# REMEDIES, ADMINISTRATIVE AND JUDICIAL, RELATING TO ADMINISTRATIVE FUNCTIONS OF HIGH COURTS

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## 1. Importance of the subject

The High Court stands at the apex of the judicial structure of the state. To the ordinary citizen and, by and large, to the lawyer also, its importance lies in the exercise of its judicial functions. It is true that its judicial functions overshadow its administrative functions and its powers in the latter sphere do not affect a very large number of persons. All the same, they affect the integrity, independence and efficiency of the entire judicial machinery from the lowest to the highest rank. Ordinarily, it is thought that the rule of law, which is the very basis of freedom in democratic countries, is exposed to dangers from the encroachments of the executive and requires protection from attacks from that quarter only. It is seldom realised that the rule of law also depends on the quality of the administration of justice. An inefficient and corrupt machinery administering justice can pollute the stream of law and justice; may be to a greater extent than any possible invasion from the executive. It is from this aspect that the administrative functions exercised by High Courts acquire a national importance. An independent judiciary is considered to be the touchstone of a democratic system of government under a written constitution. This is the reason which has persuaded the author of this article to discuss a subject which is ordinarily considered of comparatively minor importance, as the exercise of such powers normally do not attract the public gaze.

## 2. Administrative powers and functions of High Courts

The constitution confers many important administrative powers and functions on the High Courts. Article 227 lays down that every High Court shall have superintendence over all courts and tribunals throughout the territory in relation to which it exercises jurisdiction and, without prejudice to the generality of the foregoing provision, the High Court may call for returns from such courts, may make and issue general rules and prescribe forms for regulating the practice and

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proceedings of such courts and prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts. The superintending power of the High Court under the Article is not only of an administrative nature but is also of a judicial nature. [1]

The object of the Article is to make the High Court responsible for the entire administration of justice in the state and to vest an unlimited reserve of judicial power which could be brought into play at any time if the High Court considers it necessary to draw upon the same. [2]

In the exercise of the powers conferred under the Article, the High Court exercises effective administrative control over all courts and tribunals. The tribunals will include many courts of special jurisdiction, as industrial tribunals, election tribunals. Under Article 233, appointments of persons and the postings and promotions of district judges, in any state, shall be made by the Governor of the state in consultation with the High Court of that state. Under Article 234, appointments of persons, other than district judges, to the judicial service of the state, shall be made by the Governor of the state in accordance with the rules made by him, after consultation with the state Public Service Commission and with the state High Court. Article 235 vests in the High Court the control over district courts and courts subordinate thereto, including the posting and promotion of and grant of leave to persons belonging to the judicial service of a state and holding any post inferior to the post of the district judge. The Calcutta High Court has recently interpreted the expression "the control over district courts and the courts subordinate thereto" in the widest possible sense by holding that control over a court includes control over the presiding officers of such courts.[3] In that case the state government had initiated disciplinary action against an additional district judge without reference to the High Court. On a writ by the aggrieved judicial officer, the Calcutta High Court quashed all the proceedings on the view that the state government was not, and the state High Court only was, empowered to take disciplinary action against the judicial officer. The

1. *Bhataraju* v. *Hon'ble Judges of the Madras High Court and Others;* A.I.R. 1955 S.C. 233 : [1955] S.C.R. 1104.

2. *Jodhey and Others* v. *State;* A.I.R. 1952. All. 788.

3. *Nripendranath* v. *Chief Secretary, Government of West Bengal,* A.I.R. 1961 Cal. 1 : 65 C.W.N. 361.

