COURT NEWS

Vol V, Issue No. 2 April-June, 2010

EDITORIAL BOARD

Hon'ble Mr. Justice Altamas Kabir, Judge, Supreme Court of India
Hon'ble Mr. Justice Dalveer Bhandari, Judge, Supreme Court of India

COMPILED BY

A.I.S. Cheema, Secretary General, Supreme Court of India
Bibhuti Bhushan Bose, Asstt. Editor, Supreme Court Reports

A quarterly newsletter published by Supreme Court of India, New Delhi

Also available on website: www.supremecourtofindia.nic.in

LIST OF SUPREME COURT JUDGES

(As on 1st September, 2010)

S.No.	Name of the Hon'ble Judge	Date of Appointment	Date of Retirement
01.	Hon'ble Mr. Justice S.H. Kapadia, Chief Justice of India (CJI)	18-12-2003 As CJI: 12-05-2010	29-09-2012
02.	Hon'ble Mr. Justice Altamas Kabir	09-09-2005	19-07-2013
03.	Hon'ble Mr. Justice R.V. Raveendran	09-09-2005	15-10-2011
04.	Hon'ble Mr. Justice Dalveer Bhandari	28-10-2005	01-10-2012
05.	Hon'ble Mr. Justice D.K. Jain	10-04-2006	25-01-2013
06.	Hon'ble Mr. Justice Markandey Katju	10-04-2006	20-09-2011
07.	Hon'ble Mr. Justice H.S. Bedi	12-01-2007	05-09-2011
08.	Hon'ble Mr. Justice V.S. Sirpurkar	12-01-2007	22-08-2011
09.	Hon'ble Mr. Justice B. Sudershan Reddy	12-01-2007	08-07-2011
10.	Hon'ble Mr. Justice P. Sathasivam	21-08-2007	27-04-2014
11.	Hon'ble Mr. Justice G.S. Singhvi	12-11-2007	12-12-2013
12.	Hon'ble Mr. Justice Aftab Alam	12-11-2007	19-04-2013
13.	Hon'ble Mr. Justice J.M. Panchal	12-11-2007	06-10-2011
14.	Hon'ble Dr. Justice Mukundakam Sharma	09-04-2008	18-09-2011
15.	Hon'ble Mr. Justice Cyriac Joseph	07-07-2008	28-01-2012
16.	Hon'ble Mr. Justice Asok Kumar Ganguly	17-12-2008	03-02-2012
17.	Hon'ble Mr. Justice Rajendra Mal Lodha	17-12-2008	28-09-2014
18.	Hon'ble Mr. Justice H.L. Dattu	17-12-2008	03-12-2015
19.	Hon'ble Mr. Justice Deepak Verma	11-05-2009	28-08-2012
20.	Hon'ble Dr. Justice B.S. Chauhan	11-05-2009	02-07-2014
21.	Hon'ble Mr. Justice A.K. Patnaik	17-11-2009	03-06-2014
22.	Hon'ble Mr. Justice T.S. Thakur	17-11-2009	04-01-2017
23.	Hon'ble Mr. Justice K.S. Radhakrishnan	17-11-2009	15-05-2014
24.	Hon'ble Mr. Justice S.S. Nijjar	17-11-2009	07-06-2014
25.	Hon'ble Mr. Justice Swatanter Kumar	18-12-2009	31-12-2012
26.	Hon'ble Mr. Justice C.K. Prasad	08-02-2010	15-07-2014
27.	Hon'ble Mr. Justice H.L. Gokhale	30-04-2010	10-03-2014
28.	Hon'ble Mrs. Justice Gyan Sudha Misra	30-04-2010	28-04-2014
29.	Hon'ble Mr. Justice Anil R. Dave	30-04-2010	19-11-2016

C O U R T N E W S

Vol V, Issue No. 2 **[APRIL - JUNE 2010]**

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This newsletter is intended to provide public access to information on the activities and achievements of the Indian Judiciary in general. The information contained in the newsletter is not necessarily exhaustive and does not constitute a professional or legal opinion. While every care has been taken to ensure accuracy and to avoid errors/omissions, information given in the newsletter is merely for reference and must not be taken as having the authority of, or being binding in any way on, the Editorial Board of the newsletter and the officials involved in compilation thereof, who do not owe any responsibility whatsoever for any loss, damage, or distress to any person, whether or not a user of this publication, on account of any action taken or not taken on the basis of the information given in this newsletter.

S. H. Kapadia
Chief Justice of India

31st August, 2010.

Dissemination of information is an important facet and is testimony to the functioning of an Institution. This dissemination continues with this edition of `Court News' as it updates all and sundry – inland and abroad.

During summer vacation, I have had the privilege to sit back, consider, visualize and take decisions on over-hauling and streamlining the working of the Registry and System as a whole to the benefit of the Nation. To start with, I tried to understand the problems of the Registry, it's grey areas and made an attempt to redress the grievances and re-vitalize the system, the result whereof would be evidenced before long. In order to enable any Court to be successful, it's listing process needs constant attention and invigoration. Keeping in line therewith, the listing procedure has been re-oriented and streamlined – of course, scope for further improvement exists – to the extent that, now, no manual intervention takes place and cases are listed only through computer allocation; Cause Lists are being published in PDF format; Process of mentioning for early listing of cases has been steamlined and mentioning is now done through Registry alone by computer allocation and the practice of oral mentioning with manual handling has been done away with. The problem regarding shortage of space and working conditions of officials is being taken care of. Information and Statistics Department has been created which will have information Bank relating to Case Management where all information will be collected, compiled and stored.

In order to overcome the problems relating to translation of vernacular languages into English, for the first time, a new Translation Cell is created which will be equipped with qualified and professional Translators who will ensure qualitative official translation of documents.

In this era of computerization and to make optimum use thereof as also in order to arrest delay in effecting service of Notice, Notice by E-Mail is being permitted in addition to usual mode of service in commercial litigation and where parties seek urgent relief.

Judiciary has been under attack from various quarters for it's ineffectiveness in arresting arrears of cases. Till date, nobody had given a thought what actually `arrears' mean and whether the term `pendency' falls within the contours of `arrears'. A case filed in the morning cannot – and should not – in the evening fall in the category of `arrears'. Pragmatic and holistic views need to be taken. A case pending, at least, for a year in a court by no means can be termed as `arrear' but should be termed as a `pending case' and this dichotomy is required to be applied in order to assess actual arrears of cases.

