

न्यायपुंज

स्मारिका VIII



न्यायः मम् धर्मः

Souvenir



अधिवक्ता परिषद, बिहार

पंजीयन सं.- 1741/2008-09

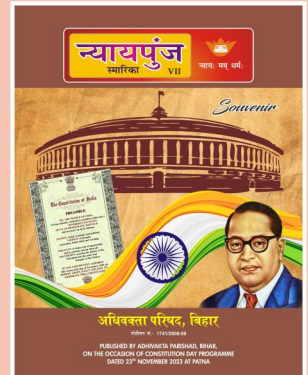
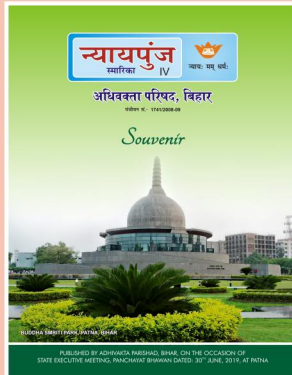
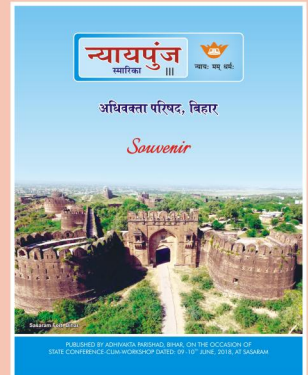
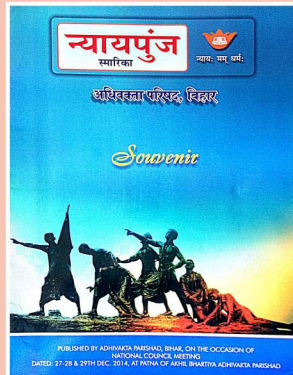
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पटना में आयोजित संविधान दिवस समारोह वर्ष 2023 का उद्घाटन करते हुए पटना उच्च न्यायालय के माननीय न्यायाधीश न्यायमूर्ति श्री अनिल कुमार सिन्हा, सम्मानित अतिथि पटना उच्च न्यायालय के माननीय न्यायाधीश न्यायमूर्ति डॉ. अंशुमान साथ में प्रदेश अध्यक्ष श्री रविन्द्र कुमार सिन्हा, प्रदेश महामंत्री श्री अमोद कुमार सिंह, राष्ट्रीय परिषद सदस्या श्रीमती शिखा सिंह पारमार, प्रांत महिला प्रमुख डॉ. शोभा चौबे एवं प्रतिनिधिगण।

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न्यायपुंज

स्मारिका VIII



न्यायः मम धर्मः

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INDEX

शुभकामना संदेश	02
सम्पादिका की कलम से-डॉ. शोभा चौबे	08
महामंत्री प्रतिवेदन - अमोद कुमार सिंह	09
Natural Justice Vis-a-Vis Rule of Law — Mr. Justice Anil Kumar Sinha	10
Natural Justice Vis-a-Vis Rule of Law — Mr. Justice Arun Kumar Jha	12
भारत में नैसर्गिक न्याय के सिद्धान्त - शिव कुमार	15
Independence of Constitution Courts : A Review of the Constitutional Provisions and Practice — Dr. K. K. Dwivedi	17
आखिर है क्या विरासत टैक्स - डॉ. अजित कुमार पाठक	26
प्राकृतिक 'न्याय' सम्मत कानून की भागीदारी - शिखा सिंह परमार	28
Principles of Natural Justice — Adv. Sudhanshu Shekhar Kr	29



संदेश

यह जानकर अति प्रसन्नता हुई की अधिवक्ता परिषद्, बिहार दिनांक 8-9 जून, 2024 अपना प्रदेश अधिवेशन गया में चिंतन विषय “ प्राकृतिक न्याय—कानून का शासन” पर अयोजित करने जा रहा है, और भी प्रसन्नता की बात यह है, कि इस सुअवसर पर संगठन एक स्मारिका “न्यायपुंज” का प्रकाशन भी करने जा रहा है। चिंतन विषय बहुत ही व्यापक है तथा अधिवेशन में प्रतिनिधियों के विचार एवं स्मारिका में प्रकाशित होने वाले लेख विधि जगत से जुड़े लोगों के साथ-साथ समाज का भी सामानुपातिक मार्गदर्शन करेगा ऐसा विश्वास है।

मैं अधिवेशन एवं स्मारिका के सफलता की कामना करता हूँ।


(आशुतोष कुमार)

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संदेश

अधिवक्ता परिषद्, बिहार दिनांक 8-9 जून, 2024 को गया में अपना प्रांत अधिवेशन चिंतन विषय “ प्राकृतिक न्याय-कानून का शासन” विषय पर आयोजित कर रहा है। इस अवसर पर एक स्मारिका “न्यायपुंज” का प्रकाशन भी कर रहा है। मैं अधिवेशन तथा स्मारिका के सफल आयोजन/प्रकाशन की शुभकामना देता हूँ और आशा करता हूँ कि इसमें भाग लेने वाले प्रतिनिधियों के विचार एवं स्मारिका में प्रकाशित होने वाले लेख समाज का बेहतर मार्गदर्शन प्रदान करेगा ऐसा विश्वास करता हूँ।

मैं अधिवेशन एवं स्मारिका के सफलता की कामना करता हूँ।

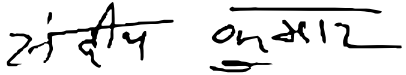
(अंजनी कुमार शरण)



संदेश

यह जानकर अति प्रसन्नता हुई की अधिवक्ता परिषद्, बिहार दिनांक 8-9 जून, 2024 को गया में प्रांत अधिवेशन चिंतन विषय “प्राकृतिक न्याय—कानून का शासन” पर आयोजित करने जा रहा है, तथा इस अवसर पर एक स्मारिका “न्यायपुंज” भी प्रकाशित करने जा रहा है। मैं स्मारिका में प्रकाशित लेख एवं विचार लोगों खासकर विधि जगत से जुड़े व्यक्तियों के लिए लाभकर होगा, ऐसी आशा है।

मैं अधिवेशन तथा सफल स्मारिका प्रकाशन की शुभकामना देता हूँ।


(संदीप कुमार)



Message

In the hallowed halls of justice, may Nayaypunj's Annual Souvenir stand as a beacon of legal enlightenment, illuminating the path for all who navigate the complexities of the law. May each page of this esteemed publication be adorned with the rich tapestry of legal wisdom, woven together by the insights of scholars, practitioner, and jurists alike. Let its contents serve as a reservoir of knowledge, nurturing the minds of aspiring legal minds and seasoned professionals alike. Here's to a publication that not only commemorates the noble pursuit of justice but also fuels the flames of legal excellence for generations to come.

With Best Wishes.

Justice Harish Kumar



Message

Natural Justice implies fairness, reasonableness and equality. It refers to the basic fundamental principles of fair treatment. These principles include the duty to give someone a fair hearing, the duty to ensure that the matter is decided by someone who is impartial, etc. Under the Constitution of India, the principles of natural justice are firmly embodied under Articles 14 and 21.

According to A.V. Dicey's concept of Rule of law, no one should be above the law. Even the king must be subject to the law of the land. In essence, the Rule of Law serves the domain of Natural justice which requires that every person, regardless of his position, must be equal before the law and must get equal protection of law in the procedures followed by the independent and impartial judicial or quasi-judicial bodies. If the judicial or quasi-judicial bodies do not comprehend to, and, follow this idea of Rule of Law, certainly, in no unclear terms, this will give rise to the arbitrariness and thus, would violate the principles of natural justice.

In India, the principle of Natural Justice is prevalent from the ancient times. It finds place in Kautilya's Arthashastra. Lord Hewart in *Rex v. Sussex Justices*, [1924] 1 KB 256, penned down the dictum that "Justice must not only be done, but it must also be seen to be done." Keeping in view the said dictum, it becomes important for the adjudicatory bodies that they observe the principles of natural justice in its true form and spirit which will further strengthen the Rule of Law in the country.

(Shalilendra Singh)



Message

I am informed that Adhivakta Parishad, Bihar intends to bring out its Annual Souvenir '*Nayayapunj*'; on the occasion of its State Conference with theme 'Natural Justice vis-a-vis The Rule of Law'. It gladdens my heart to know that a seminal topic has been chosen for the conference and the Souvenir would be published, encompassing articles on the theme 'Natural Justice vis-a-vis The Rule of Law'. The principles of natural justice have been crystallized in form with the passage of time and the same ensures fairness and impartiality in all actions of the State, whether administrative or judicial. On the other had, Rule of Law declares the supremacy of law in any democratic republican society that there would be equality before the law and equal protection of the laws available to each and every one, irrespective of his position in the society.

Keeping this background in mind, I extend my good wishes to Adhivakta Parishad, Bihar and congratulate all its members for coming out with the theme which is much relevant in the present times. I hope the articles in the Souvenir would clear the cobwebs of doubt and illuminate the path of seekers of knowledge.

With these words, I wish all the best towards the launch of Souvenir '*Nayayapunj*' and again congratulate all the members of Adhivakta Parishad, Bihar of their endeavour.


(Arun Kumar Jha)

सम्पादिका के कलम से



डॉ. शोभा चौबे
प्रान्त महिला प्रमुख,
अधिवक्ता परिषद् बिहार
एवं सम्पादिका

मैं अपने आप को अति सौभाग्यशालिनी मानती हूँ कि अधिवक्ता परिषद्, बिहार, (सम्बद्ध अखिल भारतीय अधिवक्ता परिषद्, नई दिल्ली), द्वारा आहूत सत्र 2024-27 के प्रान्त अधिवेशन, जिसका स्थान गया चयनित हुआ है, के अवसर पर प्रकाशित होने वाली स्मारिका 'न्यायपूज' के सम्पादन का गुरुतर दायित्व मुझे मिला है। न्यायपूज स्मारिका का यह मेरा दूसरा सम्पादन है। अधिवेशन का केन्द्रिय चिन्तन विषय 'कानून का शासन बनाम प्राकृतिक (नैसर्गिक) न्याय' (Rule of Law viz a viz Natural Justice) है। विषय अपने आप में काफी गूढ़ है।

जहाँ तक कानून का शासन (Rule of Law) की अवधारणा का प्रश्न है, यह कहा जाता है कि जब हमारे यहाँ अंग्रेजों का राज हुआ तब पारित कानूनों के द्वारा शासन की एक सुव्यवस्थित पद्धति विकसित हुई तथा यह अवधारणा अस्तित्व में आया। यह सम्पूर्ण सत्य नहीं है। वैदिक तथा उत्तर वैदिक काल में जीवन तथा विश्व के विविध आयामों के संचालन हेतु जिस तत्व का विकास हुआ उसे सनातन अथवा धर्म (Rule of Law) माना जाने लगा जिसके विषय में कहा गया कि "Dharma in ancient India used to mean Justice (Nayaya), which helps up liftmen of living being and it constitutes the foundation of all affairs in the Worlds", प्रजातांत्रिक व्यवस्था के पूर्व हम सभी राजतंत्र के द्वारा शासित थे, परन्तु राजतंत्र के कालखंड में भी राज राज्याभिषेक के समय यह प्रतिज्ञा करता था "I take oath by mind and words as follows; I shall protect the world considering it as equivalent to creator; I shall act fearlessly and observe the whole of Dharma in accordance with dandaniti and not according to my own sweet will (courtesy book-Paanikkar; Idea of sovereignty as taken in the book Legal and Constitutional History of India, Vol-1, authored by Justice M. Rama Jois)

अपना संविधान के अस्तित्व में आने के बाद माननीय सर्वोच्च न्यायालय / विभिन्न संवैधानिक न्यायालयों पर कानून के व्याख्या का एकमात्र दायित्व आया। वैसे तो कानून का शासन (Rule of Law) पर माननीय सर्वोच्च न्यायालय तथा माननीय उच्च न्यायालयों ने काफी कुछ कहा है, फिर भी माननीय सर्वोच्च न्यायालय द्वारा इस विषय पर वच्चन सिंह वनाम् पंजाब सरकार, (AIR 1982 sc 1325) पर आप सुधीजनों का ध्यान आकृष्ट करना समीचीन होगा जो इस प्रकार है "The Rule of Law has really three basic and fundamental assumptions-one is that law making must be essentially in the hands of a democratically elected legislature, subject of course to any power in the executive in an emergent situation to promulgate ordinances effective for a short duration while the legislature is not in session as also to enact delegated legislation in accordance with the guidelines laid down by the legislature; the other is that even in the hands of democratically elected legislature, there should not be unfettered legislative power, and lastly there must be independent judiciary to protect the citizen against excesses of executive and legislative power" (page-1340)