expression "judicial service" is defined to mean a service consisting exclusively of persons intended to fill the post of district Judge and other civil judicial posts inferior to the post of district judge.[4] Reading Article 235 in the light of the definition, the interpretation, placed upon the article, by the Calcutta High Court, appears to be correct. One might, however, object to such wide interpretation on the ground that control over a court is different from that over persons presiding over it. Control over the persons belonging to the judicial service of the state is confined to posting, promotion and the grant of leave. It does not refer to disciplinary action. One might also argue, in the light of Article 311, which prohibits the dimissal of an officer by any authority subordinate to the one appointing him, that the Calcutta High Court's interpretation is too wide. Even if one were to place a narrow interpretation, the exercise of control by the High Court over subordinate courts, including, the district courts, is effective enough to make its influence felt in determining the integrity, independence and efficiency of the services so as to have a material effect on the equality of justice administered by those courts. The morale of the services, their sense of responsibility, their statisfaction with the operation of the conditions of services and an over-all attitude of mind conducive to good and honest work will very much depend upon the way in which the High Court would treat them in the matter of transfers, promotions, writing of confidential reports, inspection of work in court protection from outside criticism and other allied matters. Fair play in the matter of promotions and postings and the extent of protection granted by higher authorities to the officers against unwarranted criticism or complaints by the irresponsible section of the public will go a longway to create proper and healthy conditions and environments in which justice will be meted to the litigant public honestly, efficiently and fearlessly.

Article 229 lays down that appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other judge or officer of the Court as he may direct. The conditions of service of such officers and servants are prescribed by rules made by the Chief Justice of the Court with the approval of the Governor of the state. The power of the High Court over its officers and servants is plenary and of the widest possible amplitude.

4. Art. 236 (b).

A judge of a High Court can be appointed by the President only after consultation with the Chief Justice of the High Court. A person who has for at least ten years held a judicial office is eligible under Article 217, sub-clause 2, for appointment as High Court judge. The Chief Justice of the High Court, in the course of his official duties, both administrative and judicial, also comes into contact with a large body of lawyers practising in the High Court or subordinate courts. It is natural that the recommendation of the Chief Justice of the High Court is considerably influenced by the opinions and impressions he had made of certain lawyers and certain judicial officers. This is a very important administrative function vested in the Chief Justice by the Constitution. A proper and wise recommendation to assist the President in the selection of an appropriate person for appointment as a judge of the High Court has an important bearing upon the respect which the High Court and its judges are likely to command from the general public. The Governor of the state—in actual practice the Chief Minister of a state—has a say in the matter. Recently the Law Commission devoted several passages of their report in discussing how the procedure of appointment of a judge in Article 217(1) has worked in practice and suggested certain amendments to the Constitution. Shri. S. R. Das, a former Chief Justice of India, in his evidence before the Law Commission, made many revealing observations.

Various Acts of Parliament and state legislatures have vested extensive powers and functions, both judicial and administrative, on the High Courts. The High Courts exercise very important rule-making powers under various statutes, for instance, the Code of Civil Procedure and the Indian Companies Act. The legality or the constitutionality of some of those rules may arise in their impact on the persons affected by them. Till the passing of the Advocates Act, 1960, the High Courts, under the Bar Councils Act, the Legal Practitioners Act and Letters Patent, exercised extensive powers in the matter of enrolment of advocates and pleaders and taking disciplinary action against them for professional misconduct.

Apart from statutes, conventions and established practices have brought in the High Courts for consultation and expression of opinions on many matters affecting government servants and also members of the public. A High Court judge may act as a member of an advisory committee. He may be appointed to act as an enquiry officer under the Public Servants Enquires Act or other departmental rules. At the request of the President, a High Court judge may be required to hold

enquiries into occurrences of public importance as police firing at a riotous mob, or exercise of powers by subordinate executive officials in dealing with the public.

It has become an established convention that all functions of the High Court are exercised and its decisions are announced or communicated, in the name of the Hon'ble the Chief Justice and judges of the High Court. Each High Court has framed rules for the disposal of executive and administrative business and nearly all important matters are disposed of at judges' meeting.[5] For instance, the suspension of subordinate judges and district and sessions judges, the promotion of subordinate judges and district and sessions judges in cases where it is proposed to pass over an officer and recommendations for the grant of pensions to district and sessions judges and subordinate judges are matters which are considered and disposed of at judges' meeting.

