever he or they may be, (emphasis supplied). Section 7 provides that every member of the Group, not on leave or suspension, shall for all purposes of the Act, be always on active duty and may at any time be employed or deployed in any manner which is consistent with duties and responsibilities of the Group under the Act. The expression "proximate security" as per Section 2(g) means protection provided from close quarters, during journey by road, rail, aircraft, watercraft or on foot or any other means of transport and shall include the places of functions, engagements, residence or halt and shall comprise ring round teams, isolation cordons, the sterile zone around, and the rostrum and access control to Section 4 provides that there shall be an armed force of the Union called the Special Pro-

tection Group for providing proximate security to (i) the Prime Minister and the members of his immediate family; and (ii) any former Prime Minister or to the members of his immediate family for a period of ten years from the date on which the former Prime Minister ceased to hold the office of the Prime Minister. Provided that any former Prime Minister or any member of his immediate family may decline such proximate security, Section 14 ordains that it shall be the duty of every civil or military authority to act in aid of the Director or any member of the Group whenever called upon to do so in furtherance of the duties and responsibilities assigned to such Director or member. These are the only prominent provisions of the Act which get attracted to solve the problem we have in hand, relating to a former Prime Minister.

6. Shri P.V. Narasimha Rao, Serialled above at No. 4, stood summoned for 30th September, 1996 at 10.00 a.m. as an accused in R.C. 1(S) 88 — State (CBI) v. Chandraswamy and others, before Shri Ajit Bharihoke, Chief Metropolitan Magistrate/Additional Sessions Judge, Tis Hazari Courts, Delhi, on which date this special leave petition was placed before us at 10.30 a.m. as the first item. The petitioners, namely the Commissioner of Police, Delhi and the Director, Special Protection Group, New Delhi in their special leave petition had bared themselves in concluding, for reasons given, that it was almost impossible for them to provide proximate security satisfactorily to Shri Rao when required to be taken to the Tis Hazari Court on the date fixed. Having regard to the constricted time situation, in which we were placed in examining this matter, we thought making of an interim order in favour of the petitioners as an absolute imperative and achieved the object by exempting personal appearance of Shri P.V. Narasimha Rao, permitting him to appear instead through a pleader before the criminal court on that day and until further orders of this Court.

7. Shri Narasimha Rao, obliged as he was to appear on that day before the criminal court, had to be taken there as a protegee of the Special Protection Group. But the prospect of his being taken there compelled the petitioners to approach the Delhi High Court suggesting that the venue of appearance and the place of trial of Shri P.V. Narasimha Rao be changed, as on account of the location, situation and topography of the Tis Hazari Court Complex, it was almost impossible for the Special Protection Group and the Delhi Police to provide to the protegee proximate security satisfactorily. Since the Administrative Committee of five Hon'ble Judges of that Court, after discussing with the petitioners declined their request on 25.9.1996, the petitioners have approached this Court under Article 136 read with Article 142 of the Constitution seeking the relief of change of venue of the trial from Tis Hazari Court to either of the venues suggested in the petition or to any other venue found suitable and consistent with the requirements of the situations, relaxing the administrative decision of the Delhi High Court dated 25.9.1996 in order to facilitate the petitioners to carry out their statutory duties in the special facts and circumstances of the case.

8. On notice being issued for October 7, 1996, we got a response from the Delhi High Court in the form of an affidavit of its Registrar, appended with which is a copy of an extract from the minutes of the September 25 meeting as perceived by the High Court in contrast with the minutes perceived by the petitioners, copy whereof was annexed with their petition. I.A. No. 3 of 1996 has also been attracted praying for impleadment of the Coordinated Committee of all the three district Bar Associations of District Courts at Delhi, viz. Delhi Bar Association, New Delhi Bar Association and Shahdara Bar Association, and in the alter-

native for allowing them to join as interveners in the special leave petition.

9. Shri K.N. Bhat, learned Additional Solicitor General, appearing for the petitioners, at the very outset maintained that the present petition of the petitioners is in no way adversarial and that it has been brought forth in the uncommon situation developed and likely to develop due to the repeated appearances of Shri Rao in the trial court in the case aforementioned as well as in other cases in other courts, placed within the precincts of Tis Hazari Courts complex. Shri Jaitley, learned counsel appearing for the Registrar, Delhi High Court too has maintained that the counter-affidavit filed by he Registrar is in no way adversarial and has been placed on record to highlight and bare some of the features emerging from the fact situation. The intending intervenor i.e. the Coordination Committee through Shri Rajiv Datta, their learned counsel, was also not adversarial in the strict sense but in opposition to the grant of the prayer suggesting that changing venue would set a bad precedent and at best timings of the trial of cases in which Shri Rao in an accused could be changed to 7.30 a.m. or to any other suitable time before or after the regular court timings. We thus have permitted the Coordination Committee to intervene in the matter and be a party respondent and having done so, we grant leave in order to dispose of this matter finally on the footing that the cause before us is not adversarial. Learned counsel have been heard at length.

