C. RAVICHANDRAN IYER

v.

JUSTICE A.M. BHATTACHARJEE

SEPTEMBER 5, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ]

Constitution of India—Articles 124(4) and 121—Impeachment—Judicial misconduct—Removal of a Judge on proved misbehaviour or incapacity—Word 'misbehaviour'—Scope and meaning—Bad conduct or bad behaviour of a Judge—Role of Bar Council or Bar Associations—Primacy of Chief Justice of India—Self regulation by judiciary.

Rule of Law—Independence of Judiciary—Judicial individualism—Duty of Judge to maintain high standard of conduct—Freedom of expression and duty of advocate—Contempt of court.

The petitioner, a practising advocate, initiated a public interest litigation under Article 32 of the Constitution seeking to issue an appropriate writ, order or direction restraining the Bar Council of Maharashtra and Goa, Bombay Bar Association and the Advocates' Association of Western India, respondents 2 to 4 respectively, coercing the Ist. Respondent, Chief Justice of Bombay High Court, to resign from the office as Judge. He sought an investigation by the Central Bureaue of Investigation etc. into the allegation made against the Ist. respondent, and if the same were found true, to direct the Speaker, Lok Sabha, to initiate action for his removal under Article 124(4) and (5) read with Article 218 of the Constitution of India and Judges (Inquiry) Act, 1968. This Court issued notice to respondents 2 to 4 and rejected the prayer for interim direction to the President of India and the Union of India not to give effect to the resignation by the Ist respondent.

The petitioner alleged that the news published in various national newspapers proved that the respondents 2 to 4 had pressurised the Ist respondent to resign from the office as Judge for his alleged misbehaviour; that the acts and action of the respondents were unknown to law, i.e., removal by forced resignation, which was not only unconstitutional but also deleterious to the independence of the Judiciary; that the accusations against the Ist respondent without proper investigation by an independent

A agency seriously damaged the image of judiciary and efficacy of judicial adjudication and thereby undermined the credibility of the judicial system itself; that the Judges are not to be judged by the Bar and allowing adoption of such demands by collective pressure rudely shakes the confidence and competence of Judges of integrity, ability, moral vigour and
B ethical firmness which destroyed the very foundation of democratic polity. The petitioner requested the Court to adopt such procedure which would safeguard the independence of the judiciary and protect the Judges from pressure through unconstitutional methods to demit the office.

The respondents 2 to 4 stated that they had in their custody the
C documents to show that the Ist respondent had negotiated with a Publishing Company of London and the acceptance by the Ist respondent for publication and sale abroad of a book authored by him for two years at a royalty US $ 80,000 and an inclusive negotiation for US $ 75,000 for overseas publishing rights of this another book; that from about late 1994,
D there was considerable agitation amongst the members of the bar that certain persons were bringing influence over the Ist respondent and could influence the course of his judgment; that the Ist respondent himself had discussed with the advocate General impressing upon the latter that the former had decided to proceed on leave and would resign in April 1995; that a press interview published in Times of India said to have been given
E by the Ist respondent stating that he had not seriously checked the antecedents of the Publisher and it was possible that he had made a mistake in accepting the offer. The Bar Council of Maharashtra and Goa passed a resolution seeking, resignation forthwith' of the Ist respondent, who assured the Bar that he would resign within a week. However, he had not
F kept his promise. Consequently, after full discussion, for and against, an over whemling majority of 185 out of 207 permanent members resolved in the meeting demanding the resignation of the Ist respondent. It was contended that the Supreme Court and the High Court are two independent constitutional institutions and a High Court is not subordinate to the Supreme Court; that the constitutional process of removal of a
G Judge as provided in Article 124(4) is only for proved misbehaviour or incapacity; that the Bar, being a collective voice of the court, has responsibility and owes duty to maintain independence of the judiciary and it is its obligation to bring it to the notice of the Judge concerned the perceived misbehaviour or incapacity and if it is not voluntarily corrected they have
H to take appropriate measures to have it corrected.

The Attorney General contended that any resolution passed by any Bar Association tentamounts to scandilising the court entailing contempt of the court and that it should be left to the Chief Justice of India to impress upon the erring Judge to correct his conduct. A

The question raised for consideration was whether any Bar Council or Bar Association has the right to pass resolution against the conduct of a Judge perceived to have committed misbehaviour and, if so, what is its effect on independence of the judiciary. B

Disposing of the writ petition, this Court C

HELD : 1.1. Where the complaint relates to the Judge of the High Court, the Chief Justice of that High Court, after verification, and if necessary, after confidential enquiry from his independent source, should satisfy himself about the truth of the imputation made by the Bar Association through its office bearers against the judge and consult the Chief Justice of India, where deemed necessary, by placing all the information with him. When the Chief Justice of India is seized of the matter to avoid embarrassment to him and to allow fairness in the procedure to be adopted in furtherance thereof, the Bar should suspend all further actions to enable the Chief Justice of India to appropriately deal with the matter. This is necessary because any action he may take must not only be just but must also appear to be just to all concerned; i.e., it must not even appear to have been taken under pressure from any quarter. The Chief Justice of India, on receipt of the information from the Chief Justice of the High Court, after being satisfied about the correctness and truth touching the conduct of the Judge, may tender such advice either directly or may initiate such action, as is deemed necessary or warranted under given facts and circumstances. If circumstances permit, it may be salutary to take the Judge into confidence before initiating action. On the decision being taken by the Chief Justice of India, the matter should rest at that. This procedure would not only facilitate nipping in the bud the conduct of a Judge leading to loss of public confidence in the courts and sustain public faith in the efficacy of the rule of law and respect for the judiciary, but would also avoid needless embarrassment of contempt proceedings against the office bearers of the Bar Association and group libel against all concerned. The independence of judiciary and the stream of public justice, would remain pure and unsullied. The Bar Association could remain a useful arm of the D E F G H

A judiciary and in the case of sagging reputation of the particular Judge, the Bar Association could take up the matter with the Chief Justice of High Court and await his response for the action taken thereunder for a reasonable period. [348-E-H; 349-A-C]

1.2. In case the allegations are against chief Justice of a High Court,
B the Bar should bring them directly to the notice of the Chief Justice of India. On receipt of such complaint, the Chief Justice of India would in the same way act as stated qua complaint against a Judge of the High Court, and the Bar would await for a reasonable period the response of the Chief Justice of India. [349-D]

C

1.3. This Court has neither administrative control over the High Court nor power on the Judicial side to enquire into the misbehaviour of a Chief Justice or Judge of a High Court. when the Bar of the High Court concerned reasonably and honestly doubts the conduct of the Chief Justice of that court, necessarily the only authority under the Constitution that
D could be tapped is the Chief Justice of India, who in common parlance is known as the head of the judiciary of the country. Impeachment is meant to be a drastic remedy and needs to be used in serious cases. But there must exist some other means to ensure the Judges do not abuse the trust the society has in them. Self-regulation by the judiciary is the only method
E which can be tried and adopted. Chief Justice of India is the first among the Judges. [346-D-F]

Yawning gap between proved misbehaviour and bad conduct in consistent with the high office on the part of a non co-operting Judge/Chief Justice of a High Court could be disciplined by self-regulation through
F inhouse procedure, this inhouse procedure would fill in the constitutional gap and would yield salutary effect. [349-E]

2.1. In a democracy governed by rule of law under written constitution, judiciary is sentinel on the *qui vive* to protect the fundamental rights
G and to poise even scales of justice between the citizens and the State or the State *Inter se*. Rule of law and judicial review are basic features of the Constitution. As its integral constitutional structure, independence of the judiciary is an essential attribute of rule of law. [333-D]

2.2. The independence of judiciary is not limited only to the inde-
H pendence from the executive pressure or influence; it is a wider concept

which takes within its sweep independence from any other pressure and prejudices. It has many dimensions, viz., fearlessness of other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the judge belong. [333-H; 334-A]

S.P. Gupta v.*Union of India*, [1981] Supp. SCC 87, relied on.