The High Court not only exercises important executive and administrative functions and powers in its own right but is also consulted on many matters by the executive government of the state. Acts and decisions of the government taken in the name of the Governor of the state are ordinarily preceded by consultations with or recommendations of the head of the department. Such acts or decisions, though nominally those of the government, are in substance those of the head of the department. In matters within the jurisdiction of the High Court, very often an identity of interest and responsibility between the High Court and the government takes place. Technically there may be a remedy against the government, but actually the grievance lies against the advice tendered by the High Court and accepted and acted upon by the former. The outward appearance may be maintained but the nature of the actual controversy or dispute and the parties thereto is seldom a secret, despite outward legal facade of form and procedure.

The next aspect of the problem is to consider remedies, administrative and judicial, which may be open to a person aggrieved against an administrative act or decision of the High Court or of the government based on the recommendation or opinion of the High Court.

By virtue of the special position occupied by the High Court in the governmental organisation, in its capacity as adviser and consultant it has an overriding influence and prestige. Conventions have developed that the state government must normally accept and implement its recommendations—a principle of practice not applicable to or followed in the case of other heads of department.

5. *Vide* Rules and orders of the Punjab High Court Vol. V. Chap. 9, Part. A.

## JUDICIAL REMEDIES

As explained earlier, all important matters on the administrative side, whether within the exclusive jurisdiction of the High Court or within its capacity as advisor and consultant of the department of the executive government carried on in the name of the Governor under the Constitution, are decided by all the judges of the High Court at a meeting or by circulating the matter to them.

What is the remedy of a person aggrieved by such an order? The matter was considered at a considerable length by a Full Bench of the Patna High Court.[6] The High Court had rejected an application of the petitioner, Shri B. C. Mitra for enrolment as an advocate of that court. He thereupon filed a writ petition under article 226 of the Constitution asking for a rule calling upon the High Court on the administrative side to show cause why a writ or direction should not be issued, commanding that the petitioner should be enrolled as an advocate. The question of the maintainability of the petition and the nature of the relief to which the petitioner was entitled were at once raised. After a consideration of certain English cases, the following propositions of law were laid down :

(1) A Bench of the High Court has no jurisdiction to issue any writ or direction or order to the High Court. It is not right to say that a High Court can issue a writ or order directly to itself to quash an order made by itself. It is immaterial whether in making the order the High Court acts in a judicial or administrative role. The process involves the absurd position that it calls upon the judges to show cause to themselves why they should not be directed to quash something they themselves have determined.

(2) The proper interpretation to be placed on the scope of article 226(1) is that a writ cannot be issued by a judge to another judge of co-ordinate jurisdiction to compel performance of duties. The very nomenclature of the writs implies superior power. The High Court on its administrative side cannot be said to be inferior to the High Court sitting on the judicial side.

It is unnecessary to refer to the facts of the English cases cited and relied upon by the Hon'ble judges. On facts, it was found that the application of Mr. Mitra was circulated to the full court, *i.e.*, to all the judges and each judge recorded, in a separate minute, his opinion as to the proper order to be passed in the application.

6. *In re Babul Chandra Mitra*, A.I.R. 1952 Pat. 309.

The question came up for consideration before a Constitution Bench of the Supreme Court,[7] but was not decided. The petitioner before the High Court, also appellant before the Supreme Court, was registrar of the High Court on the original side. Disciplinary action was taken against him by the Chief Justice in the exercise of his powers under Art. 229. Various contentions were raised on his behalf. One relevant for our purpose is that Art. 320(3)(c) of the Constitution was held not to apply to officers and staff of the High Court as they do not fall within the expression " persons serving under the Government of India or the State Government ". On the point relating to the maintainability of an application for a writ against the action of the Chief Justice the Court observed.[8]

> " The learned judges of the High Court have also dealt at some length with the question as to the maintainability of an application for a writ in a case of this kind and of the availability of any remedy by way of a writ against the action of the Chief Justice, whether administrative or judicial.
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> Arguments in this behalf have also been strongly urged before us by the learned Advocate-General of West Bengal. In the view, however, that we have taken as to the contentions raised before us regarding the validity of the order of dismissal, we do not feel called upon to enter into the discussion relating to the availability of the writ. We express no opinion on the question so raised.
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> We consider it, however, desirable to say that our view that the exercise of power of dismissal of a civil servant is the exercise of administrative power may not necessarily preclude the availability of remedy under Art. 226 of the Constitution in an appropriate case. That is a question on which we express no opinion one way or the other in this case."