10. We have already dwelt at considerable length on the historical aspect of the need for and importance of the proximate security required to be extended to the person of a former Prime Minister. It is through an Act of Parliament that such security stands provided; qualitatively far above that the ordinary security available or extended to other persons in authority before or after retirement from public service. The security available in courts and other places of governance, even in existence, can be no match or substitute to the statutory security affordable to a former Prime Minister. The complex and situation of Tis Hazari Courts where Shri Rao is required to go in response to summons received from the Court of Shri Ajit Bharihoke, Chief Metropolitan Magistrate/Addl. Sessions Judge, has been apprehensively described and visualized by the petitioners as follows:

“ . . . The complex has five entry/exit gates with no access control-system in existence. As many as 250 courts are functional attracting 60,000-70,000 visitors including 5000-10000 lawyers, 2000 car/scooters every day. The complex also houses a canteen umpteen number of lawyer’s huts, innumerable trunks, almirahs, etc. There is absolutely no restriction on movements of men and materials within the complex.

The Court room and Chamber of Shri Bharihoke is on the ground floor near the gate No. 1. The size of the Court room is approximately 30' x 20' with a number of steel/wooden almirahs and steel trunks stacked inside the room. In the remaining space, there are 22 chairs, a table and the seating enclosure of the Special Judge. The corridors provide access to different floors of the entire complex and are full of visitors and litigants during the courts hours.

3. The information gathered so far, indicates that 800-1000 media men including those of visual media and thousands of supporters/detactors and onlookers are likely to congregate inside the court complex on the day of appearance. All will try to converge towards the court room. Hundreds of cars/scooters will be used by this large crowd as means of conveyance to the

court complex. With this large assembly of people, a chocked like situation is anticipated on that day by the security agencies."

11. The Threat Perception to Shri Rao has been summarised by the appellants in this manner:

"1. Shri P.V. Narasimha Rao continues to be the Prime target of Sikh and Kashmiri militant groups.

2. Reports continue to be received about the presence of Sikh and Kashmiri militants in Delhi waiting for an opportunity for mounting a sensational attack.

3. In the past enough indications of plans of LTTE and Islamic fundamentalist groups to target Shri P.V. Narasimha Rao have come to light. The possibility of such elements gaining access in the Court premises in the guise of supporters/media persons/litigants cannot be rules out.

4. The date fixed for the appearance of Shri P.V. Narasimha Rao is publicly known. Hence the possibility of mischievous elements, militant groups taking advantage of the situation capitalising on the difficulties in enforcing strict access control and thorough anti-sabotage checks of the venue and the surrounding areas, including vehicles, can easily plant and detonate explosive devices or even mount an attack in the area. Such a situation will immediately result in a massive stampede and confusion leaving no scope at all for evacuation of the VIP from the area.

5. Any law and order situation that may develop just outside the Court premises is likely to result in immense confusion, melee and stampede which will positively nullify all measures for evacuation of former P.M.

6. Demonstrations and counter demonstrations are likely to give rise to serious law and order problems."

12. The Administration Committee of the High Court has reacted to the above apprehensions and threat perception in the manner reflected from the minutes recorded on 25.9.96, set out below:

Shri Nikhil Kumar, Commissioner of Police Delhi, and Shri Shyamal Dutta, Director (SPG) were heard at length. The Police Commissioner reiterated his request of shifting the venue of trial proceedings in Mr. Narasimha Rao's case to another suitable place where proper security measures could be taken. Shri Dutta submitted that Shri Rao was a SPG proteetee and by virtue of the provisions of Section 2(g) and 14(1) of the SPG Act, 1988, the Special Protection Group could call aid from any authority in the discharge of its statutory duty of providing Special Protection cover for a period of 10 years to the former Prime Minister, Mr. Narasimha Rao, wherever went.

The Director (SPG) was clearly told that the provisions made in Section 2(g) and Section 14 of the SPG Act were not applicable in the case of a person summoned as an accused in a case in Court.

After due consideration of the submissions made by both of these officers, the request for change of venue for trial was declined. The Commissioner of Police was also told to move an application before the concerned Court, if so advised.