2.3. Independent judiciary is, therefore, most essential when liberty of citizen is in danger. It then becomes the duty of the judiciary to poise the scales of justice unmoved by the powers (actual or perceived) undisturbed by the clamour of the multitude. The heart of judicial independence is judicial individualism. The judiciary is not a disembodied abstraction. It is composed of individual men and women who work primarily on their own. [334-B]

Stephen S.Chandler v. *Judicial Council of the Tenth Circuit of the United States*, 398 US 74:26 L.Ed. 2d 100, relied on.

2.4. The extraordinary complexity oi modern litigation requires a Judge not merely to declare the rights of citizens but also to mould the relief warranted under given facts and circumstances and often command the executive and other agencies to enforce and give effect to the order, writ or direction or prohibit them to do unconstitutional acts. In this on going complex of adjudicatory process, the role of the Judge is not merely to interpret the law but also to lay new norms of law and to mould the law to suit the changing social and economic scenario to make the ideals enshrined in the Constitution meaningful and realty. Therefore, the Judge is required to take judicial notice of the social and economic ramification, consistent with the theory of law. Thereby, the society demands active judicial roles which formerly were considered exceptional but now a routine. The Judge must act independently, if he is to perform the functions as expected of him and he must feel secure that such action will not lead to his own downfall. The independence is not assured for the Judge but to those judged. Independence to the Judge, therefore, would be both essential and proper *considered judgment of the court would guarantee the constitutional liberties which would thrive only in an atmosphere of judicial independence.* Every endeavour should be made to preserve independent judiciary as a citadel of public justice and public security to fulfil the constitutional role assigned to the Judges. [336-B-E]

A 3.1. Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would B be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, C accord dignity to the judicial and enhance public image, not only of the Judge but the court itself. It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than expected of a layman and also higher than expected of an advocate. In fact, even his private life must adhere to D high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society. [338-G-H; 339-A-C]

E 3.2. The founding fathers of the Constitution advisedly adopted cumbersome process of impeachment as a mode to remove a Judge from office for only proved misbehaviour or incapacity which implies that impeachment process is not available for minor abrasive behaviour of a Judge. It reinforces that independence to the Judge is of paramount importance to sustain, strengthen and elongate rule of law. Parliament F sparingly resorts to the mechanism of impeachment designed under the Constitution by political process as the extreme measure only upon a finding of proved misbehaviour or incapacity recorded by a committee constituted under section 3 of the Act by way of address to the President in the manner laid down in Article 124 (4) and (5) of the Constitution, the G Act and the rules made thereunder. [336-F-H]

3.3. Our Constitution permits removal of the Judges only when the motion is carried out with requisite majority of both the houses of the parliament recommending to the President for removal. The Constitution H does not permit any action by any other agency. [337-G]

3.4. Articles 124(4) and 121 would thus put nail squarely on the projections, prosecutions or attempts by any other forum or group of individuals or associations, statutory or otherwise, either to investigate or inquire into or discuss the condition of a Judge or the performance of his duties ond on/off court behaviour except as per the procedure provided under Articles 124(4) and (5) of the Constitution, the Act and the Rules. Thereby, equally no other agency or authority like the C.B.I., Ministry of Defence, the Reserve Bank of India (respondents Nos. 8 to 10) as sought for by the petitioner, could investigate into the conduct or acts or actions of a Judge. No mandamus or direction would be issued to the Speaker of Lok Sabha or Chairman of Rajya Sabha to initiate action for impeachment. [338-C-D]

3.5. Article 124(4) of the Constitution sanctions action for removal of a Judge on proved misbehaviour or incapacity. The word 'misbehaviour" was not advisedly defined. It is vague and elastic word and embraces within its sweep different facets of conduct as opposed to good conduct. Literally, it means wrong conduct or improper conduct. It has to be construed with reference to the subject matter and the context wherein the term occurs having regard to the scope of the Act or the statute under consideration. [340-B-C]

4.1. Article 121 of the Constitution prohibits discussion by the members of the Parliament of the conduct of any Judge of the Supreme Court or of High Court in the discharge of his duties, except upon a motion for presenting an address to the president praying for the removal of the Judge as proved under Articles 124 (4) and (5) and in the manner laid down under the Act, the Rules and the Rules of Business of the Parliament consistent therewith. By necessary implication, no other forum or fora or platform is available for discussion of the conduct of a Judge in the discharge of his duties as a Judge of the Supreme Court or the High Court, much less a Bar Council or group of practising advocates. They are prohibited to discuss the conduct of a Judge in the discharge of his duties or to pass any resolution in that behalf. [342-E-F]

4.2. Guarantee of tenure and its protection by the Constitution would not, however, accord sanctuary for corruption or grave misbehaviour. Yet every action or omission by a judicial officer in the performance of his duties, which is not good necessarily, may not be misbehaviour indictable by impeachment, but its insidious effect may be pervasive and may produce

A deleterious effect on the integrity and impartiality of the Judge. Every misbehaviour in juxtaposition to good behaviour, as a constitutional tautology, will not support impeachment but a misbehaviour which is not a good behaviour may be improper conduct not befitting to the standard expected of a Judge. Threat of impeachment process itself may swerve a Judge to fall prey to misconduct but it serves disgrace to use impeachment process for minor offences or abrasive conduct on the part of a Judge. The bad behaviour of one Judge has a rippling effect on the reputation of the judiciary as built heavily on public confidence and respect, the damage by an obstinate Judge would rip apart the entire judicial structure built in the Constitution. [341-C-E]

C

4.3. Bad Conduct or bad behaviour of a Judge, therefore, needs correction to prevent erosion of public confidence in the efficacy of judicial process or dignity of the institution or credibility to the judicial office held by the obstinate Judge, when the Judge cannot be removed by impeachment process for such conduct but generates widespread feeling of dissatisfaction among the general public, the haitus between bad behaviour and impeachable misbehaviour needs to be filled in to stem erosion of public confidence in the efficacy of judicial process. [341-F-G; H]

4.4. The nation's interest requires that criticism of the judiciary must be measured, strictly rational, sobre and proceed from the highest motives without being coloured by partisan spirit or pressure tactics or intimidatory attitude. The Court must, therefore, harmonise constitutional values of free criticism and the need for a fearless curial process and its presiding functionary, the Judge. If freedom of expression subserves public interest in reasonable measure, public justice cannot gag it or manacle it; but if the court considers the attack on the Judge or Judges scrurrilous, offensive, intimidatory or malicious, beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of the law by fouling its source and stream. The power to punish the contemner is, therefore, granted to the court, not because Judges need the protection, but because the citizens need an impartial and strong judiciary. [344-H; 345-A-C]

4.5. Scurrilous abuse of a Judge or court, or attack on the personal character of a Judge, are punishable contempts. Punishment is inflicted, not for the purpose of protecting either the court as a whole or the

individual Judges of the court from repetition of the attack, but for protecting the public, and especially who either voluntarily or by compulsion are subject to the jurisdiction of the court, from the mischief they will incur if the authority of the tribunal is undermined or impaired. In consequence, the court has regarded with particular seriousness allegations of partiality or bias on the part of a Judge of a court. Criticism of a Judge's conduct or of the conduct of a court, even if strongly worded, is, however, not contempt, provided that the criticism is fair, temperate and made in good faith and is not directed to the personal character of a Judge or to the impartiality of a Judge or court. [343-B-D]

Brahma Prakash Sharma & Ors. **v.** *State of Uttar Pradesh* **AIR (1954) SC 10 and** *Chokolingo* **v.** *AG of Trinidad & Tobaqo*, **[1981] 1 All ER 244, relied on.**

C.J. Miller, *Contempt of Court* **(2nd Edn.) and Borrie & Lowe,** *Law of Contempt* **(2nd Edn.), referred to.**

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 162 of 1995.