प्राकृतिक (नैसर्गिक) न्याय का सिद्धान्त भी अपने देश के प्राचीन न्यायप्रणाली में अपना विशिष्ट स्थान रखता था लेकिन वर्तमान मान्यता है कि यह अवधारणा लैटिन शब्द Audi alteram partem से आया है। माननीय सर्वोच्च न्यायालय ने नवाब खान वनाम् गुजरात सरकार (AIR 1974 SC 1471) में इसे इस प्रकार परिभाषित किया है कि "an order which infringes a fundamental freedom passed in violation of the audi alteram partem rule is a nullity" विषय इतना समसमायिक एवं सर्वस्पर्शी है कि लेखिनी अवरुद्ध नहीं हो पा रही, लेकिन मर्यादा का ख्याल रखते हुए इसे विराम, न चाहते हुए भी देना पड़ रहा है।

स्मारिका में प्रकाशित लेख, लेखकों के नीजी विचार हैं पाठकों की यदि कुछ भी मतभिन्नता हो तो वह स्वागत योग्य है, लेकिन उसका उत्तरदायित्व इस स्मारिका का सम्पादक मंडल नहीं लेता है।

इस स्मारिका के प्रकाशन में माननीय न्यायाधीशों का अदभुत सहयोग मिला है, इसके साथ ही अन्य लेखकों का भी, सम्पादक मंडल का तथा अधिवक्ता परिषद्, बिहार के सभी पदाधिकारियों एवं कार्यकर्ताओं का, विज्ञापन दाताओं का सहयोग समानुपातिक रूप से मिला है, सबों का मैं आभार प्रकट करती हूँ इस आशा के साथ कि भविष्य में भी इनका इसी प्रकार का सहयोग मिलता रहेगा।

इसके पूर्व कि मैं अपने सम्पादकीय लेखनी को पूर्ण विराम दूँ अधिवक्ता परिषद्, बिहार, के संस्थापक अध्यक्ष श्री रामसुरेश राय, वरीय अधिवक्ता, पटना उच्च न्यायालय, जो 9 मई 2024 को बैकूठ प्रयाण पर एक अपूरणीय रिक्तता को छोड़ कर चले गये वो स्मरण करना अपना कर्तव्य एवं दायित्व समझती हूँ। सम्पादन मंडल की ओर से विनम्र श्रद्धांजलि उन्हें इस प्रार्थना के साथ कि प्रभु उनके आत्मा को चिर शांति प्रदान करें तथा उनके परिजनों तथा हम सबों को इस क्षति को सहने की शक्ति प्रदान करें।

स्मारिका यदि कुछ अंश भी आपके मन एवं मस्तिष्क को स्पंदित तथा संतुष्ट कर पाता है तो मैं सम्पादन मंडल के साथ अपना सौभाग्य समझूंगी।

शेष सादर धन्यवाद!

“संविधान के प्रति उत्तरदायित्व” परिषद

महामंत्री प्रतिवेदन



अमोद कुमार सिंह
अधिवक्ता,
प्रदेश महामंत्री
अधिवक्ता परिषद, बिहार

हिन्दुस्तान में स्वतंत्रता प्राप्ति के पश्चात विधियुक्त जीवन यापन को एक कानूनी स्वरूप हमलोगों को संविधान देती है, भारतीय संविधान की संरचना को 26 नवम्बर 1949 को संविधान सभा के द्वारा अन्तिम रूप दिया गया तथा उसे 26 जनवरी 1950 को गणतंत्र दिवस के रूप में लागू किया गया। भारतीय संविधान में समय-समय पर अनेकों संशोधन हुआ वो अब वक्त आ गया है कि प्राकृतिक न्याय व्यवस्था जो भारतीय जीवन शैली के लिये अनुकरणीय रहा है पर विचार करते हुए अपना-अपना विचार रखा जाय ताकि भारतीय संस्कृति एवं सभ्यता के मूल आधार पर प्राकृति न्याय व्यवस्था स्थापित की जा सके।

“अधिवक्ता परिषद” की स्थापना भी माननीय ढेगड़ी जी की सोच वो अनुभव के आधार का खुला आख्यान है, जहाँ इमरजेन्सी के समय राष्ट्र भक्तों को जेल से बाहर निकालने वास्ते भारत के सभी प्रांतों में राष्ट्रीय सोच में विश्वास रखने वाले समूह अधिवक्ताओं ने प्रण लेकर जो कार्य प्रारंभ किया, उसका राष्ट्रीय स्वरूप पर एक संगठन 1992 में की गयी उसे “अखिल भारतीय अधिवक्ता परिषद्” के नाम से जाना जाता है जिसमें माननीय ढेगड़ी जी, श्री यू. आर. ललित जी तथा न्यायमूर्ति आर्दश गोयल आदि का सहयोग रहा तथा अखिल भारतीय

अधिवक्ता परिषद की निबंधन 27 अप्रैल 2001 में हुआ तत्पश्चात प्रत्येक प्रांत ने अपने-अपने सुविधानुसार निबंधन करवाये, अधिवक्ता परिषद्, बिहार के निबंधन संख्या 1741/2008-09 है जबकि यह संगठन 1992 में ही अस्तित्व में लाया गया था।

अधिवक्ता परिषद्, बिहार वर्ष 1992 से ही अपने संवैधानिक दायित्वों की निर्वहन करता आ रहा हैं और अधिवक्ता परिषद् बिहार के प्रथम अध्यक्ष श्री राम सुरेश राय जी एवं महामंत्री श्री प्रमोद कुमार सिन्हा जी दिनांक 25-26 सितम्बर 1993 को पटना बैठक में सर्व सम्मति से चुने गये एवं राम सुरेश राय जी अब स्वर्गीय, की मार्गदर्शन अधिवक्ता परिषद बिहार को मिलती रही एवं 09 जुन 2024 में श्री राम सुरेश राय जी की मृत्यु होने से अधिवक्ता परिषद्, बिहार मर्माहत है। अधिवक्ता परिषद् बिहार के सदस्य और पदाधिकारीगण शुरु से ही परिषद् के गैरराजनीतिक संगठन स्वरूप के तहत कार्य करते आ रहे हैं तथा परिषद् की मूल भावना एवं उद्देश्य भारतीय संविधान एवं संवैधानिक कार्य के प्रति उत्तरदायी रहता आया। संविधान एवं संवैधानिक इच्छा शक्ति के विपरीत कार्य करने वालों का परिषद् में कोई जगह न थी, न है, और न हो सकता है और अधिवक्ता परिषद् बिहार इसी आदर्श को पालन करते आ रहा है। मानवीय आकांक्षाओं की पूर्ति की जगह परिषद् में नहीं है बल्कि विद्वतजनों के समुह का संविधान एवं संवैधानिक दायित्वों के निर्वहन करना ही परिषद् का मूल उद्देश्य है वो इसी उद्देश्यों को लेकर आम लोगो के हित में प्राकृतिक न्याय के सथ संविधान में दी गयी शक्ति में आमलोगों के हित में एवं राष्ट्र के हित में अपेक्षित सुधार पर विचार विमर्श कर विधायिका को प्रस्ताव पारित कर अवगत कराना ही एक मात्र कर्तव्य है और उन कर्तव्यों पर अधिवक्ता परिषद् बिहार शुरु से ही कार्य करता आ रहा हैं वो इसी वजह से अपने-अपने विचार विद्वानों एवं न्यायिक पदाधिकारियों के विचारों को अपनी लेखनी के माध्यम से प्रस्तुत करने हेतु अधिवक्ता परिषद बिहार “न्याय पुंज” नामक स्मारिका समय-समय पर संग्रहित कर प्रकाशित भी करते आ रहे हैं।

Cr.P.C.

– An informant can move the High Court u/ss-397 and 401 of the Cr.P.C. against an order of acquittal, such right was not available to the victim if he was not the informant of the case.

2024(2) PLJR 285 (S.J.) (Aruna Devi v/s The State of Bihar).

NATURAL JUSTICE VIS-A-VIS RULE OF LAW



Mr. Justice Anil Kumar Sinha
Judge
Patna High Court

It is fairly said by French Philosopher Victor Cousin and I would like to quote, "The Universal and Absolute law is that Natural Justice which cannot be written down, but which appeals to the hearts of all."

So to speak, one cannot leap towards firmly and squarely to one singular meaning of Natural Justice, rather it can only be conceived as a crystallisation of a system of legal and moral principles that are purported to be based on human nature and reason and moralistic ideas of right and wrong, over a period of time.

In Plato's book 'Republic', Plato drew Justice as perfectly adopted to the 'main nature' which can be discovered by reason, he treated Justice as one of the four (4) principles of virtues, the other three (3)

being temperance, wisdom and courage. Justice was regarded as the supreme virtue which harmonizes all other virtues.

Natural Law or Justice of stoics followed ideas of all men equal. It consisted not of the rules that are actually common to all people but rules that derives from the essential nature of man as human beings.

These norms and moves took shape of legal jurisprudence, strengthening ideas of Natural Justice, and also did set the gold standard for the legal posterity to observe, maintain, and to help find their superior wisdom in shaping a just and fair society.

Linguistically, Justice is derived from a latin word 'Jus' meaning the quality of being 'just, impartial and fair in conscience and in acts, it thus can be interpreted as justice means that societal set up in which everybody is restrained by mutual relations.

In the modern day, this theory needs as much merit abiding attention that, justice has now become synonymous to PUBLIC WELFARE, As also David Hume expressed long back that public utility is the sole origin of justice.

In Democratic countries, strict letters of law cannot be separated from Justice.

Ideally,

(a) Law should be just.

(b) there should be justice according to law.

Justice is thus seen as an attribute of law and impartiality and fairness are understood as aspects of justice.

Natural Justice is known as procedural fairness, it is a fundamental principle in law which ensures fairness and impartiality in legal proceedings.

Mainstay of Natural Justice include two main components, Right to fair hearing and the rule against

bias.

The Due processes are another element which plays a crucial part in securing the ends of justice. Furthermore, it is unwritten law (jus-non-scriptum) or it is the law of reason, it acts as a great humanising principle intended to invest law with fairness and to prevent miscarriage of justice, with the passage of time some principles have evolved and condensed and today have become well recognised principles of law.

Audi Alteram Partem, no man should be condemned unheard, that both sides must be heard before passing of order. This is one of the important aspects of Natural Justice which is applicable in modern day courts. Natural Justice is malleable concept, it cannot be applied in a straight jacketed formula, it depends on the facts and circumstances of each case.

The rule of law also known as 'supremacy of law' it can be understood by the function it performs. Essentially, rule of law maintains the integrity of the legal systems. It ensures that all individuals, including the government are subject to as well as accountable to law.

Without Rule of Law societies would be rendered vulnerable to corruption, injustice and arbitrary exercise of power. It ensures and encourages fairness, equality and accountability within the society.

Rule of Law along with Natural Justice is a procedural requirement ensuring a strong safeguard against any judicial/administrative action adversely affecting the substantive rights of individuals.

To sum up, Natural Justice and Rule of Law go hand in hand, by upholding these principles, societies can strive towards justice, equality and the protection of individual rights. Observance of these principles of Natural Justice and Rule of Law is a must in contemporary judiciaries, for fixing the deep-societal conundrums.

Funnily enough, what is sauce for the goose should always be sauce for the gander, in commensurating to the interest of fairness of justice.

As members of the Judiciary it is however even important to note and to be acutely aware that 'Human Judgement can be fallible' and in our never dying pursuit of securing the ends of justice, we need to make peace with the fact that as long as our heart stays at the right place and members gauge on 'what should be done', have not lost their sense of objectivity and that our thoughts conscience and act are congruent to the ideas of natural justice. Vis-a-vis rule of law, we shall always shine bright as a 'glimmer of hope' to the last man standing seeking justice at our hands.

In the greater scheme of things, Natural Justice and Rule of Law are not mutually exclusive rather are elusive goals, and we as custodians of our constitution must see that these principles are not thwarted by subterfuges, issues of jurisdictional Excuses, Judicial overreach, impartiality, arbitrary actions still bane us but as injustice plays out, we should not turn a Nelsons eye rather work in unison to create a just, rule-based and fair society, with the tools of Natural Justice and Rule of Law that is bestowed upon us.

Rather optimistically, I would quote that 'There is No complete order, there is always to choose from chaos OR Manageable chaos.'