The Commissioner of Police was further told that the High Court would not agree to make any special arrangement for a particular person who is to appear as an accused in a case before a Court and that it was upto the SPG/

Police Authorities to make whatever arrangement they considered necessary for safety and security of a particular person without obstructing or hindering the normal course of proceedings in court and the Administration of Justice and that the security arrangement may be made in the manner that no obstruction should be caused to bona fide litigants, witnesses, lawyers etc. coming to any court to attend to their respective cases and the Police should ensure that no obstruction or inconvenience is caused to any Judicial Officer while coming or going from the court and in case a Judicial Officer was, somehow, found held up in the traffic jam caused by police control, he would be taken out of the traffic jam by the police authorities and put on free way to reach the court. The Police would also make arrangements for parking of the vehicles, other than those which have Bar Association and Judges' labels, at the open triangular plot which is opposite Tis Hazari Complex.

The Police Commissioner assured that while making security arrangements, all precautions, as may be required, would be taken to protect the Judicial Officers and the Court Complex. However, he contended that extraordinary steps would be required to meet the exigency of the situation, therefore, some inconvenience is bound to be caused to Judicial Officers, lawyers and litigant public although his endeavour would be to cause as little inconvenience to all as possible."

13. It is evident from the above minutes that the Administrative Committee of High Court was of the view that the provisions of Section 2(g) defining "proximate security" were not applicable in the case of a protectee summoned as an accused in a court case. Additionally, the Committee was of the view that Section 14 of the Act, where under the Special Protection Group could seek assistance required from a court. What the Committee seemingly would have meant was that neither a protectee accused summoned in court was entitled to proximate security, nor could the summoning court be required to assist the Group in terms of Section 14. When attention to this stance of the Committee was drawn Shri Jaitley, learned counsel was candid enough to state that the High Court has no intention to invite any pronouncement on the subject but he could not deny that fact that such view as recorded in the minutes could be a factor which might have influenced the Committee in taking such a position. Significantly the Committee did not dispute the expressed apprehensions and the threat perception to Shri Rao as projected by the appellants but had rather great expectations from the appellants in handling the situation of the day and on other days in a manner reflected in the minutes.

14. We cannot help remarking that the will of the Parliament reflected in the Act is bold, unequivocal, comprehensive and wide in nature, nowhere permitting withdrawal, limiting or prescribing of the proximate security statutorily conferred on the protectee. The mere fact that the protectee has to go to court as an undertrial, does not disentitle him to the proximate security. His being in transit or getting within the precincts of the court does not absolve the Group from extending to him the proximate security as threat perception to him is in no way diminished. The expression "proximate security" has to be given a purposive meaning, for, it could never have been intended by the Parliament that security would be restricted to places of functions, engagements, residence or halt on resorting to a literal meaning. The purposive approach would warrant these places to be wide

enough to include visits of a protectee to courts, compulsive or voluntary and in no way can the Group be absolved from its statutory responsibility on the specious plea that having brought the protectee to the court precincts, the obligation to protect him would then shift to the court, who may either, under orders, place the protectee back to the Group, or send him into Police or Judicial Custody, shifting the obligation of his protection to others. A contrary view expressed on these lines by Shri Bhat deserves outright rejection. It has to be borne in mind that the protectee is a protectee all the time, as long as he keeps breathing for the period of ten years, from the date he demits office of the Prime Minister. We shall not be taken to have even remotely suggested or tried to impinge on the power of the Court to deal with the person summoned in accordance with law we wish to lay emphasis that even in court custody or other custody as ordered by the court, the SPG protective cover cannot be lifted from the protectee. It goes with the person of the protectee as the shadow would a man. It is for the SPG to devise how to render meaningful protection to the protectee wherever he is even when he is under court orders, vide Section 2(a).

15. Shri Bhat supported the need for change of venue not only on the apprehensions and threat perception projected by the appellants but also on the ground that the request for change has been made taking into account certain suggestion made by Hon'ble Mr. Justice J.S. Verma, sitting Judge of this Court, who sat in Commission to report the security failures relatable to the assassination of late Prime Minister Shri Rajiv Gandhi. That report, in our view, is entitled to great respect and his Lordship's suggestions are not meant to be merely on papers but must reach out in action. Another former Prime Minister cannot have to be experimentally killed in order to realize the gravity of threat perception more so while undergoing criminal trial/trials. Emphasis need be laid on Article 21 of the Constitution which enshrines and guarantees the precious right of life and liberty to a person, deprivable only on following the procedure established by law in a fair trial, assured of the safety of the accused. Assurance of a fair trial is the first imperative of the dispensation of justice. This is what Justice Krishna Iyer speaking for the court in *Maneka Sanjay Gandhi v. Rani Jethmalani* had to say:

“...Likewise, the safety of the person of an accused or complainant is an essential condition for participation in a trial and where that is put in peril by commotion, tumult or threat on account of pathological conditions prevalent in a particular venue, the request for a transfer may not be dismissed summarily. It causes disquiet and concern to a court of justice if a person seeking justice is unable to appear, present one's case, bring one's witnesses or adduce evidence. Indeed, it is the duty of the court to assure propitious conditions which conduce to comparative tranquility at the trial. Turbulent conditions putting the accused's life in danger creating chaos inside the court hall may jettison public justice. If this vice is peculiar to a particular plea and is persistent the transfer of the case from that place may become necessary. Likewise, if there is general consternation or atmosphere of tension or raging masses of people in the entire region taking sides and polluting the climate, vitiating the necessary neutrality to hold a detached judicial trial, the situation may be said to have deteriorated to such an extent as to warrant transfer.”

16. We repeat that the High Court does not deny the threat perception. At the same time it requires avoidance of dislocation of the ordinary routine of the

courts when producing the protectee in the Tis Hazari Court. It is also not disputed that the protectee would have to visit the courts a number of times not only in this case but in other cases too. We are equally conscious that his appearance time and again, would put a lot many people to inconvenience, if it is insisted upon that like any other criminal, he too should appear in court in such conditions. In these circumstances the assessment of the situation made by the appellants would normally require no contradiction particularly when there is no malafide exercise of power. Should the worst happen, the protectee alone may not depart from the world, as others too might go with him. Instinct of self preservation is the foremost to be favourably responded. The concern of the appellants is therefore justified.

17. It has been urged by the Bar Coordination Committee that change of venue would set a bad precedent. The appellants too in their minutes prepared, appended with the petition, have thought this to be the view of the Committee. The Registrar of the High Court in his counter has suggested nothing of the kind. Even so, we fail to appreciate how change of venue would create a precedent. The former Prime Ministers entitled to such security are just a handful. We can hopefully look forward that no occasion would arise for citing the instant case as precedent. Those who faced trial in the court of its origin and those whose avenues were shifted, as mentioned in the pleadings of the parties, are merely examples but not precedents. Distinction can be drawn in the instant matter on two grounds (i) those cases were cases on their own fact situation; and (ii) none of the persons involved had the special protective cover of the Act.

18. At this juncture, we may dispose of an objection which was feebly raised in passing by the Bar Coordinated Committee to the effect that the order of the kind passed by the Committee was not amenable to jurisdiction under Article 136 of the Constitution. Reliance was placed on *Dev Singh and others v. Registrar, Punjab and Haryana High Court and others*. Before us the petition is not only under Article 136 but under Article 142 of the Constitution as well. A Larger Bench in the *Delhi Judicial Service Association v. State of Gujarat* has ruled that the appellate jurisdiction under Article 136 is plenary in nature and this Court can determine its own jurisdiction and its effort in that regard would be final. This Court observed as follows:

“18. There is therefore no room for any doubt that this Court has wide power to interfere and correct the judgement and orders passed by any Court or tribunal in the country. In addition to the appellate power, the Court has special residuary power to entertain appeal against any order of any court in the country. The plenary jurisdiction of this Court to grant leave and hear appeals against any order of a court or tribunal confers power of judicial superintendence over all the courts and tribunals in the territory of India including subordinate courts of Magistrate and District Judge. This Court has, therefore, supervisory jurisdiction over all courts in India.”

(emphasis supplied)

Likewise paras 58 to 62 in *Union Carbide Corporation v. Union of India* may be read with advantage in support. Reproduction thereof is avoided to reduce the length of this Judgment.

19. In the same strain, we may, to some extent, deal with the scope of Section 14 of the Act, whereunder assistance can be requisitioned by the Group by enjoining, amongst others, every local or other authority or civil or military authority

to act in aid of the Director or any member, whenever called upon to do so in furtherance of the duties and responsibilities assigned to such Director or member. The language employed is wide enough to include assistance to the Group from all civil and local authorities when taking a protegee to a court of law. We see no reason why the court Administration is isolated from such requirement as long as the assistance sought does not obstruct or in any other manner hinders court proceedings. We need not stretch this aspect of the matter any further for reasons which are obvious.