(Under Article 32 of the Constitution of India.)

C. Ravichandran Iyer-in-Person, Milon Kr. Banerjee, Attorney General of India, and S.N. Terdol for the Petitioner.

V.N. Ganpule, and V.B. Joshi for the Respondent No. 2

F.S. Nariman, Dariyar Khambatta, R.N. Karanjawala, P.K. Mullick and Ms. Manik Karanjawala for the Respondent NO. 3

Harish N. Salve A.M. Khanwilkar for the Respondent No. 4.

M.N. Krishnamani, for the S.C. Bar Association M.P. Vashi for the Bar Council of Maharashtra.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. The petitioner, a practising advocate, has initiated the public interest litigation under Article 32 of the Constitution seeking to issue an appropriate writ, order or direction restraining permanently the Bar Council of Maharashtra and Goa (BCMG), Bombay Bar

A Association (BBA) and the Advocates' Association of Western India (AAWI), respondents 2 to 4 respectively, coercing Justice A.M. Bhattacharjee [the 1st respondent], Chief Justice of Bombay High Court, to resign from the office as Judge. He also sought an investigation by the Central Bureau of Investigation etc. (respondents 8 to 10) into the allegations made against the 1st respondent and if the same are found true, to B direct the 5th respondent, Speaker Lok Sabha to initiate action for his removal under Article 124 (4) and (5) read with Article 218 of the Constitution of India and Judges (Inquiry) Act, 1968 (for short, 'the Act'). This Court on March 24, 1995 issued notice to respondents 2 to 4 only and rejected the prayer for interim direction to the President of India and the C Union of India (respondents 6 and 7 respectively) not to give effect to the resignation by the 1st respondent. We have also issued notice to the Attorney General for India and the President of the Supreme Court Bar Association (SCBA). The BBA filed a counter-affidavit through its President, Sri Iqbal Mahomedali Chagla. Though respondents 2 and 4 are represented through counsel, they did not file any counter-affidavit. The D SCBA informed the Court that its newly elected office bearers required time to take a decision on the stand to be taken and were directed them to file their written submissions. Shri F.S. Nariman, learned senior counsel appeared for the BBA and Shri Harish N. Salve, learned senior counsel, appeared for AAWI, the 4th respondent. The learned attorney General also assisted the Court. We place on record our deep appreciation for their E valuable assistance.

The SCBA, instead of filing written submissions sent a note with proposal to reopen the case; to issue notice to all the Bar Associations in the country and refer the matter to a Bench of not less than five, preferably F seven, Judges for decision after hearing them all. We do not think that it is necessary to accede to this Suggestion.

The petitioner in a well-documented petition stated and argued with commitment that the news published in various national newspapers do prove that respondents 2 to 4 had pressurised the 1st respondent to resign G from the office as Judge for his alleged misbehaviour. The Constitution provides for independence of the Judges of the higher courts, i.e., the Supreme Court and the High Courts. It also lays down in proviso (a) to clause (2) of Article 124; so too in Article 217 (1) proviso (a) and Article 124 (4), procedure for voluntary resignation by a Judge, as well as for H compulsory removal, respectively from office in the manner prescribed

therein and in accordance with the Act and the rules made thereunder. The acts and actions of the respondents 2 to 4 are unknown to law, i.e., removal by forced resignation, which is not only unconstitutional but also deleterious to the independence of the judiciary. The accusations against the 1st respondent without proper investigation by an independent agency seriously damages the image of judiciary and efficacy of Judicial adjudication and thereby undermine credibility of the judicial institution itself. Judges are not to be judged by the Bar. Allowing adoption of such demands by collective pressure rudely shakes the confidence and competence of judges of integrity, ability, moral vigour and ethical firmness, which in turn, sadly destroys the very foundation of democratic polity. Therefore, the pressure tactics by the Bar requires to be nibbed in the bud. He, therefore, vehemently argued and requested the Court to adopt such procedure which would safeguard the independence of the judiciary and protect the judges from pressure through unconstitutional methods to demit the office.

Shri Chagla in his affidavit and Shri Nariman appearing for the BBA explained the circumstances that led the BBA to pass the resolution requesting the 1st respondent to demit his office as a judge in the interest of the institution. It is stated in the affidavit that though initially he had in his custody the documents to show that the 1st respondent had negotiated with Mr. S.S. Musafir, Chief Executive of Roebuck Publishing, London and the acceptance by the 1st respondent for publication and sale abroad of a book authored by him, viz., "Muslim Law and the Constitution" for two years at a royalty of US $ 80,000 (Eighty thousand U.S. Dollars) and an inconclusive negotiation for US$ 75,000 (Seventy five thousand U.S. Dollars) for overseas publishing rights of his book "Hindu Law and the Constitution" (2nd Edn), he did not divulge the information but kept confidential. From about late 1994, there was considerable agitation amongst the members of respondents 3 and 4 that certain persons whose names were known to all and who were seen in the court and were being openly talked about, were bringing influence over the 1st respondent and could "influence the course of judgments of the former Chief Justice of Bombay". "The names of such persons though known are not being mentioned here since the former Chief Justice of Bombay has resigned as Chief Justice and judge of the Bombay High Court". It was also rumoured that "the former Chief Justice of Bombay has been paid a large sum of money in foreign exchange purportedly as royalty for a book written by him, viz.,

A "Muslim Law and the Constitution". The amount of royalty appeared to be totally disproportionate to what a publisher abroad would be willing to pay for foreign publication of a book which might be of academic interest within India (Since the book was a dissertation of Muslim Law in relation to the Constitution of India). There was a growing suspicion at the Bar that the amount might have been paid for reasons other than the ostensible B reason". He further stated that the 1st respondents himself had discussed with the Advocate General on February 14, 1995 impressing upon the later that the Chief Justice "had decided to proceed on leave from the end of February and would resign in April 1995". The Advocate General had conveyed it to Shri Chagla and other members of the Bar. By then, the C financial dealings referred to above were neither known to the public nor found mention in the press reports. Suddenly on February 19, 1995, the advocates found to their surprise a press interview published in Times of India said to have been given by the 1st respondent stating that "he had not seriously checked the antecedents of the publishers and it was possible that he had made a mistake in accepting the offer". He was not contemplat- D ing to resign from judgship at that stage and was merely going on medical leave for which he had already applied for and was granted. The BCMG passed a resolution on February 19, 1995 seeking "resignation forthwith" of the 1st respondent. On February 21, 1995, the BBA received a requisition for holding its General Body meeting to discuss the financial dealings said E to have been had by the 1st respondent "for a purpose other than the ostensible purpose thereby raising a serious doubt as to the integrity of the Chief Justice". The meeting was scheduled to be held at 2.15 p.m. on February 22, 1995 as per its bye-laws. The 1st respondent appears to have rung up Shri Chagla in the evening on February 21, 1995 but he was not F available. Pursuant to a contact by Shri W.Y. Yande, the President of AAWI, at the desire of Chief Justice to meet him, Shri Chagla and Shri Yande met the 1st respondent at his residence at 10.00 a.m. in the presence of two Secretaries of the 1st respondent, who stated thus to Shri Chagla as put in his affidavit :