Note : Author is the Hon'ble Judge of the Hon'ble Patna High Court

NATURAL JUSTICE VIS-A-VIS The RULE OF LAW



Mr. Justice Arun Kumar Jha

Judge
Patna High Court

Natural justice, a concept of common law, as commonly understood is absence of bias and fairness in any conduct and has been a part of India's legal system since time immemorial. Natural justice ideals are deeply ingrained in Indian ethos and culture, and even Kings and Monarchs were expected to act fairly and impartially. At the same time, Rule of Law was not an alien concept in Ancient India as reflected from the old saying 'no matter howsoever high you are, the law is above you'. The necessity for a rule-based,

ordered structure became apparent in the *Vedic* era, even when the societies were simple, and life was not complicated. As a result of this requirement, the concepts of natural justice and the Rule of Law began to take tangible form. While early systems were mostly monarchies and did not exactly follow these principles as they are understood today, there were cases in which even kings followed the rules of the land because they were expected to abide by it by society, the paramount concern of the society being the preservation of justice. In one of the verses of 'Manusmriti', it has been beautifully expressed as under :

"8.15. धर्म एव हतो हन्ति धर्मो रक्षति रक्षितः । तस्माद् धर्मो न हन्तव्यो मा नो धर्मो हतोऽवधीत् ॥15॥

Justice, being violated, destroys; justice, being preserved, preserves: therefore justice must not be violated, lest violated justice destroy us".

In this background, it's critical to understand how the Rule of Law and the concepts of natural justice interact.

When we talk about natural justice or its principles, we mean fair play in action. It signifies that the actions conducted by the state should be fair and impartial. The principles of natural justice include the rule against bias, the rule of fair hearing, and the rule of reasoned decision.

1. Right to be heard: This principle guarantees that all parties participating in a procedure prescribed by law have the opportunity to state their case, respond to the evidence and arguments presented against them, and be heard by an impartial decision-maker. It prevents decisions from being taken without involvement from the affected parties, protecting individuals' rights to a fair process.
2. Rule against bias: This rule bans decision-makers from having any personal interests, prejudices, or biases that could influence their decisions. It demands decision-makers to be

impartial and unbiased, ensuring that decisions are made entirely on the merits of the case and are not swayed by outside circumstances.

3. Reasoned decision: The authorities' actions must be justified by reasoned conclusions. Authorities are expected to provide clear explanations for their decisions. The decision should reflect the thought process of the authority who issued the commands. The rationale used here helps to develop faith in the actions of the authorities/state. It eliminates any bias. The reasoned orders usher in a transparent society that values impartiality, openness, and accountability.

Moreover, reasoned orders are hallmark of a sound judicial system. The Hon'ble Supreme Court in the case of *Sadhu Saran Singh vs State of Uttar Pradesh*, reported in (2016) 4 SCC 357 has held that reason is the heartbeat of a judgment. Reason is the heartbeat of every conclusion, and without the same it becomes lifeless: *Raj Kishore Jha v. State of Bihar* (2003) 11 SCC 519.

The requirement of reasoning transcends across other jurisdictions too, even in respect of administrative orders. Lord Denning in *Breen v. Amalgamated Engg. Union* [(1971) 2 QB 175] observed : 'The giving of reasons is one of the fundamentals of good administration.' Further in *Alexander Machinery (Dudley) Ltd. v. Crabtree* [1974 ICR 120 (NIRC)] it was observed:

'Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.'

On the other hand, rule of law denotes the fundamental principles of governance in a democratic society. It simply means society governed by the law and not by the rule of men. In a society governed by the Rule of Law all individuals irrespective of their status are subject to the same laws which are to be applied consistently, uniformly and with certainty to all. At the same time, law must be just, fair, equitable and reasonable and not any law sans all these characteristics.

A.V. Dicey in his exposition on rule of law described it in the following words :

- "1. **Supremacy of Law** : The First meaning of the Rule of Law is that 'no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land.
2. **Equality before Law** : the Second meaning of the Rule of Law is no man is above law.
3. **Predominance of Legal Spirit** or the Third meaning of the Rule of Law is the general principles of the constitution are the result of juridical decisions determining rights of private persons in particular cases brought before the Court."

In any modern society, the Rule of Law guarantees justice, equality, and order. It serves as an assurance to all members of society that no one, regardless of status or power, is above the law. It

embodies the idea that all individuals and institutions are to be regulated by the same legal principles and subject to the same laws. Even governments could not claim exemptions. It serves as a protection against arbitrary government action while also promoting fairness, predictability, and openness. A society without the Rule of Law would collapse into a dystopia, with the powerful exploiting the vulnerable and no justice. The absence of the Rule of Law makes the pursuit of justice unreal.

The Rule of Law in a community promotes democracy and serves as a bulwark against tyranny. It also assures that the state respects citizens' rights and does not violate them. It restricts government action to constitutional constraints. The Rule of Law, if violated, would result in the loss of each individual's inherent dignity and rights since it serves as a safeguard against discrimination, arbitrary action and abuse of power. The preservation of the Rule of Law would contribute to the maintenance of societal order and cohesion. At the same time, it would enable varied communities to cohabit peacefully while also allowing for conflict resolution through legal channels rather than resorting to violence and other barbarous tactics. Similarly, legal certainty and property rights are critical for economic growth and investment. A strong legal framework generates trust and stability, which promotes economic progress in society.

The concepts of natural justice and the Rule of Law are inextricably linked, and these two systems work together to provide fairness, transparency, and accountability in both administrative and judicial settings. Thus, we defend equality while also ensuring fairness and impartiality in all activities of the state. In the case of India, these two ideas have been elevated to the maximum level to protect the rights of all citizens and non-citizens. The principle of natural justice is an extension of the Rule of Law.

However, in today's civil society, the Rule of Law is constantly threatened despite being a cornerstone of democracy. Corruption, political intervention, and a lack of supportive legal institutions are real threats to the very existence of the Rule of Law. This presents a significant challenge to all stakeholders and necessitates a collaborative effort by all, including civil society, government, and non-governmental organisations, to strengthen legal frameworks, increase judicial independence, and foster a culture of respect for the law.

Thus, from the time of the "*Vedas*" to the current Indian Constitution, we have come a long way. However, the powerful undercurrent that has existed since the beginning of time, especially during the "*Smrities*" period, continues to flow underneath the modern principles of natural justice and the Rule of Law. We cannot think of a society that does not uphold the values of natural justice or the Rule of Law and yet be just and equitable. It's simply inconceivable. Therefore, as the main actors in the Indian legal system, it is our duty to make sure that the fundamental tenets of democracy—natural justice and the Rule of Law—are upheld and safeguarded in order to maintain the well-being of society.

Note : Author is the Hon'ble Judge of the Hon'ble Patna High Court

भारत में नैसर्गिक न्याय के सिद्धान्त



शिव कुमार

अपर जिला एवं सत्र न्यायाधीश
(अवकाश प्राप्त),
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नैसर्गिक न्याय का सिद्धान्त वह नियम है, जो मनमानी प्रक्रिया के विरुद्ध न्यायालय द्वारा व्यक्तियों के अधिकारों (मौलिक एवं विधिक अधिकारों) के न्युत्तम संरक्षण के लिये स्थापित किये गये हैं। नैसर्गिक न्याय का ध्येय न्याय की रक्षा करना है। वह एक ऐसा अस्त्र है नागरिकों के विधिक हितों को सुरक्षित करता है। विधि के प्रावधानों के अन्तर्गत सद्भावपूर्ण तरीके से कार्य संपन्न करने के लिये दिशा—निर्देश देती है एवं न्याय का हनन (न्याय के वंचित) होने से बचाने का कार्य करती है (जस्टिस पी०डी० दिनकरणा बनाम ऑनरेबल जज इक्वायरी कमिटी ए०आर०आर० 2011 सुप्रीम कोर्ट दृष्टव्य)। हालांकि नैसर्गिक न्याय को हू—ब—हू परिभाषित किया जाना संभव नहीं है, फिर भी इसका अर्थ है कि शक्ति के उचित निष्पक्ष और युक्ति—युक्त प्रयोग से किया जाना चाहिये। मेनका गॉंधी बनाम भारत संघ 1979 एस०सी० के वाद में यह अभिनिर्धारित किया गया है कि नैसर्गिक न्याय एक मानवतावादी सिद्धांत है जिसका अभिप्राय (उद्देश्य) विधि में निष्पक्षता निहित करना है। न्यायिक तथा न्यायिक—कल्प प्राधिकारियों द्वारा अधिकारों पर प्रभाव डालने वाले निर्णय लेते समय लागू किया जाना है। ये नियम प्राधिकारों को न्याय की अवमानना करने से रोकते हैं। इस सिद्धांत में दो मौलिक नियम सम्मिलित या समाहित हैं। प्रथम—कोई व्यक्ति अपने मामले में निर्णायक स्वयं नहीं हो सकता है तथा द्वितीय—किसी व्यक्ति को अपने बचाव में समुचित रूप से सुना जाना चाहिए।

नैसर्गिक न्याय का उद्देश्य:-

इस नियम का मुख्य उद्देश्य है — न्याय को सुरक्षित रखना तथा अन्याय को रोकना (उमानाथ पाण्डेय व अन्य बनाम उ०प्र० राज्य ए०आई० 2009 ए०आई०आर० 2009 सुप्रीम कोर्ट दृष्टव्य है)। इस नियम के सिद्धांत को विधि के सामान्य नियम में इस लिये शामिल किया जाता है, जिससे कि राज्य के मनमाने पूर्ण कृत्यों एवं शक्तियों को नियंत्रित किया जा सके और राज्य के कृत्यों (कार्यवाहियों) के न्याय का हनन होने से रोका जा सके। ये नियम व्यक्तियों को मनमाने प्रक्रिया के विरुद्ध न्युत्तम कार्यरक्षण प्रदान करता है (केसर इन्टरप्राइजेज बनाम स्टेट ऑफ उ०प्र० ए०आई०आर० 2011 एवं मोहिन्द्र सिंह बनाम चीफ इलेक्शन कमीशनर ए०आई०आर०—1978 सुप्रीम कोर्ट दृष्टव्य है)। माननीय न्यायाधीश कृष्णा अय्यर के शब्दों में नैसर्गिक न्याय धर्मनिर्पेक्ष जीवन का सर्वव्यापी तथ्य है और इनको महत्व दिये जाने से विधायिका, प्रशासन तथा न्याय—निर्णयन को नया जीवन मिला जिससे औचित्य पूर्णता जीवन का पथ बन गया। आदि काल से ही इसे स्वस्थ सरकार की रीढ़ माना गया था। मानव इतिहास के पौराणिक काल से लेकर कौटिल्य के अर्थशास्त्र के समय तक विधि शास्त्र को नैसर्गिक नियमों की मोहर (सील) प्राप्त थी जिसके निर्णय समाजिक न्याय के अंग बन गये। आज इन नियमों से विधानों के न्यायिक निर्णयों तथा अन्य माध्यमों से कायम रखा जाना चाहिए (मोहिन्द्र सिंह बनाम चीफ इलेक्शन कमीशनर)।

नैसर्गिक न्याय के उल्लंघन में दिया गया निर्णय शून्य होता है। इसके नियम विवक्षित रूप से सहायक माने जाते हैं, जिसका पालन नहीं किये जाने पर कोई भी निर्णय अविधिमान्य हो जाता है। इस तथ्य की मान्यता माननीय न्यायालयों के अनेक निर्णयों में भी की गयी है।

इसलिये जब कभी कोई प्रशासनिक निर्णय नैसर्गिक न्याय के नियमों के उल्लंघन में होने के कारण दूषित हो जाता है, न्यायालय कोई भी समुचित उपचार प्रदान कर सकता है। समान्यतः ऐसे मामलों में उत्प्रेषण रिट जारी करके न्यायालय निर्णय को रद्द कर देता है और यह मानता है कि निर्णय शून्य और अकृत (Null) है।

प्रशासनिक विधि में नैसर्गिक न्याय के नियम आधारित तथा मौलिक सिद्धांत हैं तथा अब विधि पूर्णरूपेण प्रतिष्ठित हो चुका है कि ये निर्णय विधिक तथा न्यायिक प्रक्रिया के अभिन्न अंग हैं। उच्चतम न्यायालय ने ए० के० क्रेपक बनाम युनियन ऑफ इण्डिया

ए०आई०आर० 1970 मामले में नैसर्गिक न्याय क्षेत्र को विस्तृत कर दिया है तथा इसके नियमों को न्यायिक क्षेत्र से न्यायिक-कल्प में एवं न्यायिक कार्य में न्यायिक कल्प से प्रशासनिक क्षेत्र में विस्तारित कर दिया है।