...2/-

S. H. Kapadia
Chief Justice of India

In order to establish Rule of Law, I, my brothers and sister have geared up to commit ourselves to the Nation for dispensation of justice, especially to the weaker section of the Society.

I am sure this edition of `Court News' will disseminate useful information about the functioning of Judiciary.

[S.H. KAPADIA]
CHIEF JUSTICE OF INDIA

APPOINTMENTS AND RETIREMENTS IN SUPREME COURT (From 01-04-2010 to 30-06-2010)

APPOINTMENTS

Name of the Hon'ble Judge	Date of Appointment
Hon'ble Mr. Justice S.H. Kapadia, Chief Justice of India	As CJI: On 12-05-2010
Hon'ble Mr. Justice H.L. Gokhale	30-04-2010
Hon'ble Mrs. Justice Gyan Sudha Misra	30-04-2010
Hon'ble Mr. Justice Anil R. Dave	30-04-2010

RETIREMENT

Name of the Hon'ble Judge	Date of Retirement
Hon'ble Mr. Justice K.G. Balakrishnan, Chief Justice of India	12-05-2010

APPOINTMENTS IN HIGH COURTS
(From 01-04-2010 to 31-08-2010)

S. No.	Name of the High Court	Name of the Hon'ble Judge	Date of Appointment
1	Allahabad	F.I. Rebello (As Chief Justice)	26-06-10
2	Calcutta	J.N. Patel (As Chief Justice)	26-06-10
		Harish Tandon	13-04-10
		Tarun Kumar Gupta	21-06-10
		Raghunath Bhattacharya	21-06-10
		Asim Kumar Roy	21-06-10
		Mrinal Kanti Chaudhuri	21-06-10
		Kanchan Chakraborty	21-06-10
3	Gauhati	R.S. Garg (As Chief Justice)	17-04-10
		Madan B. Lokur (As Chief Justice)	24-06-10
4	Jharkhand	Bhagwati Prasad (As Chief Justice)	22-08-10
5	Madhya Pradesh	Brij Kishore Dubey	03-05-10
		Gulab Singh Solanki	03-05-10
		Naresh Kumar Gupta	03-05-10
		Anil Kumar Sharma	03-05-10
6	Madras	M. Yusuf Eqbal (As Chief Justice)	11-06-10
7	Patna	Rekha M. Doshit (As Chief Justice)	21-06-10
		Hemant Kumar Srivastava	12-08-10
8	Punjab & Haryana	Ritu Bahri	16-08-10
9	Rajasthan	K.C. Joshi	24-05-10
		S.S. Kothari	24-05-10

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

TRANSFERS BETWEEN HIGH COURTS (From 01-04-2010 to 31-08-2010)

S. No.	From	To	Name of the Hon'ble Judge	Date of Transfer
1	Calcutta	Bombay	M.S. Shah (Chief Justice)	26-06-10
2	Jammu & Kashmir	Sikkim	Barin Ghosh (Chief Justice)	13-04-10
3	Karnataka	Sikkim	P.D.D. Premkumar (Chief Justice)	09-08-10
4	Patna	Delhi	Dipak Misra (Chief Jusice)	24-05-10
5	Rajasthan	Gujarat	A.M. Kapadia	16-05-10
6	Sikkim	Jammu & Kashmir	Dr. A. H. Saikia (Chief Justice)	13-04-10
7	Sikkim	Uttaranchal	Barin Ghosh (Chief Justice)	12-08-10
8	Uttaranchal	Karnataka	J.S. Khehar (Chief Justice)	08-08-10

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

VACANCIES IN COURTS

A) SUPREME COURT OF INDIA (As on 01-09-2010)

Sanctioned Strength	Working strength	Vacancies
31	29	02

B) HIGH COURTS (As on 01-09-2010)

S. No.	Name of the High Court	Sanctioned strength	Working strength	Vacancies
1	Allahabad	160	73	87
2	Andhra Pradesh	49	32	17
3	Bombay	75	59	16
4	Calcutta	58	39	19
5	Chhattisgarh	18	12	06
6	Delhi	48	41	07
7	Gauhati	24	20	04
8	Gujarat	42	23	19
9	Himachal Pradesh	11	11	00
10	Jammu & Kashmir	14	09	05
11	Jharkhand	20	13	07
12	Karnataka	50	40	10
13	Kerala	38	29	09
14	Madhya Pradesh	43	34	09
15	Madras	60	51	09
16	Orissa	22	15	07
17	Patna	43	30	13
18	Punjab & Haryana	68	46	22
19	Rajasthan	40	23	17
20	Sikkim	03	02	01
21	Uttarakhand	09	08	01
	TOTAL	**895**	**610**	**285**

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

C) DISTRICT & SUBORDINATE COURTS (As on 31-03-2010)

S. No.	Concerned State/Union Territory	Sanctioned Strength	Working Strength	Vacancies
1.	Uttar Pradesh	2185	1921	**264**
2.	Andhra Pradesh	930	801	**129**
3a.	Maharashtra	2087	1763	**324**
3b.	Goa	49	42	**7**
3c.	Diu, Daman & Dadra and Nagar Haveli	4	4	**0**
4.	West Bengal and A&N Islands	933	788	**145**
5.	Chhattisgarh	293	255	**38**
6	Delhi	605	439	**166**
7.	Gujarat	1072	791	**281**
8a.	Assam	326	220	**106**
8b.	Meghalaya	10	8	**2**
8c.	Tripura	92	61	**31**
8d.	Manipur	33	31	**2**
8e.	Nagaland	27	26	**1**
8f.	Mizoram	67	32	**35**
8g.	Arunachal Pradesh	2	2	**0**
9.	Himachal Pradesh	126	119	**7**
10.	Jammu and Kashmir	207	166	**41**
11.	Jharkhand	546	397	**149**
12.	Karnataka	914	811	**103**
13a.	Kerala	437	429	**8**
13b.	Lakshadweep	3	3	**0**
14a.	Tamil Nadu	827	794	**33**
14b.	Puducherry	20	14	**6**
15.	Madhya Pradesh	1288	1117	**171**
16.	Orissa	509	463	**46**
17.	Bihar	1385	1044*	**323**
18a.	Punjab	408	292	**116**
18b.	Haryana	409	286	**123**
18c.	Chandigarh	20	19	**1**
19.	Rajasthan	896	716	**180**
20.	Sikkim	15	9	**6**
21.	Uttarakhand	265	129	**136**
	Total	**16990**	**13992**	**2980**