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> "....The Bar council of Maharashtra and Goa had already shot an arrow and that the wound was still fresh and requested me to ensure that he would not be hurt any further by a resolution of the Bombay Bar Association. The 1st respondent informed me that he had already agreed to resign and in fact called for and showed me

H a letter dated 17th February, 1995 addressed by him to the

Honourable the Chief Justice of India in which he proposed to go on medical leave for a month and that at the end of the leave or even earlier he proposed to tender his resignation". A

They had reminded the 1st respondent of the assurance given to the Advocate General expressing his desire to resign and he conveyed his personal inconveniences to be encountered etc. The 1st respondent assured them that he would "resign within a week which resignation would be effective some 10 or 15 days thereafter and that in the meanwhile he would not do any judicial work including delivery of any judgment". Shri Chagla appears to have told the 1st respondent that though he would not give an assurance, he would request the members of the Association to postpone the meeting and he had seen that the meeting was adjourned to 5.00 p.m. of March 1, 1995. On enquiry being made on March 1, 1995 from the Principle Secretary to the 1st respondent whether the 1st respondent had tendered his resignation, it was replied in negative which showed that the 1st respondent had not kept his promise, Consequently, after full discussion, for and against, an overwhelming majority of 185 out of 207 permanent members resolved in the meeting held on March 1, 1995 at 5.00 p.m. demanding the resignation of the 1st respondent. B C D

Since the 1st respondent has already resigned, the question is whether a Bar Council or Bar Association is entitled to pass resolution demanding a judge to resign, what is its effect on the independence of the judiciary and whether it is constitutionally permissible. Shri Nariman Contended that the Supreme Court and the High Court are two independent constitutional institutions. A High Court is not subordinate to the Supreme Court though constitutionally the Supreme Court has the power to hear appeals from the decisions or orders or judgments of the High Courts or any Tribunal or quasi-judicial authority in the Country. The Judges and the Chief Justice of a High Court are not subordinate to the Chief Justice of India. The constitutional process of removal of a Judge as provided in Article 124(4) of the Constitution is only for proved misbehaviour or incapacity. The recent impeachment proceedings against Justice V. Ramaswami and its fall-out do indicate that the process of impeachment is cumbersome and the result uncertain. Unless corrective steps are taken against judges whose conduct is perceived by the Bar to be detrimental to the independence of the judiciary, people would lose faith in the efficacy of judicial process. Bar being a collective voice of the court concerned has E F G H

A responsibility and owes duty to maintain independence of the Judiciary. It is its obligation to bring it to the notice of the Judge concerned the perceived misbehaviour or incapacity and if it is not voluntarily corrected they have to take appropriate measures to have it corrected. Bar is not aware of any other procedure than the one under Article 124(4) of the
B Constitution, and the Act. Therefore, the BBA, instead of proceeding to the press, adopted democratic presses to pass the resolution, in accordance with its bye-laws, when all attempts made by it proved abortive. The conduct of the Judge betrayed their confidence in his voluntary resignation. Consequently, the BBA was constrained to pass the said resolution. Thereby it had not transgressed its limits. Its action is in consonance with its
C bye-laws and in the best tradition to maintain independence of the judiciary. Shri Nariman also cited the instance of non-assignment of work to four judges of the Bombay High Court by its former chief Justice when some allegations of misbehaviour were imputed to them by the Bar. He, however submitted that in the present case the allegations were against the
D Chief Justice himself, and so, he could not have been approached. He urged that if some guidelines could be laid down by this Court in such cases, the same would be welcomed.

The counsel appearing for the BCMG, who stated that he is its member, submitted that when the Bar believes that the Chief Justice has
E committed misconduct, as an elected body it is its duty to pass a resolution after full discussion demanding the Judge to act in defence of independence of the judiciary by demitting his office.

Shri Salve argued that independence of the judiciary is paramount.
F Judges should not be kept under pressure. Such procedure which would be conducive to maintain independence of the judiciary and at the same time would nib the evil in the bud, needs to be adopted. The tendencies of unbecoming conduct on the part of erring judges would betray the confidence of the litigant public in the efficacy of the judicial process. In the light of the previous experience, it is for the Court to evolve a simple
G and effective procedure to meet the exigencies.

The learned Attorney General contended that any resolution passed by any Bar Association tantamounts to scandalising the court entailing contempt of the court. It cannot coerce the judge to resign. The pressure
H brought by the Chief Justice of India upon the Judge would be constitu-

tional but it should be left to the Chief Justice of India to impress upon the erring Judge to correct his conduct. This procedure would yield salutary effect. The Chief Justice of India would adopt such procedure as is appropriate to the situation. He cited the advice tendered by Lord Chancellor of England to Lord Denning, when the latter was involved in the controversy over his writing on the jury trial and the composition of the black members of the jury, to demit the office, which he did in grace.

Rule of Law and Judicial Independence - Why need to be preserved?

The diverse contentions give rise to the question whether any Bar council or Bar Association has the right to pass resolution against the conduct of a Judge perceived to have committed misbehaviour and, if so, what is its effect on independence of the judiciary. With a view to appreciate the contentions in their proper perspective, it is necessary to have at the back of our mind the importance of the independence of the judiciary. In a democracy governed by rule of law under written Constitution, judiciary is sentinel on the *qui vive* to protect the fundamental rights and to poise even scales of justice between the citizens and the State or the States *inter se*. Rule of law and judicial review are basic features of the Constitution. As its integral constitutional structure, independence of the judiciary is an essential attribute of rule of law. In *S.P. Gupta* v. *Union of India*, [1981] Supp. SCC 87, in paragraph 27, this Court held that if there is one principle which runs through the entire fabric of the Constitution it is the principle of the rule of law, and under the Constitution it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law meaningful and effective, Judicial review is one of the most potent weapons in the armoury of law. The judiciary seeks to protect the citizen against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers. The judiciary stands between the citizen and the State as a bulwark against executive excesses and misuse or abuse of power by the executive. It is therefore, absolutely essential that the judiciary must be free from executive pressure or influence which has been secured by making elaborate provisions in the Constitution with details. The independence of judiciary is not limited only to the independence from the executive pressure or influence; it is a wider concept which takes within its sweep independence from any other pressure and prejudices. It has many dimensions, viz., fearlessness of other power centres, economic or political,

A and freedom from prejudices acquired and nourished by the class to which the judges belong.

Judicial individualism - whether needs protection?

Independent judiciary is, therefore, most essential when liberty of
B citizen is in danger, It then becomes the duty of the judiciary to poise the scales of justice unmoved by the powers (actual or perceived) undisturbed by the clamour of the multitude. The heart of judicial independence is judicial individualism. The judiciary is not a disembodied abstraction. It is composed of individual men and women who work primarily on their own.
C Judicial individualism, in the language of Justice Powell of the Supreme Court of United States in his address to the American Bar Association, Labour Law Section on August 11, 1976, is perhaps one of the last citadels of jealously preserved individualism...". Justice Douglas in his dissenting opinion in *Stephen S. Chandler* v. *Judicial Council of the Tenth Circuit of the United States* 398 US 74: 26 L.ED. 2d 100 stated :

D

> "No matter how strong an individual judge's spine, the threat of punishment—the greatest peril to judicial independence - would project as dark a shadow whether cast by political strangers or by judicial colleagues. A federal judge must be independent of every
E other judge... Neither one alone nor any number banded together can act as censor and place sanctions on him. It is vital to preserve the opportunities for judicial individualism."