भारत में नैसर्गिक न्याय का संम्यक अभ्युदय विधि का शासन (Rule of Law) की अवधारणा से हुआ है। वर्तमान काल के विधायन, प्रशासन तथा न्याय निर्णयन के क्षेत्र में नैसर्गिक न्याय के ऋजुता (Fairness) एवं औचित्यता का सिद्धान्त सर्वव्यापी होते जा रहे हैं। किशनचंद बनाम कमिश्नर ऑफ पुलिस, कलकता ए०आई०आर० 1961 एस०सी० 705 मामले में उच्चतम न्यायालय यह अभिनिर्धारित किया कि आदेश पास करने के पूर्व सुने जाने का अधिकार का नियम न्यायिक और न्यायिक-कल्प कार्यवाहियों में ही लागू किया जाना चाहिए न कि प्रशासनिक कार्य में। बाद में ब्रिटेन तथा भारत में इस विचारधारा में परिवर्तन हुआ है। नैसर्गिक न्याय के सिद्धान्त को प्रशासनिक मामलों में भी विस्तृत कर दिया गया (आर०एल०शर्मा बनाम मनैजिंग कमेटी ए०आई०आर०, 1993 एस०सी० 2155 दृष्टव्य है)। उच्चतम न्यायालय ने ए०के० क्रेपक बनाम युनियन ऑफ इण्डिया के मामले में नैसर्गिक न्याय का क्षेत्र को विस्तृत कर दिया तथा न्यायिक क्षेत्र से न्यायिक कल्प और न्यायिक कल्प से प्रशासनिक क्षेत्र में विस्तारित किया गया है।

नैसर्गिक न्याय का सिद्धान्त दो मुख्य सिद्धान्तों को निर्देशित करता है :-

- (1) दूसरे पक्ष को भी सुनो,
- (2) कोई भी व्यक्ति स्वयं अपने मामले में निर्णायक नहीं हो सकते हैं।

नैसर्गिक न्याय के नियमों के उल्लंघन का परिणाम शून्य अथवा शून्यकरणीय :- जहाँ कोई नैसर्गिक न्याय के नियमों का बिना पालन किये आदेशपारित किया जाता है अथवा निर्णय लिया जाता है वहाँ आदेश या निर्णय शून्य (void) होगा अथवा शून्य करणीय (voidable) होगा इस पर कई न्यायालय के निर्णय में एकरूपता नहीं है। लेकिन यदि प्रभावित पक्षकार शून्य करवाने हेतु कोई याचिका नहीं दायर करता है या अपने अधिकार का प्रयोग नहीं करता है तो वह आदेश व निर्णय वैध तथा बाध्यकारी बना रहेगा। इससे स्पष्ट है कि पक्षपात से नियम विरुद्ध दिया गया आदेश या निर्णय शून्यकारणीय होगा न कि शून्य।

नैसर्गिक न्याय के नियमों का कुछ अपवाद है जो निम्नवत् है :-

- (1) विधायी कार्यों में अपवर्जन—पंजाब राज्य बनाम तेहल सिंह ए०आई०आर० 2002 सुप्रीम कोर्ट दृष्टव्य है।
- (2) आपातकालीन स्थितियों में अपवर्जन—मोहिन्दर सिंह गिल बनाम निर्वाचन आयुक्त, ए०आई०आर० 1978 एस०सी० 85 दृष्टव्य है।
- (3) शैक्षणिक मूल्यांकन में अपवर्जन—जवाहर लाल नेहरू विश्वविद्यालय बनाम वी०एस० नरवल ए०आई०आर० 1980 सुप्रीम कोर्ट 1666 दृष्टव्य है।
- (4) जनहित में अपवर्जन—महामाया हायर सेकेन्ड्री स्कूल बनाम छत्तीसगढ़ राज्य व अन्य ए०आई०आर० 2009 दृष्टव्य है।
- (5) अव्यवहारिक परिस्थितियों में अपवर्जन—बिहार स्कूल परीक्षा बोर्ड बनाम सुभाष चन्द्र ए०आई०आर० 1970 सुप्रीम कोर्ट दृष्टव्य है।
- (6) संवैधानिक प्रतिपादनना के अपवर्जन—तुलसी राम पटेल बनाम भारत संघ ए०आई०आर० 1985 सुप्रीम कोर्ट एवं रामकुमार कश्यप बनाम भारत संघ ए०आई०आर० 2010 सुप्रीम कोर्ट दृष्टव्य है।
- (7) क्षणिक अनुशासनात्मक कार्यवाही:—अभय कुमार बनाम श्रीनिवासन ए०आई०आर० 1981 सुप्रीम कोर्ट एवं संजय कुमार सिंह बनाम युनियन ऑफ इण्डिया ए०आई०आर० 2012 सुप्रीम कोर्ट दृष्टव्य है।

नैसर्गिक न्याय के सिद्धान्त का नियम एवं विधि (कानून) में कभी-कभी विपरीतता दिखती है। क्योंकि नैसर्गिक न्याय के नियम के अनुपालन में कभी-कभी कानून (विधि) में दी गयी व्यवस्था से हटकर साम्य व सद्भाविक व सद्विवेक के आधार पर मामलों की परिस्थितियों, तथ्यों के आधार पर विचारोपरान्त आदेश या निर्णय का किया जाना न्यायोचित प्रतीत होता है। ऐसी स्थिति में नैसर्गिक न्याय के सिद्धान्त का नियम अनुपालन किया जाना न्यायोचित है। इस प्रकार न्यायिक, न्यायिक-कल्प तथा प्रशासनिक कार्यवाहियों में उपरोक्त तथ्यों के आलोक में आदेश या निर्णय का किया जाना नैसर्गिक न्याय के सिद्धान्त का नियम का अनुपालन किये जाने पर ही सही न्याय निर्णयन होगा।

Independence of Constitutional Courts:

A Review of the Constitutional Provisions and Practice



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Abstract

The selection of judges for the constitutional courts in India has been a topic of disagreement between institutions, legal principles, and public discussion. This problem highlights the need of protecting the institutional autonomy of the court from the increasing influence of the executive branch, while also acknowledging the legitimate issues with the Collegium system. This article suggests that the judicial appointment process must be significantly reconsidered in the discussions about judicial primacy as the only means of ensuring independence. The article emphasizes the need of thorough public examination and discussion on the judicial appointments process to enhance impartiality and openness, ultimately fostering accountability for the judiciary. What is crucial is to start a significant debate and discussion between the judiciary and other government bodies to address inefficiencies and disagreement between the judiciary and politics.

Key Words- Constitutional courts, Independence, Appointment, Collegium system, NJAC.

Introduction

Judicial independence is essential for a society that seeks to be free, equal, and democratic. The judiciary's independence is closely linked to how justices are appointed in constitutional courts. The people of India view the constitutional courts, which include the Supreme Court and the High Courts, as institutions that protect their fundamental rights, safeguard the basic structure of the Indian Constitution, and prevent the misuse of power by public officials. This has significantly elevated the judiciary's significance¹.

Appointing judges to the constitutional courts in India has always been a contentious topic. Appointing judges is vital for maintaining an independent and effective judiciary². Any errors or problems in this process may significantly impact the judicial system and the rule of law. The appointment of judges in India has been a subject of controversy due to the creation and subsequent invalidation of the National Judicial Appointments Commission (NJAC). The NJAC was suggested as a constitutional amendment to revamp the current appointment procedure and enhance openness and accountability. It sought to supplant the collegium system that had been established for many decades.

A cohort of senior judges of the Supreme Court and the Chief Justice of India (CJI) assess and recommend candidates for appointment to the higher judiciary under the collegium system presently

in effect in India. The collegium is comprised of the Chief Justice of India and four most senior judges. Commencing in 1990s, a sequence of decisions rendered by the Supreme Court laid the foundation for this system³.

It was believed that the NJAC was an effort to rectify some of the deficiencies associated with the collegium system. It was suggested that the CJI, two senior judges, Law minister, and two eminent individuals comprise the six-member commission. By involving non-judicial members in the appointment process, the NJAC sought to foster a decision-making procedure that was more inclusive and diverse. Nevertheless, the NJAC encountered substantial resistance and was petitioned before the Supreme Court on the grounds that it violated a fundamental provision of the Constitution, namely judicial independence. In 2015, a five-judge panel of the Supreme Court rendered a verdict of unconstitutionality and invalidation against the NJAC. In upholding the collegium system as the legitimate approach to appointing justices, the court argued that it served as an essential precaution to maintain the independence of the judiciary.

The reactions to the decision to invalidate the NJAC were varied. Advocates of the collegium system contended that its preservation of the constitutional courts' independence and prevention of executive meddling in the appointment procedure were both indispensable. They held the belief that, notwithstanding its imperfections, the collegium system offered a degree of transparency and accountability. Conversely, detractors of the collegium system emphasized its inadequate transparency, exclusion of varied viewpoints, and consolidation of authority among a select group of justices⁴.

Decisions rendered by the Supreme Court frequently make headlines. Nevertheless, it has recently engaged in self-defense regarding the operation of the collegium system. The ongoing dispute between the judiciary and the government regarding the appointment of justices is intensifying, particularly in light of the Union Law Minister's stance advocating for the rejection of the collegium system⁵. Paradoxically, the Supreme Court opined that public criticism of the established system might incite perplexity; in the event that the government desires to alter the system, it is within the authority of Parliament to modify the Constitution, a process that is susceptible to judicial review⁶.

Rijiju stated at the Times Now Summit that the Constitution of India is a "religious document" that the government, in particular, regards. "Can you specify the article in the constitution where the collegium system is mentioned?" he inquired. The executive asserts that Article 124(2) and 217 of the Constitution grant the President (i.e. the executive) the authority to appoint justices without obtaining assent, but rather through "consultation" with the Chief Justice.

Speaking at the India Today Conclave 2023, Chief Justice of India (CJI) DY Chandrachud stated that the collegium system is the most effective for appointing judges. Further, he stated, "While no system is flawless, this particular system represents the pinnacle of our development." However, the primary aim was to safeguard the autonomy of the judiciary, an intrinsic and fundamental principle. "If we want the judiciary to be independent, we must shield it from external influences."

Constitutional Provisions and Practice

The Constitution of India is the primary legislation of the country, serving as the basis from which all

other statutes get their legitimacy and should adhere to. All authorities of the state

and its various organs originate from it and must be used in accordance with the criteria and restrictions specified in it⁷. The constitution creates a parliamentary form of government in which the administrative and legislative branches are not strictly separated, although they are clearly distinguished from the judiciary.

"To separate the judiciary from the executive in the public services of the state," the Indian Constitution instructs the state to do in a very particular manner⁸. The Supreme Court has utilized this provision to argue for the separation of the judicial branch from the other two departments of government at all levels, starting with the lowest court and extending all the way up to the Supreme Court..⁹

The Constitution designates the Union and the States as having separate bodies of government and powers. Although the Union and States maintain distinct executive and legislative branches, an independent judiciary is not present. The lower or subordinate courts are positioned at the base of the judiciary's pyramidal structure, followed by the High Courts in the middle, and finally the Supreme Court. Although the subordinate courts are subject to state regulation for financial and administrative matters, their primary oversight remains with the High Courts¹⁰. The Union primarily exercises regulatory authority over the High Courts, with the states contributing to a certain extent in matters such as the appointment of judges and other personnel, as well as the management of finances¹¹. It is only within the purview of the Union's regulatory powers that the Supreme Court operates¹². All courts have the authority to hear and rule on issues that fall within the laws of both the Union and the states, with the exception of those that are limited by geographical boundaries. The unitary nature of the judicial system is not a natural occurrence; rather, it is the result of a conscious and deliberate act on the part of the people who drafted the constitution. They thought that a unified court and consistent laws were essential for maintaining the country's cohesion and for setting consistent norms of judicial conduct and autonomy.

I. Constitutional Provisions

The Supreme Court of India

The Supreme Court of India is comprised of a Chief Justice and 33 other justices. The judges are selected by the President of India following consultation with such judges of the Supreme Court and of the High Courts in the States as the President may deem necessary¹³. The appointment of a judge, except the Chief Justice, requires consultation with the Chief Justice of India. Supreme Court judges, including the Chief Justice, serve until the age of sixty-five. Resignation or removal from office may occur sooner. Removal can only occur if the judge has shown misbehavior or incapacity or if the President orders removal after a majority of the membership and two-thirds of each House of Parliament present an address to the President in the same session. Only one judge removal effort has failed. Judges promise to uphold the constitution and laws without fear, favor, or ill intent before assuming office.

Each judge is granted a salary and other benefits and rights as outlined in the constitution, which may be adjusted by Parliament to increase but not decrease¹⁴. The constitution includes provisions for the

selection of the acting Chief Justice of India and ad hoc justices, as well as for the presence of retired judges during Supreme Court sessions¹⁵. Being a court of record, the Supreme Court has the power to punish contempt¹⁶. It is located in Delhi, but may have meetings in other places¹⁷. It has very broad original, appellate, and advisory jurisdictions¹⁸. The Supreme Court possesses the authority to review its rulings, issue orders to ensure complete justice in any case, enforce its judgments, mandate attendance, investigation, and discovery, transfer cases between High Courts, and govern its own practices and procedures¹⁹. Parliament may expand the authority of the Supreme Court and provide additional authorities to ensure more efficient execution of its jurisdiction²⁰. The law pronounced by the Court is obligatory for all courts in India²¹.