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

* 18 on deputation

INSTITUTION, DISPOSAL AND PENDENCY OF CASES

A) SUPREME COURT OF INDIA (FROM 01-01-2010 TO 31-08-2010)

						Pendency (At the end of 31-12-2009)		
						Admission matters	Regular matters	Total matters
						34,976	20,815	55,791
Institution (01-01-2010 to 31-08-2010)			**Disposal (01-01-2010 to 31-08-2010)**			**Pendency (At the end of 31-08-2010)**		
Admission matters	Regular matters	Total matters	Admission matters	Regular matters	Total matters	Admission matters	Regular matters	Total matters
47,471	6,476	53,947	49,268	4,753	54,021	33,179	22,538	55,717#

a. Out of the 55,717 pending matters, if connected matters are excluded, the pendency is only of 33,362 matters.

b. Out of the 55,717 pending matters, 19,680 matters are upto one year old and thus arrears (i.e. cases pending for more than a year) are only of 36,037 matters.

B) HIGH COURTS (FROM 01-01-2010 TO 31-03-2010)

S. No	NAME OF HIGH COURT	Civil Cases				Criminal Cases				Total
		Opening Balance as on 01-01-10	Institution from 01-01-10 to 31-03-10	Disposal from 01-01-10 to 31-03-10	Pendency at the end of 31-03-10	Opening Balance as on 01-01-10	Institution from 01-01- 10 to 31-03-10	Disposal from 01-01-10 to 31-03-10	Pendency at the end of 31-03-10	Pendency of Civil and Criminal Cases at the end of 31-03-10
1	Allahabad	668029	31046	36405	662670	282835	30149	22792	290192	952862
2	Andhra Pradesh	162470	12249	8571	166148	24580	4503	2657	26426	192574
3	Bombay	295714	32173	29840	298047	42469	8011	7227	43253	341300
4	Calcutta	273291	16915	15232	274974	46555	7248	6108	47695	322669
5	Chhattisgarh	42701	2618	4600	40719	17717	1758	2387	17088	57807
6	Delhi	49669	6844	7303	49210	11608	3010	3119	11499	60709
7	Gujarat	72337	9281	6439	75179	25286	4569	5040	24815	99994
8	Gauhati	50617	7099	7091	50625	8719	2296	2092	8923	59548
9	Himachal Pradesh	45144	4851	6861	43134	6499	683	734	6448	49582
10	Jammu & Kashmir	53356	6441	3116	56681	2232	587	323	2496	59177
11	Jharkhand	30470	2115	2283	30302	24736	4555	4147	25144	55446
12	Karnataka	154570	41662	30931	165301	17732	5725	3921	19536	184837
13	Kerala	85182	16766	14695	87253	28244	5705	5970	27979	115232
14	Madhya Pradesh	134881	17535	13458	138958	62040	9792	9300	62532	201490
15	Madras	394508	48443	43775	399176	36882	18861	17461	38282	437458
16	Orissa	231269	15931	11706	235494	28549	10159	10709	27999	263493
17	Patna	82646	9063	9272	82437	46261	13827	12412	47676	130113
18	Punjab & Haryana	195976	15196	18760	192412	47806	12761	13180	47387	239799
19	Rajasthan	200780	15947	10864	205863	58407	9368	8852	58923	264786
20	Sikkim	64	16	10	70	21	2	4	19	89
21	Uttarakhand	11384	2831	1709	12506	6473	1943	1332	7084	19590
	TOTAL	3235058	315022	282921	3267159	825651	155512	139767	841396	4108555

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

C) DISTRICT & SUBORDINATE COURTS (FROM 01-01-2010 TO 31-03-2010)

S. No.	Concerned State/ Union Territory	Civil Cases				Criminal Cases				Total Pendency of Civil and Criminal Cases at the end of 31-03-10
		Opening Balance as on 01-01-10	Institution from 01-01-10 to 31-03-10	Disposal from 01-01-10 to 31-03-10	Pendency at the end of 31-03-10	Opening Balance as on 01-01-10	Institution from 01-01-10 to 31-03-10	Disposal from 01-01-10 to 31-03-10	Pendency at the end of 31-03-10	
1	Uttar Pradesh	1299048	133307	130405	1301950	4105585	674526	597589	4182522	5484472
2	Andhra Pradesh	461836	68413	72481	457768	497174	81807	83152	495829	953597
3(a)	Maharashtra	978660	111059	108916	980803	3179798	407268	459752	3127314	4108117
3(b)	Goa	15829	3780	3280	16329	13108	4780	5169	12719	29048
3(c)	Diu and Daman	901	599	538	962	1036	151	109	1078	2040
3(d)	Dadra and Nagar Haveli	1009	56	49	1016	2565	419	294	2690	3706
4(a)	West Bengal	533156	30981	28762	535375	2064499	261068	194099	2131468	2666843
4(b)	A & N Islands	1882	151	121	1912	12705	2039	1942	12802	14714
5	Chhattisgarh	53479	9077	9180	53376	223440	40484	47792	216132	269508
6	Delhi	231892	20168	32762	219298	686494	3167	58967	630694	849992
7	Gujarat	695266	55886	56078	695074	1467333	250147	248229	1469251	2164325
8(a)	Assam	76244	8995	9095	76144	156713	34053	35871	154895	231039
8(b)	Nagaland	1976	38	68	1946	3621	322	621	3322	5268
8(c)	Meghalaya	3970	679	532	4117	8586	706	742	8550	12667
8(d)	Manipur	3407	1014	903	3518	4853	3865	3689	5029	8547
8(e)	Tripura	6789	1574	1516	6847	60576	30943	30496	61023	67870
8(f)	Mizoram	1847	244	391	1700	3684	1347	1819	3212	4912
8(g)	Arunachal Pradesh	816	229	210	835	4992	1774	1535	5231	6066
9	Himachal Pradesh	69398	14333	13186	70545	90568	38288	35264	93592	164137
10	Jammu and Kashmir	65820	11990	11375	66435	116367	52850	51616	117601	184036
11	Jharkhand	47884	4596	3929	48551	225412	22237	23338	224311	272862
12	Karnataka	560380	80575	82499	558456	579311	174257	162205	591363	1149819
13(a)	Kerala	361797	67142	70141	358798	633706	257986	250694	640998	999796
13(b)	Lakshadweep	100	20	11	109	87	7	15	79	188
14	Madhya Pradesh	210015	49268	46629	212654	920527	202448	194305	928670	1141324
15(a)	Tamil Nadu	644110	242137	226120	660127	450787	217473	199088	469172	1129299
15b)	Puducherry	15087	4684	4305	15466	10687	4962	4707	10942	26408
16	Orissa	196099	13772	10759	199112	882865	61177	55491	888551	1087663
17	Bihar*	254500	13192	15342	252142	1236333	78549	62749	1252091	1504233
18(a)	Punjab	268614	31792	32659	267747	305704	85458	84760	306402	574149
18(b)	Haryana	219175	33831	35019	217987	340968	59192	56732	343428	561415
18(c)	Chandigarh	20999	2707	2669	21037	74153	22867	29055	67965	89002
19	Rajasthan	381776	47196	42727	386245	1037107	184157	170307	1050957	1437202
20	Sikkim	271	48	26	293	857	289	230	916	1209
21	Uttarakhand	32849	6065	7046	31868	155871	60806	79110	137567	169435
	Total	7716881	1069598	1059729	7726542	19558072	3321869	3231533	19648366	27374908