He further opined that to give the administrative officer any supervision or control over the exercise of purely judicial function would be to
F destroy the very fundamentals of the theory of government. An independent judiciary is one of the nation's outstanding characteristics. Once a federal judge is confirmed by the Senate and takes his oath, he is independent of every other judge. He commonly works with other federal judges who are likewise sovereign. But neither one alone nor any number banded together can act as censor and place sanctions on him. Under the
G Constitution the only leverage that can be asserted against him in impeachment, where pursuant to a resolution passed by the House, he is tried by the Senate, sitting as a jury. The tradition even bars political impeachments as evidence by the highly partisan, but unsuccessful, effort to oust Justice Samuel of that Court in 1805..... There is no power under the Constitution
H for one group of federal judges to censor any federal judge and no power

to declare him inefficient and strip him of his power to act as a Judge. At page 139 it was further pointed out that it is time that an end be put to these efforts of federal judges to ride herd on other federal judges. This is a form of 'hazing' having no place under the Constitution. Federal Judges are entitled, like other people, to the full freedom of the First Amendment. If they break a law, they can be prosecuted. If they become corrupt or sit in cases in which they have a personal or family stake, they can be impeached by Congress. But I search the Constitution in vain for any power of surveillance which other federal judges have over those aberrations. Some judges may be displeasing to those who walk in more measured, conservative steps. But those idiosyncrasies can be of no possible constitutional concern to other federal judges. It is time to put an end to the monstrous practices that seem about to overtake us.....".

In *Chandler*, a United States District Judge had filed a motion for leave to file a petition for a writ of mandamus or alternatively a writ of prohibition addressed to the Judicial Council of the Tenth circuit. His petition sought resolution of questions of first impression concerning, *inter alia*, the scope and constitutionality of the powers of the Judicial Council under 28 USC 88 137 and 6,332. The Judicial Council of each federal circuit is under that stature, composed of the active circuit judges of the circuit. Petitioner asked the Court to issue an order under the All Writs Act telling the Council to "cease acting in violation of its powers and in violation of Judge Chandler's rights as a federal judge and an american citizen". Majority held that in essence, petitioner challenged all orders of the judicial Council relating to assignment of cases in the Western District of Oklahoma and fixing conditions on the exercise of his constitutional powers as a Judge. Specifically, petitioner urged that the Council has usurped the impeachment power, committed by the Constitution to the Congress exclusively. While conceding that the invoking statute conferred some powers on the Judicial Council, petitioner contended that the legitimate administrative purposes to which it may be turned, do not include stripping a judge of his judicial functions as, he claimed, was done there. No writ was issued.

The arch of the Constitution of India pregnant from its Preamble, Chapter III (Fundamental Rights) and Chapter IV (Directive Principles) is to establish an egalitarian social order guaranteeing fundamental freedoms and to secure justice—social, economic and political - to every

A citizen through rule of law. Existing social inequalities need to be removed and equality in fact is accorded to all people irrespective of caste, creed, sex, religion or region subject to protective discrimination only through rule of law. The Judge cannot retain his earlier passive judicial rule when he administers the law under the Constitution to give effect to the constitutional ideals. The extraordinary complexity of modern litigation requires B him not merely to declare the rights of citizens but also to mould the relief warranted under given facts and circumstances and often command the executive and other agencies to enforce and give effect to the order, writ or direction or prohibit them to do unconstitutional acts. In this on going complex of adjudicatory process, the role of the judge is not merely to C interpret the law but also to lay new norms of law and to mould the law to suit the changing social and economic scenario to make the ideals enshrined in the Constitution meaningful and reality. Therefore, the Judge is required to take judicial notice of the social and economic ramification, consistent with the theory of law. Thereby, the society demands active D judicial roles which formerly were considered exceptional but now a routine. The Judge must act independently, if he is to perform the functions as expected of him and he must feel secure that such action of him will not lead to his own downfall. The independence is not assured for the Judge but to the judged. Independence to the Judge, therefore, would be both essential and proper. *Considered judgment of the court would guarantee the* E *Constitutional liberties which would thrive only in an atmosphere of judicial independence.* Every endeavour should be made to preserve independent judiciary as a citadel of public justice and public security to fulfil the constitutional role assigned to the Judges.

F The founding fathers of the Constitution advisedly adopted cumbersome process of impeachment as a mode to remove a Judge from office for only proved misbehaviour or incapacity which implies that impeachment process is not available for minor abrasive behaviour of a Judge. It reinforces that independence to the Judge is of paramount importance to sustain, strengthen and elongate rule of law. Parliament sparingly resorts G to the mechanism of impeachment designed under the Constitution by political process as the extreme measure only upon a finding of proved misbehaviour or incapacity recorded by a committee constituted under Section 3 of the Act by way of address to the President in the manner laid down in Article 124 (4) and (5) of the Constitution, the Act and the Rules H made thereunder.

In all common law jurisdictions, removal by way of impeachment is the accepted norm for serious acts of judicial misconduct committed by a Judge. Removal of a Judge by impeachment was designed to produce as little damage a possible to judicial independence, public confidence in the efficacy of judicial process and to maintain authority of courts for its effective operation.

In United State, the Judges appointed under Article III of the American Constitution could be removed only by impeachment by the Congress. The Congress enacted the Judicial Councils Reform and Judicial Conduct and disability Act of 1980 (the 1980 Act) by which Judicial Council was explicitly empowered to receive complaints about the judicial conduct "prejudicial to the effective and expeditious administration of a business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability".

Jeffrey N. Barr and Thomas E. Willging conducted research on the administration of the 1980 Act and in their two research volumes, they concluded that "several chief judges view the Act as remedial legislation designed not to punish judges but to correct aberrant behaviour and provide opportunity for corrective action as a central feature of the Act". From 1980 to 1992, 2388 complaints were filed. 95 percent thereof resulted in dismissal. 1.7. per cent of the complaints ended in either dismissal from service or corrective action of reprimands - two of public reprimands and one of private reprimand. Two cases were reported to Judicial Conference by the judicial councils certifying that the grounds might exist for impeachment.

Our Constitution permits removal of the Judge only when the motion was carried out with requisite majority of both the Houses of the Parliament recommending to the President for removal. In other words, the Constitution does not permit any action by any agency other than the initiation of the action under Article 124(4) by the Parliament. In *Sub-Committee on Judicial Accountability Etc. Etc.* v. *Union of India & Ors. Etc.*, [1991] Supp. 2 SCR 1, this Court at page 54 held that the removal of a Judge culminating in the presentation of an address by different Houses of Parliament to the President, is committed to the Parliament along and no initiation of any investigation is possible without the initiative being taken

by the Houses themselves. At page 71 it was further held that the constitutional scheme envisages removal of a Judge on proved misbehaviour or incapacity and the conduct of the Judge was prohibited to be discussed in the Parliament by Article 121. Resultantly, discussion of the conduct of a judge or any evaluation or inferences as to its merit is not permissible elsewhere except during investigation before the Inquiry Committee constituted under the Act for this purpose.