The High Courts

While Parliament possesses the power to institute a joint High Court for two or more States, or for two or more States plus a Union Territory, each State is constitutionally endowed with its own High Court²². Every High Court has the authority to penalize for contempt as it is a court of record²³. The President may sometimes decide to appoint additional judges to the High Courts, in addition to the Chief Justice²⁴. The Governor of the State, the Chief Justice of the High Court, and the Chief Justice of India are consulted before the President appoints justices to the High Court²⁵. Judges remain in office until they are sixty-two unless they retire, are removed from office, or are nominated to the Supreme Court. Their removal is analogous to that of a Supreme Court judge, and they retain their position for the duration of their exemplary behavior.

A judge may only be appointed by an Indian citizen who has served as an advocate for 10 years or who has maintained a judicial position for at least ten years. A comparable oath is taken by each High Court judge as by a Supreme Court judge²⁶. Judges of High Courts are not allowed to appear or take action before any court or body other than the Supreme Court or another High Court they have not previously served in²⁷. The constitution also specifies the High Court justices' salaries, allowances, and other rights and privileges, which may only be increased by Parliament²⁸. The constitution also allows for the appointment of retired judges, extra justices, and an interim Chief Justice during High Court sessions²⁹.

A judge of the High Court may be transferred between High Courts. In addition to their broad original and appellate jurisdiction, the High Courts also have the authority to issue writs for any purpose, including the enforcement of the Fundamental Rights³⁰. In addition to exercising authority over all courts and tribunals within its territorial jurisdiction, each High Court possesses the power to superintend such proceedings and withdraw cases that pertain to significant legal issues, including the interpretation of the constitution³¹. The High Court's Chief Justice selects and manages the work of its employees, including officers and servants.

The administrative costs of the High Court, which include the salaries and other benefits of the judges and other personnel, are deducted from that State's Consolidated Fund³².

The Subordinate Courts

District judges' courts are the highest subordinate courts. District judges are appointed by a State's

Governor in cooperation with its High Court. A District Judge may only be appointed if the candidate is currently employed by the Union or the State, or if the candidate has been nominated by the High Court and has practiced law for at least seven years³³. Appointments to the State's judicial service below the level of district judge are made by the Governor in line with regulations developed in cooperation with the State Public Service Commission and the High Court³⁴. The High Court is in charge of posting, promoting, and providing leave to members of the judicial service, as well as overseeing district courts and lesser courts. These rules may be applied to all judges in a state by the governor of that state³⁵.

99th Constitutional Amendment

In spite of the fact that the collegium system that the court developed was praised for its ability to prevent political involvement in the nomination of judges, it was also attacked for the fact that it amended the Constitution in such a way that it established a monopoly of judges in the appointment of judges in higher judiciary i.e. Supreme Court and High Courts.

As a consequence of this, a suggestion was made to modify the Constitution and replace the collegium with a judicial commission that would consist of judges, executives, and other specialists. The last day of 2014 saw the amendment of the Constitution, which was also accompanied by the support act. Found in Article 124A of the Constitution, the National Judicial Appointment Commission Act, 2014 was established by the 99th Amendment to the Constitution. Articles 124B and 124C detail the duties of the Act as well as the authority of Parliament to initiate legislative action³⁶.

The aforementioned change resulted in many adjustments to the rules governing the appointing of judges to the Supreme Court, the High Court, and the transfer of justices to the High Court.

The modifications were substantial and had an effect on the way the judicial system in India operates. As an additional benefit, the statute gives the President the authority to take action based on the recommendations made by the National Judicial Appointment Commission statute.

II. Constitutional Practice

The parts of the constitution that were summed up above seem to be the most thorough of any. The people who wrote the Indian Constitution thought they had done everything possible to protect the freedom of the courts. They thought the individuals tasked with enforcing the constitution would ensure its proper functioning. Their goals have been achieved, however it wasn't always an easy journey. It will be seen that some of the problems started soon after the constitution was put into place, while others have come up later.

A lot of them have been fixed peacefully and hopefully for good, but some are still going on. But it's important to note that the above constitutional system has been around for a long time and hasn't changed much³⁷. The constitution says that legislative and executive acts must be reviewed by the courts. As soon as the first case came up, soon after the constitution went into effect, the courts started using this power without anyone having any questions³⁸. Also, the government has never liked it when the courts threw out laws and orders from the executive branch. This was especially true when it came to taking property without permission. Because of this, the law was changed a lot in its

early years. This method undermined the independence of the court since any rulings that clashed with the administration may be overridden by constitutional revision.

In 1967, the Supreme Court ruled that no future modification to the constitution may diminish or limit Fundamental Rights. In 1973, the Court reversed its previous ruling and supported the modifications that nullified it. However, the Court put a further restriction on the power of modification, declaring that the essential structure of the constitution could not be changed. This Act is still in place and has been utilized on multiple occasions to overturn constitutional amendments. Judicial independence and judicial scrutiny are regarded as key components of the Indian Constitution. As a consequence, the Court deemed any revisions that attempted to eliminate or weaken these components invalid. The Court reversed a constitutional amendment requiring the government to adopt or reject the verdict of a tribunal, rather than a court in the truest sense. Laws that simply repeal a court verdict without changing the legal basis of that decision have also been considered illegal. The courts have expanded the scope of judicial review by lowering the need for locus standi, adding public interest litigation, and discarding the concept of political concerns.

Judicial independence is a contentious but cherished principle in a democratic system. One significant issue in the discussion over the autonomy of the Indian judiciary is the process of selecting judges³⁹. The Indian Constitution established a system of 'consultation' with certain justices from the Supreme Court and/or High Court as determined by the President. Article 124 grants the court the final authority on nominations via various legal proceedings. The present procedure in place is the Supreme Court's collegium system, which was established based on three of its own judgments referred to as the Three Judges Case⁴⁰. The collegium comprises the five most senior justices of the Supreme Court and allows judges to choose and transfer their junior colleagues without external government involvement. Concerns arose in 1973 over the possibility of presidential meddling in the selection process.

First Judges Case

In the case of *S.P. Gupta v. Union of India*⁴¹, A seven-Judge Bench delivered the ruling in the First Judges Case on December 30, 1981, with a majority of 4:3. The President once had the unique authority to appoint judges to the higher courts. The verdict clarified that "consultation" does not imply "concurrence." The Supreme Court ruled that the President is not obligated to accept the Chief Justice of India's advice while making appointments. It also established that the authority to select Judges under Article 124 belongs to the President, who might disregard the opinions of those consulted. The statement affirmed that the Chief Justice of India's proposal on judicial appointments and transfers may be rejected only with strong and convincing reasons. This choice sparked more arguments and conversations on the need of a more autonomous and clear appointment procedure.

In Second Judges Case

In *Subhash Sharma v. Union of India*, a three-judge bench questioned the validity of the First Judges Case and suggested that the majority opinion from that case should be reviewed by a bigger bench. The Chief Justice of India convened a nine-judge bench to explore two particular cases. Was the Chief Justice of India's view entitled to primacy in the appointment and transfer of Supreme Court and High

Court judges? Secondly, was the determination of the judge-strength in High Courts subject to judicial review? Supreme Court overturned the ruling in the First Judges Case by a majority of 7:2. The ruling was issued on October 6, 1993. The power to choose judges for the higher judiciary was transferred from the executive branch to the Chief Justice of India by a joint decision by a panel of judges called the collegium. The statement indicated that the Chief Justice of India just had to seek advice from the two most senior judges⁴².

Third Judges Case

The President of India utilized his power under Article 143 to refer nine questions to the Supreme Court for clarification because he was unsure how the Union of India should interpret the Second Judges Case. A nine-judge panel provided a unanimous response to the reference on October 28, 1998. The collegium of judges, led by the Chief Justice of India, has the ultimate power to make nominations to the higher judiciary. The President is likely to agree with the proposals. The Supreme Court bench observed that the phrase "consultation with the Chief Justice of India" in Article 217(1) of the Indian Constitution necessitates seeking input from many judges in order to determine the Chief Justice of India's view. The Chief Justice of India's personal opinion alone does not qualify as "consultation" as defined in the Article. After conferring with the four most senior puisne judges of the Supreme Court, the Chief Justice of India is obligated to recommend the appointment of a Supreme Court judge and the transfer of a Chief Justice or puisne judge of a High Court. The Chief Justice of India cannot make decisions alone about the non-appointment of a judge without consulting other Supreme Court justices, based on facts provided by the government of India. A key standard set in the Second Judges Case was modified in the Third Judges Case. The modification included expanding the "collegium" that selects Supreme Court justices to comprise the Chief Justice of India and four of the most senior judges, as opposed to the two most senior judges as determined in the Second judges Case⁴³.

Fourth Judges Case

The case of Supreme Court Advocates-on-Record-Association and another v. Union of India⁴⁴ is often referred to as the Fourth Judges Case. The National Judicial Appointment Commission Act of 2014 was challenged in the Supreme Court prior to its implementation. After coming into effect, the court, with a 4:1 majority, ruled the amendment illegal, unconstitutional, and nullified. The court upheld judicial independence, a fundamental aspect of the Constitution, by declaring the amendment illegal. According to the Supreme Court, Article 124A is insufficient to support the judiciary's supremacy since it does not provide the National Judicial Appointment Commission's judicial branch with enough representation. A key component of the Constitution, the judiciary's independence, is seen to have been violated by this shortcoming. The National Judicial Appointment Commission Act and the 99th Amendment were deemed "unconstitutional and invalid" by the Supreme Court. The court held that the procedure used before to the 99th Amendment should be followed for appointments to the Supreme Court, High Court, Chief Justice of India, and judge transfers. Put simply, the court upheld the prior system and deemed the National Judicial Appointment Commission to be unlawful⁴⁵.

The Way Forward: Striking a Balance between Accountability and Independence

For all parties involved, the current judge appointment procedure is far from ideal. The Executive

proffers protracted delays to the judicial collegium's recruitment decisions, yet the validly elected Executive is deprived of any significant legal-institutional influence in the appointment process. Important components of the judicial nominations process should be reconsidered in light of that. This includes the collegium's rather ambiguous operation, the absence of reliable standards for evaluating applicants, and the pervasive nepotism and self-perpetration. The minutes of the collegium's meetings were attempted to be made public, but the exercise's main goal was quickly abandoned⁴⁶. This case emphasizes the need of putting thorough institutional and structural reform ahead of piecemeal changes. As a result, it's crucial to think carefully about and take advice from certain changes that have been put into place in other countries. The Constitutional Reform Act of 2005 delineated the parameters for judicial nominations in the United Kingdom and created an autonomous Judicial nominations Commission (JAC). The Act mandates that appointments be made "solely on merit" and only after the selection committee determines that the applicant is "of good character"⁴⁷." The JAC selects applicants based on five predetermined merit criteria. Intellectual aptitude (enough legal knowledge and experience in the selected sector), as well as character attributes (objectivity, professionalism, decisiveness, and ability to collaborate well with others), understanding and dealing fairly (treating everyone with respect regardless of background and patience), communication skills (ability to maintain authority when questioned and explain decisions succinctly), and efficiency (ability to work under pressure and produce scrupulous judgements quickly) are some examples of these⁴⁸. These standards ensure that only the most worthy and outstanding people attain the top positions in the judiciary, since judges are crucial to the administration of justice. Implementing these requirements in the Indian judiciary will greatly reduce corruption in the legal system and restore the public's trust in it. Two criteria, fairness and efficiency, are especially suitable for the Indian situation. An incredibly diversified caste and religious background in India is believed to introduce biases that hinder the rule of law and impartial administration of justice. There is a significant backlog of cases in the legal system awaiting resolution. Appointing the most effective people as judges will certainly assist decrease this backlog and guarantee justice for Indian residents, since delayed justice is tantamount to denied justice.