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

*208 in Civil side and 42 cases in Criminal side were amalgamated / transferred.

SOME RECENT SUPREME COURT JUDGMENTS OF PUBLIC IMPORTANCE
(From 01-04-2010 to 30-06-2010)

1. **Acquisition of small land holdings:** On 26th April, 2010, a two Judges Bench in *Special Land Acquisition Officer v. Karigowda and Ors.* [Civil Appeal No. 3838 of 2010] held that "there should be speedy disposal of cases particularly where the small land owners have been deprived of their small land-holdings by compulsive acquisition."

   "Any unnecessary delay in payment of the compensation to them would cause serious prejudice and even may have adverse effect on their living", the Bench said.

2. **Passenger Road Transport:** On 27th April, 2010, a two Judges Bench in *Punjab Roadways Moga through its General Manager v. Punja Sahib Bus and Transport Co. & Ors.* [Civil Appeal No.3879 of 2010] held that "if the public is put to hardship or inconvenience due to failure on the part of the State Transport Undertakings (STUs) to operate services inspite of grant of permits for a considerable long time, it is always open to the State Government to modify the scheme" and make appropriate changes in the ratio fixed (in which the routes have to be shared by the STUs and the private operators) on the basis of passenger road transport needs as assessed by the State Transport Commissioner but "such a power is not conferred on the Regional Transport Authority (RTA) and till that is done no private operator can operate his service on any part or portion of a notified area or notified route upsetting the ratio prescribed in the scheme except on a temporary permit granted under the proviso to Section 104 of the Motor Vehicles Act, 1988."

3. **Freedom of Speech and Expression:** On 28th April, 2010, a three Judges Bench in *S. Khushboo v. Kanniammal and Anr*. [Criminal Appeal No.913 of 2010] held that "even though the Constitutional freedom of speech and expression is not absolute and can be subjected to reasonable restrictions on grounds such as 'decency and morality' among others", there is a need "to tolerate unpopular views in the socio-cultural space." The Bench said that the "notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy."

4. **Debt Recovery:** On 3rd May, 2010, a two Judges Bench in *Eureka Forbes Limited v. Allahabad Bank and Ors.* [Civil Appeal No. 4029 of 2010] held that "the word 'debt' under Section 2(g) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is incapable of being given a restricted or narrow meaning." In the said context the Bench held that "the legislature has used general terms which must be given appropriate plain and simple meaning".

5. **Administration of scientific techniques in investigation of criminal cases:** On 5th May, 2010, a three Judges Bench in *Smt. Selvi and Ors. v. State of Karnataka* [Criminal Appeal No.1267 of 2004] while examining legal questions relating to involuntary administration of

certain scientific techniques, namely narco-analysis, polygraph examination and Brain Electrical Activation Profile (BEAP) test for the purpose of improving investigation efforts in criminal cases, held that compulsory administration of the impugned techniques violates the 'right against self-incrimination'. It held that the "results obtained from each of the impugned tests bear a 'testimonial' character and they cannot be categorised as material evidence."

"Forcing an individual to undergo any of the impugned techniques violates the standard of 'substantive due process' which is required for restraining personal liberty. Such a violation will occur irrespective of whether these techniques are forcibly administered during the course of an investigation or for any other purpose since the test results could also expose a person to adverse consequences of a non-penal nature. The impugned techniques cannot be read into the statutory provisions which enable medical examination during investigation in criminal cases, i.e. the Explanation to Sections 53, 53-A and 54 of the Code of Criminal Procedure, 1973", the Bench said.

The Bench said that "no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty." However, the Bench left room for "voluntary administration of the impugned techniques in the context of criminal justice, provided that certain safeguards are in place."

"Even when the subject has given consent to undergo any of these tests, the test results by themselves cannot be admitted as evidence because the subject does not exercise conscious control over the responses during the administration of the test. However, any information or material that is subsequently discovered with the help of voluntary administered test results can be admitted, in accordance with Section 27 of the Evidence Act, 1872", the Bench said.

Referring to *'Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused'* published by The National Human Rights Commission in 2000, the Bench was of the view that the said "guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the 'Narco-analysis technique' and the 'Brain Electrical Activation Profile' test."

6. Local Area Development Scheme: On 6th May, 2010, a Constitution Bench in *Bhim Singh v. Union of India and Ors.* [Writ Petition (Civil) No.21 of 1999] held the Members of Parliament Local Area Development Scheme (MPLAD Scheme) [formulated for enabling the Members of the Parliament to identify small works of capital nature based on locally felt needs in their constituencies] as "valid and *intra vires* of the Constitution". The Bench held that the said Scheme did "not result in an unfair advantage to the sitting Members of Parliament" and did "not amount to a corrupt practice". It said that in the MPLAD Scheme, "an accountability regime has been provided" and in its current form, it "cannot be struck down as unconstitutional".

The Bench held that "the court can strike down a law or scheme only on the basis of its *vires* or unconstitutionality but not on the basis of its viability" and when a regime of accountability is available within a Scheme, "it is not proper for the Court to strike it down, unless it violates any constitutional principle".