20. Change of timings of court as suggested by the Coordination Committee is out of question. We do not expect the Presiding Officer of the Court to start functioning at 7.30 a.m. and then continue till the end of the court timings. Likewise we cannot expect the Presiding Officer to sit for two to three hours in continuation of court timings. Such request is totally out of tune with the exigencies of the matter.

21. Lastly the plea of the Coordinate Committee that there should be an open Court trial in terms of section 327 of the Code of Criminal Procedure. We have only to state that within the confines of that provision, the Presiding Judge or the Magistrate of the criminal court can regulate its proceedings and the Presiding Judge or Magistrate, as the case may be, dealing with the matter/matters of Mr. Rao would likewise do the needful as the circumstances of the case may warrant.

22. Thus for the afore-going reasons, we go to allow this appeal upturning the orders of the Administrative Committee of the Delhi High Court reflected in its recorded minutes of 25th September, 1996, paving the way for remittal of this matter to the High Court for fresh consideration by making the following suggestions:

(1) On account of the threat perception to shri Rao and the fears expressed by the appellants the venue of trial/trials involving Shri P.V. Narasimha Rao, former Prime Minister may be shifted from Tis Hazari Court complex to another venue;

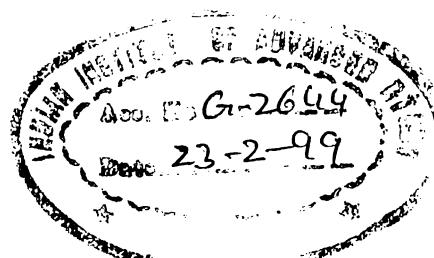
(2) The appellants are directed to submit to the High Court by Monday, the 14th October, 1994, a list of places in New Delhi area which may be suitable for converting into a court, within the shortest possible time;

(3) The choice of Patiala House Court complex as the venue of trial, for obvious reasons, be avoided as far as possible, as similar problems may surface there also;

(4) On the High Court selecting the new venue the appellants and all concerned should make necessary arrangements for conducting the trial/trials pertaining to Shri Rao;

(5) On such happening, the exemption from personal appearance of Shri Rao, granted by us vide interim orders of 30.9.1996, may continue until the Court concerned requires his presence in the newly venued Court.

23. Ordered accordingly.



GOWDA-AHMADI — THE MIDNIGHT MEET

Dr. Janak Raj Jai

The country has witnessed all sorts of scams, scandals and degeneration in almost all the institutions. The only institution where this contagious disease has not been able to enter in full scale is the judicial institution. Courts of the country are the only saviours, and they do not hesitate to step in whenever the occasion arises. Public interest litigation has thus become the order of the day and the judges are showing full inclination to come to the rescue of helpless aggrieved citizens.

The recent meeting on the 26th Sept. 1996 of the Prime Minister with the Chief Justice of India, late in the night has created countrywide controversy.

A large section of the society feels that the Prime Minister had no business to meet the Chief Justice, particularly when two petitions, challenging his own appointment are pending before the Supreme Court.

The Supreme Court Bar held a general body meeting to discuss the propriety of the Gowda-Ahmadi midnight meet. The author, who piloted the meeting of the General Body of Supreme Court Bar, has penned down in this book, all the sensational events that took place during this fortnight.

The book also contains all the three articles written by C.R. Irani, Chief Editor of *The Statesman*.

Editorials and views expressed by the intellectuals and jurists belonging to all walks of life form part of the present work.

A recent meeting of the presiding officers of State Assemblies finding out ways and means to contain the judicial activism of the courts has also been highlighted.

The book is a must for people belonging to all walks of life.



Dr. Janak Raj Jai, born on 23rd August, 1931, is a graduate from Panjab University, Master of Laws from Nagpur University and Doctor of Philosophy in Law from University of Delhi.

He has worked closely with two Prime Ministers, Pt. Jawaharlal Nehru and Smt. Indira Gandhi. Dr. Jai had been detained in Tihar Jail for about 20 months during Emergency. He is now an advocate of long standing, practising in the Supreme Court of India. He is actively involved in the political affairs of the country and is a man of great patriotism, sensitivity, conscience and character.

His publications include: *Delhi Rent Control Exposures*; *The Last Nail (Bofors)*; *What to Do with the Constitution*; *Law and Procedure*; *Divorce — Law and Practice*; *Crash Course on Motor Vehicles Act — A Critique*; *Emergency Exposed*; *Human Rights and JP the Saviour*; *Commissions and Committees (Two Volumes)*, (1996) and *Narasimha Rao — The Best Prime Minister?* (1996).

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