In the United States, applicants for the Supreme Court are questioned by the Senate on both their judicial opinions and personal lives. The proceedings are aired and open to the public. Given current rulings about live-streaming of court hearings and the emphasis on openness, such a degree of transparency in Collegium proceedings should be announced⁴⁹. The proposal to publish the minutes of Collegium meetings is a commendable move in this direction. The concern that publicly disclosing grounds for a candidate's rejection may harm their image is irrelevant in light of the need of openness and accountability, which judicial independence does not cover

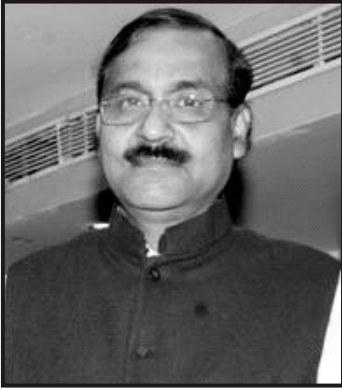
Conclusion

No doubt, the Indian judiciary needs structural and administrative changes. The higher court is praised for its power to bend the moral cosmos toward justice, yet it is often condemned for its ad hoc, inconsistent, and opaque operation. What the institution thinks itself will determine its path. The judiciary should review the Collegium method of nominations to remedy the current judicial appointment issues, including the NJAC case, the delay in judicially recommended appointments, and the seniority breach dispute. In the key NJAC case, contact with other government organizations and

the public was avoided. Judges like Justice Chelameshwar's dissent suggests a need for deliberate discussion on these basic issues. Claiming that 'judicial accountability' and 'judicial independence' are incompatible is disingenuous. The court should be politically independent while upholding its constitutional obligation to uphold people's rights and constitutional democracy. Efforts should be made to establish objective criteria for appointing high-level judges who are trustworthy, decisive, and effective. The judge appointment process should be subject to public review⁵⁰. Disclosing candidate information, qualifications, and selection committee processes would demonstrate to the public that justice is based on openness. Finally, independent Bar Associations and Bar Councils, as well as a vigorous and aggressive legal academia, media, and civil society, must take an active part in assuring the selection process's openness and integrity. The opportunity to involve 'eminent individuals' in the selection process that the NJAC partly provides should not be overlooked, and suitable mechanisms for effective and meaningful civil society participation in this vital process should be carefully explored. The selection approach should include affirmative action for underrepresented populations and align with the constitution's aim of diversity and inclusion. The argument must shift from judicial supremacy to establishing a genuinely democratic and worthy procedure for judge selections.

- 1 Jay Vinayak, O., & Sengupta, A. (2020, January). Judicial appointments in India : from pillar to post. *Constitutional Court Review*, 10(1), 43–64. <https://doi.org/10.2989/ccr.2020.0003>.
- 2 I. K. (2023, October 17). Problem With Appointment Of Constitutional Courts Judges: Collegium System. *International Journal for Multidisciplinary Research*, 5(5). <https://doi.org/10.36948/ijfmr.2023.v05i05.7663>
- 3 N. S. (2023, August 29). Judicial Independence and Reformation of the Collegium System: Evaluating the Njac Judgement and Foreign Judicial Appointment Systems. *International Journal for Multidisciplinary Research*, 5(4). <https://doi.org/10.36948/ijfmr.2023.v05i04.5904>
- 4 Khali, V. (2022, October 31). COMPARATIVE ANALYSIS OF JUDICIAL APPOINTMENTS WITH REFERENCE TO USA, AUSTRALIA AND INDIA. *International Journal of Advanced Research*, 10(10), 1128–1134. <https://doi.org/10.21474/ijar01/15588>
- 5 Desk, E. (2022, October 8). Debate over the collegium system: How are SC and HC judges appointed? *The Indian Express*. <https://indianexpress.com/article/explained/debate-over-the-collegium-system-how-are-sc-and-hc-judges-appointed-8158195/>
- 6 Karpuram, A. S., & Khan, K. (2024, February 5). Explained: The four issues that CJI DY Chandrachud highlighted within the legal profession. *The Indian Express*. <https://indianexpress.com/article/explained/explained-law/issues-cji-dy-chandrachud-legal-profession-9143599/>
- 7 An assertion of primacy. (2021, December 4). *The Hindu*. <https://www.thehindu.com/opinion/editorial/Supreme-Court-Bench-order-on-National-Judicial-Appointments-Commission-Act-An-assertion-of-primacy/article59783776.ece>
- 8 Article 50
- 9 Advocates-on-Record Association v. Union of India
- 10 Article 233 - 235
- 11 Article 229
- 12 Article 146
- 13 Article 124
- 14 Article 125
- 15 Article 126 and 128
- 16 Article 129
- 17 Article 130
- 18 Article 32, 131-136, 143
- 19 Article 137, 139A, 142, 145
- 20 Article 138-140
- 21 Article 141
- 22 Article 213, 231
- 23 Article 215
- 24 Article 216
- 25 Article 217
- 26 Article 219
- 27 Article 220
- 28 Article 221
- 29 Article 223, 224
- 30 Article 225, 226
- 31 Article 227, 228
- 32 Article 229
- 33 Article 233
- 34 Article 234
- 35 Article 237
- 36 *The Constitution (121st Amendment) Bill, 2014*. (n.d.). PRS Legislative Research. <https://prsindia.org/billtrack/the-constitution-121st-amendment-bill-2014>
- 37 State Of Bihar v/s. Kameshwar Singh AIR 1952 SC 252
- 38 A.K. Gopalan v. State of Madras, AIR 1950 SC 27
- 39 Hanssen, F. A. (2004, May 1). Is There a Politically Optimal Level of Judicial Independence? *American Economic Review*, 94(3), 712–729. <https://doi.org/10.1257/0002828041464470>
- 40 Sengupta, A., & Sharma, R. (2018, January 1). *Appointment of Judges to the Supreme Court of India*. http://books.google.ie/books?id=CFU_zQEACAAJ&dq=Appointment+of+judges&hl=&cd=1&source=gbs_api
- 41 AIR 1982, SC 149
- 42 Supreme Court Advocates-on-Record Association v. Union of India, (1993) 4 SCC 441
- 43 Re: special reference, AIR 1999 SC 1
- 44 AIR 2015 SC 5457
- 45 Supra
- 46 Kumar, A. P. (2019, October 22). *Supreme Court stops uploading collegium resolutions on website: Move is major self-inflicted wound, smacks of institutional cowardice*. First post. <https://www.firstpost.com/india/supreme-court-stops-uploading-collegium-resolutions-on-website-move-is-major-self-inflicted-wound-smacks-of-institutional-cowardice-7536991.html>
- 47 S. 63, Constitutional Reform Act 2005 (United Kingdom).
- 48 *JAC Merit Criterion Consultation - Judicial Appointments* . . . (n.d.). yumpu.com. <https://www.yumpu.com/en/document/view/32481889/jac-merit-criterion-consultation-judicial-appointments->
- 49 M. Katju, One Way to Fix the Collegium is to Televisе its Proceedings, *The Wire*, Nov. 5, 2015, <https://thewire.in/law/one-way-to-fix-the-collegium-is-to-televisе-itsproceedings>.
- 50 M. Moitra, The Supreme Court of India is a Court of Rights, Not of Contempt, *The Wire* (29/04/2020), available at <https://thewire.in/law/the-supreme-court-of-india-is-a-court-of-rights-not-of-contempt> (last visited on 02/02/2024.)

आखिर है क्या यह विरासत टैक्स ?



डॉ अजित कुमार पाठक
अधिवक्ता

इस बार के आम चुनाव में सबसे अधिक अगर चर्चा है तो सिर्फ विरासत टैक्स की। सभी पार्टियाँ इसे अपने अपने तरह से समझाते हैं। कोई इसे भारत के लिए आदर्श मानता है तो कोई बेतुका मानता है। आइये समझे इस विरासत टैक्स को।

किसी भी देश की आर्थिक प्रगति के लिए सरकार अपने नागरिकों से कर (टैक्स) वसूलती है। यह उसे प्रत्यक्ष या अप्रत्यक्ष रूप से वसूलती है। इनकम टैक्स प्रत्यक्ष रूप से दिया जाता है और जी.एस.टी अप्रत्यक्ष रूप से दिया जाता है। विरासत कर (इन्हेरिटेंस टैक्स) स्वतंत्र भारत में 1953 में शुरू की गयी थी, लेकिन अपनी जटिलताओं के कारण और टैक्स संग्रह में होने वाले खर्च के मुकाबले आने वाले टैक्स में कमी के कारण 1985 में राजीव गांधी सरकार ने इसे हटा दिया था। यह टैक्स कम से कम 1 लाख हैसियत की संपत्ति पर लगाई गयी थी, जिसके लिए 7.5% की दर नियत की थी। हालांकि 20 लाख रुपये से अधिक की संपत्ति पर इसकी दर 85% के स्तर तक पहुँच जाती थी। केन्द्र के प्रत्यक्ष कर संग्रह में इस टैक्स की हिस्सेदारी भी बहुत ही कम थी। कर संग्रह की जटिलताओं प्रशासनिक व्यय की अधिकता एवं अन्य कारण

से इसे अंततः 16 मार्च 1985 के उपरांत इसको समाप्त कर दिया गया।

विरासत टैक्स अपने नाम के अनुरूप पूर्वजों से विरासत में मिली सम्पत्ति पर लगाया जाता था। इसके लिए सरकार के द्वारा विरासत में मिली संपत्ति के मूल्य की एक सीमा निर्धारित कर दी जाती है। अगर विरासत में मिली संपत्ति पाने वाले को किसी तरह का कई टैक्स नहीं देना पड़ता था जबकि अगर विरासत में मिली संपत्ति का मूल्य तय सीमा से अधिक है तो ऐसी स्थिति में विरासत में संपत्ति प्राप्त करने वाले को विरासत टैक्स देना पड़ता था। इसके तहत खून के संबंध वाले व्यक्तियों से प्राप्त होने वाले संपत्ति का आकलन किया जाता था। जैसे दादा-दादी से मिली सम्पत्ति पर पोतो को विरासत टैक्स देना पड़ता था।

विदेशों में आज भी विरासत टैक्स लगता है

बेल्जियम में विरासत टैक्स की दर सबसे ज्यादा 80% है। दक्षिण कोरिया में 50% और स्पेन में अधिकतम 34% की दरें निर्धारित हैं। अमेरिका में संघीय सरकार इस तरह का टैक्स नहीं वसूलती है जबकि वहा की राज्य सरकार हेरिटेस टैक्स की वसूली करती है लेकिन उसकी दर अलग-अलग होती है। सिंगापुर ने विरासत टैक्स को एक नए रूप में लागू किया है।

यहाँ यदि मृतक की संपत्ति उसकी इच्छा या वसीयत के अनुसार किसी परिजन को दी जाती है तो संपत्ति के हस्तांतरण करते वक्त संपत्ति मूल्य की 10 प्रतिशत स्टाम्प ड्यूटी के रूप में वसूली जाती है। लेकिन अभी यह व्यवस्था खत्म कर दी गयी है।

जर्मनी में यह शुल्क विरासत छोड़ने वाले व्यक्ति के विरासत पाने वाले व्यक्ति से संबंधी अर्थात् रिश्तों के आधार पर वसूला जाता है। अमेरिका राज्य के आयोवा राज्य में वंशानुगत वंशज बच्चे, सौतेले बच्चे, पोतियों, और परपोते को टैक्स से छूट प्रदान की गयी है।

कैसे की जाती है इसकी गणना ?

इसके लिए विरासत में कर योग्य संपत्ति के लिए एक मूल्य सीमा तय कर दी जाती है। इसी मूल्य सीमा और विरासत छोड़ने वाले व्यक्ति के विरासत पाने वाले व्यक्ति से खूनी रिश्तों में आधार पर विरासत टैक्स की दर तय की जाती है। अगर विरासत छोड़ने वाले व्यक्ति का संबंध विरासत पाने वाले से कई नजदीकी रिश्ता होता है तो उसे इस कर से छूट भी मिल सकती है।

क्या भारत में यह फिर से लागू हो सकता है ?