7. Position of Governor under the Constitution: On 7th May, 2010, a Constitution Bench in *B.P. Singhal v. Union of India & Anr.* [Writ Petition (Civil) No. 296 of 2004] examined the position of Governor under the Constitution as also the question as to whether the removal of Governors is open to judicial review and thereafter concluded as follows:-

(i) Under Article 156(1), the Governor holds office during the pleasure of the President. Therefore, the President can remove the Governor from office at any time without assigning any reason and without giving any opportunity to show cause.

(ii) Though no reason need be assigned for discontinuance of the pleasure resulting in removal, the power under Article 156(1) cannot be exercised in an arbitrary, capricious or unreasonable manner. The power will have to be exercised in rare and exceptional circumstances for valid and compelling reasons. The compelling reasons are not restricted to those enumerated by the petitioner (that is physical/mental disability, corruption and behaviour unbecoming of a Governor) but are of a wider amplitude. What would be compelling reasons would depend upon the facts and circumstances of each case.

(iii) A Governor cannot be removed on the ground that he is out of sync with the policies and ideologies of the Union Government or the party in power at the Centre. Nor can he be removed on the ground that the Union Government has lost confidence in him. It follows therefore that change in government at Centre is not a ground for removal of Governors holding office to make way for others favoured by the new government.

(iv) As there is no need to assign reasons, any removal as a consequence of withdrawal of the pleasure will be assumed to be valid and will be open to only a limited judicial review. If the aggrieved person is able to demonstrate *prima facie* that his removal was either arbitrary, *malafide*, capricious or whimsical, the court will call upon the Union Government to disclose to the court, the material upon which the President had taken the decision to withdraw the pleasure. If the Union Government does not disclose any reason, or if the reasons disclosed are found to be irrelevant, arbitrary, whimsical, or *malafide*, the court will interfere. However, the court will not interfere merely on the ground that a different view is possible or that the material or reasons are insufficient.

8. Dishonour of Cheque: On 7th May, 2010, a three Judges Bench in *Rangappa v. Sri Mohan* [Criminal Appeal No.1020 of 2010] held that Section 139 of the Negotiable Instruments Act, 1881 (which provides for presumption in favour of the holder) "is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments."

"While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private / parties involved in commercial

transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard or proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail", said the Bench.

9. **Reservation in local self-government institutions:** On 11th May, 2010, a Constitution Bench in *Dr. K. Krishna Murthy & Ors. v. Union of India & Anr.* [Writ Petition (Civil) No.356 of 1994] examined the constitutional validity of some aspects of the reservation policy prescribed for composition of elected local self-government institutions. The Bench held that "the nature and purpose of reservations in the context of local self-government is considerably different from that of higher education and public employment."

10. **Creation of Company Law Tribunal and Appellate Tribunal:** On 11th May, 2010, a Constitution Bench in *Union of India v. R. Gandhi, President, Madras Bar Association* [Civil Appeal No.3067 of 2004] held that "the creation of National Company Law Tribunal and National Company Law Appellate Tribunal" [under Parts IB and IC of the Companies Act, 1956] "and vesting in them, the powers and jurisdiction exercised by the High Court in regard to company law matters" is not unconstitutional.

The Bench said that the "legislature can enact a law transferring the jurisdiction exercised by courts in regard to any specified subject (other than those which are vested in courts by express provisions of the Constitution) to any tribunal."

The Bench, however, tabulated a number of defects in Parts IB and IC of the Act and said that the same "may be made operational by making suitable amendments."

11. **Government Contract:** On 12th May, 2010, a three Judges Bench in *Shimnit Utsch India Pvt. Ltd. and Anr. v. West Bengal Transport Infrastructure Development Corporation Ltd. and Ors.* [Civil Appeal No.4441 of 2010] examined the aspects of judicial review in the matters of government contracts, tenders and change in administrative policy.

The Bench held that though "the State or its tendering authority is bound to give effect to essential conditions of eligibility stated in a tender document and is not entitled to waive such conditions but that does not take away its administrative discretion to cancel the entire tender process in public interest provided such action is not actuated with ulterior motive or is otherwise not vitiated by any vice of arbitrariness or irrationality or in violation of some statutory provisions."

"It is always open to the State to give effect to new policy which it wished to pursue keeping in view 'overriding public interest' and subject to principles of *Wednesbury* reasonableness", said the Bench.

12. **Defamation:** On 14th May, 2010, a two Judges Bench in *Jeffrey J. Diermeier and Anr. v. State of West* Bengal & Anr. [Criminal Appeal No.1079 of 2010] held that "where to the charge of defamation under Section 500 IPC, the accused invokes the aid of Tenth Exception to Section 499 IPC, "good faith" and "public good" have both to be established by him."

"The mere plea that the accused believed that what he had stated was in "good faith" is not sufficient to accept his defence and he must justify the same by adducing evidence. However, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt", said the Bench.

The Bench held that "it is neither feasible nor possible to lay down a rigid test for deciding whether an accused person acted in "good faith" and for "public good" under the said Exception." It held that the question has to be considered on the facts and circumstances of each case, having regard to the nature of the imputation made; the circumstances on which it came to be made and the status of the person who made the imputation as also the status of the person against whom the imputation was allegedly made.

RECENT MAJOR EVENTS AND INITIATIVES

I. **ADDITIONAL BUILDING COMPLEX OF SUPREME COURT:** The foundation stone laying ceremony for the additional building complex of the Supreme Court was held at Pragati Maidan (across the road from Supreme Court), Mathura Road, New Delhi, on 24th April, 2010. The proposed building complex will, to a large extent, mitigate the Registry's predicament regarding shortage of space. A Committee of Hon'ble Judges has been constituted to advise Hon'ble the Chief Justice of India on various steps and decisions required to be taken for construction of the proposed complex and for successful culmination of the Project.

II. **INFORMATION AND STATISTICS DEPARTMENT IN SUPREME COURT:** A new Information and Statistics Department has been directed to be created in the Supreme Court. An officer in the rank of Additional Registrar has been appointed to act as "Information and Statistics Officer" who will periodically give processed necessary information relating to Judiciary, to the Media and the Public. The said Department will act as an Information Bank where all the necessary information and statistics relating to Case Management will be collected, compiled and stored.