Another case which deserves consideration is a decision of a Special Bench of the Calcutta High Court.[9] The writ petition under Art. 226 of the Constitution was presented by three lawyers, an advocate, a barrister and a solicitor, representing three branches of the legal profession in the Court. High Court Judges (Conditions of Service) Act, 1954, s. 23A, was considered for its constitutional validity. In the exercise of his powers under the said section, the President of

7. *Pradyat Kumar* v. *Chief Justice of Calcutta High Court*, A.I.R. 1956 S.C. 285.
8. *Ibid* at 294.
9. *Pramathnath Mitter* v. *Chief Justice of Calcutta High Court;* A.I.R. 1961 Cal. 545 (P.B. Mukharjee, M.K. Bose and D.N. Sinha, JJ.).

India had passed an order, *i.e.*, Calcutta High Court (Vacation) Order, 1960, purporting to regulate the vacation period of the High Court. On the merits of the order, P. B. Mukerjee, J., used (it must be said, with great respect), very strong language in crticising the justice and the propriety of the impugned order. His Lordship observed : " Courts and constitutional jurisprudence are powerless to strike down law or order only on the ground that it violates and flouts public opinion or affected or concerned opinion." As regards the maintainability of the petition, he referred to the observations of the Supreme Court in *Pradyat Kumar's* case and was inclined to the view that a writ petition lay against the Chief Justice. He however, held the petition not maintainable on the ground that the Court had no jurisdiction for the respondent, the Union of India, had its seat in New Delhi and the order was also passed in New Delhi.

Mr. Justice Bose, after having considered the constitutionality of the order and expressing an opinion that it was *ultra vires* the constitution and the power of Parliament, proceeded to consider the question of the maintainability of the application. He expressed no opinion as to whether the remedy of a writ petition under Art. 226 of the Constitution did lie or not. Opinion was expressed that it was, assuming that it lay, not an appropriate case. He accepted the second objection that the petition was not maintainable unless all the learned judges of the Court, who were parties to the Full Court resolution which gave effect to the Presidential order were made parties to the application. The third point on which the learned judge laid great emphasis was that the judges constituting the special Bench, being parties to the said resolution, except Mr. Justice Sinha, were not competent to dispose of the matter on the ground of bias. Justice Bose observed[10] : "now it is a basic principle of jurisprudence that no one is allowed to be a judge in his own cause. A judge should have no interest in the litigation. The object of the rule is that not merely the scales be held even, it is also that they may not appear to be inclined. Justice must not only be done; it must manifestly be seen to be done. It is true that if the interest of the judge is not pecuniary one but is of any other kind, it has to be established that a judge has such a substantial interest in the result of the hearing as to make it wrong for him to act in the matter." Having laid down the general principle, it was further observed that the past conduct of the judges of the Court, including those constituting the special Bench, showed

10. *Ibid* at 554.

that they had all along been opposed to the curtailment of the vacation of the Court and for that reason and also because the administration of justice must be kept pure, the judges could not properly deal with the application.

Mr. Justice Sinha was inclined to hold that the remedy of a writ is not absolutely barred but may be available in an appropriate case in view of the observations of the Supreme Court in *Pradyat Kumar's* case. He was more of the view that three learned judges of the Court could set aside or quash or restrain the action of the full Court in an application where the other judges were not before it.

From what has been said above, one may be justified in saying that the remedy of a writ under Art. 226 is not available and, even if it is, the position is highly anomalous, partly because some judges of the court cannot sit in judgment over an administrative decision of the full court to which they themselves were a party and no direction can be issued to a court which is not subordinate to the court deciding the writ and partly because of the existence of legal bias which disqualifies a judge in such circumstances. We proceed to consider this last ground in greater detail.

The leading Indian case which has stood the test of time is *Laburi Domini* v. *Assam Railway and Trading Co.*[11] The proposition of law laid down in the case is adequately expressed in the head-note which runs as under :

> "An officer who exercises executive and judicial functions, having himself dealt with a certain matter and formed and expressed an opinion upon its merits in his executive capacity, and having further advised and directed litigation in support of this view, is, in consequence, disqualified from dealing as a judge with this same question when it comes into court and has to be dealt with judicially."