मौजूदा समय में यह टैक्स यहाँ लागू नहीं है। सरकार के पास इसे फिर से लागू करने की कोई योजना भी नहीं है। इसकी चर्चा चुनावी फायदा लेने के लिए की गयी है। भारत में जब यहाँ किसी ऐसे व्यक्त को जिसके पास अकूत संपत्ति है तो यह संपत्ति उसके नजदीकी परिजनों के बीच उनके धार्मिक कानून जैसे हिन्दू लॉ या शरीया कानून अथवा भारतीय संविधान में दी गयी व्यवस्था के आधार पर वितरित की जाती है। इस संपत्ति पर अगर किसी व्यक्ति पर कोई टैक्स बनता है तो वह उस संपत्ति पाने वाले व्यक्ति के आयकर स्लैब के आधार पर अपना टैक्स अदा कर देता है। अब विचारणीय है की भारत में इसे लागू करना चाहिए या नहीं। इसके विपक्ष में तर्क यह दिया जाता है कि विरासत टैक्स अक्सर आर्थिक अक्षमताओं को आमंत्रित करता है

जिसके कई मोर्चे पर अनापेक्षित परिणाम सामने आते हैं। यह लोगों को बचत की जगह उपभोग की ओर प्रेरित करता है जो भविष्य में देश की अर्थव्यवस्था के लिए घातक होगा। इससे दोहरे कराधान भी समस्या होगी क्योंकि इस कर के दायरे में आने वाली संपत्ति पहले ही आयकर या पूंजीगत लाभ कर के दायरे आ चुकी होती है। इस कर से देश से पूंजी पलायन की भी संभावना है क्योंकि लोग अपनी पूंजी वहां ही लगाना चाहेंगे जहाँ ऐसी व्यवस्था नहीं है। इसके अतिरिक्त इसे लागू करने में कई परेशानियां आ सकती हैं जो देश के हित में नहीं होंगी। इसे लागू करने के पक्ष में तर्क दिया जाता है कि इससे लोग गलत ढंग से पैसा नहीं कमायेंगे और देश में गरीब और अमीर के बीच की खाई कम होगी। यह देश में लागू हो या नहीं हो लेकिन देश के सामने यह एक चर्चा का तो विषय हो ही गया है।

मतदाताओं को भरमाने के लिए ही सही पर देश के आर्थिक नीतिकार को अब इस मुद्दे पर भी सोचना होगा। लेकिन इसे लागू करने के पहले देश में व्यापक चर्चा भी होनी चाहिए।

लेखक टैक्स पेयेर्स फोरम के अध्यक्ष हैं
एवं भारतीय भाषा अभियान बिहार
के संरक्षक हैं।



अधिवक्ता परिषद्, बिहार

(सम्बद्ध-अखिल भारतीय अधिवक्ता परिषद्, नई दिल्ली)

गोरखनाथ लेन, बोरिंग रोड, पटना- 1

उद्देश्य

- (क) न्याय प्रणाली के विकास के लिए सभी कार्य करना जो भारतीय परम्पराओं तथा भारतीय समाज की चेतना के अनुकूल तथा स्वीकृत संस्कृति एवं ऐतिहासिक परम्पराओं के अनुरूप हो।
- (ख) राष्ट्र की एकता, अखण्डता और प्रभुता के लिए परिषद् पूर्णतः समर्पित है। परिषद् ऐसे सभी क्रियाकलापों को प्रोत्साहित करेगी जिनका उद्देश्य राष्ट्र की एकता और अखण्डता का निर्माण तथा भारतीयों में बन्धुत्व की भावना का विकास करना हो।
- (ग) विधि विज्ञान का संबंधन करना और विधि तथा इसके प्रशासन में उच्च अध्ययन और अनुसंधान का अनन्य और संचालन करना।
- (घ) न्याय और विधि प्रशासन में सुधार तथा जनता की सामाजिक, आर्थिक और अन्य आवश्यकताओं के उपयुक्त न्याय प्रणाली के विकास का संप्रवर्तन करना।
- (ङ) विधि और विधि प्रशासन तथा उसके आधारभूत सिद्धान्तों का प्रचार करना।
- (च) विधि तथा सम्बन्ध क्षेत्रों में सम्बन्धित अध्ययन ग्रन्थों, कृतियों, पुस्तकों, नियतकालिक पत्रिकाओं, निर्णय पत्रिकाओं, अनुवादों और अन्य सम्बन्धित साहित्य एवं अनुसांगिक प्रकाशित करना।
- (छ) विधि व्यवसाय में लगे अधिवक्ता बन्धुओं, विशेषतया कनिष्ठ अधिवक्ता बन्धुओं से कल्याणार्थ योजनायें बनाना, उनके व्यापक हित संरक्षण हेतु कार्य करना।
- (ज) पुस्तकालयों एवं वाचनालयों की स्थापना करना और उन्हें संचालित करना।
- (झ) भारतीय संविधान और विधियों का पुनर्विलोकन करना और उनमें ऐसे परिवर्तन सुझाना जो समाज की सेवा हेतु उन्हें प्रभावी उपकरण बनाने के लिए अपेक्षित हो।
- (ञ) सभी को, विशेषतया समाज के निर्बल वर्ग को विधिक सहायता उपलब्ध कराने के लिए कार्य करना तथा विधि का शासन स्थापित एवं दृढ़ करने के लिए प्रयास करना।
- (ट) विधि व्यवसायियों को तथा न्यायपालिका के मध्य विधिक रामराज्य को प्रोत्साहित करना तथा प्रत्येक स्तर पर भ्रष्टाचार एवं अनियमितता के विरुद्ध जनमत जाग्रत करना तथा उसे मिटाने का प्रयास करना।
- (ठ) उपर्युक्त सभी या किन्हीं उद्देश्यों को अग्रसर करने में राष्ट्रीय तथा अन्तर्राष्ट्रीय समितियों, संस्थाओं और संगठनों को सहयोग देना और समान उद्देश्यों वाले शीर्षस्थ अखिल भारतीय निकाय के साथ सम्बद्ध होना।
- (ड) ऐसे सभी कार्य करना जो उपर्युक्त सभी या किन्हीं उद्देश्यों की पूर्ति के लिए आवश्यक व उचित हो।

प्राकृतिक 'न्याय' सम्मत कानून की भागीदारी



शिखा सिंह परमार

संयोजिका सुकन्या

अधिवक्ता, पटना उच्च न्यायालय

राष्ट्रीय परिषद् सदस्या, अधिवक्ता परिषद्, बिहार

न्याय स्वयं में सामान्य शब्द नहीं है। यह एक प्रतिक्रियात्मक शब्द एवं विपिरार्थक है। यानि किसी व्यक्ति प्राणिमात्र के साथ कुछ भी अनुचित या अवैध कारित होता है तो—त्वरित प्रतिक्रियात्मक उस बिन्दु पर जिस हद तक व्यक्ति का हित क्षतिग्रस्त हुआ है, उसके पूर्व की स्थिति या उचित मानक में विधि सम्मत समकक्ष की स्थिति अतिशीघ्र बहाल कराने या उपलब्ध करा पाना 'न्याय' के उद्देश्य को पूरा करता है। तब पूर्ण रूपेण यह प्रयास 'प्राकृतिक न्याय' को परिभाषित करता है और इस कार्य को करने में जो विधि सम्मत व्यवस्था का उपयोग होता है, वह कानून की भागीदारी कहलाएगा। महर्षि 'दयानन्द सरस्वती' की दृष्टि से—'सत्यार्थ प्रकाश' में लिखित पंक्ति—“सुशासन से अच्छा स्वशासन” होता है।

यहाँ स्वशासन से अभिप्राय— लोकतंत्र में जनमत के रास्ते अपनी संवैधानिक व्यवस्था जनतन्त्र मूलक है। इस पर गौर करें तो लम्बे बदलते कालखण्ड में गिरते मानवीय मूल्य एवं नैतिकता के पतन से राष्ट्र समक्ष गंभीर चिन्तन एवं चुनौतियों का अंबार खड़ा हो रहा है। स्वाभाविक रूप से परखा जाय अपनी संस्कृति 'राष्ट्रीय संस्कृति'

से विमुख— अन्य की संस्कृति के आवरण को और उत्थान के स्तर पर खुद को अपग्रेड करने की चाह से देश के अधिकांश नागरिकों का नागरिक 'चरित्र' धूमिल सा हो जाता है। अतः नागरिकों में राष्ट्रीय आचरण के मूल—भूत अनिवार्यता को पुनर्स्थापित करने की भी आवश्यकता है। क्योंकि 'प्राकृतिक न्याय' प्राप्त करने की नागरिक की पात्रता को भी राष्ट्रीय सांस्कृतिक आचरण के अनुरूप होना ही होगा।

ये सारे प्रयास सामग्री स्वरूप 'प्राकृतिक न्याय' के परिवेश को तैयार करता है। नैतिक मूल्यों पर आधारित अपराधिक कृत पश्चात भी यदि व्यक्ति (अपराधी) को अपराध बोध से ग्रसित हाने का एहसास हो जाय या फिर कराने का प्रयास हो तो — वह व्यक्ति मिलने वाले निर्धारित सजा (दण्ड) को प्रयाश्चित के रूप में लेगा, जो 'दण्ड—प्रक्रिया' को न्याय—प्रक्रिया की श्रेणी में स्थापित करेगा। लिगल सर्विसेज ऑथोरिटीज (Ligal Services Authority) की स्थापना के संदर्भ में बाम्बे हाईकोर्ट के पूर्ण खण्डपीठ की टिप्पणी—उपयुक्त उदाहरण जान पड़ता है। पूर्व में हमें पंच परमेश्वर से वादी को न्याय प्राप्त होता था, जिसमें अपराधी स्वयं को उस निर्धारित दण्ड या जुर्माना को अपने लिए पंच परमेश्वर द्वारा प्रदत्त प्रयाश्चित मान लेता था। यह प्राकृतिक न्याय का स्वरूप बन जाता है। चान्दबसप्पा बनाम बासिनगया, 29 Bom LR 1254 में बम्बई उच्च न्यायालय की पूर्ण न्यायपीठ ने यह टिप्पणी की:—“पंच को मामलों को निर्दिष्ट करने के लिए भारत में कई विवादों को निपटाने के प्राकृतिक तरीकों में से एक है।” वास्तव में यह प्रणाली इस धार्मिक और पवित्र देश के विभिन्न भागों में भली प्रकार से कार्य कर रही है।

केरल राज्य बनाम मथाई वर्गिस, AIR 1987 SC 33 = 1986 (4) SCC 746 = 1987 SC (Cri) 3 के बाद में यह निर्धारित किया गया कि न्यायालय प्रावधान की केवल व्याख्या कर सकता है, ताकि विधानमण्डल के इरादे को वर्णित कर सके। यह प्रावधान को पुनः लिख नहीं सकता या पुनः डिजाइन नहीं कर सकता, क्योंकि विधान की शक्ति को न्यायालय पर प्रदान नहीं किया गया। अपने संगठन के प्रयास से पूर्व में भी 'इंबोडिमेंट ऑफ भारतीय बैलूज इन कन्शटीयूशन' (Embodiment of Bhartiya Values in Constitution)। सिटिजन एकाउंटिबिलिटीस (Citizen Accoutabilities) कल्चर रिस्टोरेसन (Culture Restoration) जैसे विषयों पर व्यापक चिंतन उपरान्त रिजोलेशनस एवं न्यायाधिक पत्रिका के कई अंक विधि निर्माण व्यवस्था एवं न्याय प्रक्रिया तंत्र के समक्ष सौंपा गया है। माननीय दत्तपंत “जो वास्तविक रूप में सही है। वही व्यवहारिक रूप में ही सही है।” —महामहीम डॉ० राजेन्द्र प्रसाद

PRINCIPLES OF NATURAL JUSTICE



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Indeed, the concept of natural justice, though not explicitly mentioned in the Indian Constitution, is deeply ingrained in the Indian legal system and is considered a fundamental aspect of the administration of justice. Natural justice, also known as procedural fairness, is a concept derived from common law principles and has its roots in the idea of 'Jus Natural,' meaning the law of nature.

Natural justice encompasses principles such as the right to be heard, the right to a fair and impartial hearing, and the right to a decision-maker who is unbiased and free from any prejudice. These principles are essential to ensure that the process of decision-making is fair, transparent, and equitable.

Initially, the concept of natural justice was restricted to judicial proceedings, with courts being required to adhere strictly to these principles in their decisions. However, as the role of administrative authorities expanded, the application of natural justice principles also extended to administrative decisions. This shift recognized that administrative actions, much like judicial decisions, have significant impacts on individuals' rights and, therefore, should be subject to the same standards of fairness and impartiality.

Protecting Individual Rights

The principles of natural justice protect the substantive rights of individuals by preventing arbitrary or capricious decisions. When people know they will be treated fairly and impartially, they are more likely to accept and comply with decisions, even if the outcome is not in their favor. This protection is especially vital in administrative decisions affecting people's livelihoods, properties, or freedoms.

Preventing Abuse of Power

Natural justice acts as a check on the power of decision-makers. By requiring adherence to fair procedures, it helps prevent the misuse or abuse of authority. This is particularly important in administrative contexts where decisions can significantly impact individuals and communities.

Enhancing Legitimacy and Trust

Adherence to natural justice principles enhances the legitimacy of decisions and fosters public trust in institutions. When people perceive that decisions are made through a fair process, confidence in the legal and administrative systems is strengthened. This trust is fundamental to maintaining social order and encouraging voluntary compliance with laws and regulations.

Promoting Accountability and Transparency

Natural justice promotes accountability and transparency in decision making processes. Decision-makers are required to follow fair procedures and provide reasons for their decisions. This transparency allows for scrutiny and review, which can identify and correct errors or injustices.