III. **TRANSLATION CELL IN SUPREME COURT:** For the first time, a Translation Cell equipped with qualified and professional Translators is being created in the Supreme Court of India to ensure qualitative official translation of vernacular documents into English.

IV. **IMPROVEMENTS IN LISTING PROCEDURE:** In pursuance of the directions of Hon'ble the Chief Justice of India, a number of improvements have been made to re-organise, re-orient and streamline the Listing Procedure, which are as follows:-

a. The process of mentioning the matters for early listing/hearing has been streamlined and advocates/litigants have now to process their matters through Mentioning Branch of the Registry only and oral mentioning, which was in vogue heretofore before the Hon'ble Chief Justice's Court, has been done away with from 12th May, 2010.

b. Listing of matters through Mentioning Branch of the Registry is being done, as per subject category allocation, through computer, with effect from 12th May, 2010, instead of manual listing of such matters.

c. The guidelines regarding listing of matters directed to be listed after a specified period viz. one week, two weeks, etc., have been modified to ensure that such matters are listed immediately after the expiry of the specified period.

d. Matters referred to larger Benches by Division Benches are now treated as 'Priority Sector Litigation' and listed before the Court presided over by Hon'ble the Chief Justice of India on Tuesdays and Wednesdays.

e. Listing of cases is now being done only through Computer allocation which has made the system completely transparent and manual intervention has been done away with. Cause Lists are now being prepared in PDF format.

f. Considering the significance and public importance of “forest matters” and to ensure expeditious disposal thereof, a second Special Bench has been constituted to deal with such matters, which will sit on every Monday.

g. Applications filed under sub-rules (3), (15), (28), (29), (30), (34) and (36) of Rule 1 of Order VI, Supreme Court Rules, 1966, have been directed to be placed before the respective Registrars in office instead of Registrar's Courts with a view to arrest delay in processing such matters and to ensure that they are ready for adjudication before the Court.

h. New subject categories for matters such as 'SLPs filed against judgment/orders passed by the High Courts in Writ Petitions filed as PIL' etc. have been created and separate Codes have been given thereto.

i. An Advance List of all pending matters to be listed before the Hon'ble Judge-in-Chamber is now prepared and published on every Saturday and such matters included in the Advance List are thereafter listed before the respective Hon'ble Judges-in-Chamber in the next week. If an Hon'ble Judge in a regular combination, on any day, is not able to hold Court for any reason, then the other Hon'ble Judge takes up the regular chamber matters or deals with the pending CAV (Case Awaiting Verdict) matters.

V. IMPROVEMENT OF JUSTICE DELIVERY SYSTEM: The Hon'ble Chief Justice of India has impressed upon the Chief Justices of all the High Courts to ensure (a) proper utilisation of the Grant approved by Central Government as per 13th Finance Commission Report for improving Justice Delivery System; (b) utilization of the Grant under the Central Sponsored Scheme for improving infrastructural facilities in Subordinate judiciary; (c) improvements in the Justice Delivery System to bring down pendency and to decongest jails; (d) strengthening of legal aid system so that it actually reaches the weaker sections of the society and ensuring that the funds allocated for legal aid programmes are utilised only therefor and are not spent on ceremonial functions and matters unconnected therewith; (e) formulation of State Litigation Policy; (f) Computer technology to lowest rung judicial officers even in far-flung areas of the country so as to enable them to reach optimum level of efficiency in administration of justice; and (g) creation of dedicated recruitment cells and timely filling up of vacancies in Subordinate Judiciary.

VI. GROUPING, TAGGING AND CATEGORIZATION: As a part of special drive, Hon'ble the Chief Justice of India requisitioned the services of nine Judicial Officers from different States to undertake the exercise of grouping, tagging and categorization of 5302 Supreme Court cases **[**pertaining to (a) Land Acquisition, (b) Public Interest Litigation, (c) Tax and (d) Motor Accident claims**]** between 31st May, 2010 and 14th June, 2010.

VII. DE-CONGESTION DRIVE IN SUMMER VACATION: A drive was undertaken in the Supreme Court Registry in the summer vacation to weed-out files and Paper Books of disposed of cases, consign them to Records, return original records of disposed of cases which were requisitioned and issue Certified copies to de-congest Sections. Additional spaces also have been identified and projects are being pursued to utilise the area to mitigate the hardships of shortage of space.

VIII. DISPOSAL OF JUDICIAL MATTERS IN SUMMER VACATION: 480 judicial matters (323 Admission matters and 157 Regular Hearing matters) were disposed of by the Supreme Court in the summer vacation.

IX. SERVICES OF HON'BLE JUDGES LIBRARY EXTENDED: Services of Hon'ble Judges Library have been extended to cover Holidays also.

X. INCENTIVES TO STAFF: Appropriate incentives have been announced for Non-Gazetted and below staff in the Supreme Court facing hard postings in specified areas in order to motivate them to work with greater zeal.

XI. VISIT BY BHUTANESE DELEGATION: A four member Bhutanese Delegation led by Hon'ble Mr. Justice Lyonpo Sonam Tobgye, Chief Justice of the Supreme Court of Bhutan, visited Supreme Court of India on 25th June, 2010, and had a meeting with Hon'ble the Chief Justice of India, Hon'ble Mr. Justice Altamas Kabir and Hon'ble Mr. Justice R.V. Raveendran.

XII. PARA LEGAL TRAINING AND LEGAL AID*:* The National Committee on Para Legal Training and Legal Aid Actiivities in association with Rajiv Gandhi National Institute of Youth Development and National Legal Services Authority (NALSA) organized a programme Launching of Para Legal Training and Legal Aid Activities and Consultation at Rajiv Gandhi National Institute of Youth Development, Sriperumbudur on 25th April, 2010. The Programme was inaugurated and the Project was launched by Hon'ble Chief Justice of India in the presence of Hon'ble Union Law Minister. There was participation from all the States. Hon'ble Judges of the Supreme Court of India also took part in the different sessions.