This was an application under s. 25, C.P.C., 1882 (present s. 24, C.P.C., 1908) for the transfer of certain appeals. The Hon'ble judges quoted at length from the House of Lords case, *Dimes* v. *Proprietors of the Grand Junction Canal,*[12] where a judgment of the Lord Chancellor of England who was found to hold some shares in the company a party

11. I.L.R. 10 Cal. 915 (DB).
12. 3 H.L.C. 759.

to the cause before him, was set aside. It was said that the maxim that "no man is to act as a judge in his own cause" should be held sacred and that the principle was not confined to a case, in which he was a party but also applies to a case in which he had an interest. This principle was reported and reaffirmed in a Bombay case *Aloo Nathu* v. *Gagubha Dipsangji.*[13] The Supreme Court made similar observations in *L.S. Raju* v. *State of Mysore.*[14] The appellant was charged with an attempt to murder the Chief Justice of the Mysore High Court. His appeal against his conviction was transferred to the Bombay High Court from the Mysore High Court under s. 527, C.P.C. It is a brief judgment but is important for the principle it has recognized. In another case[15] the Supreme Court set aside a verdict of a Bar Council Tribunal on the ground of presumed bias, even though proof of actual prejudice was wanting.

The Supreme Court made some pertinent observations on this aspect of the administration of justice in *Sukhdev Singh* v. *Chief Justice and the Hon'ble Justices of the High Court at Patiala.*[16] The petitioner, Sukhdev Singh was charged with having brought out and published a scurrilous pamphlet against the Chief Justice. Proceedings for contempt were initiated against him under Art. 215 of the Constitution. He applied to the Supreme Court for transfer of his case to another High Court. After having held that the Supreme Court did not have any jurisdiction to transfer such proceedings, Mr. Justice Bose, who delivered the judgment of the court, further observed: "we consider it desirable on general principles of justice that a judge who has been personally attacked should not, as far as possible, hear a contempt matter, which, to that extent, concerns him personally."

The helplessness of the court in such a situation to save the appearances of administrating justice found vent in an exhortation which is remarkable for the high ideal judges are to set before them. The poignancy of the appeal is intensified by the realisation of how difficult it is for a man made so vulnerable and frail by his creator to rise to the occasion and show the needed breadth of vision and magnanimity of mind.

13. I.L.R. 19 Bom. 608.
14. A.I.R. 1953 S.C. 435.
15. *Manaklal* v. *Prem Chand*, A.I.R. 1957 S.C. 425.
16. A.I.R. 1954 S.C. 186.

What has been said above applied to the High Court as a whole. There may be a case where a particular judge of the court is interested and the matter comes before him for decision. The Constitution or the High Court rules and orders do not provide for the right of a litigant to make an application for the transfer of a case from one judge to another. It is, of course, open to the Hon'ble Chief Justice to make an administrative order, on being moved for the purpose. To invoke those powers also, a written application and or representation will, in most cases be necessary. The drastic step of making an application for the transfer of a case from one Bench to another was made by some senior lawyers of the Nagpur High Court. They were proceeded against for contempt of the court. If lawyers are exposed to such great risks as one finds in the Supreme Court case, *M. J. Shareef* v. *Judges of the Nagpur High Court*,[17] no sensible litigant will ever dare to make imputations against a judge of a High Court however good grounds he may have. It is true that the decided cases draw a line between fair criticism of a judge or his conduct which does not amount to contempt of court and criticism exceeding those limits. Only the latter is punishable for contempt. It has been drawn in *Andre Paul Terence Ambard* v. *Attorney-General of Trinidad*. The Privy Council observed :

> "The path of criticism is a public way. The wrong-headed are permitted to err therein provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising the right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune".