The following parts of the Constitution with their respective expressions convey the idea of

Natural Justice.

- **Preamble:** 'Social, Economic and Political' justice, liberty of belief, thought, worship, and equality of opportunity and status. ? Article 14: Equal protection of the law for all citizens of India and equality before law
- **Article 21:** Right to liberty and life
- **Article 22:** Provision of fair hearing for an arrested person ?
- **Article 39-A:** Free legal services for disabled and indignant people
- **Article 311:** Constitutional protection for civil servants ?
- **Article 32, 136, and 226:** Constitutional solutions for violations of fundamental rights.

In the Landmark Judgment *Menka Gandhi vs. Union Of India* AIR 1978 S.C 597 . This decision implants "due process of law" clause of Article of the constitution of India and extends the horizons of natural justice to umpteen areas of administrative law.

Principles of Natural Justice

According to traditional English law natural justice classified into two principles i.e

1. **Nemo judex in causa sua** (rule against bias) 2. **Audi alteram partem** (rule of fair hearing)
1. **Nemo judex in causa sua:-** "It means that no one should be a judge in his own case because it leads to the rule of biases."

Different types of Bias-

- **Personal Bias:** Personal bias may arise from a variety of relationship e.g, friendship or enmity rivalry. *Mineral Development Corporation Ltd. Vs State of Bihar* AIR 1960 SC 468 is an interesting example of personal bias. Personal bias undermines the fundamental principle of impartiality, which is essential for ensuring fair and just decision-making. When a decision-maker is biased, it can erode trust in the judicial system and compromise the integrity of the legal process. Therefore, it's crucial to address and mitigate personal bias to uphold the principles of natural justice.

A.K. Kraipak v. Union of India (AIR 1970 SC 150) SC held that a person who serves on a committee that selects candidates for a job must not be a candidate for the job himself. The logic is that the judges could be impartial and neutral. In this case, The Court ruled that the object of the Principles natural Justice is to secure Justice and to prevent miscarriage of Justice.

Pecuniary bias: Pecuniary bias occurs when the adjudicator has a financial interest in the subject matter of the dispute. Even the slightest financial interest in the litigation's subject matter disqualifies a person from acting as a judge.

(Manak lal v. Dr.Prem chand, AIR 1957 SC 425) It is obvious that pecuniary interest, howsoever small it may be in a subject matter of the proceedings, would wholly disqualify a member from acting as a judge.

- **Subject matter bias:** Bias regarding the subject matter arises when the judge has a personal interest in the issue being contested. This bias can occur if the judge has a general interest in the subject matter or if the decision-maker is directly or indirectly involved in the case's subject

matter.

A.P.S.R.T.C (AIR 1959 SC 308), the Supreme Court quashed the decision of the Andhra Pradesh Government to nationalize road transport. The decision was invalidated because the Secretary of APSRTC, who conducted the hearing, had an interest in the subject matter, leading to subject matter bias.

2. **Audi alteram partem:-** a Latin phrase meaning "hear the other side." It's one of the cornerstones of natural justice, ensuring fairness in legal proceedings. This principle dictates that no one should be condemned without a fair hearing. In legal terms, it mandates that in any situation where a person's rights or interests are at stake and action is being taken against them, they must be given an equal opportunity to present their case and defend themselves. This includes the right to be informed of the allegations against them, the right to respond to those allegations, and the right to have their arguments considered by an impartial decision-maker. Audi alteram partem safeguards against arbitrary or unjust decisions by ensuring that all parties affected by a decision have the opportunity to participate in the process and have their perspectives heard.

Contents of fair Hearing:

Right to Notice:-(prior notice of the case to be met)

The first step in ensuring fair hearing in legal proceedings is to serve notice to the affected person, giving them an opportunity to show cause against the proposed action and provide their explanation. The hearing begins with the issuance of this notice.

- The time, place and nature of hearing.
- A statement of specific charges or grounds and proposed action which the person has to meet.
- Must be clear and unambiguous.
- Must afford the party sufficient time, to prepare his case.
- Not only provide the sufficient information relating to the case, but he must also be informed of the penalty proposed to be imposed in case of his failure to meet the case against him.
- Legal authority under which hearing is to be held.

Right to know the evidence against him:-(disclosure of all evidence)

Fair hearing necessitates full disclosure of evidential facts and documents to the parties involved, allowing them to understand the basis for the decision. This right to know the materials forms a crucial part of the right to defend oneself. Adjudicating authorities must base their decisions only on the material known to the parties, and considering evidence without the knowledge of the concerned person violates natural justice.

Right to Cross Examination: Cross-examination is a potent tool for uncovering truth and revealing falsehoods. However, in administrative adjudications, the right to cross-examine witnesses may not always be granted automatically. Its necessity depends on the specifics of each case. The right to cross-examine witnesses should be provided only when circumstances indicate that without it, the affected party cannot mount an effective defence.

Representation by a lawyer: The fourth requirement for a fair hearing is legal representation, allowing individuals the opportunity to be represented by a lawyer of their choice in a court of law. This ensures that everyone has the chance to present their case effectively and receive proper legal guidance.

Right to know evidence: Evidence should not be considered without the other party's knowledge. Failure to disclose evidence to the affected person has been deemed detrimental in numerous judicial or quasi-judicial rulings. Adjudicating authorities must rely on information accessible to all parties. Considering evidence without informing the concerned person violates natural justice.

Recently, the **Allahabad High Court** in the matter of **Maa Vindhya Stone Crusher Company v. State of U.P.** and Anr. has held that in a civilized society, principles of natural justice ought to be followed in order to maintain rule of law.

Conclusion:

The judiciary has embraced the principles of natural justice to safeguard public rights from arbitrary administrative decisions. Throughout proceedings, the primary objective of these principles is to prevent miscarriages of justice. It's essential to remember that adherence to the principles of natural justice is equally crucial in determining the validity of decisions made by adjudicating authorities.

In India, the principles of natural justice find expression in Article 14 and Article 21 of the Constitution. With the incorporation of substantive and procedural due process within Article 21, all aspects of fairness inherent in the principles of natural justice can be inferred into Article 21. Violation of these principles leads to arbitrariness, rendering such decisions void or voidable.

Arbitration

A reference to first contract in a Second Contract does not automatically apply to the arbitration clause of first Contract, unless the second contract specifically mentions to apply of it.

AIR 2024 SC 1941

(NBCC (India) Ltd. v/s Zillion Infra Projects Pvt. Ltd.

Family Court Act, 1984

-S-19(I) – Even in absence of the decree, a judgement of the family court can be challenged in an appeal before the High Court and the said appeal is to be treated as Miscellaneous appeal.

2024(2)PLJR (D.B.) (Ravikant v/s Bandana Kumari

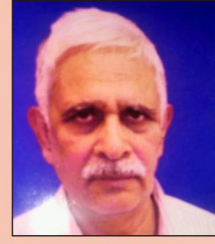
प्रदेश अधिवेशन सत्र 2024 - 27 में आये हुए प्रतिनिधियों का अधिवक्ता परिषद, बिहार द्वारा हार्दिक स्वागत



रविन्द्र कुमार सिन्हा
प्रदेश अध्यक्ष



अमोद कुमार सिंह
प्रदेश महामंत्री



मुकुल प्रसाद
प्रदेश कोषाध्यक्ष

गया जिला ईकाई द्वारा अधिवक्ता परिषद, बिहार के प्रदेश अधिवेशन में आये हुए प्रतिनिधियों का हार्दिक अभिनंदन करता है



महेश प्रसाद
प्रदेश उपाध्यक्ष, अधिवक्ता परिषद, बिहार
संरक्षक, अधिवक्ता परिषद, गया ईकाई



उमेश प्रसाद
ईकाई अध्यक्ष, अधिवक्ता परिषद, बिहार



रवि रंजन सिन्हा
ईकाई कोषाध्यक्ष, अधिवक्ता परिषद, बिहार

दैनिक भास्कर

बीआईए में अधिवक्ता परिषद ने मनाया
संविधान दिवस: 'महिला सशक्तिकरण
उत्तरदायित्व-संविधान' विषय पर अधिवक्ताओं
ने रखी अपनी बात



पटना में अधिवक्ता परिषद की ओर से बिहार
इंडस्ट्रीज एसोसिएशन के सभागार में संविधान दिवस
पर कार्यक्रम का आयोजन किया गया। कार्यक्रम का
उद्घाटन मुख्य अतिथि हाईकोर्ट के जज अनिल कुमार
सिन्हा और डॉ. अंशुमान ने दीप प्रज्ज्वलित कर

गतिविधियाँ

कुन्दन मिश्रा बने अधिवक्ता परिषद के उपाध्यक्ष



मधुबनी जिला अधिवक्ता परिषद की बैठक तिलस्कागांड़ी
स्थित अपार्टमेंट में हुई, जिसमें जिला इकाई का गठन
किया गया। गठित इकाई में अधिवक्ता महावीर तिवारी को
महामंत्री, कुन्दन कुमार मिश्रा को उपाध्यक्ष, विकास कुमार
वर्मा को मंत्री व मोहन तिवारी को कोषाध्यक्ष मनोनित
किया गया। बिहार अधिवक्ता परिषद के महामंत्री अमोद
कुमार सिंह के निर्देश पर प्रदेश मंत्री रमेश चन्द्र वर्मा ने
जिला अधिवक्ता परिषद के पदाधिकारियों का मनोनयन
किया गया। मंत्री पर प्रदेश मंत्री रमेश चंद्र वर्मा,



गुरुवार को श्रद्धांजलि सभा में स्मारिका भेंट करते परिषद के प्रदेश मंत्री।

अधिवक्ताओं ने राम सुरेश राय को दी श्रद्धांजलि

मुंगेर। अधिवक्ता परिषद जिला शाखा मुंगेर ने गुरुवार को विधिज्ञ संघ भवन
संख्या -2 के सभागार में श्रद्धांजलि सभा का आयोजन किया। जिसमें
अधिवक्ता परिषद के संस्थापक सदस्य सह पटना हाईकोर्ट के वरिष्ठ अधिवक्ता
राम सुरेश राय को श्रद्धांजलि दी गई। सभा की अध्यक्षता वरिष्ठ अधिवक्ता
श्याम शंकर राय ने की। मौके पर अधिवक्ता यदुनंदन झा ने अधिवक्ता श्याम
शंकर राय के जीवन वृत्त को विस्तार से रखा। इस अवसर सभी मौजूद
अधिवक्ताओं ने दो मिनट मौन रहकर उनके मृतात्मा की शांति के लिए प्रार्थना
की। साथ ही सभी ने उन्हें श्रद्धांजलि दी। प्रदेश मंत्री राकेश चन्द्र वर्मा ने प्रांत
द्वारा प्रकाशित स्मारिका अधिवक्ता यदुनंदन झा को भेंट किया।

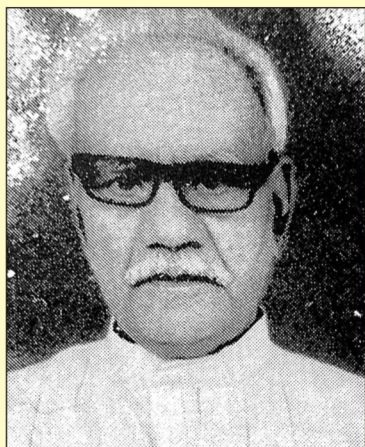


ईकाई बेनीपुर बिरौल, दरभंगा में अध्ययन मंडल का उद्घाटन करते
प्रदेश उपाध्यक्ष श्री विनय कुमार झा साथ में दरभंगा जिला ईकाई के
अध्यक्ष श्री राम मोदित झा



10 फरवरी 2024 को प्रदेश पदाधिकारी बैठक
स्थान : "केशवकुंज", ईस्ट लोहानीपुर, पटना

वित्रम श्रद्धांजलि



अधिवक्ता परिषद्, बिहार के संस्थापक अध्यक्ष तथा पटना उच्च न्यायालय के वरिष्ठ अधिवक्ता श्री राम सुरेश राय जी दिनांक 9 मई 2024 को बैकुंठ प्रयाण पर चले गये। अधिवक्ता परिषद्, बिहार का संस्थागत ढांचा निर्माण करने में उनकी उल्लेखनीय भूमिका रही। अधिवक्ता परिषद्, बिहार परिवार उनके श्री चरणों में विनम्र श्रद्धांजलि अर्पित करता है तथा परमात्मा से प्रार्थना करता है कि वे उनकी आत्मा को चिरशान्ति प्रदान करें तथा हम सबों को एवं उनके परिजनों को इस अपूरणीय क्षति को सहन करने की शक्ति प्रदान करें। ॐ शान्ति ॐ

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