XIII. MAJOR ACTIVITIES OF NATIONAL JUDICIAL ACADEMY (NJA):

a) NATIONAL JUDICIAL WORKSHOP ON COURT, CASE LOAD AND CASE MANAGEMENT (2nd April, 2010 to 4th April, 2010): Twenty three judges from across

Seventeen States participated in the workshop. The main objective of this Workshop was to develop specific methodologies to strengthen the judicial skills for effective management of Court as well as cases.

b) ***NATIONAL JUDICIAL SEMINAR ON ENHANCING TIMELY JUSTICE; KEY CHALLENGES FOR THE DISTRICT JUDICIARY (2nd April, 2010 to 4th April, 2010):*** Twenty two Judicial Officers from district judiciary participated in this seminar. The seminar was aimed to analyze and further strengthen the quality of responsiveness of courts to key social challenges faced by the country.

c) ***NATIONAL WORKSHOP ON ADJUDICATION MANAGEMENT: ADJUDICATION OF WRIT PETITIONS (16th April, 2010 to 19th April, 2010):*** The objective of the workshop was to explore the law on writ remedies with senior District Judges who are in the zone of consideration for appointment as High Court judges. The workshop focused on the public law aspects of writ jurisdiction, its historical context as also the new challenges thrown by the hybrid nature of state today. Interface of writ jurisdiction with specific themes, such as development, social justice, civil liberties and governance was also explored during various sessions.

d) ***NATIONAL JUDICIAL SEMINAR ON TERRORISM, SAFETY AND SECURITY (30th April, 2010 to 2nd May, 2010):*** The Seminar was organized for senior district judges. The objective of the seminar was to discuss the peculiar nature of special anti-terrorism legislations and its implications on human rights.

e) ***NATIONAL CONFERENCE OF STATE JUDICIAL ACADEMIES: REVIEW OF KEY ISSUES AND CHALLENGES IN JUDICIAL EDUCATION (30th April, 2010 to 2nd May, 2010):*** The objective of the programme was to look at the various issues and challenges facing judicial education in the country and to develop a strategy for the State Judicial Academies (SJA) to enhance the judicial education in its induction and refresher programmes.

f) ***NATIONAL WORKSHOP ON ADJUDICATION MANAGEMENT: ADJUDICATION OF LABOUR AND INDUSTRIAL DISPUTES (7th May, 2010 to 10th May, 2010):*** Twenty-Four Judicial Officers from 15 States participated in the workshop. The objective of this programme was to strengthen the quality of adjudication of labour disputes with a view to uphold constitutional values and reaffirm pro-worker jurisprudence.

g) ***NATIONAL JUDICIAL SEMINAR ON ENVIRONMENTAL PROTECTION, (14th May, 2010 to 16th May, 2010):*** The participants in the seminar raised issues of water pollution, illegal mining, deforestation, global warming and the lacunae in the legislations meant to protect the environment. Established principles of environmental law and emerging trends in the environmental jurisprudence were discussed.

h) NATIONAL JUDICIAL WORKSHOP ON ADJUDICATION MANAGEMENT: ADJUDICATION OF ENVIRONMENTAL DISPUTES (14th May, 2010 to 17th May, 2010): The workshop attempted to address some of the basic challenges and issues in the adjudication of environmental disputes specifically at the subordinate court level in India. Twenty one Judicial Officers participated in the workshop.

i) SEMINAR ON THE "SOCIO-ECONOMIC REVOLUTION" AGENDA OF THE CONSTITUTION OF INDIA: THE ROLE OF LAW COLLEGES AND JUDICIAL ACADEMIES (12th June, 2010 to 13th June, 2010): The main objectives of this brain storming seminar were: (1) to address the current crisis in legal education in India, in terms of increasing corporatization of legal education; (2) to emphasize the need for institutionalization of linkages between justice system and legal and judicial education; and (3) to develop a concrete action plan to re-orient legal education and law colleges to ensure that law colleges and judicial academies aid in 'socio-economic revolution' agenda of the Constitution of India.

j) SEMINAR ON THE STATE OF THE INDIAN JUSTICE SYSTEM: (19th June, 2010 to 20th June, 2010): The main objective of the seminar was to assess the situation of the Indian Justice especially in the matter of the rights of vulnerable and marginal groups in India. The national challenges facing the country which includes the issue of atrocities and discrimination against the SC/ST population, environmental problems and the rights of tribals and forest dwellers, judicial underpinnings of the Bhopal Gas leak Disaster, Rights of the people in Criminal Justice System and Protection of the Rights of women and children were discussed at length.

SOME IMPORTANT VISITS AND CONFERENCES
(From 01-04-2010 to 30-06-2010)

OVERSEAS

1. Hon'ble Shri K.G. Balakrishnan, the then Chief Justice of India, participated in the International Forum of the Judiciary on the Problems of Judicial Protection of Rights organized by the Supreme Economic Court of Republic of Belarus at Minsk, Belarus on 15th and 16th April, 2010.

2. Hon'ble Mr. Justice Markandey Katju participated in the meeting of the York, 2010 International Conference on "Forced Displacement, Protection Standards and Supervising the 1951 Convention and the 1967 Protocol and other International Instruments" held at York University, Toronto, Canada from 17th May, 2010 to 20th May, 2010.

3. Hon'ble Mr. Justice Cyriac Joseph participated in the International Conference (2010 FOR-Jvs International Forum of Justice) held at Sao Paulo, Brazil from 13th May, 2010 to 15th May, 2010. The focus of the Conference was on "Combat against Pedophilia, Organized Crime, International Terrorism and Corruption".

4. Hon'ble Mr. Justice T.S. Thakur participated in International Network for Environmental Compliance and Enforcement (INECE) Climate Compliance Network Strategic Dialogue held at London, United Kingdom, on 17th and 18th June, 2010. During deliberations, His Lordship presided as a Moderator for the session on "Perspectives on Compliance from Developing and Developed Countries".

INLAND

1. Hon'ble Shri S.H. Kapadia, Chief Justice of India, visited the Rohini District Court, Delhi on 22nd May, 2010, to meet the District Judges and Officers of Subordinate Judiciary to understand their problems for betterment of Judiciary.

2. Hon'ble Shri K.G. Balakrishnan, the then Chief Justice of India visited (i) Kottayam to inaugurate Centenary Celebrations of Kottayam District and Sessions Court on 10th April, 2010 and (ii) Ernakulam (a) to launch NALSA Project on "Promotion of Women Empowerment and Rights to end Violence on Women in the State of Kerala" at Advocates' Association Hall, High Court of Kerala and (b) to inaugurate the Golden Jubilee Chamber Complex at the High Court of Kerala on 10th April, 2010. His Lordship visited Chennai (i) to unveil Statue of Dr. B.R. Ambedkar in the Madras High Court and (ii) to launch para-legal volunteers training Programme at Rajiv Gandhi Institute of Youth Development, Sriperumbudur on 25th April, 2010.