It is also true that the Privy Council has drawn a distinction between what amounts to a mere libel of the judge and what is contempt consisting of scandalising the court itself. In *the Hindustan Times* case[19] it was said that no doubt it is galling for any judicial personage to be criticised publically as having done something outside his judicial proceedings which was ill-advised or indiscreet but judicial personages can afford not to be too sensitive. If a judge is defamed in such a way as not to affect the administration of justice, he has the

17. A.I.R. 1955 S.C. 19.
18. A.I.R. 1936 P.C. 141.
19. *Debi Prasad Sharma* v. *Emperor*, A.I.R. 1943 P.C. 202.
20. A.I.R. 1954 S.C. 10.

ordinary remedies for defamation if he should feel impelled to use them. The same principles have been recently reaffirmed by the Supreme Court in *Brahma Prakash* v. *State of U. P.*[20].

These are fine distinctions in law. One is liable to cross the border-line. Whether the border line has been crossed or not lies in the exclusive and sole determination of the High Court. These distinctions, therefore, afford little practical guidance to the ordinary litigant. The Orissa High Court has gone so far as to hold that criticism of a judge in a representation made to the authorities may amount to contempt.[21]

The path of making submissions, oral or written, for the transfer of a case from one judge to another is always fraught with danger. Section 25, C.P.C., provides a remedy for the transfer of a case from one High Court to another where the court is presided over by a single judge, who may happen to be interested in the case coming up before him. It does not apply to a High Court which has more than one judge. The procedure is also cumbrous. In criminal cases, the remedy provided by s. 527, Cr.P.C. is fairly effective. It confers very wide powers in the Supreme Court to transfer cases not only from one High Court to another but also from one subordinate court to a court subordinate to another High Court. Incidentally, the difference emphasises the futility of instituting a civil suit in a subordinate court against any administrative act or a decision of the High Court to which such Court is subordinate. Though the court is different and a suit may technically lie but it might be too much to expect a subordinate judge to take an impartial and independent view reflecting upon the propriety or bonafides of the conduct of the High Court as a whole in the exercise of its administrative power or against a particular judge. After all the human element can never be completely eliminated from any activity, whether judicial or administrative. No one can claim to be free from weaknesses of body, mind and heart, inherent in the man's organism. In legend sages and seers are depicted as having fallen from high standards of conduct and even angels are stated to have fallen from grace. It is this basic trait of human nature which has been adopted in the administration of justice by following the maxim that "no one can be a judge in his own cause."

21. *State* v. *Nityananda Mahapatra*, A.I.R. 1960 Orissa 132.
22. See A.I.R. Manual Vol. II, p. 1217 and the case cited therein.

If the view that no writ lies against an act or a decision of the High Court may be accepted, no question of transfer of the proceedings from that High Court to another can arise. It is settled law that a case in which the court of institution has no jurisdiction cannot be transferred from that court under s. 24, C.P.C.[22]

The basic principle of a democratic political society is that it ensures government of laws and not government of men. The basic principle of all systems of jurisprudence is that every wrong has a remedy. Strangely enough, we find one section of governmental activity in which these two basic principles have no application. It is still more strange that such absolutism is to be found in the sphere of one of the three organs of government and the most important under a written constitution, the administration of justice and the judiciary. It is true that one may expect members of the judiciary to develop a sense of fairplay and justice both in and out of courts. Still the warning given by Lord Acton long ago that power corrupts and absolute power corrupts absolutely has universal validity and application.

**Departmental remedies**

It is literally true that no departmental remedies exist against the administrative decisions of the High Court. As regards gazetted officers of the judicial department, the government is the appointing authority in name. That being so, no appeal lies to the Government from its own decision made on the recommendation of the High Court. The High Court possesses unlimited and absolute powers over the officers and the staff of the High Court. Under the Constitution or the rules, no representation or appeal lies to any other person or authority. With the devolution of power and the inauguration of the democratic set up, the departmental remedies, open to a government servant generally have been considerably curtailed. At one time, under the Government of India Act, 1935, both before and after 1947, till the coming into force of the Constitution, large powers of review to do justice in a particular case vested in the Governor-General or a Governor. Section 241(5) laid down that no rules made under the section and no Act of any legislature shall be construed to limit or abridge the powers of the Governor-General or a Governor to deal with the case of any person serving His Majesty in a civil capacity in such a manner as may appear to him to be just and equitable. Whatever the actual practice may be, the Centre cannot interfere with the administrative decisions of the state government in the matter of

its civil service. Of course, Article 311 provides a safeguard where the proposed punishment is reduction in rank, removal or dismissal. That Article has, however, a very limited application. It gives only a particular right of procedure. It is not open to any court to review a departmental decision on the merits. It does not also cover instances of other forms of punishment which, under the departmental rules, are many and do often entail serious consequences to the government servant in the matter of future promotions and getting adequate emoluments.