Articles 124(4) and 121 would thus put the nail squarely on the projections, prosecutions or attempts by any other forum or group of individuals or Associations, statutory or otherwise, either to investigate or enquire into or discuss the conduct of a Judge or the performance of his duties and on/off court behaviour except as per the procedure provided under Article 124(4) and (5) of the Constitution, and Act and the Rules. Thereby, equally no other agency or authority like the C.B.I. Ministry of Finance, the Reserve Bank of India (respondents Nos. 8 to 10) as sought for by the petitioner, would investigate into the conduct or acts or actions of a Judge. No mandamus or direction would be issued to the Speaker of Lok Sabha or Chairman of Rajya Sabha to initiate action for impeachment. It is true, as contended by the petitioner, that in *K. Veeraswami* v. *Union of India*, [1991] 3 SCC 655, majority of the Constitution Bench upheld the power of the police to investigate into the disproportionate assets alleged to be possessed by a Judge, an offence under Section 5 of the Prevention of Corruption Act, 1947 subject to prior sanction of the Chief Justice of India to maintain independence of the judiciary. By interpretive process, the Court carved out primacy to the rule of the Chief Justice of India, whose efficacy in a case like one at hand would be considered at a later stage.

Duty of the Judge to maintain high standard of conduct. Its judicial individualism - whether protection imperative?

Judicial office is essentially a public trust, Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of Judicial process. Society, therefore, expects

higher standards of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the court itself. it is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than expected of a layman and also higher than expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society.

In *Krishna Swami* v. *Union of India & Ors.*, [1992] 4 SCC 605 at 650-51, one of us (K. Ramaswamy, J). held that the holder of office of the judge of the Supreme Court or the High Court should, therefore, be above the conduct of ordinary mortals in the society. The standards of judicial behaviour, both on and off the Bench, are normally high. There cannot, however, be any fixed or set principles, but an unwritten code of conduct of well-established traditions is the guidelines for judicial conduct. The conduct that tends to undermine the public confidence in the character, integrity or impartiality of him Judge must be eschewed. It is expected of him to voluntarily set forth wholesome standards of conduct reaffirming fitness to higher responsibilities.

To keep the stream of justice clean and pure, the Judge must be endowed with sterling character, impeccable integrity and upright behaviour. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The Judges of higher echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings and weak character which may be found in those in other walks of life. They should be men of fighting faith with tough fibre not susceptible to any pressure, economic, political or any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short, the behaviour of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and

A justice and the antithesis rocks the bottom of the rule of law.

Scope and meaning of "misbehaviour" in Article 124 (4) :

Article 124(4) of the Constitution sanctions action for removal of a
B judge on proved misbehaviour or incapacity. The word "misbehaviour" was not advisedly defined. It is a vague and elastic word and embraces within its sweep different facets of conduct as opposed to good conduct. In the Law Lexicon by P. Ramanatha Aiyar, 1987 Edn. at page 821, collected from several decisions, the meaning of the word 'misconduct' is stated to be vague and relative term. Literally, it means wrong conduct or improper
C conduct. It has to be construed with reference to the subject matter and the context wherein the terms occurs having regard to the scope of the Act or the statute under consideration. In the context of disciplinary proceedings against Solicitor, the word misconduct was construed as professional misconduct extending to conduct "which shows him to be unworthy mem-
D ber of the legal profession." In the context of misrepresentation made by a pleader, who obtained adjournment of a case on grounds to his knowledge to be false a Full Bench of the Madras High Court in *Re: A First Grade Pleader* AIR 1931 Mad. 422 = ILR 54 Mad. 520 held that if a legal practioner deliberately made, for the purpose of impeding the course of justice, a statement to the court which he believed to be untrue and thereby
E gained an advantage for his client, he was guilty of gross improper conduct and as such rendered himself liable to be dealt with by the High Court in the exercise of its disciplinary jurisdiction. Misconduct on the part of an arbitrator was construed to mean that misconduct does not necessarily comprehend or include misconduct of a fraudulent or improper character,
F but it does comprehend and include action on the part of the arbitrator which is, upon the face of it, opposed to all rational and reasonable principles that should govern the procedure of any person who is called upon to decide upon questions in difference and dispute referred to him by the parties. Misconduct in office was construed to mean unlawful behaviour or include negligence by public officer, by which the rights of
G the party have been affected. In *Krishna Swami's* case (supra), one of us, K. Ramaswamy, J., considered the scope of 'misbehaviour' in Article 124(4) and held in paragraph 71 that "every act or conduct or even error of judgment or negligent acts by higher judiciary *per se* does not amount to misbehaviour. Wilful abuse of judicial office, wilful misconduct in the
H office, corruption, lack of integrity, or any other offence involving moral

turpitude would be misbehaviour. Misconduct implies actuation of some degree of *mens rea* by the doer. Judicial finding of guilt of grave crime is misconduct. Persistent failure to perform the judicial duties of the Judge or wilful abuse of the office *dolus malus* would be misbehaviour. Misbehaviour would extend to conduct of the Judge in or beyond the execution of judicial office. Even administrative actions or omissions too need accompaniment of *mens rea*".

Guarantee of tenure and its protection by the Constitution would not, however, accord sanctuary for corruption or grave misbehaviour. Yet every action or omission by a judicial officer in the performance of his duties which is not a good conduct necessarily, may not be misbehaviour indictable by impeachment, but its insidious effect may be pervasive and may produce deleterious effect on the integrity and impartiality of the Judge. Every misbehaviour in juxtaposition to good behaviour, as a constitutional tautology, will not support impeachment but a misbehaviour which is not a good behaviour may be improper conduct not befitting to the standard expected of a Judge. Threat of impeachment process itself may swerve a Judge to fall prey to misconduct but it serves disgrace to use impeachment process for minor offences or abrasive conduct on the part of a Judge. The bad behaviour of one Judge has a rippling effect on the reputation of the judiciary as a whole. When the edifice of judiciary is built heavily on public confidence and respect, the damage by an obstinate Judge would rip apart the entire judicial structure built in the Constitution.

Bad conduct or bad behaviour of a Judge, therefore, needs correction to prevent erosion of public confidence in the efficacy of judicial process or dignity of the institute or credibility to the judicial office held by the obstinate Judge. When the Judge cannot be removed by impeachment process for such conduct but generates widespread feeling of dissatisfaction among the general public, the question would be who would stamp out the rot and judge the Judge or who would impress upon the Judge either to desist from repetition or to demit the office in grace? Who would be the appropriate authority? Who would be the principal mover in that behalf? The haitus between bad behaviour and impeachable misbehaviour needs to be filled in to stem erosion of public confidence in the efficacy of judicial process. Whether the Bar of that Court has any role to play either in an attempt to correct the perceived fallen standard or is entitled to make a demand by a resolution or a group action to pressurise the Judge to

A resign his office as a judge? The resolution to these questions involves delicate but pragmatic approach to the questions of constitutional law.

Role of the Bar Council or Bar Associations - whether unconstitutional?