3. Hon'ble Mr. Justice Dalveer Bhandari delivered a Lecture at Symbiosis International University, Pune on 24th June, 2010.

4. Hon'ble Mr. Justice D.K. Jain visited (i) Shahabad, Kurukshetra (Haryana) to inaugurate Gram Nyayalya Complex on 18th April, 2010 and (ii) Shimla, Himachal Pradesh to inaugurate a Seminar organized by TDSAT on "Dispute Resolution Scenario in Telecom and Broadcasting Sector" from 15th May, 2010 to 16th May, 2010.

5. Hon'ble Mr. Justice P. Sathasivam visited Chennai (i) to participate in the function - unveiling of the statue of Dr. B.R. Ambedkar in the High Court premises, Chennai and (ii) to participate in the function - Launching of Para Legal Training and Legal Aid Activities and Consultation at Rajiv Gandhi National Institute of Youth Development, Sriperumbudur on 25th April, 2010.

6. Hon'ble Dr. Justice Mukundakam Sharma visited Guwahati (i) to attend the Bar Association of India's Golden Jubilee Year Seminar on the theme: "One India, One Bar" on 3rd April, 2010 and (ii) to attend Launching Ceremony of "North-Eastern Region Access to Justice and Socio-Economic Development Programmes", to participate in the inauguration of the Conference on "Access to Justice and Socio-Economic Developement" on 17th April, 2010 and to participate in the valedictory session of the Conference on 18th April, 2010. During the Conference, His Lordship chaired a Technical Session on the topic "Right to Education; A North Eastern Perspective".

   His Lordship also visited Guwahati (i) to attend meeting of the North-Eastern Chief Justices at Guwahati (Organised by Ministry of Law & Justice) on 26th June, 2010, and (ii) to attend CAT, Guwahati Bench Silver Jubilee function on 2nd July, 2010.

7. Hon'ble Mr. Justice Cyriac Joseph visited Chandigarh to participate in the Training Programme for Mediators organized by High Court Mediation and Conciliation Committee in Chandigarh Judicial Academy on 24th April, 2010. His Lordship visited (i) Kollam to inaugurate Mediation Awareness programme in the District Court on 1st May, 2010 and (ii) Bangalore to participate in the programme of Mediation & Conciliation Project Committee in the Bangalore Mediation Centre from 5th June to 6th June, 2010 and (iii) Manjeri to inaugurate the Training Programme for Mediators in the District Court on 13th June, 2010. His Lordship also visited Ernakulam to participate in the South Zone Judicial Conference organized by the National Judicial Academy on 25th June, 2010.

8. Hon'ble Mr. Justice Asok Kumar Ganguly visited Allahabad to address the members of Sapru Law Institute on 16th May, 2010.

9. Hon'ble Dr. Justice B.S. Chauhan visited Bhubneshwar to attend Convocation in Utkal University on 17th April, 2010.

10. Hon'ble Mr. Justice Swatanter Kumar visited Meerut to attend the Seminar on "Relation between Bar and Bench" at Civil Court Campus on 22nd May, 2010.

11. Hon'ble Mr. Justice Anil R. Dave visited Ahmedabad to attend Golden Jubilee Celebration of Gujarat High Court on 1st May, 2010.

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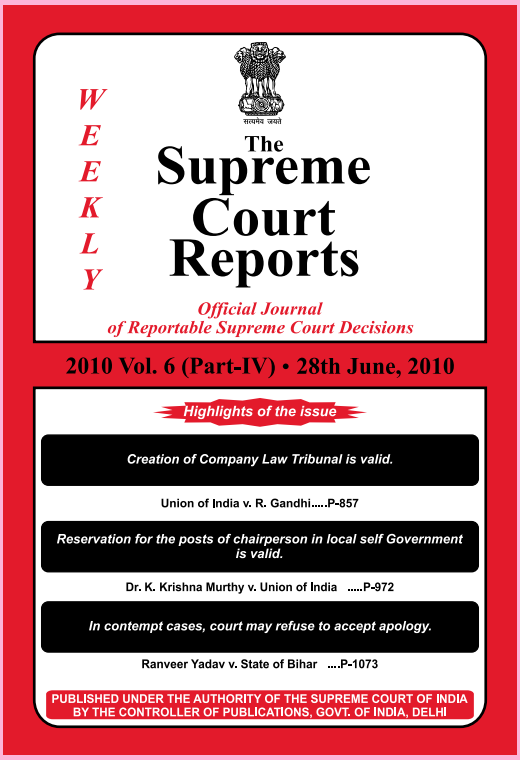

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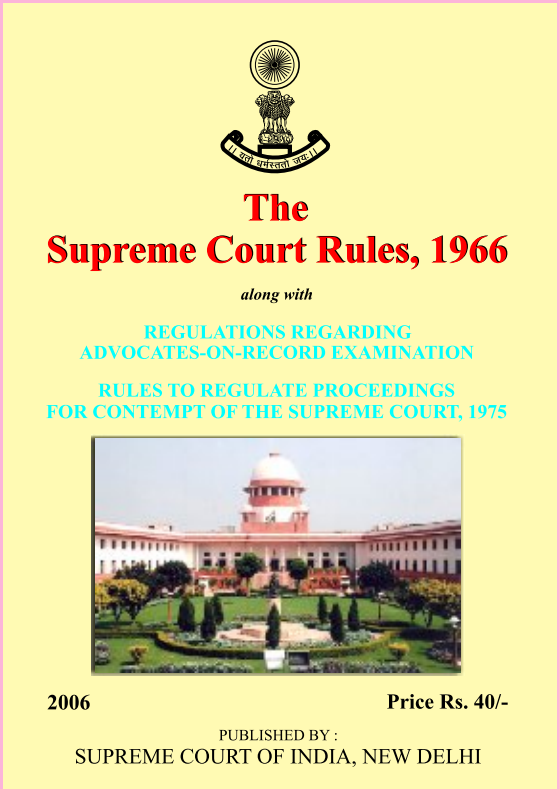

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CHIEF JUSTICE OF INDIA

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2010 **Price : Rs. 30/-**

N.B.: This publication is available at:

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