**Suggestions**

We have explained in the light of several rulings of the High Court that a writ does not lie against the High Court as such or its judges. Article 139 lays down that Parliament may, by law, confer on the Supreme Court powers to issue directions, orders or writ for any purposes other than those mentioned in clause 2 of Article 32. An Act of Parliament specifying cases in which the Supreme Court may have power to issue writs will provide an effective solution.

2. If a writ technically lies but it is undesirable that the judges of the same High Court should hear it or where the decision of the provincial Government is based on a recommendation of the High Court so as to make the Hon'ble Chief Justice and the judges of that High Court a virtual party to the decision, it is absolutely necessary that the appearances of doing justice should be saved. Section 25, C.P.C., empowers the State Government to transfer a case from one High Court to another. Section 527, Cr.P.C., was added by sec. 2 of the Cr.P.C. (Amendment) Act, No. 23 of 1952. It confers very wide powers on the Supreme Court to transfer cases and appeals not only from one High Court to another High Court but also from a criminal court subordinate to a High Court to another criminal court of equal or superior jurisdiction subordinate to another High Court. Section 25 of the C.P.C. can be substituted by a similar provision. Civil procedure is mentioned in Art. 13 of list III (concurrent list) of the 7th Schedule of the Constitution. Criminal procedure is mentioned in Art. 2 of the same list. If sec. 527, Cr.P.C., is constitutionally valid, no objection to a similar provision in the Civil Procedure Code will be tenable. It is a common belief from the point of view of human welfare that a criminal proceeding is more important than a civil one. Actually it is not so. At one time imprisonment was regarded to bring disgrace and persons avoided it at all costs. After the satyagraha movements of Mahatma Gandhi and the wide net-work of penal administrative

laws this fear no longer exists. A civil proceeding may prove as beneficial or ruinous to a citizen as criminal proceeding. Any special justification for vesting special powers in the Supreme Court in respect of criminal proceedings, as contrasted from civil proceedings, does not exist or at any rate, no longer exists in the changed circumstances.

The Supreme Court has observed in several cases that it is entitled to exercise judicial superintendence over all courts, tribunal and subordinate judicial bodies in India. Article 141 lays down that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Article 140 empowers Parliament to make provision by law for conferring on the Supreme Court such supplementary powers, not inconsistent with any of the provisions of the Constitution, as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under the Constitution.

The Supreme Court, as the head of the entire judiciary in India, may be made powerful enough to exercise administrative superintendence, direction and control over all courts. It is a matter of common knowledge that judicial superintendence alone is hardly adequate and effective to ensure the administration of justice in an efficient, independent and impartial manner. The magistracy in a state has since long been subordinate to the judicial superintendence of the State High Court. Yet who does not know that the magistracy cannot, or does not, act in the desired manner because of the executive powers in the matter of laying down conditions of service, transfers, promotions, etc., vested in the State Government over them. The constitutional directive for the separation of the judiciary from the executive recognises this basic fact. A vigorous administrative policy pursued by the Supreme Court will bring about uniformity in the administration of justice throughout the Indian territory. Numerous anomalies which at present exist, will disappear at one stroke. Article 140 is wide enough to enable Parliament to make the Supreme Court head of the judiciary in all matters.

The Supreme Court may also be expressly empowered by an Act of Parliament to function in an advisory capacity to the Government of India in matters affecting the personnel of the judiciary at high levels, *i.e.*, the Supreme Court may be allowed to have a voice in implementing the Article relating to the removal of a High Court judge. As things stand at present, both the Government of India and the Supreme Court are helpless.