B The Advocate Act, 1961 gave autonomy to a Bar Council of a State or Bar Council of India and Section 6(1) empowers them to make such action deemed necessary to set their house in order, to prevent fall in professional conduct and to punish the incorrigible as not befitting to the noble profession apart from admission of the advocates on its roll. Section 6 (1) (c) and rules made in that behalf, Sections 9, 35, 36 36B and 37 enjoin C it to entertain and determine cases of misconduct against advocates on its roll. The members of the judiciary are drawn primarily and invariably from the Bar at different levels. The high moral, ethical and professional standards among the members of the Bar are pre-conditions even for high ethical standard of the Bench. Degeneration thereof inevitably has its eruption and tends to reflect the other side of the coin. The Bar Council, D therefore, is enjoined by the Advocates Act to maintain high moral, ethical and professional standards. Which of late is far from satisfactory. Their power under the Act ends *thereat* and extends no further. Article 121 of the Constitution prohibits discussion by the members of the Parliament of the conduct of any Judge of the Supreme Court or of High Court in the E discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as provided under Article 124(4) and (5) and in the manner laid down under the Act, the Rules and the rules of business of the Parliament consistent therewith. By necessary implication, no other forum or fora or platform is available for discussion of the conduct of a Judge in the discharge of his duties as a F Judge of the Supreme Court or the High Court, much less a Bar Council or group of practising advocates. They are prohibited to discuss the conduct of a Judge in the discharge of his duties or to pass any resolution in that behalf.

G Section 2(c) of the Contempt of Courts Act, 1971, defines "criminal contempt" to mean publication whether by words spoken or written, signs, visible representations or otherwise of any matter or the doing of any act whatsoever which scandalises or tends to scandalise, lower or tends to lower the authority of any court or prejudices or interferes or tends to interfere with the due course of any judicial proceeding, or interferes or H tends to interfere with or obstructs or tends to obstruct the administration

of justice in any other manner. A

In Halsbury's Laws of England (4th Ed.) Volume 9 in para 27 at page 21, it is stated that scandalising the court would mean any act done or writing published which is calculated to bring a court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the court. Scurrilous abuse of a Judge or court, or attacks on the personal character of a Judge, are punishable contempts. Punishment is inflicted, not for the purpose of protecting either the court as a whole or the individual Judges of the court from repetition of the attack, but for protecting the public and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the court, from the mischief they will incur if the authority of the tribunal is undermined or impaired. In consequence, the court has regarded with particular seriousness allegations of partiality or bias on the part of the Judge or a court. Criticism of a Judges conduct or of the conduct of a court even if strongly worded, is, however, not contempt, provided that the criticism is fair, temperate and made in good faith and is not directed to the personal character of a Judge or to the impartiality of a Judge or court. B C D

In Oswald's Contempt of Court (3rd Edn.) 1993 at page 50 it is stated that libel upon courts is made contempt "to keep a blaze of glory around them, and to deter people from attempting to render them contemptible in the eyes of the public..... A libel upon a court is a reflection upon the king, and telling the people that the administration of justice is in week or corrupt hands, that the fountain of justice itself is tainted, and consequently that judgments which stream out of that fountain must be impure and contaminated". A libel upon a Judge in his judicial capacity is a contempt, whether it concerns what he did in court, or what he did judicially out of it. At page 91, it is stated that all publications which offend against the dignity of the court, or are calculated to prejudice the course of justice, will constitute contempt. One of the natures of offences is scandalising the courts. In Contempt of Court (2nd Edn) by C.J. Millar at page 366, Lord Diplock is quoted from *Chokolingo* v. *AG of Trinidaad and Tobago* (1981) 1 All ER 244 at 248, who spoke for the Judicial Committee summarising the position thus : "'Scandalising the court' is a convenient way of describing a publication which, although it does not relate to any specific case either past or pending or any specific Judge, is a scrurrilous attack on the judiciary as a whole, which is calculated to undermine the authority of the E F G H

A courts and public confidence in the administration of justice." In Borrie and Lowe's Law of Contempt (2nd Edn.) at page 226 it is stated that the necessity for this branch of contempt lies in the idea that without well-regulated laws a civilised community cannot survive. It is therefore, thought important to maintain the respect and dignity of the court and its officers, whose task it is to uphold and enforce the law, because without such respect, public faith in the administration of justice would be undermined and the law itself would fall into disrepute. Even in the latest Report on Contempt of Court by Phillimore Committee to revise the penal enforcement of contempt, adverting to Lord Atkin's dictum that courts are satisfied to leave to public opinion attacks or comments derogatory or scandalous to them, in paragraph 162, the Committee had stated that at one stage "we considered whether such conduct should be subject to penal Sanctions at all. It was argued that any judge who was attacked would have the protection of the law of defamation, and that no further protection is necessary. We have concluded, however, that some restraints are still required, for two reasons. First, this branch of the law of contempt is concerned with the protection of the administration of justice, and especially the preservation of public confidence in its honesty and impartiality; it is only incidentally, if at all concerned with the personal reputations of Judges. Moreover, some damaging attacks, for example upon an unspecified group of judges, may not be capable of being made the subject of libel proceedings at all. Secondly, Judges commonly feel constrained by their position not to take action reply to criticism, and they have no proper forum in which to do so such as other public figures may have. These considerations lead us to the conclusion that there is need for an effective remedy.... against imputations of improper or corrupt judicial conduct." The Contempt of Courts Act, 1971 engrafted suitable amendments accordingly.

Freedom of expression and duty of Advocate ;

It is true that freedom of speech and expression guaranteed by Article 19 (1) (a) of the Constitution is one of the most precious liberties in any democracy. But equally important is the maintenance of respect for judicial independence which alone would protect the life, liberty and reputation of the citizen. So the nation's interest requires that criticism of the judiciary must be measured, strictly rational, sobre and proceed from the highest motives without being coloured by partisan spirit or pressure

tactics or intimidatory attitude. The Court must, therefore, harmonise constitutional values of free criticism and the need for a fearless curial process and its presiding functionary, the Judge. If freedom of expression subserve public interest in reasonable measure, public justice cannot gag it or manacle it; but if the court considered the attack on the Judge or Judges scrurrilous, offensive, intimidatory or malicious, beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of the law by fouling its source and stream. The power to punish the contemner is, therefore, granted to the court not because Judges need the protection but because the citizens need an impartial and strong judiciary.

It is enough if all of us bear this in mind while expressing opinions on courts and Judges. But the question that still remains is when the Bar of the Court, in which the Judge occupies the seat of office, honestly believes that the conduct of the Judge or of the Bench fouls the fountain of justice, or undermines or tends to undermine the dignity expected a Judge and the people are tending to disbelieve the impartiality or integrity of the Judge, who should bear the duty and responsibility to have it/them corrected so as to restore the respect for judiciary?

In *Brahma Prakash Sharma & Ors.* v. *The State of Uttar Pradesh*, AIR (1954) SC 10 the Bar Association passed resolutions and communicated to the superior authorities that certain judicial officers were incompetent due to their conduct in the court and High Court took action for contempt of the court. The question was whether the members of the Executive Committee of the Bar Association had committed contempt of the court? This Court held that the attack on a Judge is a wrong done to the public and if it tends to create apprehension in the minds of the people regarding the integrity, ability or fairness of the judge and to deter actual and prospective litigants from placing complete reliance upon the court's administration of Justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties, it would be scandalising the court and be dealt with accordingly.

The threat of action on vague grounds of dissatisfaction would create a dragnet that would inevitably sweep into its grasp the maverick, the dissentor, the innovator, the reformer - in one word the unpopular. Insidious, attempts pave way for removing the inconvenient. Therefore,

A proper care should be taken by the Bar Association concerned. First it should gather specific, authentic and acceptable material which would show or tend to show that conduct on the part of a Judge creating a feeling in the mind of a reasonable person doubting the honesty, integrity, impartiality or act which lowers the dignity of the office but necessarily, is not impeachable misbehaviour. In all fairness to the Judge, the responsible office bearers should meet him in camera after securing interview and apprise the Judge of the information they had with them. If there is truth in it, there is every possibility that the Judge would mend himself. Or to avoid embarrassment to the Judge, the office bearers can approach the Chief Justice of that High Court and apprise him of the situation with material they have in their possession and impress upon the Chief Justice to deal with the matter appropriately.

Primacy of the Chief Justice of India

It is true that this Court has neither administrative control over the High Court nor power on the judicial side to enquire into the misbehaviour of a Chief Justice or Judge of a High Court. When the Bar of the High Court concerned reasonably and honestly doubts the conduct of the Chief Justice of that court, necessarily the only authority under the Constitution that could be tapped is the Chief Justice of India, who in common parlance is known as the head of the judiciary of the country. It is of importance to emphasis here that impeachment is meant to be a drastic remedy and needs to be used in serious cases. But there must exist some other means to ensure that Judges do not abuse the trust the society has in them. It seems to us the self- regulation by the judiciary is the only method which can be tried and adopted. Chief Justice of India is the first among the Judges. Under Articles 124(2) an 217(1), the President of India always consults the Chief Justice of India for appointment of the Judges in the Supreme Court and High Court. Under Article 222, the President transfer Judges of High Courts in consultation with the Chief Justice of India. In *Supreme Court Advocates-on- record association v. Union of india*, [1993] 4 SCC 441, it was reinforced and the Chief Justice of India was given centre stage position. The Primacy and importance of the office of the Chief Justice was recognised judicially by this Court in *Veeraswami's* case (supra) in para 60 at page 709. This Court, while upholding power to register case against a retired Chief Justice of the High Court, permitted to proceed with the investigation for the alleged offence under Section 5 of the Prevention of

Corruption Act. The Constitution Bench per majority, However, held that the sanction and approval of the Chief Justice of India is a condition precedent to register a case and investigation into the matter and sanction for prosecution of the said Judge by the President after consultation with the Chief Justice of India.

In *Sub-Committee on Judicial Accountability (2nd case) (supra)* also the same primacy had been accorded to the Chief Justice at page 72 thus:

> "It would be reasonable to assume that the Chief Justice of India is expected to find a desirable solution in such a situation to avoid embarrassment to the learned Judge and to the Institution in the manner which is conductive to the independence of judiciary and should the Chief Justice of India be of the view that in the interests of the institution of judiciary it is desirable for the learned Judge to abstrain from judicial work till the final outcome under Article 124 (4), he would advise the learned Judge accordingly. It is further reasonable to assume that the concerned learned Judge would ordinarily abide by the advice of the Chief Justice of India."

International Bar Association at its 19th Biennial Conference held at New Delhi in October 1982 had adopted minimum standards for judicial conduct. Paras 27 to 72 relate to judicial removal and discipline. Para 31 says that "the head of the Court may legitimately have supervisory powers to control judges on administrative matters."

In "Chilling Judicial Independence", Irving R. Kaufman, Chief Judge, U.S. Court of Appeals, for the Second Circuit (See : Yale Law Journal (Vol. 88) 1978-79 P. 681 at page 712) stated that it seems unwise to allow bureaucrats, whether lawyers or not, to determine, even in part, the fate of Judges. The sheer magnitude of the disciplinary engine would be a major nuisance. Judges frequently receive hostile or threatening correspondence from disappointed litigants. Creation of a new disciplinary scheme would transform a minor annoyance into a constant threat of official action. At the very least, it would require time- Consuming responses by the Judge. Even if the Judge were not eventually condemned, the mere invocation of the statutory provisions might taint him with a devastating stigma. The vestment of authority might remain but the aura of respect and confidence so essential to the judicial function would be forever dissipated. *He, therefore, suggested that pressure by the peers would yield salutary effect on the*

A *erring judge and, therefore, judicial system can better survive by pressure of the peers instead of disciplinary actions*. At page 709 he stated : "Peer pressure is a potent tool. It should not be underestimated because it is neither exposed to public view nor enshrined in law".

B Harry T. Edwards, Chief Judge, U.S. Courts of Appeal for the District of Columbia Circuit (See: Michigan Law Review (Vol. 87) 765) In his article "Regulating Judicial Misconduct and Divining "Good Behaviour" for Federal Judges", after the 1980 Act, suggested that "I believe that federal judges are subject to some measure of control by peers with respect to behaviour or intimidation that adversely affects the work of the court C and that does not rise to the level of impeachable misconduct". "I would submit that the ideal of judicial independence is not compromised when judges are monitored and are regulated by their own peers".This limited system of judicial self-regulation resists no constitutional dilemma as long as removal power remains with Congress. "I argue that judiciary alone D should monitor this bad behaviour through a system of self-regulation." He opined that self-regulation would bridge the haitus between bad behaviour and impeachable conduct to yield salutary effect.

Bearing all the above in mind, we are of the considered view that where the complaint relates to the Judge of the High Court, the Chief E Justice of that High Court, after verification, and if necessary, after confidential enquiry from his independent source, should satisfy himself about the truth of the imputation made by the Bar Association through its office bearers against the Judge and consult the Chief Justice of India, where deemed necessary, by placing all the information with him. When the Chief F Justice of India is seized of the matter, to avoid embarrassment to him and to allow fairness in the procedure to be adopted in furtherance thereof, the Bar should suspend all further actions to enable the Chief Justice of India to appropriately deal with the matter. This is necessary because any action he may take must not only be just but must also appear to be just to all concerned, i.e., it must not even appear to have been taken under G pressure from any quarter. The Chief Justice of India, on receipt of the information from the Chief Justice of the High Court, after being satisfied about the correctness and truth touching the conduct of the Judge, may tender such advice either directly or may initiate such action, as is deemed necessary or warranted under given facts and circumstances. If circumstan- H ces permit, it may be salutary to take the Judge into confidence before

initiating action. On the decision being taken by the Chief Justice of India, the matter should rest at that. This procedure would not only facilitate nibbing in the bud the conduct of a judge leading to loss of public confidence in the courts and sustain public faith in the efficacy of the rule of law and respect for the judiciary, but would also avoid needless embarrassment of contempt proceedings against the office bearers of the Bar Association and group libel against all concerned. The independence of judiciary and the stream of public justice would remain pure and unsullied. The Bar Association could remain a useful arm of the Judiciary and in the case of sagging reputation of the particular Judge, the Bar Association could take up the matter with the Chief Justice of the High Court and await his response for the action taken thereunder for a reasonable period.

In case the allegations are against Chief Justice of a High Court, the Bar Should bring them directly to the notice of the Chief Justice of India. On receipt of such complaint, the Chief Justice of India would in the same way act as stated above qua complaint against a Judge of the High Court, and the Bar would await for a reasonable period the response of the Chief, Justice of India.

It would thus be seen that yawning gap between proved misbehaviour and bad conduct inconsistent with the high office on the part of a non cooperating Judge/Chief Justice of a High Court could be disciplined by self-regulation through inhouse procedure. This inhouse procedure would fill in the constitutional gap and would yield salutary effect. Unfortunately, recourse to this procedure was not taken in the case at hand, may be, because of absence of legal sanction to such a procedure.

Since the 1st respondent already demitted the office, we have stated as above so that it would form a precedent for future.

The writ petition is accordingly disposed of.

R.A. Petition disposed of.